SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90232; File No. SR-CBOE-2020-097)

October 20, 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 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 8, 2020, 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. 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 its Fees Schedule to (1) remove Market-Maker floor volume from the Marketing Fees assessment; (2) adopt a new fee code for Market-Maker volume executed on the floor; (3) remove Market-Maker floor volume eligibility for credits under certain programs; (4) amend the Clearing Trading Permit Holder Fee Cap; (5) reinstate certain facility fees currently waived in light of the COVID-19 pandemic; (6) add options on the S&P 500 ESG Index ("SPESG") to the same Customer Large Trade Discount assessed for options on the S&P 500 Index ("SPX"); and (7) amend the application of the Strategy Fees Cap to certain products, effective October 1, 2020.[3]

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 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share.[4] 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

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3 The Exchange initially filed the proposed fee changes on October 1, 2020 (SR-CBOE-2020-093). On October 8, 2020, the Exchange withdrew that filing and submitted this filing.

4 See Cboe Global Markets U.S. Options Monthly Market Volume Summary (September 29, 2020), available at https://markets.cboe.com/us/options/market_statistics/.

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

Proposed Removal of Market-Maker Floor Volume from Assessment of Marketing Fees

The Exchange first proposes to amend its Marketing Fee program. By way of background the Marketing Fee is assessed on transactions of Market-Makers, resulting from customer orders at the per contract rate provided above on all classes of equity options, options on ETFs, options on ETNs and index options.[5] A Designated Primary Market-Maker ("DPM"), a "Preferred Market-Maker ("PMM"), or a Lead Market-Maker ("LMM") (collectively "Preferenced Market-Maker") are given access to the marketing fee funds generated from a Preferenced order. The funds collected via this Marketing Fee are then put into pools controlled by the Preferenced Market-Maker. The Preferenced Market-Maker controlling a certain pool of funds can then determine the order flow provider(s) to which the funds should be directed in order to encourage such order flow provider(s) to send orders to the Exchange. Currently, the Marketing Fee does not apply to Market-Maker transactions resulting from orders from non-Trading Permit Holder market-makers; transactions resulting from penny cabinet trades and sub-penny cabinet trades; transactions in FLEX Options; transactions executed as a qualified contingent cross ("QCC");

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[5] The marketing fee does not apply to Sector Indexes, DJX, MXEA, MXEF, XSP or products in Underlying Symbol List A.

and transactions in the Penny Pilot classes resulting from orders executed through the Step Up Mechanism ("SUM"). Each month, undisbursed marketing fees in excess of $250,000 will be reimbursed to the Market-Makers that contributed to the pool based upon a one month look back and their pro-rata portion of the entire amount of marketing fee collected during that month.

The proposed rule change amends the Marketing Fees table by adding transactions in open outcry to the list of Market-Maker transactions to which the Marketing Fee does not apply. As such, transactions in open outcry will not be assessed, thus will not contribute to the pool nor be included in the one month look back of pro-rata contributions in determining the allocation of undisbursed marketing fees. The Exchange has recently observed that collecting on and distributing funds for Market-Maker transactions in open outcry resulting from customer orders has not served as a significant incentive in attracting customer order flow to the trading floor as designed. Therefore, the proposed rule change removes this assessment for such transactions on the trading floor, which, in turn will also assist the Exchange in redirecting resources and funding into other programs intended to incentivize customer order flow providers. The Exchange also notes that the proposed amendment to the Marketing Fee program is also in line with how other exchanges with trading floors apply their respective marketing fee programs.[6]

Proposed Fee Code for Market-Maker Volume Executed on the Trading Floor

The Exchange proposes to adopt a new fee code for Market-Maker orders transacted on the trading floor (i.e., manual) in Equity, ETF, and ETN Options, Sector Indexes and All Other Index Products. Such orders will yield fee code "MB" and will be assessed a standard rate of

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6 See NYSE American Options Fee Schedule, Section IA, Options Transaction Fees and Credits, Marketing Charges Per Contract for Electronic Transactions, which assesses marketing charges on NYSE American Options Market Makers who are counterparties to an Electronic trade only.

