

Required fields are shown with yellow backgrounds and asterisks.

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| Page 1 of * 44 | SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4 | File No.* SR - 2021 - * 002 Amendment No. (req. for Amendments *) |
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Filing by Cboe BZX Exchange, Inc.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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|---|--------------------------------------|-------------------------------------|---|---|--|
| Initial * <input checked="" type="checkbox"/> | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input type="checkbox"/> | Section 19(b)(3)(A) * <input checked="" type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> |
| Pilot <input type="checkbox"/> | | | Rule | | |
| Extension of Time Period for Commission Action * <input type="checkbox"/> | | Date Expires * <input type="text"/> | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| | | | <input checked="" type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) | |
| | | | <input type="checkbox"/> 19b-4(f)(3) | <input type="checkbox"/> 19b-4(f)(6) | |

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| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 |
| Section 806(e)(1) * <input type="checkbox"/> | Section 806(e)(2) * <input type="checkbox"/> |
| | Section 3C(b)(2) * <input type="checkbox"/> |

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| Exhibit 2 Sent As Paper Document <input type="checkbox"/> | Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
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Description
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

The Exchange proposes to amend the fees applicable to the BZX Top Feed.

Contact Information
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Adrian Last Name * Griffiths
 Title * Assistant General Counsel
 E-mail * agriffiths@cboe.com
 Telephone * (646) 856-8723 Fax

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.
(Title *)
VP, Associate General Counsel

Date 01/04/2021
By Kyle Murray (Name *)
kmurray@cboe.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the fees applicable to the BZX Top Feed.

The text of the proposed changes to the fee schedule are enclosed as Exhibit 5, and available on the Exchange’s website at <http://markets.cboe.com/>, at the Exchange’s principal office and at the Public Reference Room of the Commission.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on December 23, 2020.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7462, or Adrian Griffiths, Assistant General Counsel, (646) 856-8723.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to amend the fees applicable to the BZX Top Feed, which is an uncompressed data feed that offers both top-of-book quotations and execution information based on equity orders entered into the System.³ Specifically, the Exchange proposes to: (1) increase the fee for internal distribution of the BZX Top Feed; and (2) introduce Professional User fees for internal Professional Users of the BZX Top Feed. The current fees for external distribution of the BZX Top Feed will continue to apply, without change, including various incentive programs that the Exchange has adopted to facilitate the provision of lower-cost market data to retail and other investors.⁴

Market Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed

³ See BZX Rule 11.22(d).

⁴ See e.g., BZX Schedule of Fees, Financial Product Distribution Program. The Financial Product Distribution Program lowers the cost of distributing Derived Data based upon the Exchange’s top-of-book offerings, including Derived Data that is often used by retail investors.

companies.”⁵ As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”⁶

Equity trading is currently dispersed across sixteen exchanges, including three new U.S. equities exchanges that launched trading in 2020, 32 alternative trading systems,⁷ and numerous broker-dealer internalizers and wholesalers, all competing fiercely for order flow. Based on publicly-available information, no single U.S. equities exchange has more than 20% market share.⁸ In turn, the market for top-of-book data is highly competitive as national securities exchanges compete both with each other and with the securities information processors (“SIPs”) to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public.⁹ Top-of-book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top-of-book data, but no rule or regulation of the Commission requires market

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS Adopting Release”).

⁶ See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) (“Transaction Fee Pilot”).

⁷ See FINRA ATS Transparency Data, *available at* <https://otctransparency.finra.org/otctransparency/AtsData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

⁸ See Cboe Global Markets, U.S. Equities Market Volume Summary, *available at* http://markets.cboe.com/us/equities/market_share/.

⁹ See Rule 602 of Regulation NMS.

participants to purchase top-of-book data from an exchange.¹⁰ The BZX Top Feed therefore competes with the SIP and with similar products offered by other national securities exchanges that offer their own competing market data products. In fact, there are twelve competing products offered by other national securities exchanges today,¹¹ not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. equities exchanges also offers similar top-of-book data.

Fees for Internal Distribution of the BZX Top Feed

Currently, the Exchange charges a modest fee of \$500 per month for internal distribution of BZX Top Feed data,¹² *i.e.*, distribution within the distributor's own firm,¹³ and does not charge any additional fees for internal distribution based on the number of Professional or Non-Professional Users that receive access to this information. These internal distribution fees have been in place, without change, since July 2013 when the Exchange first began charging for access to the BZX Top Feed, which had previously

¹⁰ By contrast, Rule 603(c) of Regulation NMS (the "Vendor Display Rule") effectively requires that SIP data or some other consolidated display be utilized in any context in which a trading or order-routing decision can be implemented.

¹¹ Competing top of book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE BQT, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, IEX TOPS, MIAX PEARL Equities Top of Market Feed, and MEMX MEMOIR Top.

¹² See BZX Schedule of Fees, BZX Top, Internal Distribution.

¹³ The Exchange's fee schedule defines an Internal Distributor of an Exchange Market Data product as a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. See BZX Schedule of Fees, Market Data Fees, Definitions.

been available free of charge.¹⁴ In the time since, the Exchange has made a number of significant enhancements to its platform, including, among other things, a significant expansion of its listing program for exchange-traded products,¹⁵ that have resulted in improved trading opportunities for investors and, consequently, more valuable market data.

