

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88243; File No. SR-CBOE-2020-011)

February 19, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the 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 February 6, 2020, 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

The text of the proposed rule change is 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

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

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

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to (1) amend certain SPX fees, (2) amend the standard transaction fee for Clearing Trading Permit Holder Proprietary orders in Underlying Symbol List A, (3) amend certain VIX fees, (4) adopt fee codes for waived linkage transactions, (5) re-adopt the Clearing Trading Permit Holder position re-assignment rebate, (6) clarify that Network Access Ports will be available for physical connections to PULSe through February 29, 2020, and (7) reduce the rebate under the GTH SPX/SPXW LLM program.<sup>3</sup>

SPX Fees

Standard Transaction Fees

The Exchange first proposes to adopt modest fee increases for SPX and SPXW transactions. With respect to Customer orders (capacity “C”) in SPX and SPXW, the Exchange proposes to increase transaction fees by \$0.01 per contract. More specifically, the Exchange proposes to increase Customer transaction fees for SPX/SPXW orders with a premium of (1) \$0.00-\$0.10 and \$0.11-\$0.99 from \$0.35 per contract to \$0.36 per contract and (2) \$1.00 or more from \$0.44 per contract to \$0.45 per contract. The Exchange next proposes to increase transaction fees for Broker-Dealer (capacity “B”),

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<sup>3</sup> The Exchange initially filed the proposed fee changes on February 3, 2020 (SR-CBOE-2020-008). On February 4, 2020, the Exchange withdrew that filing and submitted SR-CBOE-2020-009. On February 6, 2020, the Exchange withdrew that filing and submitted this filing.

Joint Back-Office (capacity “J”), Non-Trading Permit Holder (“TPH”) Market-Maker (capacity “N”), and Professional (capacity “U”) orders in SPX and SPXW from \$0.40 per contract to \$0.42<sup>4</sup> per contract.

#### SPX Liquidity Provider Sliding Scale

The Exchange proposes to amend its sliding scale for Market-Maker transaction fees in SPX and SPXW (“SPX Liquidity Provider Sliding Scale”). Currently, Market-Makers’ transaction fees in SPX and SPXW are determined by their average monthly contracts in SPX and SPXW. The SPX Liquidity Provider Sliding Scale currently provides for five tiers. The Exchange proposes to increase the transaction fees under Tiers 4 and 5 of the SPX Liquidity Provider Sliding Scale by \$0.01 per contract (and thereby lessen the current discount). More specifically, the Exchange proposes to increase the transaction rate under Tier 4<sup>5</sup> from \$0.22 per contract to \$0.23 per contract, and the transaction rate under Tier 5<sup>6</sup> from \$0.20 per contract to \$0.21 per contract. The Exchange believes that notwithstanding the proposed transaction fee increase under Tiers 4 and 5, the SPX Liquidity Provider Sliding Scale will continue to provide incremental incentives for Market-Makers to reach the highest tier level and encourage trading of SPX options, as it continues to provide progressively lower rates if increased volume thresholds in SPX (including SPXW) options are attained during a month.

#### SPXW Execution Surcharge

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<sup>4</sup> The Exchange proposes to adopt new fee code BT for Non-Customer, Non-Market-Maker SPX and SPXW orders.

<sup>5</sup> The volume threshold for Tier 4 is 9.00% - \$15.00%.

<sup>6</sup> The volume threshold for Tier 5 is above 15.00%.

The Exchange proposes to amend the Execution Surcharge for SPXW (“SPXW Surcharge”). Currently, the Exchange assesses a SPXW Surcharge of \$0.10 per contract for non-Market-Maker orders in SPXW that are executed electronically (with some exceptions).<sup>7</sup> The Exchange proposes to increase the Execution Surcharge for SPXW to \$0.13 per contract. The Exchange notes the proposed SPXW Surcharge is still less than the Execution Surcharge assessed for SPX transactions.<sup>8</sup>

#### SPX Index License Surcharge

The Exchange proposes to increase the Index License Surcharge Fee for SPX (including SPXW) (the “SPX Surcharge”) from \$0.16 per contract to \$0.17 per contract. The Exchange licenses from S&P Dow Jones Indices (“SPDJI”) (the “SPDJI License”) the right to offer an index option product based on the S&P 500 index (that product being SPX and other SPX-based index option products). In order to offset the costs associated with the SPDJI License, the Exchange assesses the SPX Surcharge. The Exchange therefore proposes to increase the SPX Surcharge from \$0.16 per contract to \$0.17 per contract in order to offset more of the costs associated with the SPX license.

