

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-95934; File No. SR-CBOE-2022-048)

September 27, 2022

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 20, 2022, 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 update 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 to modify fees for certain Customer and Market-Maker orders executed in Cboe Volatility Index (“VIX”) options.<sup>3</sup>

The Exchange first proposes to reduce fees for certain complex Customer VIX transactions. By way of background, an “Index Combo” is a complex order to purchase or sell one or more index option series and the offsetting number of Index Combinations defined by the delta.<sup>4</sup> An “Index Combination” is a purchase (sale) of an index option call and sale (purchase) of an index option put with the same underlying index, expiration date and strike price.<sup>5</sup> Index Combinations can trade on their own or as part of a tied combo strategy (such as part of an Index Combo), where similar to a tied-to-stock option, an option contract [sic] is bought or sold in the same package as the two legs making up the Index Combination as the synthetic underlying position as a hedge. Currently, Customer complex orders, including Index Combo orders, in VIX options are assessed the following fees: \$0.05 per contract when the premium price is between \$0.00 and

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<sup>3</sup> The Exchange initially filed the proposed fee changes on September 12, 2022 (SR-CBOE-2022-045). On September 20, 2022, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> See Cboe Options Rule 5.33, “Index Combo”.

<sup>5</sup> See Cboe Options Rule 5.33(b)(5) (subparagraph (1) of definition of “Index Combo”).

\$0.10; \$0.17 per contract when the premium price is between \$0.11 and \$0.99; \$0.30 per contract when the premium price is between \$1.00-\$1.99; and \$0.45 per contract when the premium price is equal or greater than \$2.00, which orders yield fee codes CZ, DA, DB and DC, respectively.<sup>6</sup> The Exchange proposes to waive transaction fees for the Index Combination component (legs) of Customer Index Combo orders in VIX. The Index Combination legs will yield proposed new fee code “CI”, and any remaining legs will continue to yield the applicable standard Customer complex order fee codes for VIX transactions as set forth in the Fees Schedule. The Exchange proposes to adopt new Footnote 43 (which is currently Reserved), to describe the fee waiver. The Exchange proposes to waive fees for Customer Index Combinations to encourage the submission of Index Combo orders which provide customers with a means to reduce or hedge the risk associated with price movements in the underlying index.

The Exchange next proposes to reduce fees for certain Market-Maker orders in VIX options that execute against qualifying complex orders. Currently, Market-Maker orders in VIX options are assessed \$0.05 per contract when the premium price is between \$0.00 and \$0.99 (which orders yield fee code MV) and \$0.23 per contract when the premium price is equal to or above \$1.00 (which orders yield fee code MW). The Exchange proposes to reduce the transaction fee for certain Market-Maker VIX orders when the premium is equal to or above \$1.00 from \$0.23 to \$0.05 per contract. Particularly, the Exchange proposes to assess \$0.05 per contract for Market-Maker VIX orders where the order (i) is executed by the Market-Maker in open outcry, (ii) against a

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<sup>6</sup> Transaction fees for all Customer orders executed in VIX during GTH are currently waived through December 31, 2022. See Cboe Options Fees Schedule, Footnote 32.

complex order that has 3 or more legs, and (iii) the total executed order quantity of the contra order is greater than or equal to 5,000 contracts.<sup>7</sup> A Market-Maker must be representing themselves on the trading floor in order to qualify for the reduced fee. Solicited orders where the Market-Maker is represented by a Floor Broker are not eligible. In connection with this change the Exchange proposes to adopt new fee code “MI” which will apply to such transactions<sup>8</sup> and proposes to describe the proposed criteria in new Footnote 43. The Exchange believes the proposed reduced fee will encourage Market-Makers to participate in additional open-outcry orders in VIX and in particular to quote tighter spreads with greater size.