As discussed, the Exchange now proposes to increase certain fees applicable to firms that consume this data as internal distributors, *i.e.*, firms that use BZX Top Feed data for internal purposes as opposed to firms that distribute such data externally to its customers. As proposed, the Exchange would increase the monthly charge for internal distribution of BZX Top Feed data to \$750 per month, which would continue to be significantly cheaper than similar products offered by the Exchange's main competitors, including both other national securities exchanges that offer top-of-book data products to their customers as well as the SIPs that provide similar "core data" to vendors and subscribers pursuant to Regulation NMS. In addition, the Exchange would introduce Professional User fees for internal Professional Users of the BZX Top Feed. Those Professional User fees will be the same as the modest fee currently charged for external distribution of the BZX Top Feed, *i.e.*, \$4 per month for each Professional User. There would continue to be no charge associated with internal distribution to Non-Professional Users. Further, as discussed, the current fees for external distribution of the BZX Top Feed would continue to apply, without change, including various incentive programs that

¹⁴ See Securities Exchange Act Release No. 69936 (July 3, 2013), 78 FR 41483 (July 10, 2013) (SR-BATS-2013-39).

¹⁵ See <https://markets.cboe.com/services/listings/>.

the Exchange has adopted to facilitate the provision of lower-cost market data to retail and other investors. As a result, the Exchange believes that the proposed fee changes would allow it to be appropriately compensated for the value of its market data, particularly from professional financial services firms that use that data for internal purposes, while simultaneously ensuring that its data would continue to be available to a wide range of market participants at a cost that facilitates widespread availability of such data.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(4),¹⁷ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.¹⁸ Finally, the proposed rule change is also consistent with Rule 603 of Regulation NMS,¹⁹ which provides that any national securities exchange that distributes information with respect to

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(4).

¹⁸ 15 U.S.C. 78k-1.

¹⁹ See 17 CFR 242.603.

quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Exchange operates in a highly competitive environment. Indeed, with the launch of three new national securities exchanges that trade U.S. equity securities last September, there are now sixteen registered U.S. equities exchanges, and with the exception of Long-Term Stock Exchange, Inc. (“LTSE”), which has determined to not offer any proprietary market data feeds, each of these exchanges offer associated market data products to their customers, either with or without a fee. The national securities exchanges also compete with the SIPs for market data customers, as much of the information offered to market participants and investors through the BZX Top Feed is similarly made available to market participants and investors through the SIPs, consolidated with data from each of the other fifteen exchanges. It is in this robust and competitive market in which the Exchange is proposing to modestly increase its fees.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Further, with respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC* upheld the Commission’s reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data: “In fact, the legislative history indicates that the Congress intended that the market system ‘evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed’ and that the SEC wield its regulatory power ‘in those situations where competition may not be sufficient,’ such as in the creation of a ‘consolidated

transactional reporting system.”²⁰ The court agreed with the Commission’s conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.’”²¹ As discussed in this filing, significant competitive forces constrain the ability of the Exchange to charge supra-competitive fees.

i. The BZX Top Feed is an Optional Market Data Product, and the Exchange is Constrained in its Pricing by Significant Competitive Forces

Subscribing to the BZX Top Feed is entirely optional. The Exchange is not required to make the BZX Top Feed available to any customers, nor is any customer required to purchase the BZX Top Feed. Unlike certain other data products that firms may be required to purchase in order to fulfill regulatory obligations,²² *e.g.*, the consolidated quotation and last-sale information feeds offered by the SIPs, a customer’s decision as to whether to purchase the BZX Top Feed is entirely discretionary, and is based on that firm’s individual business needs. Generally, firms that choose to subscribe to the BZX Top Feed do so because they believe that it is a

²⁰ NetCoalition v. SEC, 615 F.3d 525, 535 (D.C. Cir. 2010) (“NetCoalition I”) (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323).

²¹ Id. at 535.

²² The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations, Release Nos. 34-72182; AP-3-15350; AP-3-15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSS have chosen not to do so.

cost-effective alternative to core data offered by the SIPs that provides valuable information about the market for securities traded on the Exchange, particularly in cases where a consolidated display is not required pursuant to the Vendor Display Rule. Such firms are able to determine for themselves whether the BZX Top Feed helps them to achieve their business goals, and if so, whether or not it is attractively priced compared to other similar products.

Indeed, if the BZX Top Feed does not provide sufficient value to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the BZX Top Feed. In fact, comparing the number of internal distributors that currently subscribe to the BZX Top Feed, based on data compiled by the Exchange as of November 2020, to the total number of internal distributors that subscribe to core data offered by the CTA and UTP SIPs, as published on plan websites for Q3 2020,²³ less than 9.5% of internal distributors that purchase U.S. equities data choose to subscribe to the BZX Top Feed. The BZX Top Feed therefore represents an insignificant proportion of the relevant market for such market data, and significantly more internal distributors choose not to purchase this product than those that do. Given the insignificant percentage of internal distributors that consume the BZX Top Feed, it is clear that such firms can and do exercise their right to choose to purchase, or not purchase, this particular market data product.

²³ See CTA Quarterly Population Metrics (Q3 2020), *available at* https://www.ctaplan.com/publicdocs/ctaplan/CTAPLAN_Population_Metrics_3Q_2020.pdf; UTP Quarterly Population Metrics (Q3 2020), *available at* https://www.utpplan.com/DOC/UTP_2020_Q3_Stats_with_Processor_Stats.pdf.

Although the Exchange is not required to make any data, including top-of-book data, available through its proprietary market data platform, the Exchange believes that making such data available increases investor choice, and contributes to a fair and competitive market. Specifically, making such data publicly available through proprietary data feeds allows investors to choose alternative, potentially less costly, market data based on their business needs. While some market participants that desire a consolidated display often choose the SIP to satisfy their top-of-book data needs, and in some cases are effectively required to do so under the Vendor Display Rule, others may prefer to purchase data directly from one or more national securities exchanges. For example, a buy-side investor or fintech firm may choose to purchase the BZX Top Feed, or a similar product from another exchange, in order to perform investment analysis, or to provide general information about the market for U.S. equity securities, respectively. In either case the choice to purchase the BZX Top Feed would be based on the firm's determination of the value of the data offered by their chosen product compared to the cost of acquiring this data instead of receiving similar data from other sources. The BZX Top Feed serves as a valuable reference for investors that do not require a consolidated display that contains quotations for all sixteen U.S. equities exchanges. Making alternative products available to market participants ultimately ensures competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees.