$0.35 per contract. Currently, Market-Maker transactions in Equity, ETF, and ETN Options are assessed the same fee of $0.23 per contract. The proposed rule change is intended to assess manual Market-Maker order flow in light of the proposed change (described in detail above) to remove the assessment of Marketing Fees for manual Market-Maker order flow. Additionally, the proposed rule change is consistent with the manner in which other options exchanges with trading floors currently assess different standard rates between manual and electronic market maker volume.[7]

Proposed Removal of Market-Maker Floor Volume Eligibility under certain Programs

The Exchange proposes to remove Market-Maker volume transacted in open outcry from eligibility for credits pursuant to the Liquidity Provider Sliding Scale and the Affiliated Volume Plan ("AVP"). Currently, the Liquidity Provider Sliding Scale offers credits on Market-Maker orders where a Market-Maker achieves certain volume thresholds based on total national Market-Maker volume in all underlying symbols[8] during the calendar month. Currently, under AVP, if a Market-Maker affiliate[9] ("Affiliate OFP") or Appointed OFP receives a credit under the Exchange's Volume Incentive Program ("VIP"), the Market-Maker will receive an access credit on their BOE Bulk Ports corresponding to the VIP tier reached as well as a transaction fee credit on their sliding scale Market-Maker transaction fees. Specifically, the proposed rule change

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7 See BOX Options Fee Schedule, Section IA, Electronic Transaction Fees: Non-Auction Transaction, which assesses $0.50 or $0.75 for (taker) market maker orders; and Section IIA, Manual Transaction Fees: Qualified Open Outcry Orders ("QOO"), which assesses $0.25 for manual market maker orders; see also NYSE Arca Options Fee Schedule, Trade-Related Charges for Standard Options, which assesses $0.25 for manual market maker orders and $0.50 or $1.10 for electronic (take liquidity) market maker orders.

8 Excluding products in Underlying Symbol List A and XSP.

9 "Affiliate" defined as having at least 75% common ownership between the two entities as reflected on each entity's Form BD, Schedule A.

provides in footnote 10 (appended to the Liquidity Provider Sliding Scale) that the Liquidity Provider Sliding Scale applies to Liquidity Provider (Cboe Options Market-Maker, DPM and LMM) transaction fees in all products except 1) Underlying Symbol List A (34) excluding XSP, and 2) (as proposed) volume executed in open outcry. The proposed rule change will also make clear that the volume thresholds under the Liquidity Provider Sliding Scale will continue to include volume executed in open outcry. The Exchange notes that it continues to include volume executed in open outcry in a Market-Maker's volume eligible to meet the tier thresholds in order to continue to incentivize Market-Maker order flow to the trading floor. The Exchange offers a hybrid market system and aims to continue to balance incentives for Market-Makers to contribute to deep liquid markets for investors on both its electronic and open outcry platforms. The proposed rule change provides in footnote 23 (appended to the AVP table) that volume executed in open outcry is not eligible to receive a credit under AVP. The Exchange notes that no changes are being made to the Volume Incentive Program as it relates to Market-Maker transactions in open outcry as it currently does not include Market-Maker volume. The proposed change to remove the eligibility of certain credits for Market-Maker volume in open outcry is also intended to balance the fact that Market-Makers will no longer be assessed Marketing Fees on such orders.

