

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-87303; File No. SR-CBOE-2019-080)

October 15, 2019

Self-Regulatory Organizations; Cboe 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 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 2019, 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 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 on the proposed rule change. The text of these statements may be examined at the places specified in

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

<sup>2</sup> 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange’s parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (“Cboe Global”), which is also the parent company of Cboe C2 Exchange, Inc. (“C2”), acquired Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX” or “EDGX Options”), Cboe BZX Exchange, Inc. (“BZX” or “BZX Options”), and Cboe BYX Exchange, Inc. (“BYX” and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the “Cboe Affiliated Exchanges”). Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019 (the “migration”). The upcoming migration will also include a migration of the Exchange’s billing system to a new billing system. Accordingly, the Exchange proposes to amend certain fees in the Fees Schedule in connection with the migration, effective October 1, 2019.

Split Billing

In connection with the migration of the Exchange’s trading platform and billing system on October 7, 2019, for the month of October 2019, the Exchange proposes to issue Trading Permit Holders (“TPHs”) two separate invoices. The first invoice will apply to transaction fees for transactions occurring October 1, 2019 through October 4, 2019.<sup>3</sup> The second invoice will apply to transaction fees for transactions occurring October 7, 2019 through October 31, 2019.

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<sup>3</sup> The Exchange notes that because ORF fees are based on OCC files, ORF fees for the month of October will all be reflected on the October 7 –October 31 invoice.

The Exchange notes that because it is migrating billing systems, it needs to bill certain programs separately for the period of October 1-4 and October 7-31. Adjustments to transaction fees, such as sliding scales and incentive programs, will be calculated separately for the two time periods. For example, the Liquidity Provider Sliding Scale, Liquidity Provider Sliding Scale Adjustment Table, SPX Liquidity Providing Sliding Scale, Volume Incentive Program, the Affiliate Volume Plan, Clearing Trading Permit Holder Proprietary Products Sliding Scale, Clearing Trading Permit Holder VIX Sliding Scale, and the Select Customer Options Reduction (“SCORE”) Program, will all be billed separately for the periods of October 1-4 and October 7-31.<sup>4</sup> For any programs that rely on total volume for the month, rather than percentages, volume from both time periods will be aggregated. For example, the following programs will not be subject to split billing: Clearing Trading Permit Holder Fee Cap, Order Router Subsidy and Complex Order Router Subsidy Programs, Floor Brokerage Fees Discount Scale, Frequent Trader, and QCC Fee Cap. Given the transition of the Exchange’s billing to a new system mid-month, the Exchange believes the proposal to split billing for the month of October 2019 is appropriate and ensures a seamless transition with respect to billing upon migration.

#### Registration Fees

The Exchange also wishes to amend certain application registration-related fees. First the Exchange proposes to amend the Inactive Nominee Status Fee. Currently a quarterly fee of \$900 is assessed for any nominee that retains inactive status. To simplify the billing process, the Exchange proposes to assess this fee monthly, instead of quarterly. As such, the Exchange

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<sup>4</sup> The Exchange intends to adopt footnote 33 to address split billing and append it to the applicable programs to indicate which programs are subject to split billing.

proposes to assess a monthly fee of \$300 per month for an Inactive Nominee Status (i.e., the rate of the fee is not changing, merely the timing of billing).

Next the Exchange proposes to amend the Inactive Nominee Status Change fees. Particularly, the Exchange currently assesses a fee each time an inactive nominee swaps places with a nominee on a Trading Permit. The amount of such fee varies depending on what time the request for the swap occurs. Specifically, the Exchange assesses a fee of \$55 if the request is submitted prior to 4:00 pm CT on the day prior to the effective date of the change; \$110 if the request is submitted after 4:00 pm Ct on the day prior to the effective date of the change and \$220 if the request is submitted after 8:00 am CT on the effective date of change. As the Exchange is modifying its current Trading Permit structure upon migration, the Exchange proposes to waive these fees for the period of October 1 – October 4, 2019.<sup>5</sup>

The Exchange also proposes to eliminate the fee assessed for Joint Accounts fee. Currently, the Exchange currently assesses \$1,000 per new Joint Account that a TPH reports pursuant to Rule 8.9(c). Post-migration however, the Exchange intends to no longer requiring the reporting of such accounts. As such, the Exchange wishes to eliminate the corresponding fee.