Further, in the event that a market data customer views one exchange's top-of-book data product and/or fees as more or less attractive than a competitor's offerings they can and often do switch between competing products. As discussed, much of the top-of-

book quotation information and last-sale information offered within the BZX Top Feed is also available on the SIP feeds, and for firms that do not require a consolidated display, as is typically the case for the subscribers to the BZX Top Feed, similar top-of-book information is available from a number of competing U.S. equities exchanges.²⁴ This include a number of large established exchanges that charge for access to such top-of-book data, as well as certain smaller or new exchange entrants that provide similar data without charge, in many cases as a way of attracting customers to their exchange while they seek to grow market share. In this way, the BZX Top Feed, SIP data products, and other top-of-book products offered by a number of U.S. equities exchanges, are all substitutes. The availability of these substitute products constrains the Exchange's ability to charge supra-competitive prices as market participants can easily obtain similar data from one of the Exchange's many competitors. In fact, the impact of competition on the market in which the BZX Top Feed is offered to market participants and investors is showcased by the Exchange's other recent fee changes related to this product, which involved the *reduction* of fees to facilitate the Exchange's ability to compete for customers.²⁵ Distributors can discontinue use of the BZX Top Feed at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

²⁴ Although the Exchange does not have access to the customer lists for other competing products, it understands based on conversations with subscribers to the BZX Top Feed that they typically view exchange top-of-book products as substitutes and do not generally look to purchase such data from more than one national securities exchange.

²⁵ See supra note 4. The Exchange also notes that while this proposed fee change involves an increase in fees, it is simultaneously filing another proposed fee change to expand its Financial Products Distribution Program and further *reduce* certain fees. See SR-CboeBZX-2021-003 (pending publication).

In setting the proposed fees for the BZX Top Feed, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. Indeed, the Exchange has no market power and is not in a position to charge unreasonable fees for its top-of-book data as there are a number of competing products in the market, including products that are currently offered free of charge by certain other exchanges that have determined not to charge for their market data. The existence of alternatives to the BZX Top Feed ensures that the Exchange cannot set unreasonable fees when vendors and subscribers can freely elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

ii. The Proposed Fees Are Reasonable Given the Value of the Data Provided to Customers, and When Compared to Competing Market Data Products

The proposed fees are also reasonable as they represent a modest increase for top-of-book data that has proven valuable for investors, particularly as the Exchange grows market share due to its innovative market model that has been successful in attracting retail limit orders, increasing the Exchange's market share to over 7% consolidated U.S. equities volume.²⁶ Specifically, the BZX Top Feed offers competitively-priced alternative to top-of-book data disseminated by SIPs, *i.e.*, core data, for firms that do not

²⁶ See Cboe Global Markets, U.S. Equities Market Volume Summary, *available at* http://markets.cboe.com/us/equities/market_share/.

need or desire a consolidated display covering all sixteen U.S. equities exchanges, or similar data disseminated by other national securities exchanges. It is purchased by a wide variety of market participants and vendors, including data platforms, websites, fintech firms, buy-side investors, retail brokers, regional banks, and securities firms inside and outside of the U.S. that desire low cost, high quality, real-time U.S. equity market data. By providing lower cost access to U.S. equity market data, the BZX Top Feed benefits a wide range of investors that participate in the national market system. As discussed, the decision to purchase a particular market data product from a particular exchange is largely based on two factors: (1) the quality of the data, and (2) the price charged for access to that data. The Exchange believes that the BZX Top Feed is competitive on both of these factors.

First, the BZX Top Feed would remain competitively priced compared to similar products offered by other comparable U.S. equities exchanges and core data offered by the SIPs. Although the BZX Top Feed is not offered free of charge like certain other competitor offerings, particularly those offered by newer U.S. equities exchanges that are seeking to grow market share, it is made available at a price that is significantly lower than the prices charged by the Exchange's main competitors – *i.e.*, those with comparable market shares and data quality. Notably, even with the proposed fee increase, the BZX Top Feed would remain significantly cheaper than similar products offered by New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc. (“Arca”), and The Nasdaq Stock Market LLC (“Nasdaq”) both in terms of the fees charged for internal distribution and the fees charge for each Professional User that is provided access to the feed. For example, NYSE charges a total of \$3,000 per month for internal distribution of their equivalent

products, *i.e.*, \$1,500 per month for applicable top-of-book quotation information,²⁷ and an additional \$1,500 per month for transaction information,²⁸ both of which are included in the BZX Top Feed for a single fee.²⁹ Arca, which has a similar pricing model to NYSE, also charges a higher rate of \$1,500 per month for internal distribution of its equivalent products, separated into a \$750 per month charge for top-of-book quotation information and an additional \$750 per month charge for transaction information.³⁰ Finally, Nasdaq charges its internal distributors a fee of \$1,500 per month for Nasdaq Basic, which includes both top-of-book quotation information and transaction information for the same fee, similar to the Exchange's pricing model, but again at a higher cost.³¹ In each case, the internal distribution charges associated with obtaining comparable U.S. equities market data from NYSE, Arca, and Nasdaq runs at least double and up to four times as much as the proposed fee to be charged by the Exchange, meaning that the Exchange would continue to be offering its data at a price that is attractive compared to the prices charged by its competitors. Similarly, each of these exchanges charges a fee for each Professional User that is higher than that proposed by

²⁷ See NYSE PDP Market Data Pricing, Section 1.3, NYSE BBO.

