

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100340; File No. SR-C2-2024-008)

June 14, 2024

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 June 3, 2024, 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”) proposes to amend its Fees Schedule.

The text of the proposed rule change is 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 Fees Schedule, effective June 3, 2024.

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 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than approximately 14% 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 trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Currently, the Exchange provides a rebate of \$0.32 per contract for C2 Market-Maker orders AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity and are a National Best Bid or Offer (“NBBO”) Joiner or NBBO Setter (which orders yield fee code “SL”). To qualify as a NBBO Joiner, a C2 Market-Maker order must improve the C2 Best Bid or Offer

³ See Cboe Global Markets U.S. Options Market Volume Summary by Month (May 29, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

("BBO") and result in C2 joining an existing NBBO. Only the first order received that results in C2 BBO joining the NBBO at a new price level will qualify for the enhanced rebate. If C2 is at the NBBO, the order will not qualify. Alternatively, C2 Market-Makers may receive the enhanced rebate if they are a NBBO Setter. To qualify as a NBBO Setter and receive the enhanced rebate, a C2 Market-Maker order must set the NBBO. The Exchange also provides a rebate of a rebate of [sic] \$0.28 per contract for C2 Market-Maker orders AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity (which orders yield fee code "SM"). Pursuant to Footnote 1 of the Fee Schedule, the Exchange also offers four Market-Maker Volume Tiers, which provide enhanced rebates between \$0.30 and \$0.36 per contract for qualifying Market-Maker orders yielding fee code SM where a TPH meets required criteria.

The Exchange now proposes to add Footnote 2 (Market-Maker (NBBO Joiner or NBBO Setter) Volume Tiers), applicable to qualifying C2 Market-Maker orders yielding fee code SL, to the Fees Schedule. Under proposed Footnote 2 of the Fees Schedule, the Exchange proposes to offer two Market-Maker (NBBO Joiner or NBBO Setter) Volume Tiers, which provide enhanced rebates of \$0.34 and \$0.36 per contract for qualifying Market Maker orders yielding fee code SL where a TPH meets required criteria.

The Exchange proposes to add new Market-Maker (NBBO Joiner or NBBO Setter) Volume Tier 1 to provide a rebate of \$0.34 per contract if a TPH has an ADAV⁴ in Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF (i.e., yielding fee codes SM or SL) greater than or equal to 0.85% of Average OCV.⁵ The

⁴ "ADAV" means average daily added volume calculated as the number of contracts added, per day.

⁵ "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.

Exchange also proposes to add new Market-Maker (NBBO Joiner or NBBO Setter) Volume Tier 2 to provide a rebate of \$0.36 per contract if a TPH has an ADAV in Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF (i.e., yielding fee codes SM or SL) $\geq 1.05\%$ of Average OCV.

The proposed changes bring the enhanced rebates offered for orders yielding fee code SL in-line with the enhanced rebates currently offered for orders yielding fee code SM. As such, the Exchange believes the proposed enhanced rebates for C2 Market-Makers in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that are NBBO Joiners or Setters will continue to incentivize liquidity providers to provide more aggressively priced liquidity in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF options.

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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

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. Further, the Exchange notes that other exchanges offer tiered product-specific pricing and/or incentives.¹⁰ The proposed changes are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also creating additional incentives to providing aggressively priced displayed liquidity, which the Exchange believes would enhance market quality to the benefit of all market participants.

