

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96644; File No. SR-CBOE-2023-002)

January 12, 2023

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Fee Schedule to Reflect Adjustments to the Financial Industry Regulatory Authority, Inc. General Registration Fees, Fingerprinting Fees, and Continuing Education Fees

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 3, 2023, 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 the Exchange's Fee Schedule ("Fee Schedule") to reflect adjustments to the Financial Industry Regulatory Authority, Inc. ("FINRA") General Registration Fees, Fingerprinting Fees, and Continuing Education Fees. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 its Fee Schedule regarding Regulatory Fees to reflect updates to the FINRA Disclosure Processing Fee, Annual System Processing Fee, Fingerprint Processing Fees, and Continuing Education Fees.³ The applicable fees are collected and retained by FINRA via Web CRD⁴ for the registration of associated persons of Exchange Trading Permit Holder (“TPH”) organizations that are not FINRA members (“Non-FINRA members”). The Exchange is merely listing these fees on its Fee Schedule and does not collect or retain the fees.

³ See Securities Exchange Act Releases No. 34-90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR-FINRA-2020-032) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adjust FINRA Fees to Provide Sustainable Funding for FINRA’s Regulatory Mission); and 93928 (January 7, 2022), 87 FR 2193 (January 13, 2022) (SR-FINRA-2021-034) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Section 4 of Schedule A to the FINRA By-Laws Relating to the Continuing Education Fees).

⁴ FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment, and disciplinary histories of registered associated persons of broker-dealers.

Specifically, the Exchange proposes to amend: (1) the \$110 fee for the additional processing of each initial or amended Form U-4, Form U-5, Form BD and amendments that include the initial reporting, amendment, certification, or one or more disclosure events or proceedings to \$155; (2) the \$45 FINRA Annual System Processing Fee assessed only during Renewals to \$70⁵; and (3) the current \$55 per continuing education exam fee to \$18 per exam. These amendments are being made in accordance with a FINRA rule change and a FINRA amendment to its By-Laws to adjust these fees.⁶

The Exchange also proposes to amend the following Fingerprint Fees: (1) the \$29.50 Initial Submission (Electronic) fee to \$31.25;⁷ (2) the \$15 Second Submission (Electronic) Fingerprint Processing Fee to \$20; (3) the \$29.50 Third Submission (Electronic) fee to \$31.25;⁸ (4) the \$44.50 Initial Submission (Paper) fee to \$41.25;⁹ and (5) the \$44.50 Third Submission (Paper) fee to \$41.25.¹⁰ Specifically, today, the FBI fingerprint charge is \$11.25¹¹ and the FINRA electronic Fingerprint Fee will increase

⁵ This fee change will not be effective until January 2, 2024.

⁶ Supra note 3.

⁷ This fee includes a \$20.00 FINRA fee and \$11.25 FBI fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

⁸ This fee includes a \$20.00 FINRA fee and \$11.25 FBI fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

⁹ This fee includes a \$30.00 FINRA fee and a \$11.25 FBI fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

¹⁰ This fee includes a \$30.00 FINRA fee and a \$11.25 FBI fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

¹¹ See Securities Exchange Act Release No. 34-67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Sections 4 and 6 of Schedule A

from \$15 to \$20 in 2023.¹² While FINRA did not amend the paper Fingerprint Fee, previously the FBI fee was reduced from \$14.50 to \$11.25.¹³ The paper Fingerprint Fees are not currently reflecting the amount assessed by FINRA. The amendment to the paper Fingerprint Fees will conform these fees with those of FINRA.

The FINRA Web CRD Fees are user-based, and there is no distinction in the cost incurred by FINRA if the user is a FINRA-member itself, associated with a FINRA-member organization, or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.¹⁴

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.¹⁵

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ 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

to the FINRA By-Laws Regarding Fees Relating to the Central Registration Depository) (“2012 Rule Change”).

¹² Supra note 3.

¹³ See 2012 Rule Change at note 11. The FBI does not charge its fee on a second fingerprint transaction when it identifies the first set of fingerprints as illegible for the same individual.

¹⁴ Supra note 3.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

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)¹⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. All similarly situated FINRA-Member organizations are subject to the same fee structure, and all must use the CRD system for registration and disclosure.

The Exchange believes the proposed changes to the FINRA Disclosure Processing Fee, Annual System Processing Fee, Fingerprint Fees, and continuing education fee are reasonable because they are identical to the fee changes adopted by FINRA for use of the Web CRD system for disclosure, registration, and continuing education of associated persons of FINRA Members and their associated persons.¹⁸ The costs are borne by FINRA when a non-FINRA member uses Web CRD for these purposes. Thus, the Exchange's Fee Schedule will reflect the current rates that will be assessed by FINRA as of January 2, 2023 and January 2, 2024, as applicable, for use of Web CRD by any Trading Permit Holders that are not also FINRA members for the additional processing of each initial or amended Form U4, Form U5 or Form BD, (Electronic) Fingerprint Processing, registration, and continuing education. The Exchange believes the proposed fee changes are equitable and not unfairly discriminatory, because the Exchange will not be collecting or retaining these fees, and therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

¹⁷ Id.

¹⁸ Supra note 3.

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. The Exchange believes that its proposal will not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner. The proposal will reflect the fees that will be assessed by FINRA to all market participants (FINRA and non-FINRA members) for these uses of Web CRD.

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 Act¹⁹ and paragraph (f) of Rule 19b-4²⁰ 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

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f).

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-2023-002 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-2023-002. 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-2023-002 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.²¹

Sherry R. Haywood,
Assistant Secretary.

²¹ 17 CFR 200.30-3(a)(12).