²⁸ See NYSE PDP Market Data Pricing, Section 1.4, NYSE Trades.

²⁹ See supra note 3 and accompanying text. The Exchange also offers a separate market data product, *i.e.*, BZX Last Sale, that exclusively provides last sale information. See BZX Rule 13.8(d). However, all of the information contained in the BZX Last Sale Feed is also made available in the BZX Top Feed at no additional charge.

³⁰ See NYSE PDP Market Data Pricing, Section 3.3, NYSE Arca BBO; NYSE PDP Market Data Pricing, Section 3.4, NYSE Arca Trades.

³¹ See Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(c)(1). In addition, Nasdaq also charges distributors a \$100 monthly administrative fee. See Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 135.

the Exchange – *i.e.*, \$26 per month for Nasdaq,³² and \$8 per month total for both NYSE and Arca.³³ Finally, the BZX Top Feed also remains competitively priced compared to core data provided by the SIPs for firms, *e.g.*, buy-side investors or fintech firms, that do not need or desire a consolidated display covering all sixteen U.S. equities exchanges.³⁴

Second, the proposed fees are reasonable given the value of the data provided in the BZX Top Feed and used by data recipients in their profit-generating activities. The BZX Top Feed provides top-of-book quotations and transactions executed on the Exchange, and provides a valuable window into the market for securities traded on a market that accounts for about 4.5% of U.S. equity market volume today.³⁵ As discussed, the Exchange offers the BZX Top Feed in a competitive environment where firms may freely choose which market data products best suit their business needs. Invariably, firms that choose to purchase the BZX Top Feed instead of receiving one of the many free products offered by other exchanges,³⁶ including free products offered by an affiliate of the Exchange,³⁷ have decided that the value of the BZX Top Feed is greater than that offered by those other products. Indeed, by incentivizing market quality improvements

³² Nasdaq's Professional User fee is divided into Nasdaq issues (\$13), NYSE issues (\$6.50), and other issues (\$6.50) for a total of \$26 per month for each Professional User. See Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(b)(1).

³³ NYSE and Arca's fees are both broken down into \$4 per month for BBO information and an additional \$4 per month for Trades information. See supra notes 27, 28, and 30.

³⁴ See CTA Schedule of Market Data Charges, *available at* <https://www.ctaplan.com/pricing>; UTP Fee Schedule, *available at* <https://utpplan.com/DOC/Datapolicies.pdf>.

³⁵ See https://markets.cboe.com/us/equities/market_share/.

³⁶ See e.g., Investors Exchange Fee Schedule, Market Data fees.

³⁷ See e.g., Cboe EDGA Exchange, Inc., Fee Schedule, EDGA Top.

through its Lead Market Maker (“LMM”) and other programs designed to enhance the quality of its market, the Exchange is able to offer higher quality market data products to customers. In turn, investors may choose to rely on those products instead of other competitor offerings based on the value they provide in relation to any additional cost associated with obtaining that market data from the Exchange. The Exchange therefore believes that its proposal is consistent with the principles enshrined in Regulation NMS to “promote the wide availability of market data and to allocate revenues to SROs that produce the most useful data for investors.”³⁸

iii. The Proposed Fees Are Equitable and Not Unfairly Discriminatory as Internal Distributors will be Subject to Uniform Pricing Based on their Usage of the Data

The Exchange believes the proposed fees for internal distribution of the BZX Top Feed will continue to be allocated fairly and equitably among subscribers, and are not unfairly discriminatory, as the proposed fees will apply equally to all data recipients that choose to subscribe to the BZX Top Feed and distribute that data to internal subscribers. As proposed, all internal distributors of the BZX Top Feed will be subject to the same internal distribution fee, regardless of the type of business that they operate, or the use they plan to make of the data feed. Thus, all internal distributors would have access to the BZX Top Feed on the same equitable and non-discriminatory terms. Similarly, with the introduction of Professional User fees, internal distributors of the BZX Top Feed will be subject

³⁸ See Regulation NMS Adopting Release, *supra* note 5, at 37503.

to the same modest fees based solely on the number of Professional Users that each internal distributor has chosen to permission for access to this information. The Exchange does not believe that it is inequitable, or unfairly discriminatory, to charge a fee based on the number of Professional Users within a firm that have access to the BZX Top Feed as this ensures that firms with the highest usage pay their equitable share for the data.

The Exchange also believes that it is fair and equitable, and not unfairly discriminatory, to continue *not* to charge a fee for internal distribution to Non-Professional Users. The Exchange's fee structure is generally designed to facilitate lower cost access to its market data by retail investors, either through substantially lower User fees for Non-Professional Users, or other incentive programs, such as the Small Retail Broker Distribution Program, which was recently implemented to lower the cost of the Exchange's market data to small broker-dealers that serve retail investors. The Exchange does not anticipate any significant number of Non-Professional Users to receive BZX Top Feed Data through internal, *i.e.*, within the distributor's firm, as opposed to external distribution, and in the event that certain firms may distribute data internally to Users that qualify as Non-Professional, providing such Users access without any User fees would facilitate the Exchange's overall goals of facilitating access to its data by retail investors, which the Commission has continually found to be consistent with the Exchange Act.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes

of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) competition among exchanges that offer similar data products to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top-of-book data is broadly disseminated by both the SIPs and the sixteen U.S. equities exchanges. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing U.S. equities exchanges without charge. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as market data customers look to purchase cheaper top-of-book data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed fees would apply to all internal distributors of the BZX Top Feed on an equal and non-discriminatory basis. The Exchange therefore believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. To the extent that particular fees would apply to only a subset of subscribers, *e.g.*, Professional versus Non-Professional Users, those distinctions are not unfairly discriminatory and do not unfairly burden one set of customers over another.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In setting the proposed fees, the Exchange is constrained by the availability of numerous substitute products offered by other national securities exchanges as well as core data offered by the SIPs. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act³⁹ and Rule 19b-4(f)(2) thereunder,⁴⁰ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule

³⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴⁰ 17 CFR 240.19b-4(f)(2).

change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed Rule Change

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2021-002]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend the Fees Applicable to the BZX Top Feed

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the fees applicable to the BZX Top Feed. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the fees applicable to the BZX Top Feed, which is an uncompressed data feed that offers both top-of-book quotations and execution information based on equity orders entered into the System.³ Specifically, the Exchange proposes to: (1) increase the fee for internal distribution of the BZX Top Feed; and (2) introduce Professional User fees for internal Professional Users of the BZX Top Feed. The current fees for external distribution of the BZX Top Feed will continue to apply, without change, including various incentive programs that the Exchange has adopted to facilitate the provision of lower-cost market data to retail and other investors.⁴

³ See BZX Rule 11.22(d).

⁴ See e.g., BZX Schedule of Fees, Financial Product Distribution Program. The Financial Product Distribution Program lowers the cost of distributing Derived Data based upon the Exchange's top-of-book offerings, including Derived Data that is often used by retail investors.

Market Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁵ As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”⁶

Equity trading is currently dispersed across sixteen exchanges, including three new U.S. equities exchanges that launched trading in 2020, 32 alternative trading systems,⁷ and numerous broker-dealer internalizers and wholesalers, all competing fiercely for order flow. Based on publicly-available information, no single U.S. equities exchange has more than 20% market share.⁸ In turn, the market for top-of-book data is highly competitive as national securities exchanges compete both with each other and with the securities information processors (“SIPs”) to provide efficient,

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS Adopting Release”).

⁶ See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) (“Transaction Fee Pilot”).

⁷ See FINRA ATS Transparency Data, *available at* <https://otctransparency.finra.org/otctransparency/AtsData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

⁸ See Cboe Global Markets, U.S. Equities Market Volume Summary, *available at* http://markets.cboe.com/us/equities/market_share/.

reliable, and low-cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public.⁹ Top-of-book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top-of-book data, but no rule or regulation of the Commission requires market participants to purchase top-of-book data from an exchange.¹⁰ The BZX Top Feed therefore competes with the SIP and with similar products offered by other national securities exchanges that offer their own competing market data products. In fact, there are twelve competing products offered by other national securities exchanges today,¹¹ not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. equities exchanges also offers similar top-of-book data.

Fees for Internal Distribution of the BZX Top Feed

Currently, the Exchange charges a modest fee of \$500 per month for internal distribution of BZX Top Feed data,¹² *i.e.*, distribution within the distributor's own firm,¹³

⁹ See Rule 602 of Regulation NMS.

¹⁰ By contrast, Rule 603(c) of Regulation NMS (the "Vendor Display Rule") effectively requires that SIP data or some other consolidated display be utilized in any context in which a trading or order-routing decision can be implemented.

¹¹ Competing top of book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE BQT, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, IEX TOPS, MIAX PEARL Equities Top of Market Feed, and MEMX MEMOIR Top.

¹² See BZX Schedule of Fees, BZX Top, Internal Distribution.

¹³ The Exchange's fee schedule defines an Internal Distributor of an Exchange Market Data product as a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the

and does not charge any additional fees for internal distribution based on the number of Professional or Non-Professional Users that receive access to this information. These internal distribution fees have been in place, without change, since July 2013 when the Exchange first began charging for access to the BZX Top Feed, which had previously been available free of charge.¹⁴ In the time since, the Exchange has made a number of significant enhancements to its platform, including, among other things, a significant expansion of its listing program for exchange-traded products,¹⁵ that have resulted in improved trading opportunities for investors and, consequently, more valuable market data.

As discussed, the Exchange now proposes to increase certain fees applicable to firms that consume this data as internal distributors, *i.e.*, firms that use BZX Top Feed data for internal purposes as opposed to firms that distribute such data externally to its customers. As proposed, the Exchange would increase the monthly charge for internal distribution of BZX Top Feed data to \$750 per month, which would continue to be significantly cheaper than similar products offered by the Exchange's main competitors, including both other national securities exchanges that offer top-of-book data products to their customers as well as the SIPs that provide similar "core data" to vendors and subscribers pursuant to Regulation NMS. In addition, the Exchange would introduce Professional User fees for internal Professional Users of the BZX Top Feed. Those Professional User fees will be the same as the modest fee currently charged for external

Distributor's own entity. See BZX Schedule of Fees, Market Data Fees, Definitions.

¹⁴ See Securities Exchange Act Release No. 69936 (July 3, 2013), 78 FR 41483 (July 10, 2013) (SR-BATS-2013-39).

¹⁵ See <https://markets.cboe.com/services/listings/>.

distribution of the BZX Top Feed, *i.e.*, \$4 per month for each Professional User. There would continue to be no charge associated with internal distribution to Non-Professional Users. Further, as discussed, the current fees for external distribution of the BZX Top Feed would continue to apply, without change, including various incentive programs that the Exchange has adopted to facilitate the provision of lower-cost market data to retail and other investors. As a result, the Exchange believes that the proposed fee changes would allow it to be appropriately compensated for the value of its market data, particularly from professional financial services firms that use that data for internal purposes, while simultaneously ensuring that its data would continue to be available to a wide range of market participants at a cost that facilitates widespread availability of such data.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(4),¹⁷ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.¹⁸ Finally, the

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(4).

