

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103041; File No. SR-CBOE-2025-034]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule with Respect to Market-Maker Orders Transacted on the Trading Floor

May 14, 2025.

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 May 1, 2025, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) 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 Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Fees Schedule with respect to Market-Maker orders transacted on the trading floor (i.e., manual) in Equity, ETF, and ETN Options, Sector Indexes and All Other Index Products and the Clearing Trading Permit Holder (“TPH”) fee cap. 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://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 Exchange proposes to amend its Fees Schedule, effective May 1, 2025.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 18 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 17% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to

³ See Cboe Global Markets U.S. Options Monthly Market Volume Summary (April 29, 2025), available at https://markets.cboe.com/us/options/market_statistics/.

competitive pricing, the Exchange, like other options exchanges, offers rebates and assesses fees for certain order types executed on or routed through the Exchange.

The Exchange first proposes to increase the fee for Market-Maker (capacity “M”) orders transacted on the trading floor (i.e., manual) in Equity, ETF, and ETN Options, Sector Indexes⁴ and All Other Index Products (yielding fee code “MB”), as set forth in the Rate Table for All Products Excluding Underlying Symbol List A.⁵ Currently, the Exchange assesses a fee of \$0.35 per contract for manual Market-Maker orders in Equity, ETF, and ETN Options, Sector Indexes and All Other Index Products which yield fee code MB; the Exchange proposes to increase the fee from \$0.35 per contract, to \$0.45 per contract. The proposed rule change is in-line with, albeit still lower than, similar fees that other options exchanges with trading floors currently assess manual market maker transactions.⁶

The Exchange also applies a transaction fee cap of \$65,000 per month per Clearing TPH⁷ (and/or their Non-TPH Affiliates)⁸ for non-facilitation transactions executed in AIM or open outcry, or as a QCC or FLEX transaction in all products except CBTX, MBTX, MRUT, NANOS, XSP, SPEQX, FLEX Micros, Sector Indexes and Underlying Symbol List A, as

⁴ Sector Index underlying symbols: IXB, SIXC, IXE, IXI, IXM, IXR, IXRE, IXT, IXU, IXV AND IXY. Corresponding option symbols: SIXB, SIXC, SIXE, SIXI, SIXM, SIXR, SIXRE, SIXT, SIXU, SIXV AND SIXY. See Exchange Fees Schedule, Footnote 47.

⁵ Underlying Symbol List A: OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXW), SPESG and VIX. See Exchange Fees Schedule, Footnote 34.

⁶ See e.g., NYSE American Options Fee Schedule, Section I, paragraph A (Rates for Options transactions), which assesses a fee of \$0.50 per contract for manual NYSE American Options Market Maker transactions; see also BOX Options Fee Schedule, Section V(A), Manual Transaction Fees: Qualified Open Outcry Order (“QOO”) and FLEX Open Outcry Orders (“FOO”) Order Fees, which assesses a fee of \$0.50 per contract for manual Market Maker orders.

⁷ The Clearing TPH Fee Cap applies to all Clearing TPH proprietary orders (“F” capacity code). See Exchange Fees Schedule, Footnote 11.

⁸ See Exchange Fees Schedule, Footnote 11, which defines a “Non-TPH Affiliate” as a 100% wholly-owned affiliate or subsidiary of a Clearing TPH that is registered as a United States or foreign broker-dealer and that is not a Cboe Options TPH. Only proprietary orders of the Non-TPH Affiliate that clear through a Cboe Options-registered OCC clearing number(s) will be included in calculating the Fee Cap.

provided in footnote 34 of the Fees Schedule. The Exchange proposes to increase such fee cap to \$250,000 per month per Clearing TPH and to amend the “Clearing Trading Permit Holder Fee Cap” section of the Fees Schedule as well as footnote 22 accordingly. The proposed fee cap is in line with similar fee caps applied by other exchanges.⁹

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹³ which requires

⁹ See e.g., NYSE American Options Fee Schedule, Section I, paragraph I (Firm Monthly Fee Cap), which provides a fee cap of \$250,000 per month per firm for manual transactions (including QCC transactions). See also PHLX Options Pricing Schedule, Section 4, “Monthly Firm Fee Cap and Facilitation,” which provides a monthly fee cap of \$250,000 for firm floor options transactions and QCC transactions fees.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² Id.