The Exchange notes that currently, any post-trade edits to floor trades that change the symbol, price, size, or floor trader on any leg of the trade will result in single leg fee codes being assigned by the billing system to each leg of the trade. Additionally, the Exchange notes that orders which contain more than the maximum number of legs supported by the Cboe System (currently 16) must be submitted as multiple orders. In some instances the submitted child orders on their own may not appear to the System as qualifying for fee code CI or MI, as applicable, and therefore instead would receive the standard applicable fee code notwithstanding otherwise qualifying for the fee waiver or reduced fee as part of the original order. For example, if the contra order on a child order

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<sup>7</sup> The 5,000 contracts may be summed across multiple legs of the contra order. As an example, if a contra complex order has 4 legs, and each execute for 1,250 contracts against 4 different Floor Market-Makers, each Market-Maker will be assessed \$0.05 per contract for their respective order of 1,250 contracts.

<sup>8</sup> The Exchange notes that fee code “MI” will also apply to qualifying transactions where the VIX Premium is less than \$1.00 (which currently yield Fee Code MV), because the proposed rate (i.e., \$0.05) is the same as the rate currently assessed to all Market-Maker VIX orders where the premium is less than \$1.00.

executes at a quantity less than 5,000 contracts, the System would not recognize that order as qualifying for the reduced fee and the Market-Maker order trading against it would not receive fee code MI (nor the corresponding reduced fee). Accordingly, the Exchange proposes to also clarify in Footnote 43 that supporting documentation (e.g., documentation that includes the original trade detail) must be submitted to the Exchange within 3 business days of the transaction in order to receive the proposed fee waiver or reduced fee on qualifying orders for which (i) a post-trade edit to an order executed in open outcry was made that changed the symbol, price, size, and/or floor trader acronym on any leg of the transaction; and/or (ii) the original order contained more than the maximum number of legs supported by the Cboe System and was consequently submitted as multiple orders, where the applicable child order by itself does not meet the qualifications for the fee waiver or reduced fee. The proposal ensures TPHs have the means to receive the proposed fee waiver or reduced fee notwithstanding certain System limitations that may impact billing.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>10</sup> 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

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<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

with the objectives of Section 6(b)(5)<sup>11</sup> 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.

The Exchange believes that the proposed rule change to waive transaction fees for the Index Combination legs of a Customer Index Combo order executed in VIX options is reasonable, equitable and not unfairly discriminatory as Customers would not be subject to fees for contracts that are executed as part of an Index Combination and the proposed change would apply to all Customers uniformly. The Exchange believes the proposal is reasonably designed to encourage Customer order flow in VIX options. The Exchange wishes to promote the growth of VIX and believes that incentivizing increased Customer Index Combo order flow in VIX options would attract additional liquidity to the Exchange. The Exchange believes increased Customer order flow facilitates increased trading opportunities and attracts Market-Maker activity, which facilitates tighter spreads and may ultimately signal an additional corresponding increase in order flow from other market participants, contributing overall towards a robust and well-balanced market

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<sup>11</sup> 15 U.S.C. 78f(b)(5).

ecosystem. The Exchange notes that it similarly waives fees for other types of Customer orders in the Fees Schedule.<sup>12</sup>

Further, the Exchange believes that it is equitable and not unfairly discriminatory to waive fees for certain Customer complex orders because, as described above, Customer liquidity benefits all market participants by providing more execution opportunities, in turn, attracting Market Maker order flow, which ultimately enhances market quality on the Exchange to the benefit of all market participants. Additionally, the Exchange believes the proposed change is in line with other fee programs that are designed to incentivize the sending of complex orders, including Index Combo orders, to the Exchange. For example, the Exchange provides higher rebates under the Volume Incentive Program for complex orders as compared to simple orders.<sup>13</sup> The Exchange also assesses lower fees for complex Customer orders in VIX as compared to simple orders in VIX.<sup>14</sup>

The Exchange next believes the proposed change to reduce certain VIX transaction fees for Market-Makers is reasonable as Market-Makers will be paying lower fees for such transactions. The Exchange notes the proposed changes are designed to encourage the sending of additional large complex VIX orders in open-outcry. Indeed, the Exchange believes the proposed reduced fee will encourage Market-Makers to

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<sup>12</sup> See Cboe Options Fees Schedule, footnote 8, which waives the transaction fee for customer orders in ETF and ETN options executed in open outcry or in AIM or as a QCC or as a FLEX Options transaction, and footnote 9, which waives transaction fees for customer orders that provide or remove liquidity that are 99 contracts or less in ETF and ETN options.