¹⁸ 15 U.S.C. 78k-1.

proposed rule change is also consistent with Rule 603 of Regulation NMS,¹⁹ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Exchange operates in a highly competitive environment. Indeed, with the launch of three new national securities exchanges that trade U.S. equity securities last September, there are now sixteen registered U.S. equities exchanges, and with the exception of Long-Term Stock Exchange, Inc. (“LTSE”), which has determined to not offer any proprietary market data feeds, each of these exchanges offer associated market data products to their customers, either with or without a fee. The national securities exchanges also compete with the SIPs for market data customers, as much of the information offered to market participants and investors through the BZX Top Feed is similarly made available to market participants and investors through the SIPs, consolidated with data from each of the other fifteen exchanges. It is in this robust and competitive market in which the Exchange is proposing to modestly increase its fees.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Further, with respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC* upheld the Commission’s reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data: “In fact, the legislative history indicates that the Congress intended that the market system ‘evolve

¹⁹ See 17 CFR 242.603.

through the interplay of competitive forces as unnecessary regulatory restrictions are removed’ and that the SEC wield its regulatory power ‘in those situations where competition may not be sufficient,’ such as in the creation of a ‘consolidated transactional reporting system.’”²⁰ The court agreed with the Commission’s conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.’”²¹ As discussed in this filing, significant competitive forces constrain the ability of the Exchange to charge supra-competitive fees.

i. The BZX Top Feed is an Optional Market Data Product, and the Exchange is Constrained in its Pricing by Significant Competitive Forces

Subscribing to the BZX Top Feed is entirely optional. The Exchange is not required to make the BZX Top Feed available to any customers, nor is any customer required to purchase the BZX Top Feed. Unlike certain other data products that firms may be required to purchase in order to fulfill regulatory obligations,²² e.g., the consolidated quotation and last-sale information feeds offered by the SIPs, a customer’s decision as to whether to purchase the BZX Top Feed is entirely

²⁰ NetCoalition v. SEC, 615 F.3d 525, 535 (D.C. Cir. 2010) (“NetCoalition I”) (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323).

²¹ Id. at 535.

²² The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations, Release Nos. 34-72182; AP-3-15350; AP-3-15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSS have chosen not to do so.

discretionary, and is based on that firm's individual business needs. Generally, firms that choose to subscribe to the BZX Top Feed do so because they believe that it is a cost-effective alternative to core data offered by the SIPs that provides valuable information about the market for securities traded on the Exchange, particularly in cases where a consolidated display is not required pursuant to the Vendor Display Rule. Such firms are able to determine for themselves whether the BZX Top Feed helps them to achieve their business goals, and if so, whether or not it is attractively priced compared to other similar products.

Indeed, if the BZX Top Feed does not provide sufficient value to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the BZX Top Feed. In fact, comparing the number of internal distributors that currently subscribe to the BZX Top Feed, based on data compiled by the Exchange as of November 2020, to the total number of internal distributors that subscribe to core data offered by the CTA and UTP SIPs, as published on plan websites for Q3 2020,²³ less than 9.5% of internal distributors that purchase U.S. equities data choose to subscribe to the BZX Top Feed. The BZX Top Feed therefore represents an insignificant proportion of the relevant market for such market data, and significantly more internal distributors choose not to purchase this product than those that do. Given the insignificant percentage of internal distributors that consume the BZX Top Feed, it is clear that such firms can and do exercise their right to choose to purchase, or not purchase, this particular market data product.

²³ See CTA Quarterly Population Metrics (Q3 2020), *available at* https://www.ctaplan.com/publicdocs/ctaplan/CTAPLAN_Population_Metrics_3Q_2020.pdf; UTP Quarterly Population Metrics (Q3 2020), *available at* https://www.utpplan.com/DOC/UTP_2020_Q3_Stats_with_Processor_Stats.pdf.

Although the Exchange is not required to make any data, including top-of-book data, available through its proprietary market data platform, the Exchange believes that making such data available increases investor choice, and contributes to a fair and competitive market. Specifically, making such data publicly available through proprietary data feeds allows investors to choose alternative, potentially less costly, market data based on their business needs. While some market participants that desire a consolidated display often choose the SIP to satisfy their top-of-book data needs, and in some cases are effectively required to do so under the Vendor Display Rule, others may prefer to purchase data directly from one or more national securities exchanges. For example, a buy-side investor or fintech firm may choose to purchase the BZX Top Feed, or a similar product from another exchange, in order to perform investment analysis, or to provide general information about the market for U.S. equity securities, respectively. In either case the choice to purchase the BZX Top Feed would be based on the firm's determination of the value of the data offered by their chosen product compared to the cost of acquiring this data instead of receiving similar data from other sources. The BZX Top Feed serves as a valuable reference for investors that do not require a consolidated display that contains quotations for all sixteen U.S. equities exchanges. Making alternative products available to market participants ultimately ensures competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees.

