

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91546; File No. SR-C2-2021-005)

April 13, 2021

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 1, 2021, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (“SEC” or “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 C2 Exchange, Inc. (the “Exchange” or “C2”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the 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://markets.cboe.com/us/options/regulation/rule_filings/ctwo/), 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

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 fee schedule to (1) amend the standard transaction fees and rebates for certain SPY, AAPL, QQQ, IWM and SLV transactions, (2) adopt tiered pricing for SPY, AAPL, QQQ, IWM and SLV Market-Maker transactions, (3) adopt a discount program for Bulk BOE Logical Ports, (4) adopt a "Definitions" section in the fees schedule, and (5) eliminate outdated language and obsolete facilities fees, effective April 1, 2021.

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 approximately 17% of the market share and currently the Exchange represents approximately 3% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. 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 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

³ See Cboe Global Markets U.S. Options Market Volume Summary by Month (March 29, 2021), available at https://markets.cboe.com/us/options/market_statistics/.

trade on competing venues if they deem pricing levels at those other venues to be more favorable.

SPY, AAPL, QQQ, IWM and SLV Pricing

First, the Exchange proposes to amend the transaction fee for Public Customer orders in SPY, AAPL, QQQ, IWM and SLV that remove liquidity. Currently, Public Customer orders in SPY, AAPL, QQQ, IWM and SL, that remove liquidity are assessed a standard transaction fee of \$0.39 per contract and yield fee code “SC”. The Exchange proposes to reduce the standard transaction fee to \$0.37 per contract. The Exchange also proposes to reduce the current standard rebate for C2 Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV that add liquidity. Currently, C2 Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV that add liquidity are provided a standard rebate of \$0.26 per contract and yield fee code “SM”. The Exchange proposes to reduce the standard rebate to \$0.20 per contract. The Exchange notes that the proposed changes are in line with the pricing for similar market participants in similar products on other exchanges.⁴

SPY, AAPL, QQQ, IWM and SLV Incentive Tiers

The Exchange also proposes to adopt new incentive tiers for C2 Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV that add liquidity under a new section in the fees schedule titled “Footnotes”. The proposed tiered pricing would provide Trading Permit Holders (“TPHs”)

⁴ See, e.g., MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for a fee of \$0.46 per contract for priority customer SPY orders that remove liquidity, \$0.50 per contract for priority customer IWM and QQQ orders that remove liquidity, and \$0.50 per contract for priority customer orders in Penny Classes other than SPY, QQQ and IWM orders that remove liquidity. See also Nasdaq ISE Pricing Schedule, Section 3, Footnote 5, which provides for tiered rebates for Market-Maker SPY, QQQ, and IWM orders that add liquidity between \$0.00-\$0.26 per contract.

opportunities to qualify for higher rebates where certain volume criteria and thresholds are met in such products. Tiered pricing provides an incremental incentive for TPHs to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria. Particularly, the Exchange proposes to adopt under Footnote 1, new Market-Maker Volume Tiers, which would provide enhanced rebates for qualifying C2 Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV that add liquidity (i.e., orders yielding fee code SM) that meet certain liquidity thresholds. First, proposed Tier 1 would provide an enhanced rebate of \$0.26 per contract where a TPH: (1) has an ADAV⁵ in Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV (i.e., yielding fee codes SM or SL⁶) equal to or greater than 50,000 contracts; or (2) has a Step-Up ADAV⁷ in Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV (i.e., yielding fee codes SM or SL) equal to or greater than 15,000 contracts from March 2021. The Exchange also proposes to adopt Tier 2, which would provide a higher rebate of \$0.30 per contract where a TPH meets the more stringent criteria of having an ADAV in Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV (i.e., yielding fee codes SM or SL) equal to or greater than 130,000 contracts. The Exchange notes that other exchanges offer tiered pricing incentives for similar orders.⁸ The proposed enhanced rebates and corresponding criteria are designed to encourage Market-Makers to increase or grow their order flow on the Exchange in

⁵ “ADAV” means average daily added volume calculated as the number of contracts added, per day.