<sup>13</sup> See Cboe Options Fees Schedule, Volume Incentive Program.

<sup>14</sup> See Cboe Options Fees Schedule, Rate Table – Underlying Symbol List A.

participate in additional open-outcry orders in VIX and in particular quote tighter spreads with greater size, which may signal additional corresponding increase in order flow from other market participants, ultimately incentivizing more overall order flow and improving liquidity levels and price transparency on the Exchange to the benefit of all market participants.

The Exchange believes the proposed fee change is equitable and not unfairly discriminatory because it applies to all Market-Makers uniformly. The Exchange believes that it is equitable and not unfairly discriminatory to propose lower transaction rates for Market-Makers because the Exchange recognizes that these market participants can provide key and distinct sources of liquidity. Additionally, as noted above, an increase in general market-making activity may provide more trading opportunities, in turn, signaling additional corresponding increase in order flow from other market participants, and, as a result, contributing towards a robust, well-balanced market ecosystem. The Exchange notes too that Market-Makers take on a number of obligations that other market participants do not have. For example, unlike other market participants, Market-Makers take on quoting obligations and other market making requirements.

The Exchange also believes the proposed rule change is equitable and not unfairly discriminatory because, as proposed, the proposed fee reduction applies to all qualifying VIX orders executed by Market-Makers on the trading floor equally and because the Exchange believes that facilitating VIX orders submitted by Market-Makers via open outcry encourages and supports increased liquidity and execution opportunities in open outcry, which functions as an important price-improvement mechanism for customers. Indeed, the Exchange notes that all market participants stand to benefit from any increase



in volume transacted on the trading floor, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

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

The Exchange believes the proposed amendments to its Fee Schedule will not impose any burden on 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 because the proposed fee changes for Customers and Market-Makers will be assessed automatically and uniformly to each similarly situated market participant (i.e., all qualifying Customer VIX transactions will receive the proposed fee waiver and all qualifying Market-Maker VIX transactions will be assessed the proposed reduced fee amount). The Exchange notes that there is a history in the options markets of providing preferential treatment to Customers and Market-Makers. Also, as discussed in the statutory basis, the Exchange believes Customer order flow may facilitate increased trading opportunities and attract Market-Maker activity, which can contribute towards a robust and well-balanced market ecosystem. Market-Makers provide key and distinct sources of liquidity, and an increase in general market-making activity may facilitate tighter spreads, which tends to signal additional corresponding increases in order flow from other market participants, ultimately incentivizing more overall order flow and improving liquidity levels and price transparency on the Exchange to the benefit of all market participants. Further as discussed, Market-Makers take on a number of obligations that other market participants do not, such as quoting obligations and other

market-making requirements. The Exchange also notes that the proposed fee changes are designed to attract additional VIX order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

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 the proposed rule changes apply only to a product exclusively listed on the Exchange. Additionally, 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 (which list products that compete with VIX options) and direct 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 17% of the market share of executed volume of options trades.<sup>15</sup> 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

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<sup>15</sup> See Cboe Global Markets, U.S. Options Market Volume Summary by Month (September 7, 2022), available at [http://markets.cboe.com/us/options/market\\_share/](http://markets.cboe.com/us/options/market_share/).

been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>16</sup> 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’....”<sup>17</sup> 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.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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<sup>16</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>17</sup> *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)).

### 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<sup>18</sup> and paragraph (f) of Rule 19b-4<sup>19</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2022-048 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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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2022-048. 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-2022-048 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.<sup>20</sup>

J. Matthew DeLesDernier,  
Deputy Secretary.

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<sup>20</sup> 17 CFR 200.30-3(a)(12).