Further, in the event that a market data customer views one exchange's top-of-book data product and/or fees as more or less attractive than a competitor's offerings they can and often do switch between competing products. As discussed, much of the top-of-

book quotation information and last-sale information offered within the BZX Top Feed is also available on the SIP feeds, and for firms that do not require a consolidated display, as is typically the case for the subscribers to the BZX Top Feed, similar top-of-book information is available from a number of competing U.S. equities exchanges.²⁴ This include a number of large established exchanges that charge for access to such top-of-book data, as well as certain smaller or new exchange entrants that provide similar data without charge, in many cases as a way of attracting customers to their exchange while they seek to grow market share. In this way, the BZX Top Feed, SIP data products, and other top-of-book products offered by a number of U.S. equities exchanges, are all substitutes. The availability of these substitute products constrains the Exchange's ability to charge supra-competitive prices as market participants can easily obtain similar data from one of the Exchange's many competitors. In fact, the impact of competition on the market in which the BZX Top Feed is offered to market participants and investors is showcased by the Exchange's other recent fee changes related to this product, which involved the *reduction* of fees to facilitate the Exchange's ability to compete for customers.²⁵ Distributors can discontinue use of the BZX Top Feed at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

²⁴ Although the Exchange does not have access to the customer lists for other competing products, it understands based on conversations with subscribers to the BZX Top Feed that they typically view exchange top-of-book products as substitutes and do not generally look to purchase such data from more than one national securities exchange.

²⁵ See supra note 4. The Exchange also notes that while this proposed fee change involves an increase in fees, it is simultaneously filing another proposed fee change to expand its Financial Products Distribution Program and further *reduce* certain fees. See SR-CboeBZX-2021-003 (pending publication).

In setting the proposed fees for the BZX Top Feed, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. Indeed, the Exchange has no market power and is not in a position to charge unreasonable fees for its top-of-book data as there are a number of competing products in the market, including products that are currently offered free of charge by certain other exchanges that have determined not to charge for their market data. The existence of alternatives to the BZX Top Feed ensures that the Exchange cannot set unreasonable fees when vendors and subscribers can freely elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

ii. The Proposed Fees Are Reasonable Given the Value of the Data Provided to Customers, and When Compared to Competing Market Data Products

The proposed fees are also reasonable as they represent a modest increase for top-of-book data that has proven valuable for investors, particularly as the Exchange grows market share due to its innovative market model that has been successful in attracting retail limit orders, increasing the Exchange's market share to over 7% consolidated U.S. equities volume.²⁶ Specifically, the BZX Top Feed offers competitively-priced alternative to top-of-book data disseminated by SIPs, *i.e.*, core data, for firms that do not

²⁶ See Cboe Global Markets, U.S. Equities Market Volume Summary, *available at* http://markets.cboe.com/us/equities/market_share/.

need or desire a consolidated display covering all sixteen U.S. equities exchanges, or similar data disseminated by other national securities exchanges. It is purchased by a wide variety of market participants and vendors, including data platforms, websites, fintech firms, buy-side investors, retail brokers, regional banks, and securities firms inside and outside of the U.S. that desire low cost, high quality, real-time U.S. equity market data. By providing lower cost access to U.S. equity market data, the BZX Top Feed benefits a wide range of investors that participate in the national market system. As discussed, the decision to purchase a particular market data product from a particular exchange is largely based on two factors: (1) the quality of the data, and (2) the price charged for access to that data. The Exchange believes that the BZX Top Feed is competitive on both of these factors.

First, the BZX Top Feed would remain competitively priced compared to similar products offered by other comparable U.S. equities exchanges and core data offered by the SIPs. Although the BZX Top Feed is not offered free of charge like certain other competitor offerings, particularly those offered by newer U.S. equities exchanges that are seeking to grow market share, it is made available at a price that is significantly lower than the prices charged by the Exchange's main competitors – *i.e.*, those with comparable market shares and data quality. Notably, even with the proposed fee increase, the BZX Top Feed would remain significantly cheaper than similar products offered by New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc. (“Arca”), and The Nasdaq Stock Market LLC (“Nasdaq”) both in terms of the fees charged for internal distribution and the fees charge for each Professional User that is provided access to the feed. For example, NYSE charges a total of \$3,000 per month for internal distribution of their equivalent

products, *i.e.*, \$1,500 per month for applicable top-of-book quotation information,²⁷ and an additional \$1,500 per month for transaction information,²⁸ both of which are included in the BZX Top Feed for a single fee.²⁹ Arca, which has a similar pricing model to NYSE, also charges a higher rate of \$1,500 per month for internal distribution of its equivalent products, separated into a \$750 per month charge for top-of-book quotation information and an additional \$750 per month charge for transaction information.³⁰ Finally, Nasdaq charges its internal distributors a fee of \$1,500 per month for Nasdaq Basic, which includes both top-of-book quotation information and transaction information for the same fee, similar to the Exchange's pricing model, but again at a higher cost.³¹ In each case, the internal distribution charges associated with obtaining comparable U.S. equities market data from NYSE, Arca, and Nasdaq runs at least double and up to four times as much as the proposed fee to be charged by the Exchange, meaning that the Exchange would continue to be offering its data at a price that is attractive compared to the prices charged by its competitors. Similarly, each of these exchanges charges a fee for each Professional User that is higher than that proposed by

²⁷ See NYSE PDP Market Data Pricing, Section 1.3, NYSE BBO.

²⁸ See NYSE PDP Market Data Pricing, Section 1.4, NYSE Trades.

²⁹ See supra note 3 and accompanying text. The Exchange also offers a separate market data product, *i.e.*, BZX Last Sale, that exclusively provides last sale information. See BZX Rule 13.8(d). However, all of the information contained in the BZX Last Sale Feed is also made available in the BZX Top Feed at no additional charge.

³⁰ See NYSE PDP Market Data Pricing, Section 3.3, NYSE Arca BBO; NYSE PDP Market Data Pricing, Section 3.4, NYSE Arca Trades.

