

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92712; File No. SR-CBOE-2021-049)

August 20, 2021

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 its Strategy Fee Cap

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 August 17, 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 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 its strategy 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 13 of its Fees Schedule in relation to its strategy order fee cap, effective August 17, 2021.

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. Footnote 13 also provides that strategy orders must be marked with a code approved by the Exchange identifying the orders as eligible for fee cap, and that strategy orders executed during September 2020 will be eligible for the fee cap notwithstanding not being marked, provided that a TPH submits a rebate request with supporting documentation for such orders to the Exchange within 3 business days of September 30, 2020 (i.e., October 5, 2020). Beginning August 17, 2021, the Exchange's billing system will be able to automatically identify strategy orders for purposes of the strategy order fee cap, thereby eliminating the need for TPHs to manually mark their strategy orders with a code approved the Exchange. Accordingly, the Exchange proposes to update Footnote 13 by removing the language in connection with the marking requirements for strategy orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,³ in general, and furthers the objectives of Section 6(b)(4),⁴ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)⁵ 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that removing language from its Fees Schedule in connection with manual marking requirements for strategy orders in order for TPHs to receive the fee cap is reasonable as the Exchange's billing system will now be able to automatically identify strategy orders for purposes of the strategy order fee cap. The proposed rule change makes no changes to the fee cap but merely eliminates the need for TPHs to mark orders to receive the fee cap. The proposed rule change is reasonable as it provides transparency in the Fees Schedule and alleviates potential investor confusion in connection with marking strategy

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78f.(b)(5).

orders as eligible to receive the fee cap, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system and protecting investors and the public interest. The Exchange also believes the proposed rule change is equitable and not unfairly discriminatory as it applies uniformly to all TPHs, in that, all strategy orders submitted will be automatically identified as eligible for the fee cap by the Exchange's billing system.

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 does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate as the proposed rule change applies uniformly to all TPHs, in that, all strategy orders submitted will be automatically identified as eligible for the fee cap by the Exchange's billing system. The proposed rule change makes no changes to the fee cap but merely eliminates the need for TPHs to mark orders to receive the fee cap. Further, the Exchange believes the proposed rule change will not cause an unnecessary burden on intermarket competition because it only applies to trading on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

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 is effective upon filing pursuant to Section 19(b)(3)(A)⁶ of the Act and subparagraph (f)(2) of Rule 19b-4⁷ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 shall institute proceedings under Section 19(b)(2)(B)⁸ of the Act 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-2021-049 on the subject line.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ 15 U.S.C. 78s(b)(2)(B).

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-2021-049. 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. 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-2021-049 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.⁹

Jill M. Peterson
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).