

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="43"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2021"/> - * <input type="text" value="003"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by Cboe BZX Exchange, Inc.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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"/>
			Rule		
Pilot <input type="checkbox"/>	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 type="checkbox"/> 19b-4(f)(6)
			<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)	

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"/>	

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 Fee Schedule to expand the existing Financial Product Distribution Program to provide for a Derived Data Platform Service.

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 * <input type="text" value="Sarah"/>	Last Name * <input type="text" value="Tadtman"/>
Title * <input type="text" value="Counsel"/>	
E-mail * <input type="text" value="stadtman@cboe.com"/>	
Telephone * <input type="text" value="(913) 815-7203"/>	Fax <input type="text"/>

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 *)

Date <input type="text" value="01/04/2021"/>	<input type="text" value="VP, Associate General Counsel"/>
By <input type="text" value="Kyle Murray"/>	<input type="text" value="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 EFFF 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.

Item 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 Fee Schedule to expand the existing Financial Product Distribution Program (the “Program”) to provide for a Derived Data Platform Service. Additionally, the proposal seeks to enhance the Program to provide for the distribution of data derived from the Cboe Aggregated Market (“Cboe One”)³ Summary Feed.

The text of the proposed rule change is attached as Exhibit 5 and is 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.

Item 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 21, 2020.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Sarah Tadtman, (913) 815-7203.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 11.22(j)

Item 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 implement a pricing structure that would reduce fees charged to Distributors of “Derived Data”, as defined below, through an Exchange approved Derived Data Platform Service. Additionally, the proposal seeks to enhance the Program to permit the distribution of data derived from Cboe One Summary through the existing White Label Service, Application Programming Interface (“API”) Service, and the proposed Platform Service.

Derived Data Platform Service

“Derived Data” is pricing data or other data that (i) is created in whole or in part from Exchange Data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange Data or used to create other data that is a reasonable facsimile or substitute for Exchange Data. Derived Data may be created by Distributors for a number of different purposes, as determined by the Distributor. Possible uses include the display of information or data, or the creation of derivative instruments, such as swaps,⁴ swaptions,⁵ or contracts for difference.⁶ The specific use of the data is determined by the Distributor, as applicable fees do not depend on the purpose for placing the Derived Data under the Program.

⁴ A swap is a derivative contract in which two parties agree to exchange financial instruments.

⁵ A swaption, or swap option, is an option to enter into a swap at a specified time.

⁶ A contract for difference is an agreement to exchange the difference between the current value of an asset and its future value. If the price increases, the seller pays the buyer the amount of the increase. If the price decreases, the buyer pays the seller the amount of the decrease.

The Exchange currently offers a White Label Service and an API Service that allow Distributors to benefit from discounted fees when distributing Derived Data taken from Exchange data.⁷ Instead of the regular fee for external distribution⁸ of Exchange data, Distributors of Derived Data under both the White Label Service and API Service are charged a tiered External Subscriber Fee based on the number of External Subscribers that receive Derived Data from the Distributor. Additionally, Distributors are charged a Professional User⁹ Fee based on the number of Professional Users of the Derived Data. Non-Professional Users of Derived Data are not subject to a fee under either the White Label Service or the API Service.

The White Label Service is a type of hosted display solution in which a Distributor hosts, maintains, and controls a website or platform on behalf of a third-party

⁷ Currently, BZX Top data is the only Exchange data included in the Program; however, as discussed in further detail below, the Exchange is also proposing to include Cboe One Summary in the Program.

⁸ External distribution occurs when a Distributor that receives an Exchange Market Data product distributes that data to a third-party or one or more users outside the Distributor's own entity.

⁹ A "Professional User" of an Exchange Market Data product is any User other than a Non-Professional User. A "Non-Professional User" of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

entity. The service allows Distributors to make Derived Data available on a platform that is branded with a third-party brand, or co-branded with a third-party and a Distributor, while the Distributor maintains control of the applications data, entitlements and display. Alternatively, the API Service is a type of data feed distribution in which a Distributor delivers an API or similar distribution mechanism to a third-party entity for use within one or more platforms. The API Service allows Distributors to provide Derived Data to a third-party entity for use within one or more downstream platforms that are operated and maintained by the third-party entity. The Distributor maintains control of the entitlements, but does not maintain technical control of the usage or the display.

Now the Exchange is proposing to implement a third service under the Program, the Platform Service. The Platform Service would allow a Distributor to provide derivative products directly to users that are hosted within their infrastructure. The Platform Service would be strictly limited to derivative products based in whole or in part on Exchange data where only user remote access is permitted. Normally, distributors of Exchange market data may be subject to Distribution and User Fees including an: External Distribution Fee, Professional User Fee, and Non-Professional User Fee. Distributors would be liable for the fees normally applicable for external distribution except for the Non-Professional User fee,¹⁰ which would be eliminated when participating in the Platform Service, further reducing costs for Distributors that provide access to such data to retail investors. In contrast to the existing White Label Service and

¹⁰ The Non-Professional User Fee for external distribution of BZX Top is \$0.10/month.

API Service, the Platform Service provides a targeted discount to Distributors rather than to External Subscribers.

Like the existing White Label Service and API Service, the proposed Platform Service would be entirely optional, in that it would only apply to Distributors that opt to use Derived Data to create a Platform Service, as described herein. It would not impact or raise the cost of any other Exchange product, nor would it affect the cost of Exchange data, except in instances where Derived Data is made available on a Platform Service. A Distributor that provides a Platform Service for Exchange data that is not Derived Data or distributes Derived Data through a platform other than an approved White Label Service, API Service, or Platform Service would be liable for the fees normally applicable for the distribution of Exchange data.