Proposed Amendment to Clearing Trading Permit Holder Fee Cap

The Clearing Trading Permit Holder Fee Cap table and accompanying footnote 22 provides that, for all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction, transaction fees for Clearing Trading Permit Holder Proprietary and/or their Non-Trading Permit Holder Affiliates (collectively, "Firms") in all products except Sector Indexes and products in Underlying Symbol List A, in the aggregate, are capped at $75,000 per

month per Clearing Trading Permit Holder. The proposed rule change amends the cap from $75,000 to $55,000. The proposed reduction in the fee cap amount is intended to incentivize Firms to submit increased order flow to the Exchange thus encouraging a healthy and diverse ecosystem as the Exchange has observed lower Firm volume across the industry in recently months than observed historically. Additionally, the Exchange notes that the proposed cap change is competitive with similar firm caps in place on other options exchanges.[10]

Proposed Reinstatement of Certain Facility Fees

Current footnote 24 provides for modified and waived fees for certain trading floor-related transaction fees and fees related to trading floor facilities while the trading floor operates in a modified state. Specifically, it provides that, among other things, monthly fees will be waived for the following facilities fees: standard and non-standard booth rentals, wireless phone rental, arbitrage phone positions and satellite tv, provided however that such fees will be pro-rated based on the remaining trading days in the calendar month if the trading floor becomes fully operational mid-month. If a TPH is unable to utilize designated facility services while the trading floor is operating in a modified state, corresponding fees, including for standard and non-standard booth rentals, Exchangefone maintenance, single line maintenance, intra floor lines, voice circuits, data circuits at local carrier (entrance), and data circuits at in-house frame, will not be assessed.

While the Exchange's trading floor continues to operate in a modified state due to the ongoing COVID-19 pandemic, on September 21, 2020, the Exchange further expanded its

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10 See BOX Options Fee Schedule, Section IIA, Manual Transaction Fees: Qualified Open Outcry Orders, which provides that QOO Order fees for Broker Dealers will be capped at $75,000 per month per Broker Dealer; see also NYSE Arca Options Fee Schedule, Firm and Broker Dealer Monthly Firm Cap Tiers, which assesses a broker-dealer/firm cap between $65,000 and $100,000 for firms that achieve certain volume tiers.

trading floor capacity. As a result, Trading Permit Holders have been able to again occupy booths and utilize the wireless phone rentals. The Exchange notes also that as a result of the recent expansion all wireless phone rental will be in use, however, not all booths will be occupied. Therefore, the proposed rule change updates footnote 24 to reinstate fees for such facilities and provides that, beginning October 1, 2020, facilities fees for standard and non-standard booth rentals and wireless phone rental will be reinstated. The proposed rule change makes clear too that if a TPH is unable to utilize designated facility services while the trading floor is operating in a modified state, corresponding fees, including for standard and non-standard booth rentals will not be assessed.

Proposed Addition of SPESG to the Rate Provided for SPX in the Large Customer Discount Program

On September 21, 2020, the Exchange submitted a fee filing to introduce fees for the newly listed and traded SPESG on the Exchange.[11] The proposal generally amended the Fees Schedule so that the majority of the existing transactions fees and programs currently applicable to trading in SPX would also apply to trading in SPESG. However, it inadvertently did not include SPESG in the Customer Large Trade Discount along with SPX (and SPXW). As a result, SPESG currently falls under the transaction fees discount for "All Other Options" (which charges for only the first 5,000 contracts per order), where the Exchange had instead intended it to receive the same transaction fees discount as SPX (which charges for only the first 20,000 contracts per order), consistent with amendments made to accommodate SPESG throughout the proposal. Therefore, the proposed rule change amends the Customer Large Trade Discount to

11 See Securities Exchange Act Release No. 90093 (October 5, 2020) (SR-CBOE-2020-088).

correct this inadvertent omission and apply the same Customer Large Trade Discount to SPESG as SPX going forward.