⁶ Fee code SL is currently appended to C2 Market Maker orders in SPY, AAPL, QQQ, IWM and SLV that add liquidity and are a National Best Bid or Offer (“NBBO”) Joiner or NBBO Setter and offers a rebate of \$0.31 per contract for such orders.

⁷ “Step-Up ADAV” means ADAV in the relevant baseline month subtracted from current ADAV.

⁸ See, e.g., Nasdaq ISE Pricing Schedule, Section 3, Footnote 5, which provides for tiered rebates for Market-Maker SPY, QQQ, and IWM orders that add liquidity between \$0.00-\$0.26 per contract.

SPY, AAPL, QQQ, IWM and SLV, which facilitates tighter spreads, signaling increased activity from other market participants, and thus ultimately contributes to deeper and more liquid markets and provides greater execution opportunities on the Exchange to the benefit of all market participants.

BOE Bulk Logical Ports Discount

By way of background, the Exchange currently offers BOE Bulk Logical Ports (“BOE Bulk Ports”), which provide users with the ability to submit single and bulk order messages to enter, modify, or cancel orders designated as Post Only Orders with a Time-in-Force of Day or GTD with an expiration time on that trading day. BOE Bulk Ports are assessed \$1,500 per port, per month for the first 5 BOE Bulk Ports and thereafter assessed \$2,500 per port, per month for each additional BOE Bulk Port. Each Bulk BOE Port also incurs the logical port fee indicated in the table above when used to enter up to 30,000,000 orders per trading day per logical port as measured on average in a single month. Each incremental usage of up to 30,000,000 orders per day per BOE Bulk Port will incur an additional logical port fee of \$2,500 per month (“incremental usage fees”).

The Exchange now proposes to adopt a discount program for BOE Bulk Ports which provides an opportunity for Market-Makers to obtain credits on their monthly BOE Bulk Port fees (excluding incremental usage fees).⁹ More specifically, the Exchange proposes to provide that Market-Makers would receive a discount of 30% on monthly Bulk BOE Port fees (excluding incremental usage fees) where a Market-Maker has (1) a Step-Up ADAV equal to or greater than

⁹ While BOE Bulk Ports are available to all market participants, they are used primarily by Market Makers or firms that conduct similar business activity.

0.025% of average OCV¹⁰ from February 2021 and (2) a “Make Rate” equal to or greater than 85%. The “Make Rate” shall be derived from a Market-Maker’s volume the previous month in all symbols using the following formula: (i) the Market-Maker’s total simple add volume divided by (ii) the Market-Maker’s total simple volume.¹¹ Trades on the open and complex orders will be excluded from the Make Rate calculation. The Exchange will aggregate the trading activity of separate Market-Maker firms for purposes of the discount tier and make rate calculation if there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. The proposed BOE Bulk Port discount is designed to attract liquidity from traditional Market-Makers and encourage Market-Makers to grow their volume. Specifically, the Exchange believes the proposal mitigates costs incurred by traditional Market-Makers that focus on adding liquidity to the Exchange (as opposed to those that provide and take, or just take). The Exchange notes that its affiliate, Cboe Exchange, Inc. (“Cboe Options”) similarly provides discounts on BOE Bulk Port fees based on a Market-Maker’s Make Rate the previous month.¹²

Definitions

The Exchange next proposes to adopt a new “Definitions” section of its fees schedule.

As described above, the Exchange intends to adopt new tiered pricing for certain products and a

¹⁰ “OCV” (or “OCC Customer Volume” means, the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (“OCC”) for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

¹¹ For example, a TPH’s total simple add volume in March 2021 is 2,600,000 contracts and its total simple volume is 3,000,000 contracts, resulting in a Make Rate of 86.6%. As such, the TPH would receive a 30% credit on its monthly Bulk Port fees for the month of April 2021.