Cboe One Summary

In addition to the above, the Exchange is proposing to adopt fees for the distribution of data derived from Cboe One Summary under the existing White Label Service and API Service, as well as the proposed Platform Service. Under the existing Fee Schedule, Distributors that participate in the Program may only create Derived Data from BZX Top,¹¹ a proprietary data product that provides top of book quotations and execution information for all equity securities traded on the Exchange. The Exchange is now proposing a fee amendment to allow Distributors that participate in the Program to create Derived Data from Cboe One Summary in addition to BZX Top. Cboe One Summary is a proprietary data product that provides the top of book quotations and execution information for all listed equity securities traded across the Exchange and its

¹¹ See Exchange Rule 11.22(d).

affiliated U.S. equities exchanges (the “Cboe equity exchanges”).¹² Therefore, Distributors of Derived Data created from Cboe One Summary could display information or data or create derivative instruments based on top of book information across the four Cboe equity exchanges rather than just BZX. The Exchange believes that the proposal will enhance the Program as the inclusion of Cboe One Summary will allow Distributors to create Derived Data that is based on a more comprehensive view of the U.S. equities market.

As discussed above, Distributors of Exchange data, including Cboe One Summary, may be subject to Distribution and User Fees including an: External Distribution Fee, Professional User Fee, and Non-Professional User Fee. As proposed, a Distributor that provides Derived Data from Cboe One Summary would be liable for the proposed fees discussed below instead of the fees normally applicable for the distribution of Cboe One Summary. Existing fees for BZX Top Derived Data within a White Label Service or API Service are comprised of a tiered fee based on the number of External Subscribers, a monthly fee for each Professional User, and include no fee for Non-Professional Users. Similarly, the proposed fees for the Platform Service are comprised of the normal External Distribution and Professional User fees applicable for the distribution of BZX Top except that they would not be subject to the Non-Professional Users fees normally applicable. The Exchange proposes to adopt a similar fee structure for Cboe One Summary Derived Data.

As proposed, Distributors would be charged the following fees for a White Label Service for Cboe One Summary Derived Data: (1) \$1,000 per month for each External

¹² Supra note 3.

Subscriber if the Distributor makes Derived Data available to 1 – 5 External Subscribers; (2) \$750 per month for each External Subscriber if the Distributor makes Derived Data available to 6 – 10 External Subscribers; and (3) \$500 per month for each External Subscriber if the Distributor makes Derived Data available to 11 or more External Subscribers. For example, a Distributor providing White Label Derived Data based on Cboe One Summary to six External Subscribers would be charged a monthly fee of \$4,500 (i.e., 6 External Subscribers x \$750 each). Additionally, the Exchange would continue to charge a monthly Professional User fee of \$10 per month for each Professional User. The Exchange proposes no Non-Professional User fee for the distribution of Cboe One Summary Derived Data under the White Label Service, which is consistent with the fee structure for the distribution of BZX Top Derived Data under the White Label Service.

Alternatively, Distributors would be charged the following fees for an API Service for Cboe One Summary Derived Data: (1) \$5,000 per month for each External Subscriber if the Distributor makes Derived Data available to 1 – 5 External Subscribers; (2) \$4,000 per month for each External Subscriber if the Distributor makes Derived Data available to 6 – 20 External Subscribers; and (3) \$3,000 per month for each External Subscriber if the Distributor makes Derived Data available to 11 or more External Subscribers. For example, a Distributor providing API Service Derived Data based on Cboe One Summary to six External Subscribers would be charged a monthly fee of \$24,000 (i.e., 6 External Subscribers x \$4,000 each). Additionally, the Exchange would continue to charge a monthly Professional User fee of \$10 per month for each Professional User. The Exchange proposes no Non-Professional User fee for the

distribution of Cboe One Summary Derived Data under the API Service, which is consistent with the fee structure for the distribution of BZX Top Derived Data under the API Service.

Lastly, the Exchange proposes to adopt fees for the proposed Platform Service for Cboe One Summary data in addition to the proposed fees for BZX Top discussed above. Like the proposed fee for BZX Top Derived Data, Distributors of Cboe One Summary Derived Data would be liable for the fees normally applicable for the external distribution of Cboe One Summary, except for the Non-Professional User fee (i.e., \$0.25/month) which would be free under the Platform Service.

Corresponding Amendments to Fee Schedule

Based on the proposed amendments discussed above, the Exchange proposes several clarifying modifications to the Fee Schedule. First, the Exchange proposes to add a definition of “Platform Service” to the Market Data Fees definitions section of the Fee Schedule. The definition would provide that “a Platform Service is a type of hosted display solution in which a Distributor provides derivative products to Platform Service Data Users within their infrastructure. The service allows Distributors to make Derived Data available as part of a platform, providing users remote access to derivative products based in whole or in part on Exchange Data.”

The Exchange also proposes to amend explanatory asterisks provided under the Program in the Fee Schedule. Specifically, the Exchange proposes to amend the paragraph following the first asterisk to reference the proposed Platform Service in addition to the existing references to the White Label Service and API Service.

Additionally, the Exchange proposes to add references to Cboe One Summary after all

references to BZX Top in the paragraph following the first asterisk. Lastly, the Exchange proposes to add additional examples to asterisks two and three so as to explain the application of fees for Derived Data from Cboe One Summary. These proposed non-substantive changes would provide clarity in the Fee Schedule based on the addition of the Platform Service and Cboe One Summary proposed herein.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹³ in general, and furthers the objectives of Section 6(b)(4),¹⁴ 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.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.¹⁵ Specifically, the proposed rule change 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. In addition, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹⁶ which provides that any national securities exchange that distributes information

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78k-1.