Proposed to Amend the Application of the Strategy Cap

By way of background, last month, the Exchange submitted a proposal that amended footnote 13 and updated the strategy cap from applying to strategies executed on the same trading day in the same option class for options on equities, ETFs and ETN to applying to strategies executed in open outcry on the same trading day in the same option class across all symbols.[12] The Exchange notes that in the proposal it incorrectly applied the cap to strategies executed in open outcry on the same trading day in the same options across all symbols where, instead, the proposal was originally intended to clarify that the strategy cap would apply to strategies executed in open outcry on the same trading day in the same options classes across all symbols in equity, ETF and ETN options, as opposed to on a symbol by symbol basis. As such, the proposed rule change reapplies the strategy cap to executions (in open outcry) in equities, ETFs and ETNs, as was in place prior to just last month, and updates footnote 13 to clarify that the cap applies across all symbols within equity, ETF and ETN options. Specifically, proposed footnote 13 provides that Market-Maker, Clearing Trading Permit Holder, JBO participant, broker-dealer and non-Trading Permit Holder market-maker transaction fees are capped at $0.00 for all merger, short stock interest, reversal, conversion and jelly roll strategies executed in open outcry on the same trading day in the same option class across all symbols in equities, ETFs and ETNs.[13]

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12 See Securities Exchange Act Release No. 89831 (September 11, 2020), 85 FR 58096 (September 17, 2020) (SR-CBOE-2020-084).

13 The proposed rule change also removes footnote 13 incorrectly appended to "Rate Table - Underlying Symbol List A".

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.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] 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,[16] 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.

As stated above, the Exchange 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. Many of the proposed fee changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange's trading floor, which the Exchange believes would enhance market quality to the benefit of all TPHs. Particularly, the Exchange believes that its proposed amendment to the

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14 15 U.S.C. 78f(b).

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

16 15 U.S.C. 78f(b)(4).

application of certain programs and assessments of Market-Maker volume executed in open outcry and the proposed $55,000 Clearing Trading Permit Holder 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 fees are reasonable, equitable, and not unfairly discriminatory in that competing options exchanges, and the Exchange itself, offer fees and credits in connection with Market-Maker transactions in open outcry[17] or firm fee caps,[18] as the Exchange now proposes. 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 or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange amends its Fees Schedule accordingly to respond to this competitive marketplace.

Proposed Removal of Market-Maker Floor Volume from Assessment of Marketing Fees

The Exchange believes that the proposed rule change to amend the Marketing Fees table by adding transactions in open outcry to the list of Market-Maker transactions to which the Marketing Fee does not apply is reasonable because the current assessment of such orders has not resulted in significant incentive in attracting customer order flow to the trading floor as designed. Therefore, the proposed rule change is reasonable in that it removes this assessment for

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17 See supra notes 6 and 7.

18 See supra note 10.

such transactions, which will allow the Exchange to redirect such resources and funding into other programs intended to incentivize customer order flow providers. Impactful incentive programs for customer order flow providers would, in turn, encourage an increase in customer order flow, which attracts Market-Makers. A subsequent increase in Market-Maker activity tends to signal an increase in activity from other market participants, contributing to overall deeper, more liquid markets and a robust market ecosystem to the benefit of all market participants. The Exchange believes the proposed rule change is equitable and not unfairly discriminatory because the proposed rule change will apply equally to all Market-Maker volume in open outcry, in that, no such volume will be assessed, or otherwise a part of, the Marketing Fee program. Also, as described above, the proposed rule change is reasonable, equitable and not unfairly discriminatory as the Marketing Fee program, as proposed, is also in line with how other exchanges with trading floors apply their respective marketing fee programs.[19]

Proposed Fee Code for Market-Maker Volume Executed on the Trading Floor

The Exchange believes that the proposed rule change to adopt a fee code and assess a standard rate for Market-Maker manual orders is reasonable in that it is reasonably designed to balance the assessment of fees on such orders in light of the removal of the assessment of Marketing Fees on such orders as proposed. 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). Additionally, the proposed rule change is reasonable, equitable and not unfairly discriminatory because it is consistent with the manner in which other options exchanges with trading floors

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19 See supra note 6.

currently assess different standard rates between manual and electronic Market-Maker volume.[20]