¹² See Cboe Options Fees Schedule, Market-Maker Access Credit.

new discount program for BOE Bulk Ports which will provide TPHs opportunities to qualify for higher rebates or a discount, respectively, where certain volume criteria and thresholds are met. The volume thresholds refer to certain terms that are not currently defined in the Exchange's fees schedule (i.e., "ADAV", "Step-Up ADAV", and "OCV"). The Exchange believes clearly defining those terms in the fees schedule would reduce potential confusion, increase transparency, and benefit market participants. Accordingly, the Exchange proposes to adopt the following definitions.

- **"ADAV"** means average daily added volume calculated as the number of contracts added, per day.
 - ADAV is calculated on a monthly basis, excluding contracts added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours ("Exchange System Disruption") and on any day with a scheduled early market close.
 - Routed contracts are not included in ADAV calculation.
 - With prior notice to the Exchange, a TPH may aggregate ADAV or ADV with other TPHs that control, are controlled by, or are under common control with such TPH.
- **"Step-Up ADAV"** means ADAV in the relevant baseline month subtracted from current ADAV.
- **"OCC Customer Volume"** or **"OCV"** means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation ("OCC") for the month for which the fees apply, excluding volume on any day

that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

The Exchange notes the proposed definitions are substantively similar to the definitions contained in one of the Exchange's affiliate fees schedules.¹³

Eliminate Outdated Language and Obsolete Facilities Fees

The Exchange next proposes to eliminate obsolete language under the Physical and Logical Connectivity Fees sections that reference legacy physical and logical ports that were decommissioned in 2018. Particularly, under the Physical Connectivity Fees section, the Exchange proposes to eliminate the following language “[t]hrough June 30, 2018, C2 market participants can elect to connect to C2’s trading system via either a 1 Gigabit Ethernet or a 10 Gigabit Ethernet Network Access Port. No fees will be assessed for the legacy Network Access Ports”, as such language is no longer relevant. The Exchange also proposes to make clear that TPHs and non-TPHs only connect to C2’s trading system via Physical Ports (instead of “may also” connect, which was relevant only when TPHs had the option of alternatively connecting via legacy Network Access Ports). Under the Logical Connectivity Fees section, the Exchange proposes to eliminate the following language “Port fees for BOE, FIX, BOE Bulk and Drop ports will be assessed the full month rates for May for ports available for use on the new trading platform beginning May 14, 2018”, along with another reference to May 15, 2018, as such language is also outdated and no longer relevant or necessary to maintain.

Lastly, the Exchange proposes to eliminate the “Facilities Fees” section, which includes fees for the PULSe Workstation and related footnotes. Particularly, on January 4, 2021, the Exchange decommissioned the PULSe Workstation. Accordingly, the related PULSe

¹³ See Cboe EDGX Exchange, Inc. Fees Schedule, Definitions.

Workstation fees are no longer applicable nor necessary to maintain in the fees schedule. The Exchange therefore proposes to eliminate the language to avoid potential confusion and eliminate unnecessary language

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(4),¹⁵ 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)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 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.

As described 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. In particular, the proposed changes to Exchange execution fees and rebates for certain orders in SPY, AAPL, QQQ, IWM and SLV are intended to attract order flow to the Exchange by continuing to offer competitive

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f.(b)(5).

pricing. More specifically, the Exchange believes it is reasonable to reduce the current fee for Public Customers that remove liquidity in SPY, AAPL, QQQ, IWM and SLV, as such market participants will be paying lower fees for such transactions and thus may be encouraged to increase retail SPY, AAPL, QQQ, IWM and SLV order flow to the Exchange. Furthermore, the Exchange believes its proposed change is reasonable as it is competitive and in line with pricing for many of the same products at other exchanges.¹⁷ The Exchange believes the proposed change is equitable and not unfairly discriminatory as it will apply to all Public Customers equally. The Exchange also believes that it is equitable and not unfairly discriminatory to assess a lower fee for Public Customer orders in SPY, AAPL, QQQ, IWM and SLV as compared to other market participants because customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, the options industry has a long history of providing preferential pricing to customers, and the Exchange's current Fee Schedule currently does so in many places, as do the fees structures of multiple other exchanges.