#### SPX Select Market-Makers

Footnote 49 of the Fees Schedule currently provides that any appointed SPX SMM will receive a monthly waiver of the cost of one Market-Maker Trading Permit and one SPX Tier Appointment provided that the SMM satisfies a heightened quoting standard for that month, which standard is also set forth in Footnote 49 of the Fees Schedule. Specifically an SMM will receive the monthly Trading Permit and SPX Tier Appointment waiver if it (1) provides

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<sup>5</sup> Changes to the Exchange's Trading Permit structure and corresponding fees will be addressed by a separate rule filing. The Exchange will also submit a separate filing amending these fees, effective October 7, 2019 in connection with migration.

continuous electronic quotes in 95% of all SPX series 90% of the time in a given month, (2) submits opening quotes that are no wider than the Opening Exchange Prescribed Width (“OEPW”) within one minute of the initiation of an opening rotation in any series that is not open due to the lack of a qualifying quote, on all trading days, to ensure electronic quotes on the open that allow the series to open, (3) submit opening quotes that are no wider than the OEPW quote by 8:00 am (CT) on volatility index derivative settlement days in the SPX series that expire in the month used to calculate the settlement value for expiring volatility index derivatives and (4) within 30 minutes from the initiation of the end-of-month fair value closing rotation, the Exchange disseminates end-of-month closing quotations pursuant to Cboe Options Rule 6.2(.06)(a)<sup>6</sup>. SMMs are not currently obligated to satisfy the heightened quoting standards described in the Fees Schedule. Rather, SMMs are eligible to receive a rebate if they satisfy the heightened standards. The Exchange notes however, that with respect to quoting obligations, SMMs must still comply with the continuous quoting obligation and other obligations of Market-Makers and LMMs described in Cboe Options Rules.<sup>7</sup>

The Exchange proposes to amend and simplify the SMM program. As the Exchange will be overhauling its Trading Permit structure, the Exchange first proposes to amend the available incentive under the program. First, the Exchange proposes to provide that if an SMM meets the proposed heightened quoting standard, it will receive a monthly rebate of \$8,000. The Exchange notes that this amount represents the dollar value of the current rebate (i.e., \$5,000 for the free Trading Permit and \$3,000 for the free SPX Tier Appointment). In order to receive the proposed rebate, the Exchange proposes to eliminate prongs 2-4 and amend prong 1 to simply require

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<sup>6</sup> The end-of-month fair value closing rotation is governed by Cboe Options Rule 6.2, Interpretation and Policy .06.

<sup>7</sup> See e.g., Cboe Options Rule 8.7.

SMMs to provide continuous electronic quotes in at least 99% of the SPX series 90% of the time in a given month.<sup>8</sup> As is the case today, SMMs will still not be obligated to satisfy the heightened quoting standards described in the Fees Schedule. The Exchange believes the program, as amended, will continue to encourage SMMs to provide liquidity in SPX.

#### Clearing Trading Permit Holder Position Re-Assignment

Currently, the Exchange will rebate assessed transaction fees to a Clearing Trading Permit Holder who, as a result of a trade adjustment on any business day following the original trade, re-assigns a position established by the initial trade to a different Clearing Trading Permit Holder. In such a circumstance, the Exchange will rebate, for the party for whom the position is being re-assigned, that party's transaction fees from the original transaction as well as the transaction in which the position is re-assigned. In all other circumstances, including corrective transactions, in which a transaction is adjusted on any day after the original trade date, regular Exchange fees will be assessed.

The Exchange notes that post-migration it is seeking to limit the amount of rebates it must process post-trade. As such, in an effort to further simplify its billing processes, and as the Exchange no longer wishes to maintain such rebate, the Exchange proposes to eliminate the Clearing Trading Permit Holder Position Re-Assignment Rebate. The Exchange notes only a handful of TPHs submit such request each month and as such believes the impact of the deletion of this rebate to be de minimis. The Exchange also notes that it is under no regulatory requirement to maintain such a rebate.

#### Sponsored User Inactivity Fee

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<sup>8</sup> For the month of October 2019, the heightened quoting standard will be based on the period of October 7 – October 31 only, in light of the migration of the Exchange's billing system.

The Exchange currently assesses a fee of \$1,000 per month to any Sponsored User that is not software certified by the Exchange and has not established a production network connection and passed a login test within 90 days of the Exchange’s acceptance of its Sponsored User registration status. Such Fee continues to apply until a Sponsored User has completed all of the foregoing requirements or the Sponsored User’s registration status is withdrawn. The Exchange notes that it has not assessed this fee in the recent past. Additionally, the Exchange currently only has one Sponsored User who has an established network connection. As such, the Exchange proposes to eliminate the fee in order to simplify its Fees Schedule and eliminate unused and unnecessary fees.