Proposed Removal of Market-Maker Floor Volume Eligibility under certain Programs

The proposed rule change to remove Market-Maker volume transacted in open outcry from eligibility for credits pursuant to the Liquidity Provider Sliding Scale and the AVP is reasonable because it is also reasonably designed to balance against the increased benefit to Market-Makers as a result of not assessing Marketing Fees for Market-Maker volume in open outcry, which, the Exchange believes that even with the proposed standard fee applied, may result in reduced overall transaction fees for Market-Makers executing volume on the trading floor. The Exchange also believes that it is reasonable to continue to include Market-Maker open outcry volume in the volume thresholds for meeting the Liquidity Provider Sliding Scale tiers because, as stated above, it is designed to continue to incentivize Market-Maker order flow to the trading floor and would assist the Exchange in continuing to provide a robust hybrid market. Particularly, Market-Maker volume in open outcry facilitates tighter spreads on the Exchange and signals additional corresponding increase in order flow from other market participants. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange notes, too, that other programs in the Fees Schedule include certain volume in meeting volume thresholds while not including the same volume as eligible for credits or reduced rates under such programs.[21] The

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20 See supra note 7.

21 See e.g., Cboe Options Fees Schedule, Volume Incentive Program (VIP) table (which counts volume for capacity B, J and U towards tier qualification but not as eligible for the VIP credit), and Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scale table (which counts volume in products not included in Underlying Symbol

proposed rule change is equitable and not unfairly discriminatory because the proposed rule change will apply equally to all Market-Maker volume in open outcry, in that, no such volume will be allotted credits under the Liquidity Provider Sliding Scale Program or AVP.

Proposed Amendment to Clearing Trading Permit Holder Fee Cap

The Exchange believes that the proposed reduction in the Clearing Trading Permit Holder Fee Cap amount is reasonably designed to incentivize Firms to increase their order flow submitted to the Exchange in order to meet, and trade beyond, the reduced cap, particularly given the recent observation of Firm volume decline across the industry. As stated above, increases in order flow contributes to deeper, more liquid markets and an increase in overall trading activity. The Exchange further believes that Clearing Trading Permit Holder participation in the markets is essential to a robust market ecosystem as Clearing Trading Permit Holders facilitate the execution of customer orders as well as provide clearing services. The Exchange believes that the proposed fee cap is equitable and reasonable as it will continue to apply uniformly to all Clearing Permit Holders that submit qualifying volume to meet the cap. Additionally, the Exchange notes that the proposed cap change is competitive with similar firm caps in place on other options exchanges.[22]

Proposed Reinstatement of Certain Facility Fees

The Exchange believes that reinstating the facility fees for the use of booths (as occupied) and wireless phones is reasonable as the Exchange has recently expanded its trading floor capacity, though continues to operate in a modified state, and therefore these facilities are once again being used by Trading Permit Holders. The Exchange believes the proposed rule change is

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List A towards reaching the tiers, but provides reduced rates to volume in products included in Underlying Symbol List A).

22 See supra note 10.

also reasonable, equitable and not unfairly discriminatory as it applies equally to all floor TPHs use such services.

Proposed Addition of SPESG to the Rate Provided for SPX in the Large Customer Discount Program

The proposed rule change to add SPESG to the same existing transaction fees that apply to SPX under the Customer Large Trade Discount is reasonable as it is intended to correct an inadvertent omission of such via a recent proposal which amended the Fees Schedule so that the majority of the existing transactions fees and programs currently applicable to trading in SPX would also apply to trading in SPESG.[23] The Exchange also believes, and as stated in the recent proposal, it is reasonable to apply the same discount to SPESG as it currently does to SPX because of the relation between the S&P 500 ESG Index and the S&P 500 Index, wherein each constituent of a S&P 500 ESG Index is a constituent of the S&P 500 Index. The proposed rule change does not alter any of the current rates under the Customer Large Trade Discount. Moreover, the proposed rule change is equitable and not unfairly discriminatory because all customer orders in SPESG will be charged equally up to the first 20,000 contracts per order just as they are today for orders in SPX.