The Exchange believes it is reasonable to reduce the current rebate for Market-Makers that add liquidity in SPY, AAPL, QQQ, IWM and SLV, as such market participants will still be receive a rebate for such orders (albeit at a lower amount). Additionally, the Exchange believes

¹⁷ See, e.g., MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for a fee of \$0.46 per contract for priority customer SPY orders that remove liquidity, \$0.50 per contract for priority customer IWM and QQQ orders that remove liquidity, and \$0.50 per contract for priority customer orders in Penny Classes other than SPY, QQQ and IWM orders that remove liquidity.

its proposed change is reasonable as it is competitive and in line with pricing for many of the same products at other exchanges.¹⁸ The Exchange also notes that it is providing opportunities for Market-Makers to receive higher rebates for these same transactions via the proposed Market-Maker Volume tiers. The Exchange believes the proposed change is equitable and not unfairly discriminatory as it will apply to all Market-Makers equally.

The Exchange believes adopting Market-Maker Volume Tiers for C2 Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV that add liquidity because they provide additional opportunities for TPHs to receive enhanced rebates on qualifying orders in a manner that incentivizes increased Market-Maker order flow in certain multiply-listed options on the Exchange. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges¹⁹ and are reasonable, equitable and non-discriminatory because they are open to all TPHs on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns.

The Exchange believes the proposed Market-Maker Penny Volume Tiers are reasonable means to encourage Market-Makers to increase their order flow to specific multiply-listed options on the Exchange (i.e., SPY, AAPL, QQQ, IWM and SLV). The Exchange notes that increased Market-Maker activity, particularly, facilitates tighter spreads and an increase in overall liquidity provider activity, both of which signal additional corresponding increase in order flow from other market participants, contributing towards a robust, well-balanced market

¹⁸ See, e.g., Nasdaq ISE Pricing Schedule, Section 3, Footnote 5, which provides for tiered rebates for Market-Maker SPY, QQQ, and IWM orders that add liquidity between \$0.00-\$0.26 per contract.

¹⁹ See, e.g., Nasdaq ISE Pricing Schedule, Section 3, Footnote 5, which provides for tiered rebates for Market-Maker SPY, QQQ, and IWM orders that add liquidity between \$0.00-\$0.26 per contract.

ecosystem, particularly in multiply-listed options on the Exchange. The Exchange also believes that proposed enhanced rebates offered under proposed Tiers 1 and 2 are reasonably based on the difficulty of satisfying the proposed tiers' criteria and ensures the proposed rebate and thresholds appropriately reflect the incremental difficulty in achieving the Market-Maker Volume Tier. The Exchange believes that the proposed enhanced rebates are also in line with the enhanced rebates currently offered by another exchange for similar products.²⁰ The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to adopt pricing specific to certain orders in SPY, AAPL, QQQ, IWM and SLV as the Exchange already offers product-specific pricing for these orders and, and as noted above, other exchanges similarly provide for product-specific tiered pricing.²¹

The Exchange believes that the proposed Market-Maker Volume Tiers represent an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Market-Makers, in that all Market Makers have the opportunity to compete for and achieve the proposed tiers. The enhanced rebates will apply automatically and uniformly to all Market-Makers that achieve the proposed corresponding criteria. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market-Maker qualifying for the proposed tiers, the Exchange believes that approximately four Market-Makers will reasonably be able to compete for and achieve the proposed criteria in proposed Tier 1 and at least one Market-Maker will be able to achieve proposed Tier 2. The Exchange notes, however, that the proposed tiers are open to any Market-Maker that satisfies the tiers' criteria.

²⁰ See, e.g., Nasdaq ISE Pricing Schedule, Section 3, Footnote 5, which provides for tiered rebates for Market-Maker SPY, QQQ, and IWM orders that add liquidity between \$0.00-\$0.26 per contract.

²¹ Id.

The Exchange lastly notes that it does not believe the proposed tiers will adversely impact any TPH's pricing. Rather, should a TPH not meet the proposed criteria, the TPH will merely not receive the enhanced rebates corresponding to Tier 1 or Tier 2, and will instead receive the standard rebate.