¹⁶ See 17 CFR 242.603.

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

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee change would further broaden the availability of U.S. equity market data to investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are 16 registered national securities exchanges that trade U.S. equities and have the capability to offer associated top of book market data products to their customers. The national securities exchanges also compete with the Securities Information Processors (“SIPs”) for market data customers. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.”¹⁷ The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for its proprietary top of book data offerings through the introduction of a Derived Data

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Platform Service and the expansion of top of book data offerings to include Cboe One Summary under the Program.

The Exchange believes that it is reasonable to introduce reduced fees for the use of Derived Data on Platform Services as the proposed fee reduction would facilitate cost effective access to market information that is used primarily to create and display certain derivative instruments rather than to display the underlying U.S. equity securities. The proposed Platform Service fees are constrained by competition, and it is this competition that is driving the proposed fee change. Indeed, the Program is designed to allow the Exchange to compete more effectively for market data distributors that purchase market information to offer Derived Data to investors.

Similarly, the Exchange believes that it is reasonable to enhance the Program by expanding Exchange data offered under the Program to include Cboe One Summary as doing so will allow Distributors to create Derived Data that is based on a more comprehensive view of the U.S. equities market. Because Exchange data in this context is primarily purchased for the creation of Derived Data encompassing certain derivative instruments, Distributors do not require a consolidated view of the market across multiple exchanges, and will generally purchase such data from a single or select few exchange(s) for their purposes. As noted above, Cboe One Summary includes top of book quotation and transaction data across all four Cboe equity exchanges, which would allow Distributors to create more meaningful Derived Data than that available from a single exchange's market data at a potentially reduced price.

The existence of alternatives to the Program ensures that the Exchange cannot set unreasonable or unfairly discriminatory fees, as subscribers are free to elect such

alternatives. That is, the Exchange competes with other exchanges that provide similar market data products and pricing programs. Expanding the availability of diverse competitive products actually promotes additional competition as it ensures that alternative products from different sources are readily available to Distributors and the broader market. The Exchange therefore believes that the introduction of pricing programs and the expansion of Exchange data are not only constrained by competition but also ensure continued competition that acts as a constraint on the pricing of services provided by other national securities exchanges and the SIPs. If a competing exchange were to charge less for a similar product than the Exchange charges under the proposed fee structure, prospective subscribers may choose not to subscribe to, or cease subscribing to, the Program. The Exchange believes that lowering the cost of accessing Derived Data may make the Exchange's market information more attractive, and encourage additional Distributors to subscribe to Exchange market data instead of competitor products. The Exchange anticipates up to 10 Distributors to participate in the proposed Platform Service, and up to three Distributors to create Derived Data from Cboe One Summary. Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other national securities exchanges, including those that choose to offer discounted fees for the distribution of Derived Data in an effort to compete for this business.

The proposed rule change would provide an optional fee structure for Distributors to use Exchange data to make Derived Data available to Non-Professional Users via an

Exchange approved Platform Service at a reduced fee. As proposed, if a Distributor uses a Platform Service to distribute Derived Data, the Distributor would be charged the normal applicable External Distributor Fee excluding the Non-Professional User Fee. The Exchange believes that it is equitable and not unfairly discriminatory to charge a fee for Professional Users but no fee for Non-Professional Users. Non-Professional Users are already subject to a heavily discounted fee for BZX Top market data relative to Professional Users. Differential fees for Professional and Non-Professional Users are widely used by the Exchange and other exchanges for their proprietary market data as this reduces costs for retail investors and makes market data more broadly available. The Exchange believes that eliminating fees for Non-Professional Users that access Derived Data from Distributors pursuant to the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail investors that rely on the public markets for their investment needs.¹⁸ Further, the proposed fee would only apply to Distributors that elect to participate in the Program by distributing Derived Data through a Platform Service. Exchange market data is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Distributors of Exchange data are not required to participate in the proposed Program, which is merely an alternative option being proposed by the Exchange to potentially

¹⁸ As discussed previously, the Exchange does not fees to Non-Professional Users pursuant to the White Label Service and API Service. See Securities Exchange Act No. 84002 (August 30, 2018) 83 FR 45149 (September 5, 2018) (SR-CboeBZX-2018-065) (Proposed fee amendment for White Label Service). See also Securities Exchange Act No. 87306 (October 15, 2019) 84 FR 56258 (October 21, 2019) (SR-CboeBZX-2019-087) (Proposed fee amendment for API Service).

lower costs for market data that is Derived Data. As previously explained, the Exchange currently offers discounted fees for Distributors that distribute Derived Data on a White Label Service or an API Service. Expanding the universe of customers that can benefit from discounted fees for distributing Derived Data would serve to further increase the accessibility of the Exchange's market data products. Although the proposed pricing for the Platform Service differs from the pricing currently in place for the White Label and API Service Programs, it mirrors the normal External Distribution Fee for BZX Top and Cboe One Summary except that there would be no fee for Non-Professional Users. The White Label Service provides an "off-the-shelf" solution to display Derived Data as it is ultimately designed and controlled by the Distributor. Alternatively, the API Service offers end clients of Distributors to use Derived Data in one or more of their own customized applications. The Exchange believes that the proposed pricing reflects the relative benefits provided to Distributors that offer a Platform Service that allows Users remote access to derivative products via a hosted display solution within the Distributors fully managed infrastructure.

