

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91053; File No. SR-CBOE-2021-010)

February 3, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish a Policy Relating to Billing Errors

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 January 25, 2021, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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. (“Cboe Options” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to establish a policy relating to billing errors. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 17 CFR 240.19b-4(f)(6)(iii).

The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change 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.

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 Footnote 7 of its fees schedule which relates to billing errors and fee disputes. Footnote 7 currently provides that that any potential billing errors relating to fees assessed by Cboe Options must be brought to the attention of Cboe Options' Accounting Department within three months from the invoice date. Additionally, all fees assessed shall be deemed final and non-refundable after three months from the invoice date. However, Footnote 7 further provides that the Exchange is not precluded from assessing fees more than three months after they were incurred if those fees were required to be paid pursuant to the Cboe Options Fee Schedule in effect at the time the fees were incurred. The Exchange proposes to eliminate the current language in Footnote 7 of the fees schedule and replace it with language recently adopted by its affiliated exchanges.⁶ Particularly, the Exchange proposes to

⁶ See SR-CboeBZX-2020-094; SR-CboeBYX-2020-034; SR-CboeEDGA-2020-032; SR-

provide: “All fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final. Any dispute concerning fees or rebates billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation.”

The proposed language would result in all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error to be considered final. Particularly, the Exchange will resolve an error by crediting or debiting Trading Permit Holders (“TPHs”) and Non-TPHs based on the fees or rebates that should have been applied in the three full calendar months preceding the month in which the Exchange became aware of the error, including to all impacted transactions that occurred during those months.⁷ The Exchange will apply the three month look back regardless of whether the error was discovered by the Exchange or by a TPH or Non-TPH that submitted a fee dispute to the Exchange. The Exchange will continue to provide all disputes concerning fees and rebates assessed by the Exchange would have to be submitted to the Exchange in writing and accompanied by supporting documentation.

The Exchange notes that the proposed language continues to encourage TPHs and Non-TPHs to promptly review their Exchange invoices so that any disputed charges can be addressed in a timely manner. The Exchange notes that it provides TPHs with both daily and monthly fee

CboeEDGX-2020-064.

⁷ For example, if the Exchange becomes aware of a transaction fee billing error on January 4, 2021, the Exchange will resolve the error by crediting or debiting Members based on the fees or rebates that should have been applied to any impacted transactions during October, November and December 2020. The Exchange notes that because it bills in arrears, the Exchange would be able to correct the error in advance of issuing the January 2021 invoice and therefore, transactions impacted through the date of discovery (in this example, January 4, 2021) and thereafter, would be billed correctly.

reports and thus believes they should be aware of any potential billing errors within three months. Requiring that TPHs and Non-TPHs submit disputes in writing and provide supporting documentation encourages them to promptly review their invoices so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (e.g., applicable fees and order information) is still easily and readily available. This practice will avoid issues that may arise when TPHs or Non-TPHs do not dispute an invoice in a timely manner and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes. As such, the requirement continues to alleviate administrative burdens related to billing disputes, which could divert staff resources away from the Exchange's regulatory and business purposes. The proposed rule change to eliminate the requirement that the Exchange assess fees beyond three months if they were required to be assessed pursuant to the fees schedule at the time incurred (i.e., all fees and rebates would be final after three months regardless of how far back a billing error occurred) would provide both the Exchange and TPHs and Non-TPHs finality and the ability to close their books after a known period of time.

The Exchange notes that a number of exchanges have explicitly stated that they consider all fees to be final after a similar period of time.⁸ Additionally, several other exchanges have adopted similar provisions in their rules that provide for a process for their members and non-members to submit fee disputes.⁹ Moreover, the proposed language is identical to the language

⁸ See e.g. Securities Exchange Act Release No. 87650 (December 3, 2019), 84 FR 67304 (December 9, 2019) (SR-NYSECHX-2019-024); Securities Exchange Act Release No. 84430 (October 16, 2018), 83 FR 53347 (October 22, 2018) (SR-NYSESTAT-2018-23); and Securities Exchange Act Release No. 79060 (October 6, 2016), 81 FR 70716 (October 13, 2016) (SR-ISEGemini-2016-11) .

⁹ See e.g., MEMX LLC, Rule 15.3, IEX Rule 15.120, Nasdaq Rule Equity 7, Section 70, Nasdaq BX Rule Equity 7, Section 111, and Nasdaq PHLX Rule Equity 7, Section 2.

recently adopted on the Exchange's affiliated exchanges.¹⁰ As such, the proposed change will also harmonize and conform the Exchange's billing practices with that of its affiliated exchanges. The proposed billing policy will apply to all charges and rebates reflected in the Exchange's fees schedules.

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.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² 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)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

With respect to the proposed language regarding the billing procedure, the Exchange believes continuing to require the submission of all billing disputes in writing, and with supporting documentation is reasonable because the Exchange provides TPHs with ample tools

¹⁰ See supra note 6.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ Id.

to monitor and account for various charges incurred in a given month. Additionally, the Exchange notes that most TPHs and Non-TPHs that pay exchange fees are sophisticated entities, so it is appropriate to expect them to promptly review their invoices for errors and to be capable of identifying such errors. The proposed provision also continues to promote the protection of investors and the public interest by providing a clear and concise mechanism for TPH and Non-TPHs to dispute fees and for the Exchange to review such disputes in a timely manner. Moreover, the proposed billing dispute language, which lowers the Exchange's administrative burden, is similar to billing dispute language of other exchanges, and the same as the Exchange's affiliates.¹⁴ In addition, the billing procedure is fair, equitable, and not unfairly discriminatory because it will apply equally to all TPHs (and Non-TPHs that pay Exchange fees).

The Exchange also believes that providing that all fees and rebates are final after three months (i.e., always resolving billing errors only for the three full calendar months preceding the month in which the Exchange became aware of the error), is reasonable as both the Exchange and TPHs and Non-TPHs have an interest in knowing when its fee assessments are final and when reliance can be placed on those assessments. Indeed, without some deadline on billing errors, the Exchange and TPHs and Non-TPHs would never be able to close their books with any confidence. Furthermore, as noted above, a number of Exchanges similarly consider their fees final after a similar period of time.¹⁵ The proposed change is also equitable, and not unfairly discriminatory because it will apply equally to all TPHs (and Non-TPHs that pay Exchange fees) and apply in cases where either the TPH (or Non-TPH) discovers the error or the Exchange

¹⁴ See supra notes 6 and 9.

¹⁵ See supra notes 6 and 8.

discovers the error. Lastly, the proposed changes to the fees schedule will align the Exchange's billing practices with those of its affiliated exchanges.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. With respect to the billing procedure and billing error policy, the proposed rule change would provide a clear process that would apply equally to all TPHs. Additionally, the proposed rule change is similar to rules of other exchanges. The Exchange does not believe such proposed changes would impair the ability of TPHs or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because the proposed changes would apply equally to all TPHs, the proposal does not impose any burden on competition.

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

No comments were solicited or received on the proposed rule change.

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

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)¹⁷ thereunder.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,

The Exchange has asked the Commission to waive the 30-day operative delay.¹⁸ The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because waiver of the operative delay will allow the Exchange to provide a clear process for billing errors and fee disputes without delay. Moreover, the proposed rule changes are comparable to other policies and practices established by other exchanges and therefore does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁹

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:

or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2021-010 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-2021-010. 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-CBOE-2021-010 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).