SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88526; File No. SR-CBOE-2020-024)

March 31, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend its Fees Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 23, 2020, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("SEC" or "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. 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.

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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 Footnote 12 of the Fees Schedule, which governs pricing changes in the event the Exchange trading floor becomes inoperable. In the event the trading floor becomes inoperable, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor facility is inoperable. The Exchange would operate using that configuration only until the Exchange's trading floor facility became operational. Open outcry trading would not be available in the event the trading floor becomes inoperable. Particularly, the Exchange proposes to incorporate into Footnote 12, changes related to Related Future Cross ("RFC") transactions.

By way of background, the Exchange recently adopted Rule 5.24(e)(1)(D), which provides that in the event the trading floor is inoperable, a Trading Permit Holder ("TPH") may execute an RFC order, which is comprised of an SPX or VIX option combo order coupled with a contra-side order or orders totaling an equal number of option combo orders, which is identified to the Exchange as being part of an exchange of option contracts for related futures positions.[3] Particularly, Rule 5.24(e)(1)(D) permits unexposed crosses of riskless packaged transactions (i.e., RFC transactions) which include SPX/SPXW or VIX option combos offset by futures contracts. The proposal to allow RFC transactions was adopted to replicate functionality that is otherwise available when the Exchange is operating with an open outcry environment. RFC transactions are intended to provide means for transferring risk from futures positions into

3 See SR-CBOE-2020-023.

related combo positions for purposes of reducing capital requirements on portfolios held at bank clearing firms.

The Exchange first proposes to provide that in the event the trading floor becomes inoperable, the Exchange shall waive the SPX and SPXW Execution Surcharges for SPX and SPXW volume executed as an RFC order for the duration of time the Exchange operates in a screen-based only environment. The Exchange currently assesses a SPX Execution Surcharge of $0.21 per contract and a SPXW Execution Surcharge of $0.13 per contract for non-Market Maker orders in SPX and SPXW, respectively that are executed electronically (with some exceptions).[4] The Execution Surcharges were adopted to ensure that there is reasonable cost equivalence between the primary execution channels for SPX and SPXW. More specifically, the Execution Surcharges minimize the cost differentials between manual and electronic executions, which is in the interest of the Exchange as it must both maintain robust electronic systems as well as provide for economic opportunity for floor brokers to continue to conduct business, as the Exchange believes they serve an important function in achieving price discovery and customer executions.[5] In the event the trading floor becomes inoperable, the only execution available for SPX and SPXW would be electronic executions. The Exchange still wishes to encourage floor brokers to continue to conduct business on the Exchange, albeit electronically when the floor is inoperable. To that end, in order to approximate the trading floor environment electronically, the Exchange will allow TPHs to execute RFC orders electronically, as noted above. As such, the Exchange does not wish to discourage floor brokers from executing SPX and SPXW RFC transactions when the trading floor is inoperable by assessing the Execution

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4 See Cboe Options Fees Schedule, Footnote 21.

5 See e.g., Securities Exchange Act Release No. 71295 (January 14, 2014) 79 FR 3443 (January 21, 2014) (SR-CBOE-2013-129).

Surcharges such volume. Indeed, in the absence of the trading floor being inoperable, RFC orders would otherwise execute on the floor[6] and not be subject to the Execution Surcharges. The Exchange notes that AIM executions are similarly excluded from the Execution Surcharges as such functionality is similarly only made available for SPX in the event the trading floor is inoperable.[7]

The Exchange next proposes to adopt an RFC Execution Surcharge for RFC initiating orders for all market participants which would apply only when the Exchange operates in a screen-based only environment and which would be invoiced to the executing TPH. Specifically, the Exchange proposes to adopt a $0.05 per contract fee for SPX and SPXW RFC initiating orders and a $0.04 per contract fee for VIX RFC initiating orders. The Exchange notes that currently, SPX, SPXW and VIX orders executed via open-outcry are assessed floor brokerage fees. Specifically, SPX/SPXW orders are assessed a floor brokerage fee of $0.04 per contract fee for non-crossed orders and a $0.02 per contract fee for crossed orders and VIX orders are assessed a floor brokerage fee of $0.03 per contract for non-crossed orders and $0.015 per contract for crossed orders. The Exchange notes that in the event the trading floor becomes inoperable, volume that would otherwise be executed on the floor would have to be executed electronically. The Exchange believes it's appropriate to continue to assess this volume a modest fee, notwithstanding the fact that it is being moved to an electronic channel. The Exchange notes