The proposed rule change would also provide Distributors the option to create Derived Data from Cboe One Summary, and benefit from reduced fees for that product under the Financial Product Distribution Program, in addition to the currently available BZX Top. The proposed fees would only apply to Distributors that elect to create Derived Data from Cboe One Summary. Similar to the fee structure for BZX Top under the Program, no fee would be assessed for Non-Professional Users of Derived Data from Cboe One Summary. For the same reasons discussed above, the Exchange believes it is equitable and not unfairly discriminatory to charge a fee for Professional Users but no fee

for Non-Professional Users. Further, the proposed fee would only apply to Distributors that elect to participate in the Program by distributing Derived Data from Cboe One Summary. Exchange market data is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Although the proposed pricing for Cboe One Summary differs from the pricing currently in place for BZX Top, the Exchange also believes that its pricing reflects the relative benefits provided to Distributors that provide Derived Data based on market information from all four Cboe equities exchanges. For example, the proposed fee for one to five External Subscribers of Derived Data based on Cboe One Summary using the API Service is equal to the aggregate standard External Distribution Fee across the Cboe equities exchange Top feeds, and is also equal to the standard External Distribution Fee for Cboe One Summary (i.e., \$5,000 per External Subscriber) on the Exchange. The proposed fee under the White Label Service is less than the proposed fee for API Service as Derived Data is provided on an “off-the-shelf” basis, and thus reflects the relative benefits provided to Distributors. Further, the proposed fee for Cboe One Summary under the proposed Platform Service is identical to the standard External Distributor fee for Cboe One Summary with the exception that there would be no fee associated with Non-Professional Users.

Item 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, and pricing options, to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top of book data is disseminated by both the SIPs and all 16 equities exchanges have the capability to disseminate such data. There are therefore a number of alternative products available to market participants and investors. 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 broker-dealers or vendors look to purchase the lowest priced top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market, the Exchange is proposing to reduce fees charged to Distributors that distribute Derived Data through an Exchange approved Platform and enhance the existing program to offer Distributors the option to create Derived Data based on Cboe One Summary. The Exchange believes that this would facilitate greater access to Exchange data, ultimately benefiting investors that are provided access to such data. The proposed Platform Service fees would apply to data derived from BZX Top and Cboe One Summary, which are subject to competition from both the SIPs and exchanges that offer similar products, including but not limited to those that choose to provide similar pricing options for Derived Data. A number of national securities exchanges, including the Exchange, its affiliated Cboe U.S. equities exchanges, and the Nasdaq Stock Market, LLC (“Nasdaq”) offer pricing discounts for Derived Data today. These pricing programs reduce the cost of accessing top of book market information that is used, among other things, to create derivative instruments rather than to trade U.S. equity securities. In order to better compete for this segment of the market, the Exchange is

proposing to expand the Program to include a Derived Data Platform Service, which would allow additional market data customers to benefit from discounted pricing. Additionally, the Exchange is proposing to enhance the Program by providing a fee structure for Cboe One Summary, which would allow Distributors to create Derived Data that is based on a more comprehensive view of the U.S. equities market. The Exchange does not believe that the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. The Exchange believes that the proposed rule change is pro-competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers.

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

The Exchange neither solicited nor received comments on the proposed rule change.

Item 6. Extension of Time Period for Commission Action

Not applicable.

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

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(2)²⁰ thereunder.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(2).

(b) The Exchange designates that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, which renders the proposed rule change effective upon filing with the Securities and Exchange Commission (the “Commission”). At any time within 60 days of the filing of this 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.

(c) Not applicable.

(d) Not applicable.

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

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

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

Not applicable.

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

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. Proposed rule text.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2021-003]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend the Fee Schedule to Expand the Existing Financial Product Distribution Program (the “Program”) to Provide for a Derived Data Platform Service

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 Fee Schedule to expand the existing Financial Product Distribution Program (the “Program”) to provide for a Derived Data Platform Service. Additionally, the proposal seeks to enhance the Program to provide for the distribution of data derived

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

from the Cboe Aggregated Market (“Cboe One”)³ Summary 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.

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 implement a pricing structure that would reduce fees charged to Distributors of “Derived Data”, as defined below, through an Exchange approved Derived Data Platform Service. Additionally, the proposal seeks to enhance the Program to permit the distribution of data derived from Cboe One Summary through the existing White Label Service, Application Programming Interface (“API”) Service, and the proposed Platform Service.

Derived Data Platform Service

³ See Exchange Rule 11.22(j)

“Derived Data” is pricing data or other data that (i) is created in whole or in part from Exchange Data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange Data or used to create other data that is a reasonable facsimile or substitute for Exchange Data. Derived Data may be created by Distributors for a number of different purposes, as determined by the Distributor. Possible uses include the display of information or data, or the creation of derivative instruments, such as swaps,⁴ swaptions,⁵ or contracts for difference.⁶ The specific use of the data is determined by the Distributor, as applicable fees do not depend on the purpose for placing the Derived Data under the Program.

The Exchange currently offers a White Label Service and an API Service that allow Distributors to benefit from discounted fees when distributing Derived Data taken from Exchange data.⁷ Instead of the regular fee for external distribution⁸ of Exchange data, Distributors of Derived Data under both the White Label Service and API Service are charged a tiered External Subscriber Fee based on the number of External Subscribers that receive Derived Data from the Distributor. Additionally, Distributors are charged a

⁴ A swap is a derivative contract in which two parties agree to exchange financial instruments.

⁵ A swaption, or swap option, is an option to enter into a swap at a specified time.