## 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.<sup>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</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. Additionally, the Exchange believes the proposed rule change

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

is consistent with Section 6(b)(4) of the Act,<sup>11</sup> 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.

The Exchange believes providing split billing for the month of October is reasonable as the Exchange is transitioning not only its trading platform on October 7, 2019, but also its billing system. The proposed rule change ensures a seamless transition with respect to the assessment of fees and calculations under various incentive programs, 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.

The Exchange believes amending its inactive nominee fee is reasonable, equitable and not unfairly discriminatory because the Exchange is not changing the amount of the fee assessed but merely changing the timing of the billing (from quarterly to monthly). The proposed change applies uniformly to all TPHs.

. The Exchange believes it's reasonable to waive the current inactive nominee swap fees for the period of October 1 – October 4, 2019 as the Exchange is modifying its Trading Permit structure in connection with the migration and as TPHs would not be subject to these fees for this period. The Exchanges also notes the proposed waiver would apply to all TPHs.

The Exchange believes the proposal to eliminate the Joint Account fee is reasonable as TPHs no longer will be subject to this fee. Additionally, the Exchange notes that post-migration, the Exchange intends to no longer require reporting of Joint Accounts and as such, the current fee would be rendered obsolete and unnecessary. Removing the fee from the Fees Schedule maintains clarity in the rules and would avoid potential confusion.

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<sup>11</sup> 15 U.S.C. 78f(b)(4).



The Exchange believes amending the SPX SMM program is reasonable as SMMs will still be eligible to receive a payment in an amount equivalent to the financial benefit they receive today (i.e., a free Trading Permit and SPX Tier Appointment). The Exchange believes the monthly payment continues to be commensurate with the heightened quoting standard, even as amended. The Exchange believes the proposed changes to the heightened quoting standard are reasonable and appropriate as the changes result in a simplified incentive program, while still acting as an incentive for SMMs to provide liquid and active markets in SPX. The Exchange believes it is equitable and not unfairly discriminatory to continue to only offer this financial incentive to the SMMs because it benefits all market participants trading SPX to encourage the SMMs to satisfy the heightened quoting standard, which ensures, and may even provide increased, liquidity, which thereby may provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that the SMMs provide a crucial role in providing quotes and the opportunity for market participants to trade SPX, which can lead to increased volume, providing a robust market. The Exchange also notes that SMMs may have added costs each month that it needs to undertake in order to satisfy that heightened quoting standard (e.g., having to purchase additional logical connectivity). The Exchange also believes the proposed amendments are equitable and not unfairly discriminatory because they apply to all SMMs uniformly. Additionally, if an SMM does not satisfy the heightened quoting standard for any given month, then it simply will not receive the offered payment for that month.

The Exchange believes it's reasonable to eliminate the Clearing Trading Permit Holder Re-Assignment Rebate because the Exchange is not required to provide such a rebate and it only issues this rebate a couple times a month. The proposed elimination will also apply to all TPHs. The Exchange believes eliminating the Sponsored User Inactivity Fee as it eliminates a fee a

Sponsored User may otherwise be potentially subject to in the future. Additionally, the Exchanges notes that it has not assessed this fee in recent history and that it only has one Sponsored User, to whom the fee does not currently apply. As such, the elimination of the Clearing TPH Re-Assignment Rebate and Sponsored User Inactivity Fee are reasonable, equitable and not unfairly discriminatory as they apply to all TPHs uniformly and eliminate unnecessary fees that are not required and whose elimination will have a de minimis impact.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that the proposed change will impose any burden on intramarket competitions that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes will be applied equally to all similarly situated TPHs. The Exchange also 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. The proposed rule change continues to reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes enhances market quality to the benefit of all TPHs.

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. The Exchange also notes that the proposed rule changes are precipitated by its upcoming migration of the Exchange's trading platform and billing system and not intended to address competitive issues. Rather, the changes are either necessitated by the transition or are designed to

simplify the Exchange's billing processes post-migration and eliminate the need to bill for unnecessary and unused fees.

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 Act<sup>12</sup> and paragraph (f) of Rule 19b-4<sup>13</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-2019-080 on the subject line.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 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-CBOE-2019-080. 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-2019-080 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>14</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).