¹³ 15 U.S.C. 78f(b)(4).

that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

The Exchange believes that its proposed change to increase the fee assessed for manual Market-Maker orders yielding fee code “MB” and to increase the Clearing TPH Fee Cap are consistent with Section 6(b)(4) of the Act in that the proposed rule changes are reasonable, equitable and not unfairly discriminatory. As noted above, the Exchange operates in highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes that the proposed fee is reasonable, equitable, and not unfairly discriminatory in that competing options exchanges offer similar fees in connection with Market-Maker transactions in open outcry and firm fee caps, as the Exchange now proposes.

The Exchange believes that the proposed rule change to increase the fee assessed for Market-Maker manual orders in Equity, ETF, and ETN Options, Sector Indexes and All Other Index Products yielding fee code “MB” is reasonable in that it is reasonably designed to align the Exchange’s assessment of fees on such orders with the rates assessed by other options exchanges. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because the proposed fee will apply automatically and uniformly to all Market-Maker orders transacted in open outcry (i.e., manual) which yield fee code “MB”. Additionally, the proposed rule change is reasonable, equitable and not unfairly discriminatory because, as noted above, it is in-line with, albeit lower than, similar fees that other options exchanges with trading floors currently assess manual market maker transactions.¹⁴

¹⁴ See e.g., NYSE American Options Fee Schedule, Section I, paragraph A (Rates for Options transactions), which assesses a fee of \$0.50 per contract for manual NYSE American Options Market Maker transactions; see also BOX Options Fee Schedule, Section V(A), Manual Transaction Fees: Qualified Open Outcry Order (“QOO”) and FLEX Open Outcry Orders (“FOO”) Order Fees, which assesses a fee of \$0.50 per

The Exchange believes that the proposed increase in the Clearing Trading Permit Holder Fee Cap amount is reasonable because it is in-line with similar fee caps offered on other exchanges.¹⁵ The Exchange believes that the proposed fee cap is equitable and reasonable as it will continue to apply uniformly to all Clearing TPHs that submit qualifying volume to meet the cap.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to increase the fee assessed for manual Market-Maker orders yielding fee code "MB" and to increase the Clearing TPH Fee Cap apply uniformly to all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the fee change for manual Market-Maker orders yielding fee code "MB" is in-line with similar fees that other options exchanges with trading floors currently assess manual market maker transactions,¹⁶ and the proposed fee cap is in line with similar fee caps applied by

contract for manual Market Maker orders.

¹⁵ See e.g., NYSE American Options Fee Schedule, Section I, paragraph I (Firm Monthly Fee Cap), which provides a fee cap of \$250,000 per month per firm for manual transactions (including QCC transactions). See also PHLX Options Pricing Schedule, Section 4, "Monthly Firm Fee Cap and Facilitation," which provides a monthly fee cap of \$250,000 for firm floor options transactions and QCC transactions fees.

¹⁶ See e.g., NYSE American Options Fee Schedule, Section I, paragraph A (Rates for Options transactions), which assesses a fee of \$0.50 per contract for manual NYSE American Options Market Maker transactions; see also BOX Options Fee Schedule, Section V(A), Manual Transaction Fees: Qualified Open Outcry Order ("QOO") and FLEX Open Outcry Orders ("FOO") Order Fees, which assesses a fee of \$0.50 per contract for manual Market Maker orders.

other exchanges.¹⁷ As previously discussed, the Exchange operates in a highly competitive market. TPHs have numerous alternative venues they may participate on and direct their order flow, including 17 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 15% of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange believes that the proposed fee changes are comparable to that of other exchanges offering similar functionality. Moreover, 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.” The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the

¹⁷ See e.g., NYSE American Options Fee Schedule, Section I, paragraph I (Firm Monthly Fee Cap), which provides a fee cap of \$250,000 per month per firm for manual transactions (including QCC transactions). See also PHLX Options Pricing Schedule, Section 4, “Monthly Firm Fee Cap and Facilitation,” which provides a monthly fee cap of \$250,000 for firm floor options transactions and QCC transactions fees.

execution of order flow from broker dealers'". Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ 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

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

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2025-034 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-CBOE-2025-034. This file number should be included on the subject line if email 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 (<https://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, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-CBOE-2025-034 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,
Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).