⁶ A contract for difference is an agreement to exchange the difference between the current value of an asset and its future value. If the price increases, the seller pays the buyer the amount of the increase. If the price decreases, the buyer pays the seller the amount of the decrease.

⁷ Currently, BZX Top data is the only Exchange data included in the Program; however, as discussed in further detail below, the Exchange is also proposing to include Cboe One Summary in the Program.

⁸ External distribution occurs when a Distributor that receives an Exchange Market Data product distributes that data to a third-party or one or more users outside the Distributor’s own entity.

Professional User⁹ Fee based on the number of Professional Users of the Derived Data. Non-Professional Users of Derived Data are not subject to a fee under either the White Label Service or the API Service.

The White Label Service is a type of hosted display solution in which a Distributor hosts, maintains, and controls a website or platform on behalf of a third-party entity. The service allows Distributors to make Derived Data available on a platform that is branded with a third-party brand, or co-branded with a third-party and a Distributor, while the Distributor maintains control of the applications data, entitlements and display. Alternatively, the API Service is a type of data feed distribution in which a Distributor delivers an API or similar distribution mechanism to a third-party entity for use within one or more platforms. The API Service allows Distributors to provide Derived Data to a third-party entity for use within one or more downstream platforms that are operated and maintained by the third-party entity. The Distributor maintains control of the entitlements, but does not maintain technical control of the usage or the display.

⁹ A "Professional User" of an Exchange Market Data product is any User other than a Non-Professional User. A "Non-Professional User" of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

Now the Exchange is proposing to implement a third service under the Program, the Platform Service. The Platform Service would allow a Distributor to provide derivative products directly to users that are hosted within their infrastructure. The Platform Service would be strictly limited to derivative products based in whole or in part on Exchange data where only user remote access is permitted. Normally, distributors of Exchange market data may be subject to Distribution and User Fees including an: External Distribution Fee, Professional User Fee, and Non-Professional User Fee. Distributors would be liable for the fees normally applicable for external distribution except for the Non-Professional User fee,¹⁰ which would be eliminated when participating in the Platform Service, further reducing costs for Distributors that provide access to such data to retail investors. In contrast to the existing White Label Service and API Service, the Platform Service provides a targeted discount to Distributors rather than to External Subscribers.

Like the existing White Label Service and API Service, the proposed Platform Service would be entirely optional, in that it would only apply to Distributors that opt to use Derived Data to create a Platform Service, as described herein. It would not impact or raise the cost of any other Exchange product, nor would it affect the cost of Exchange data, except in instances where Derived Data is made available on a Platform Service. A Distributor that provides a Platform Service for Exchange data that is not Derived Data or distributes Derived Data through a platform other than an approved White Label Service, API Service, or Platform Service would be liable for the fees normally applicable for the distribution of Exchange data.

¹⁰ The Non-Professional User Fee for external distribution of BZX Top is \$0.10/month.

Cboe One Summary

In addition to the above, the Exchange is proposing to adopt fees for the distribution of data derived from Cboe One Summary under the existing White Label Service and API Service, as well as the proposed Platform Service. Under the existing Fee Schedule, Distributors that participate in the Program may only create Derived Data from BZX Top,¹¹ a proprietary data product that provides top of book quotations and execution information for all equity securities traded on the Exchange. The Exchange is now proposing a fee amendment to allow Distributors that participate in the Program to create Derived Data from Cboe One Summary in addition to BZX Top. Cboe One Summary is a proprietary data product that provides the top of book quotations and execution information for all listed equity securities traded across the Exchange and its affiliated U.S. equities exchanges (the “Cboe equity exchanges”).¹² Therefore, Distributors of Derived Data created from Cboe One Summary could display information or data or create derivative instruments based on top of book information across the four Cboe equity exchanges rather than just BZX. The Exchange believes that the proposal will enhance the Program as the inclusion of Cboe One Summary will allow Distributors to create Derived Data that is based on a more comprehensive view of the U.S. equities market.

As discussed above, Distributors of Exchange data, including Cboe One Summary, may be subject to Distribution and User Fees including an: External Distribution Fee, Professional User Fee, and Non-Professional User Fee. As proposed, a

¹¹ See Exchange Rule 11.22(d).

¹² Supra note 3.

Distributor that provides Derived Data from Cboe One Summary would be liable for the proposed fees discussed below instead of the fees normally applicable for the distribution of Cboe One Summary. Existing fees for BZX Top Derived Data within a White Label Service or API Service are comprised of a tiered fee based on the number of External Subscribers, a monthly fee for each Professional User, and include no fee for Non-Professional Users. Similarly, the proposed fees for the Platform Service are comprised of the normal External Distribution and Professional User fees applicable for the distribution of BZX Top except that they would not be subject to the Non-Professional Users fees normally applicable. The Exchange proposes to adopt a similar fee structure for Cboe One Summary Derived Data.

As proposed, Distributors would be charged the following fees for a White Label Service for Cboe One Summary Derived Data: (1) \$1,000 per month for each External Subscriber if the Distributor makes Derived Data available to 1 – 5 External Subscribers; (2) \$750 per month for each External Subscriber if the Distributor makes Derived Data available to 6 – 10 External Subscribers; and (3) \$500 per month for each External Subscriber if the Distributor makes Derived Data available to 11 or more External Subscribers. For example, a Distributor providing White Label Derived Data based on Cboe One Summary to six External Subscribers would be charged a monthly fee of \$4,500 (i.e., 6 External Subscribers x \$750 each). Additionally, the Exchange would continue to charge a monthly Professional User fee of \$10 per month for each Professional User. The Exchange proposes no Non-Professional User fee for the distribution of Cboe One Summary Derived Data under the White Label Service, which

is consistent with the fee structure for the distribution of BZX Top Derived Data under the White Label Service.