The Exchange believes the proposal to adopt credits for BOE Bulk Ports is reasonable, equitable and not unfairly discriminatory because it provides an opportunity for TPHs to pay lower fees for logical connectivity. The Exchange notes that the proposed discount is in line with the discount offered to Market-Makers on its affiliate exchange, Cboe Options.²² Although only Market-Makers may receive the proposed BOE Bulk Port credits, Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. For example, Market-Makers have a number of obligations, including quoting obligations and fees associated with appointments that other market participants do not have. The Exchange also believes that the proposal provides an incentive for TPHs to provide more liquidity to the Exchange. Greater liquidity benefits all market participants by providing more trading opportunities and tighter spreads. The Exchange believes it's also reasonable, equitable and not unfairly discriminatory to provide credits to those Market-Makers that primarily provide and post liquidity to the Exchange, as the Exchange wants to continue to encourage Market-Makers with significant Make Rates to continue to participate on the Exchange and add liquidity. Moreover, the Exchange notes that Market-Makers with a high Make Rate percentage generally require higher amounts of capacity than other Market-Makers. Particularly, Market-Makers with high Make Rates are generally streaming significantly more quotes than those with lower Make Rates. As such, Market-Makers with high Make Rates may

²² See Cboe Options Fees Schedule, Market-Maker Access Credit.

incur more costs than other Market-Makers as they may need to purchase multiple BOE Bulk Ports in order to accommodate their capacity needs. The Exchange believes the proposed credits for BOE Bulk Ports encourages Market-Makers to continue to provide liquidity for the Exchange, notwithstanding the costs incurred by purchasing multiple ports. Particularly, the proposal is intended to mitigate the costs incurred by traditional Market-Makers that focus on adding liquidity to the Exchange (as opposed to those that provide and take, or just take).

The Exchange believes the value of the proposed discount is also commensurate with the difficulty to achieve the required thresholds. While the Exchange has no way of predicting with certainty how many and which TPHs will satisfy the proposed criteria to receive the discount, the Exchange anticipates at least two TPHs to satisfy the criteria and receive the discount. The Exchange does not believe the proposed discount will adversely impact any TPH's pricing. Rather, should a TPH not meet the proposed criteria, the TPH will merely not receive the proposed discount.

Lastly, the Exchange believes adopting a definitions section and eliminating outdated language and obsolete fees maintains transparency and clarity in the fees schedule and reduces potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional to a public exchange, including in certain products

(i.e., SPY, AAPL, QQQ, IWM and SLV) thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all TPHs. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all similarly situated Trading Permit Holders equally. Additionally, the proposed change is designed to attract additional SPY, AAPL, QQQ, IWM and SLV Public Customer orders that remove liquidity and SPY, AAPL, QQQ, IWM and SLV Market Maker orders that add liquidity to the Exchange. The Exchange believes that the new C2 Market Maker tiered pricing for orders in SPY, AAPL, QQQ, IWM and SLV would incentivize entry on the Exchange of such orders, benefitting both TPHs and public investors and, as a result, provide for deeper levels of liquidity, increasing trading opportunities for other market participants, thus signaling further trading activity, ultimately incentivizing more overall order flow and improving price transparency on the Exchange. Similarly, although the proposed discount for BOE Bulk Port fees only applies to Market-Makers, Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. For example, Market-Makers have a number of obligations, including quoting obligations and fees associated with appointments that other market participants do not have.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the

Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 17% of the market share. Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. 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.” 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’....”. Accordingly, the Exchange does not believe its proposed fee change imposes 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 neither solicited nor received written 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 Act²³ and paragraph (f) of Rule 19b-4²⁴ 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 SR-C2-2021-005 on the subject line.

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f).

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-C2-2021-005. 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 offices 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-C2-2021-005, 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.²⁵

J. Matthew DeLesDernier
Assistant Secretary

²⁵ 17 CFR 200.30-3(a)(12).