Proposed to Amend the Application of the Strategy Cap

The Exchange believes that the proposed rule change to re-apply the strategy fee cap to open outcry executions in equity, ETF and ETN options is reasonable because it corrects the Fees Schedule to reflect the original intention of the recent proposal that updated the strategy caps and footnote 13,[24] and because, just until month ago, the cap applied exclusively to equities, ETFs and ETNs. By way of background, last month, the Exchange submitted a proposal that

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23 See supra note 11.

24 See supra note 12.

amended footnote 13 and updated the strategy cap from applying to strategies executed on the same trading day in the same option class for options on equities, ETFs and ETN to applying to strategies executed in open outcry on the same trading day in the same option class across all symbols.[25] The proposed rule change is reasonably designed to provide additional clarity in the Fees Schedule and mitigate any potential confusion regarding the application of the strategy cap to strategies executed in open outcry across all symbols in equity, ETF and ETN options (rather than an alternative reading that such might apply on a symbol by symbol basis). The proposed rule change does not alter the amount of the current strategy fee cap and will continue to be uniformly available to all similarly situated market participants, that is, all market-makers, Clearing Trading Permit Holders, JBO participants, broker-dealers and non-Trading Permit Holders that execute strategies in any class of equity, ETF or ETN options in open outcry will continue to be eligible to for the cap, thus, will continue to equally receive no charge on such orders.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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. Particularly, the proposed change regarding Market-Maker volume in open outcry will apply uniformly to all such volume. That is, all Market-Makers that transact orders on the trading

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[25] See Securities Exchange Act Release No. 89831 (September 11, 2020), 85 FR 58096 (September 17, 2020) (SR-CBOE-2020-084).

floor will not be assessed the Marketing Fee on such orders, such orders will uniformly not be eligible for credits under the Liquidity Provider Sliding Scale or AVP, and such orders will automatically and uniformly yield fee code MB and be assessed the standard rebate for MB. Likewise, the Clearing Trading Permit Holder Fee Cap will continue to apply uniformly, as it does today, to all Firms that submit qualifying orders to reach the cap. The proposed rule change merely reduces the cap as an incentive for Clearing Trading Permit Holders to submit additional liquidity to the Exchange, which would benefit all market participants. The Exchange notes that the remaining proposed rule changes do not alter any of the current fees in place. The proposed rule change to reinstate certain facilities fees will apply equally to all floor Trading Permit Holders utilizing such facility services, the proposed rule change to the Customer Large Trade Discount table will apply equally to all customer orders in SPESG, exactly as it does today for such orders in SPX, and the proposed rule change to re-apply the strategy cap to strategies executed in certain products will apply uniformly to all market-makers, Clearing Trading Permit Holders, JBO participants, broker-dealers and non-Trading Permit Holders that execute strategies in open outcry across all symbols in equity, ETF and ETN options.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as noted above, competing options exchanges, and the Exchange, currently have substantially similar fees in place in connection with Market-Maker orders executed in open outcry and firm fee caps. The Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and director their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Based on publicly available

information, no single options exchange has more than 18% of the market share of executed volume of options trades.[26] Therefore, no exchange possesses significant pricing power in the execution of option order flow. 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."[27] 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 execution of order flow from broker dealers'….".[28] Accordingly, the Exchange does not believe its proposed changes to the incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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26 See supra note 4.

27 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

28 NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

The Exchange does not believe that the proposed rule change in connection with the waiver of certain designated facility service fees 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.

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[29] and paragraph (f) of Rule 19b-4[30] 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

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29 15 U.S.C. 78s(b)(3)(A).

30 17 CFR 240.19b-4(f).

SR-CBOE-2020-097 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-2020-097. 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 office 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-2020-097 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.[31]

J. Matthew DeLesDernier
Assistant Secretary

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31 17 CFR 200.30-3(a)(12).