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6 If the trading floor is open, floor brokers may execute crosses of option combos (*i.e.*, synthetic futures) on the trading floor on behalf of market participants who were exchanging futures contracts for related options positions. Market participants enter into these exchanges in or to swap related exposures. For instance, if a market participant has positions in VIX options but would prefer to hold a corresponding position in VIX futures (such as, for example, to reduce margin or risk related to the option positions), that market participant may swap its VIX options positions with another market participant's VIX futures positions that have corresponding risk exposure.

7 See Cboe Options Fees Schedule, Footnote 12.

the proposed fees are the same as applied to SPX/SPXW and VIX AIM Agency/Primary Orders (i.e., "AIM Execution Surcharge"), which was adopted recently for similar reasons and is applied only in the event the trading floor is inoperable. The Exchange therefore proposes to amend the title to AIM Execution Surcharge to "AIM and RFC Execution Surcharge Fee" and modify Footnote 12 to clarify that this Surcharge will also apply to volume executed as an RFC transaction.

The Exchange also proposes to provide that SPX/SPXW and VIX contracts executed as an RFC order during the time when the Exchange operates in a screen-based only environment will not count towards the 1,000 contract thresholds for the electronic SPX/SPXW and VIX Tier Appointment Fees. Currently, the Exchange assesses separate monthly Tier Appointment Fees to electronic and floor Market-Maker holding a Market-Maker Electronic Access Permit or Market-Maker Floor Permit, respectively, that trade SPX (including SPXW) and VIX contracts at any time during the month. The Exchange proposes to exclude SPX/SPXW and VIX volume executed as an RFC order during the time when the Exchange operates in a screen-based only environment, as the Exchange does not wish to discourage the sending of such orders during that time. The Exchange notes that the electronic Tier Appointment fees are intended to be assessed to Market-Maker TPHs who act as Market-Makers electronically and engage in trading of these products (as opposed to those who normally execute volume via open outcry, but must participate electronically due to the trading floor being inoperable).

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.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] 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 Section 6(b)(4) of the Act,[10] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change to waive SPX and SPXW Execution Surcharges for RFC orders in the event the trading floor becomes inoperable is reasonable because market participants will not be subject to these extra surcharge for these executions. As noted above, the Execution Surcharges minimize the cost differentials between manual and electronic executions, which is in the interest of the Exchange as it must both maintain robust electronic systems as well as provide for economic opportunity for floor brokers to continue to conduct business, as the Exchange believes they serve an important function in achieving price discovery and customer executions.[11] In the event the trading floor becomes inoperable, the Exchange still wishes to incentivize floor brokers to conduct business on the Exchange, albeit

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8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(5).

10 15 U.S.C. 78f(b)(4).

11 See Securities Exchange Act Release No. 71295 (January 14, 2014) 79 FR 3443 (January 21, 2014) (SR-CBOE-2013-129).

electronically and as such does not wish to assess a surcharge on volume that was otherwise executed on floor and not electronically as an RFC order. As discussed above, market participants may be able to execute RFC orders comprised of SPX or SPXW options electronically in the event the trading floor is inoperable in order to best approximate the trading floor in an electronic environment. Indeed, the Exchange believes waiving the Execution Surcharges for volume executed as an RFC order in the event the trading floor is inoperable will promote and encourage trading of these products notwithstanding the fact that manual executions are no longer available. Additionally, the Exchange does not wish to assess the Execution Surcharges on RFC transactions as such transactions are intended to replicate functionality that is otherwise available when the Exchange is operating with an open outcry environment and is further intended to provide means for transferring risk from futures positions into related combo positions for purposes of reducing capital requirements on portfolios held at bank clearing firms. The Exchange believes the proposed change is also equitable and not unfairly discriminatory as it applies uniformly to all similarly situated market participants that submit RFC orders who will be subject to equivalent execution costs while the trading floor is inoperable. Also, as noted above, the Exchange notes that AIM executions are similarly excluded from the Execution Surcharges as such functionality is similarly only made available in the event the trading floor is inoperable.