³¹ See Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(c)(1). In addition, Nasdaq also charges distributors a \$100 monthly administrative fee. See Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 135.

the Exchange – *i.e.*, \$26 per month for Nasdaq,³² and \$8 per month total for both NYSE and Arca.³³ Finally, the BZX Top Feed also remains competitively priced compared to core data provided by the SIPs for firms, *e.g.*, buy-side investors or fintech firms, that do not need or desire a consolidated display covering all sixteen U.S. equities exchanges.³⁴

Second, the proposed fees are reasonable given the value of the data provided in the BZX Top Feed and used by data recipients in their profit-generating activities. The BZX Top Feed provides top-of-book quotations and transactions executed on the Exchange, and provides a valuable window into the market for securities traded on a market that accounts for about 4.5% of U.S. equity market volume today.³⁵ As discussed, the Exchange offers the BZX Top Feed in a competitive environment where firms may freely choose which market data products best suit their business needs. Invariably, firms that choose to purchase the BZX Top Feed instead of receiving one of the many free products offered by other exchanges,³⁶ including free products offered by an affiliate of the Exchange,³⁷ have decided that the value of the BZX Top Feed is greater than that offered by those other products. Indeed, by incentivizing market quality improvements through its Lead Market Maker (“LMM”) and other programs designed to enhance the

³² Nasdaq’s Professional User fee is divided into Nasdaq issues (\$13), NYSE issues (\$6.50), and other issues (\$6.50) for a total of \$26 per month for each Professional User. See Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(b)(1).

³³ NYSE and Arca’s fees are both broken down into \$4 per month for BBO information and an additional \$4 per month for Trades information. See supra notes 27, 28, and 30.

³⁴ See CTA Schedule of Market Data Charges, *available at* <https://www.ctaplan.com/pricing>; UTP Fee Schedule, *available at* <https://utpplan.com/DOC/Datapolicies.pdf>.

³⁵ See https://markets.cboe.com/us/equities/market_share/.

³⁶ See e.g., Investors Exchange Fee Schedule, Market Data fees.

³⁷ See e.g., Cboe EDGA Exchange, Inc., Fee Schedule, EDGA Top.

quality of its market, the Exchange is able to offer higher quality market data products to customers. In turn, investors may choose to rely on those products instead of other competitor offerings based on the value they provide in relation to any additional cost associated with obtaining that market data from the Exchange. The Exchange therefore believes that its proposal is consistent with the principles enshrined in Regulation NMS to “promote the wide availability of market data and to allocate revenues to SROs that produce the most useful data for investors.”³⁸

iii. The Proposed Fees Are Equitable and Not Unfairly Discriminatory as Internal Distributors will be Subject to Uniform Pricing Based on their Usage of the Data

The Exchange believes the proposed fees for internal distribution of the BZX Top Feed will continue to be allocated fairly and equitably among subscribers, and are not unfairly discriminatory, as the proposed fees will apply equally to all data recipients that choose to subscribe to the BZX Top Feed and distribute that data to internal subscribers. As proposed, all internal distributors of the BZX Top Feed will be subject to the same internal distribution fee, regardless of the type of business that they operate, or the use they plan to make of the data feed. Thus, all internal distributors would have access to the BZX Top Feed on the same equitable and non-discriminatory terms. Similarly, with the introduction of Professional User fees, internal distributors of the BZX Top Feed will be subject to the same modest fees based solely on the number of Professional Users that each internal distributor has chosen to permission for access to this information.

³⁸ See Regulation NMS Adopting Release, *supra* note 5, at 37503.

The Exchange does not believe that it is inequitable, or unfairly discriminatory, to charge a fee based on the number of Professional Users within a firm that have access to the BZX Top Feed as this ensures that firms with the highest usage pay their equitable share for the data.

The Exchange also believes that it is fair and equitable, and not unfairly discriminatory, to continue *not* to charge a fee for internal distribution to Non-Professional Users. The Exchange's fee structure is generally designed to facilitate lower cost access to its market data by retail investors, either through substantially lower User fees for Non-Professional Users, or other incentive programs, such as the Small Retail Broker Distribution Program, which was recently implemented to lower the cost of the Exchange's market data to small broker-dealers that serve retail investors. The Exchange does not anticipate any significant number of Non-Professional Users to receive BZX Top Feed Data through internal, *i.e.*, within the distributor's firm, as opposed to external distribution, and in the event that certain firms may distribute data internally to Users that qualify as Non-Professional, providing such Users access without any User fees would facilitate the Exchange's overall goals of facilitating access to its data by retail investors, which the Commission has continually found to be consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) competition among exchanges that offer similar data products to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top-of-book data is broadly disseminated by

both the SIPs and the sixteen U.S. equities exchanges. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing U.S. equities exchanges without charge. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as market data customers look to purchase cheaper top-of-book data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed fees would apply to all internal distributors of the BZX Top Feed on an equal and non-discriminatory basis.

The Exchange therefore believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. To the extent that particular fees would apply to only a subset of subscribers, *e.g.*, Professional versus Non-Professional Users, those distinctions are not unfairly discriminatory and do not unfairly burden one set of customers over another.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In setting the proposed fees, the Exchange is constrained by the availability of numerous substitute products offered by other national securities exchanges as well as core data offered by the SIPs. Because market data

customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act³⁹ and paragraph (f) of Rule 19b-4⁴⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

³⁹ 15 U.S.C. 78s(b)(3)(A).

⁴⁰ 17 CFR 240.19b-4(f).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2021-002 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2021-002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-CboeBZX-2021-002 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴¹

Secretary

⁴¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new language is underlined; proposed deletions are marked by [brackets].

Cboe BZX U.S. Equities Exchange Fee Schedule

* * *

BZX Top:

Internal Distribution

| | |
|----------------------------------|---------------------------|
| Distribution Fee | \$[500] <u>750</u> /month |
| Professional User Fee | \$[0] <u>4</u> /month |
| Non-Professional User Fee | \$0/month |

* * *