#### Clearing Trading Permit Holder Proprietary Fees

The Exchange proposes to increase the standard transaction fee for Clearing Trading Permit Holders and for Non-Clearing Trading Permit Holder Affiliates (“Firms”) (capacities “F” and “L”, respectively) in Underlying Symbol List A<sup>9</sup> (excluding VIX) by

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<sup>7</sup> See Cboe Options Fees Schedule, Footnote 21.

<sup>8</sup> See Cboe Options Fees Schedule, Rate Table – Underlying Symbol List A, Execution Surcharge, SPX only.

<sup>9</sup> Underlying Symbol List A currently includes OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXw) and VIX. See Cboe Options Fees Schedule, Footnote 34.

\$0.01. Specifically the Exchange proposes to increase the fee from \$0.25 per contract to \$0.26 per contract.

VIX Fees

The Exchange next proposes to amend standard Customer (capacity “C”) transaction fees for VIX transactions. First the Exchange proposes to decrease certain VIX transaction fees, adopt separate fees for simple versus complex VIX transactions, and adopt a new fee for VIX orders with a premium of \$2.00 or more, along with the noted fee codes, as follows:

<b>Current Premium</b>	<b>Proposed Premium</b>	<b>Current</b>	<b>Proposed Simple Fees</b>	<b>Fee Code</b>	<b>Proposed Complex Fees</b>	<b>Fee Code</b>
\$0.00-\$0.10	\$0.00-\$0.10	\$0.10	No change	CV	\$0.05	CZ
\$0.11-\$0.99	\$0.11-\$0.99	\$0.25	No change	CW	\$0.17	DA
Greater than \$1.00	\$1.00-\$1.99	\$0.45	\$0.40	CX	\$0.30	DB
N/A	\$2.00 and above	N/A	\$0.45	CY	\$0.45	DC

The Exchange proposes to reduce fees for Customer simple orders with a premium between \$1.00-\$1.99 to incentivize the sending of more orders within this premium range. Similarly, the Exchange proposes to adopt reduced fees for Customer complex VIX orders in order to encourage the sending of additional complex VIX orders. The Exchange did not believe it was necessary to assess different fees for simple and complex VIX orders with a premium of \$2.00 or greater. The Exchange notes that Customer VIX orders with a premium of \$2.00 or greater account for a very small percentage of overall VIX trading.

Linkage Waiver

The Exchange proposes to adopt fee codes for linkage transactions for which away transaction fees are waived. More specifically, the Exchange currently provides that it will not pass through or otherwise charge customer orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from the trading floor through an Exchange-sponsored terminal (e.g. a PULSe Workstation). Currently, this waiver is implemented manually. Beginning February 3, 2020, this waiver will be automated and the Exchange therefore proposes to adopt specific fee codes for such transactions. Particularly, the Exchange proposes to adopt the following fee codes for customer orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from the trading floor through an Exchange-sponsored terminal:

Fee Code		Rate
TD	Routed to AMEX, BOX, BX, EDGX, MERC, MIAX, PHLX, $\geq 100$ contracts, ETF	\$0.18 <sup>10</sup>
TE	Routed to AMEX, BOX, BX, EDGX, MERC, MIAX, PHLX, $< 100$ contracts ETF, Equity	\$0.00 <sup>11</sup>
TF	Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, $\geq 100$ contracts ETF, Penny	\$0.18
TG	Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, $\geq 100$ contracts ETF, Non-Penny	\$0.18
TH	Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, $< 100$ contracts ETF, Equity, Penny	\$0.00
TI	Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, $< 100$ contracts ETF, Equity, Non-Penny	\$0.00
TS	Routed, Index	\$0.18
TX	Routed, XSP, originating on Exchange-sponsored terminal	\$0.04 <sup>12</sup>

<sup>10</sup> The Exchange assesses \$0.18 per contract for customer ETF orders that are  $\geq 100$  contracts, and customer orders in multi-listed index products. See Cboe Options Fees Schedule, Rate Table – All Products Excluding Underlying Symbol List A.