Alternatively, Distributors would be charged the following fees for an API Service for Cboe One Summary Derived Data: (1) \$5,000 per month for each External Subscriber if the Distributor makes Derived Data available to 1 – 5 External Subscribers; (2) \$4,000 per month for each External Subscriber if the Distributor makes Derived Data available to 6 – 20 External Subscribers; and (3) \$3,000 per month for each External Subscriber if the Distributor makes Derived Data available to 11 or more External Subscribers. For example, a Distributor providing API Service Derived Data based on Cboe One Summary to six External Subscribers would be charged a monthly fee of \$24,000 (i.e., 6 External Subscribers x \$4,000 each). Additionally, the Exchange would continue to charge a monthly Professional User fee of \$10 per month for each Professional User. The Exchange proposes no Non-Professional User fee for the distribution of Cboe One Summary Derived Data under the API Service, which is consistent with the fee structure for the distribution of BZX Top Derived Data under the API Service.

Lastly, the Exchange proposes to adopt fees for the proposed Platform Service for Cboe One Summary data in addition to the proposed fees for BZX Top discussed above. Like the proposed fee for BZX Top Derived Data, Distributors of Cboe One Summary Derived Data would be liable for the fees normally applicable for the external distribution of Cboe One Summary, except for the Non-Professional User fee (i.e., \$0.25/month) which would be free under the Platform Service.

Corresponding Amendments to Fee Schedule

Based on the proposed amendments discussed above, the Exchange proposes several clarifying modifications to the Fee Schedule. First, the Exchange proposes to add a definition of “Platform Service” to the Market Data Fees definitions section of the Fee Schedule. The definition would provide that “a Platform Service is a type of hosted display solution in which a Distributor provides derivative products to Platform Service Data Users within their infrastructure. The service allows Distributors to make Derived Data available as part of a platform, providing users remote access to derivative products based in whole or in part on Exchange Data.”

The Exchange also proposes to amend explanatory asterisks provided under the Program in the Fee Schedule. Specifically, the Exchange proposes to amend the paragraph following the first asterisk to reference the proposed Platform Service in addition to the existing references to the White Label Service and API Service. Additionally, the Exchange proposes to add references to Cboe One Summary after all references to BZX Top in the paragraph following the first asterisk. Lastly, the Exchange proposes to add additional examples to asterisks two and three so as to explain the application of fees for Derived Data from Cboe One Summary. These proposed non-substantive changes would provide clarity in the Fee Schedule based on the addition of the Platform Service and Cboe One Summary proposed herein.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹³ in general, and furthers the objectives of Section

¹³ 15 U.S.C. 78f.

6(b)(4),¹⁴ 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.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.¹⁵ Specifically, the proposed rule change 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. In addition, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹⁶ 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.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee change would further broaden the availability of U.S. equity market data to investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are 16 registered national securities exchanges that trade U.S. equities and have the capability to offer associated top of book market data products to their customers. The national

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78k-1.

¹⁶ See 17 CFR 242.603.

securities exchanges also compete with the Securities Information Processors (“SIPs”) for market data customers. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.”¹⁷ The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for its proprietary top of book data offerings through the introduction of a Derived Data Platform Service and the expansion of top of book data offerings to include Cboe One Summary under the Program.

The Exchange believes that it is reasonable to introduce reduced fees for the use of Derived Data on Platform Services as the proposed fee reduction would facilitate cost effective access to market information that is used primarily to create and display certain derivative instruments rather than to display the underlying U.S. equity securities. The proposed Platform Service fees are constrained by competition, and it is this competition that is driving the proposed fee change. Indeed, the Program is designed to allow the Exchange to compete more effectively for market data distributors that purchase market information to offer Derived Data to investors.

Similarly, the Exchange believes that it is reasonable to enhance the Program by expanding Exchange data offered under the Program to include Cboe One Summary as

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

doing so will allow Distributors to create Derived Data that is based on a more comprehensive view of the U.S. equities market. Because Exchange data in this context is primarily purchased for the creation of Derived Data encompassing certain derivative instruments, Distributors do not require a consolidated view of the market across multiple exchanges, and will generally purchase such data from a single or select few exchange(s) for their purposes. As noted above, Cboe One Summary includes top of book quotation and transaction data across all four Cboe equity exchanges, which would allow Distributors to create more meaningful Derived Data than that available from a single exchange's market data at a potentially reduced price.

The existence of alternatives to the Program ensures that the Exchange cannot set unreasonable or unfairly discriminatory fees, as subscribers are free to elect such alternatives. That is, the Exchange competes with other exchanges that provide similar market data products and pricing programs. Expanding the availability of diverse competitive products actually promotes additional competition as it ensures that alternative products from different sources are readily available to Distributors and the broader market. The Exchange therefore believes that the introduction of pricing programs and the expansion of Exchange data are not only constrained by competition but also ensure continued competition that acts as a constraint on the pricing of services provided by other national securities exchanges and the SIPs. If a competing exchange were to charge less for a similar product than the Exchange charges under the proposed fee structure, prospective subscribers may choose not to subscribe to, or cease subscribing to, the Program. The Exchange believes that lowering the cost of accessing Derived Data may make the Exchange's market information more attractive, and encourage additional

Distributors to subscribe to Exchange market data instead of competitor products. The Exchange anticipates up to 10 Distributors to participate in the proposed Platform Service, and up to three Distributors to create Derived Data from Cboe One Summary. Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other national securities exchanges, including those that choose to offer discounted fees for the distribution of Derived Data in an effort to compete for this business.