The Exchange believes the proposed change to adopt volume-based rebate tiers for C2 Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that are NBBO Joiners or Setters (which yield fee code “SL”) is reasonable, because such market participants are providing liquidity in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA and XLF options to the benefit of all market

⁸ Id.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ See, e.g., MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for product-specific pricing for SPY, QQQ, and IWM; and Nasdaq ISE Pricing Schedule, Section 3, Footnote 5, which provides for tiered rebates for Market Maker SPY, QQQ, IWM orders that add liquidity between \$0.10 and \$0.26 per contract, as well as tired [sic] rebates for Market Maker orders in similar, single-name options (AMZN, META, and NVDA) between \$0.15 and \$0.22.

participants. Increased add volume order flow, particularly by liquidity providers, contributes to a deeper, more liquid market, which, in turn, provides for increased execution opportunities and thus overall enhanced price discovery and price improvement opportunities on the Exchange. As such, this benefits all market participants by contributing towards a robust and well-balanced market ecosystem, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange believes its proposed change is reasonable as it is competitive and in line with volume-based pricing of at least one other exchange.¹¹ Additionally, the Exchange believes that it is equitable and not unfairly discriminatory to offer higher rebates to Market-Makers that add liquidity as compared to other market participants, because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations, which other market participants do not have. Further, these rebates are intended to incentivize Market-Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. The Exchange notes that the proposed changes to Market-Maker rebates for orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA and XLF that are NBBO Joiners or Setters and that add liquidity will be applied equally to all Market-Makers.

The Exchange believes that offering the NBBO Joiner and Setter rebate for Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF is reasonable as it is designed to continue to incentivize C2 Market Makers to improve the C2 BBO resulting in C2

¹¹ See, e.g., MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for rebates ranging between \$0.22 and \$0.48 for all MIAX Pearl Market Maker orders in Penny Classes that add liquidity.

joining an existing NBBO or setting a new NBBO to receive the rebate, ultimately encouraging C2 Market Makers to submit more aggressive AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF orders that will maintain tight spreads, benefitting both TPHs and public investors.

The Exchange believes the Market-Maker Volume Tiers, as amended, continue to be a 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, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF). 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 ecosystem, particularly in multiply listed options on the Exchange. The Exchange also believes that the proposed enhanced rebates offered under Tiers 1 and 2 are reasonably based on the difficulty of satisfying the tiers' amended criteria and ensures the proposed rebate and thresholds appropriately reflect the incremental difficulty in achieving the Market-Maker (NBBO Joiner or NBBO Setter) Volume Tiers. The Exchange believes that the proposed enhanced rebates are also in line with the enhanced rebates currently offered by another exchange for similar products.¹²

The Exchange believes that the Market-Maker (NBBO Joiner or NBBO Setter) Volume Tiers, as amended, 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

¹² See, e.g., MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for rebates ranging between \$0.22 and \$0.48 for all MIAX Pearl Market Maker orders in Penny Classes that add liquidity.

criteria. The Exchange notes that the tiers are open to any Market-Maker that satisfies the tiers' 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 notes that currently no Market-Makers would be able to achieve the criteria in Tiers 1 and 2.

The Exchange lastly notes that it does not believe the tiers, as amended, 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 the tiers, and will instead receive the standard rebate.

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 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 TPHs equally. Specifically, the proposed change to adopt volume-based tier rebates for Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA and XLF that are NBBO Joiners or NBBO Setters and add liquidity will be applied equally to all Market-Makers that achieve the proposed tiers' criteria. The Exchange believes that the proposed change to provide volume-based tier rebates for Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that are NBBO Joiners or NBBO Setters and that add liquidity will incentivize entry on the Exchange of more aggressive SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF orders that will maintain tighter

spreads, benefitting both TPHs and public investors criteria 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. Finally, as noted above, the proposed Market-Maker (NBBO Joiner or NBBO Setter) Volume Tiers apply uniformly to all Market-Makers, in that all Market-Makers have the opportunity to compete for and achieve the tiers, as amended; the enhanced rebates, as amended, will apply automatically and uniformly to all Market-Makers that achieve the proposed corresponding criteria.

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. TPHs have numerous alternative venues that they may participate on and direct [sic] their order flow, including 16 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 14% of the market share.¹³ 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

¹³ See supra note 3.

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 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 Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ 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.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-C2-2024-008 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-C2-2024-008. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should

submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-C2-2024-008, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).