The Exchange believes the proposal to adopt an RFC Execution Surcharge for SPX/SPXW and VIX RFC initiating orders is reasonable as the proposed rates are similar to the total rates charged for volume that is executed via open-outcry.[12] The Exchange also notes that the Fees Schedule already provides for a similar scenario of such rates being assessed in the

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12 See Cboe Options Fees Schedule, Floor Brokerage Fees.

event the trading floor is inoperable. For example, Footnote 15 of the Fees Schedule provides that in the event the Exchange's exclusively listed options must be traded at a Back-up Exchange pursuant to Cboe Options Rule 5.26, the Back-up Exchange has agreed to apply the per contract and per contract side fees (i.e., the Floor Brokerage fees) to such transactions. Accordingly, the Exchange believes it's similarly appropriate to adopt and apply similar fees to transactions that must occur via an electronic execution channel (instead of on a Back-Up Exchange) due to the Exchange's trading floor being inoperable. The Exchange also notes that as discussed above, it is not otherwise assessing the SPX/SPXW Execution Surcharges on RFC SPX/SPXW orders. The Exchange believes the proposed change is also equitable and not unfairly discriminatory as it applies uniformly to all similarly situated market participants that submit RFC orders who will be subject to equivalent execution costs while the trading floor is inoperable. Additionally, the Exchange notes the RFC Execution Surcharge is the same as the AIM Execution Surcharge, which was recently adopted for similar reasons for when the trading floor is inoperable.[13]

The Exchange believes its proposal to provide that SPX/SPXW and VIX contracts executed as an RFC order during a time when the Exchange operates in a screen-based only environment will not count towards the 1,000 contract thresholds for the electronic SPX/SPXW and VIX Tier Appointment Fees is reasonable as Market-Makers that would otherwise meet the current contract thresholds due to the need to participate on the Exchange electronically will not be subject to an additional Tier Appointment Fee for volume executed as an RFC order. The Exchange believes the proposed change is reasonable as the Tier Appointment fees were intended to apply to TPHs who act as electronic Market-Makers in SPX/SPX and VIX, not those that, notwithstanding the trading floor being inoperable, would act as floor Market-Makers and

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13 See SR-CBOE-2020-021.

trade these products. Accordingly, the Exchange does not wish to assess the Tier Appointment fees to Market-Makers who do not usually conduct significant electronic volume in these products and would not participate electronically if not for the trading floor being inoperable. Additionally, the Exchange does not wish to discourage the use of RFC orders for SPX/SPXW and VIX as RFC transactions would provide Market-Makers with needed relief from the effect of the current exposure method ("CEM") on the options market. The proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated market participants, as it applies to all Market-Makers trading in these products. The Exchange notes such exclusion is similar to the exclusion of SPX/SPXW and VIX volume executed via AIM.[14]

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes the proposed changes are not intended to address any competitive issue, but rather to address fee changes it believes are reasonable in the event the trading floor becomes inoperable, thereby only permitting electronic participation on the Exchange. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply equally to all similarly situated market participants. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only affect trading on the Exchange in limited circumstances.

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[14] See Cboe Options Fees Schedule, Footnote 12.

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 Act[15] and paragraph (f) of Rule 19b-4[16] 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2020-024 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.

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15 15 U.S.C. 78s(b)(3)(A).

16 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2020-024. 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, DC 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 offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2020-024, 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.[17]

J. Matthew DeLesDernier
Assistant Secretary

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17 17 CFR 200.30-3(a)(12).