The proposed rule change would provide an optional fee structure for Distributors to use Exchange data to make Derived Data available to Non-Professional Users via an Exchange approved Platform Service at a reduced fee. As proposed, if a Distributor uses a Platform Service to distribute Derived Data, the Distributor would be charged the normal applicable External Distributor Fee excluding the Non-Professional User Fee. The Exchange believes that it is equitable and not unfairly discriminatory to charge a fee for Professional Users but no fee for Non-Professional Users. Non-Professional Users are already subject to a heavily discounted fee for BZX Top market data relative to Professional Users. Differential fees for Professional and Non-Professional Users are widely used by the Exchange and other exchanges for their proprietary market data as this reduces costs for retail investors and makes market data more broadly available. The Exchange believes that eliminating fees for Non-Professional Users that access Derived Data from Distributors pursuant to the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail

investors that rely on the public markets for their investment needs.¹⁸ Further, the proposed fee would only apply to Distributors that elect to participate in the Program by distributing Derived Data through a Platform Service. Exchange market data is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Distributors of Exchange data are not required to participate in the proposed Program, which is merely an alternative option being proposed by the Exchange to potentially lower costs for market data that is Derived Data. As previously explained, the Exchange currently offers discounted fees for Distributors that distribute Derived Data on a White Label Service or an API Service. Expanding the universe of customers that can benefit from discounted fees for distributing Derived Data would serve to further increase the accessibility of the Exchange's market data products. Although the proposed pricing for the Platform Service differs from the pricing currently in place for the White Label and API Service Programs, it mirrors the normal External Distribution Fee for BZX Top and Cboe One Summary except that there would be no fee for Non-Professional Users. The White Label Service provides an "off-the-shelf" solution to display Derived Data as it is ultimately designed and controlled by the Distributor. Alternatively, the API Service offers end clients of Distributors to use Derived Data in one or more of their own customized applications. The Exchange believes that the proposed pricing reflects the

¹⁸ As discussed previously, the Exchange does not fees to Non-Professional Users pursuant to the White Label Service and API Service. See Securities Exchange Act No. 84002 (August 30, 2018) 83 FR 45149 (September 5, 2018) (SR-CboeBZX-2018-065) (Proposed fee amendment for White Label Service). See also Securities Exchange Act No. 87306 (October 15, 2019) 84 FR 56258 (October 21, 2019) (SR-CboeBZX-2019-087) (Proposed fee amendment for API Service).

relative benefits provided to Distributors that offer a Platform Service that allows Users remote access to derivative products via a hosted display solution within the Distributors fully managed infrastructure.

The proposed rule change would also provide Distributors the option to create Derived Data from Cboe One Summary, and benefit from reduced fees for that product under the Financial Product Distribution Program, in addition to the currently available BZX Top. The proposed fees would only apply to Distributors that elect to create Derived Data from Cboe One Summary. Similar to the fee structure for BZX Top under the Program, no fee would be assessed for Non-Professional Users of Derived Data from Cboe One Summary. For the same reasons discussed above, the Exchange believes it is equitable and not unfairly discriminatory to charge a fee for Professional Users but no fee for Non-Professional Users. Further, the proposed fee would only apply to Distributors that elect to participate in the Program by distributing Derived Data from Cboe One Summary. Exchange market data is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Although the proposed pricing for Cboe One Summary differs from the pricing currently in place for BZX Top, the Exchange also believes that its pricing reflects the relative benefits provided to Distributors that provide Derived Data based on market information from all four Cboe equities exchanges. For example, the proposed fee for one to five External Subscribers of Derived Data based on Cboe One Summary using the API Service is equal to the aggregate standard External Distribution Fee across the Cboe equities exchange Top feeds, and is also equal to the standard External Distribution Fee for Cboe One Summary (i.e., \$5,000 per External

Subscriber) on the Exchange. The proposed fee under the White Label Service is less than the proposed fee for API Service as Derived Data is provided on an “off-the-shelf” basis, and thus reflects the relative benefits provided to Distributors. Further, the proposed fee for Cboe One Summary under the proposed Platform Service is identical to the standard External Distributor fee for Cboe One Summary with the exception that there would be no fee associated with Non-Professional Users.

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, and pricing options, to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top of book data is disseminated by both the SIPs and all 16 equities exchanges have the capability to disseminate such data. There are therefore a number of alternative products available to market participants and investors. 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 broker-dealers or vendors look to purchase the lowest priced top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market, the Exchange is proposing to reduce fees charged to Distributors that distribute Derived Data through an Exchange approved Platform and enhance the existing program to offer Distributors the option to create Derived Data

based on Cboe One Summary. The Exchange believes that this would facilitate greater access to Exchange data, ultimately benefiting investors that are provided access to such data. The proposed Platform Service fees would apply to data derived from BZX Top and Cboe One Summary, which are subject to competition from both the SIPs and exchanges that offer similar products, including but not limited to those that choose to provide similar pricing options for Derived Data. A number of national securities exchanges, including the Exchange, its affiliated Cboe U.S. equities exchanges, and the Nasdaq Stock Market, LLC (“Nasdaq”) offer pricing discounts for Derived Data today. These pricing programs reduce the cost of accessing top of book market information that is used, among other things, to create derivative instruments rather than to trade U.S. equity securities. In order to better compete for this segment of the market, the Exchange is proposing to expand the Program to include a Derived Data Platform Service, which would allow additional market data customers to benefit from discounted pricing. Additionally, the Exchange is proposing to enhance the Program by providing a fee structure for Cboe One Summary, which would allow Distributors to create Derived Data that is based on a more comprehensive view of the U.S. equities market. The Exchange does not believe that the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better compete with the Exchange’s offering. The Exchange believes that the proposed rule change is pro-competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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 Act¹⁹ and paragraph (f) of Rule 19b-4²⁰ 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:

Electronic comments:

- Use the Commission's Internet comment form

(<http://www.sec.gov/rules/sro.shtml>); or

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2021-003 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-2021-003. 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-2021-003 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.²¹

Secretary

²¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Cboe BZX U.S. Equities Exchange Fee ScheduleEffective [December 2, 2020] January 4, 2021

* * * * *

Market Data Fees:**Definitions**

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- An “API Service” is a type of data feed distribution in which a Distributor delivers an API or similar distribution mechanism to a third-party entity for use within one or more platforms. The service allows Distributors to provide Derived Data to a third-party entity for use within one or more downstream platforms that are operated and maintained by the third-party entity. The Distributor maintains control of the entitlements, but does not maintain technical control of the usage or the display.
- A “Platform Service” is a type of hosted display solution in which a Distributor provides derivative products to Platform Service Data Users within their infrastructure. The service allows Distributors to make Derived Data available as part of a platform, providing users remote access to derivative products based in whole or in part on Exchange Data.
- A “White Label Service” is a type of hosted display solution in which a Distributor hosts or maintains a website or platform on behalf of a third-party entity. The service allows Distributors to make Derived Data available on a platform that is branded with a third-party brand, or co-branded with a third party and a Distributor. The Distributor maintains control of the application's data, entitlements and display.

* * * * *

Financial Product Distribution Program:***BZX Top Derived Data White Label Service:**

External Subscriber Fee**	1 – 5 External Subscribers	\$300 / month / External Subscriber
	6 – 10 External Subscribers	\$250 / month / External Subscriber
	11+ External Subscribers	\$200 / month / External Subscriber
Professional User Fee		\$4.00 / month

Non-Professional User Fee		\$0 / month
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BZX Top Derived Data API Service:

External Subscriber Fee***	1 – 5 External Subscribers	\$2,500 / month / External Subscriber
	6 – 20 External Subscribers	\$2,000 / month / External Subscriber
	21+ External Subscribers	\$1,500 / month / External Subscriber
Professional User Fee		\$4.00 / month
Non-Professional User Fee		\$0 / month

Cboe One Summary Derived Data White Label Service:

<u>External Subscriber Fee</u>	<u>1 – 5 External Subscribers</u>	<u>\$1,000 / month / External Subscriber</u>
	<u>6 – 10 External Subscribers</u>	<u>\$750 / month / External Subscriber</u>
	<u>11+ External Subscribers</u>	<u>\$500 / month / External Subscriber</u>
<u>Professional User Fee</u>		<u>\$10.00 / month</u>
<u>Non-Professional User Fee</u>		<u>\$0 / month</u>

Cboe One Summary Derived Data API Service:

<u>External Subscriber Fee</u>	<u>1 – 5 External Subscribers</u>	<u>\$5,000 / month / External Subscriber</u>
	<u>6 – 20 External Subscribers</u>	<u>\$4,000 / month / External Subscriber</u>
	<u>21+ External Subscribers</u>	<u>\$3,000 / month / External Subscriber</u>
<u>Professional User Fee</u>		<u>\$10.00 / month</u>
<u>Non-Professional User Fee</u>		<u>\$0 / month</u>

Derived Data Platform Service

A Distributor that provides derivative products based on BZX Top or Cboe One Summary through an approved Derived Data Platform Service will be subject to the normal external distribution fees applicable for the distribution of BZX Top or Cboe One Summary except that they will not be subject to the Non-Professional User fees normally applicable for the

distribution of BZX Top or Cboe One Summary. For Cboe One Summary, the Data Consolidation fee will also apply.

* A Distributor that provides a White Label Service,[or] API Service, or Platform Service for Derived Data taken from BZX Top or Cboe One Summary is liable for these fees instead of the fees normally applicable for the distribution of BZX Top or Cboe One Summary. A Distributor that provides a White Label Service,[or] API Service, or Platform Service for BZX Top or Cboe One Summary data that is not Derived Data or distributes Derived Data through a platform other than an approved White Label Service,[or] API Service, or Platform Service would be liable for the fees normally applicable for the distribution of BZX Top or Cboe One Summary.

** The External Subscriber Fee is non-progressive and is based on the number of White Label Service Platforms (i.e., "External Subscribers") that receive Derived Data from the Distributor. For example, a Distributor providing Derived Data based on BZX Top to six External Subscribers that are White Label Service Platforms would be charged a monthly fee of \$1,500 (i.e., 6 External Subscribers x \$250 each). Similarly, a Distributor providing Derived Data based on Cboe One Summary to six External Subscribers that are White Label Service Platforms would be charged a monthly fee of \$4,500 (i.e., 6 External Subscribers x \$750 each).

*** The External Subscriber Fee is non-progressive and is based on the number of API Service Platforms (i.e., "External Subscribers") that receive Derived Data from the Distributor. For example, a Distributor providing Derived Data based on BZX Top to six External Subscribers that are API Service Platforms would be charged a monthly fee of \$12,000 (i.e., 6 External Subscribers x \$2,000 each). Similarly, a Distributor providing Derived Data based on Cboe One Summary to six External Subscribers that are API Service Platforms would be charged a monthly fee of \$24,000 (i.e., 6 External Subscribers x \$4,000 each).

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