<sup>11</sup> The Exchange does not assess a fee for customer ETF orders that are  $< 100$  contracts or for customer orders in equity options. See Cboe Options Fees Schedule, Rate Table – All Products Excluding Underlying Symbol List A.

<sup>12</sup> The Exchange assesses a \$0.04 per contract fee for customer XSP orders. See Cboe Options Fees Schedule, Rate Table – All Products Excluding Underlying Symbol List A.

The Exchange notes the proposed fee codes do not represent a substantive change, but are being adopted merely in light of the Exchange's automation of a current waiver.

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

The Exchange proposes to adopt a rebate for transaction fees assessed 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 the proposed rebate is not novel. Indeed, the Exchange's Fees Schedule had included the proposed rebate prior to the migration to a new billing system on October 7, 2019, but had eliminated the rebate upon migration<sup>13</sup>. After further evaluation, the Exchange now wishes to re-adopt the proposed rebate. The Exchange lastly notes that because the Exchange may not always be able to automatically identify these situations, in order to receive a rebate, the Fees Schedule will also provide that a written request in a form and manner prescribed by the Exchange must be submitted within 3 business days of the original transaction.

#### Network Access Ports

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<sup>13</sup> See Securities and Exchange Act Release No. 87303 (October 15, 2019), 84 FR 56276 (October 21, 2019) (SR-CBOE-2019-080).

By way of background, a physical port is utilized by a TPH or non-TPH to connect to the Exchange at the data centers where the Exchange's servers are located. Prior to migration of its trading platform to a new system on October 7, 2019, the Exchange utilized Network Access Ports for these physical connections to the Exchange. Upon migration, the TPHs and non-TPHs had the option to alternatively elect to connect to Cboe Options via new latency equalized Physical Ports. The Exchange had noted in its Fees Schedule that through January 31, 2020, Cboe Options market participants would continue to have the ability to connect to Cboe Options' trading system via the current Network Access Ports. The Exchange notes that all Network Access Ports have been decommissioned as of January 31, 2020, with the exception of a couple Network Access Ports used solely to connect to PULSe. The Exchange notes that although the new latency equalized Physical Ports became available on October 7, 2019, the new Physical Ports were not originally able to be utilized to send orders to PULSe. Accordingly, users who wished to route orders to PULSe via the Exchange's physical ports had to maintain and use a legacy Network Access Fee Port and could not use any of the new Physical Ports for such purpose. The Exchange notes that although the new Physical Ports are now able to be used to connect to PULSe, a couple of TPHs have not yet made the transition from the Exchange's legacy Network Access Ports to the new Physical Ports for purposes of connecting to PULSe. As such, the Exchange proposes to amend the Fees Schedule to clarify that Network Access Ports will be available through February 29, 2020 to connect to PULSe. The fee waiver for Network Access Ports used solely to access PULSe will continue to remain in place.

GTH SPX/SPXW LMM Incentive Program



Pursuant to the Fees Schedule, a LMM in SPX/SPXW will receive a pro-rata share of a compensation pool for SPX equal to \$15,000 times the number of LMMs appointment in SPX and if the LMM meets the heightened quoting standard described below for SPXW, the LMM will receive an additional pro-rata share of a compensation pool for SPXW equal to \$15,000 times the number of LMMs in that class (for a total of \$30,000 per month for meeting the standard for both SPX and SPXW) if the LMM(s) provide continuous electronic quotes that meet or exceed the following heightened quoting standards in at least 99% of each of SPX and SPXW series 90% of the time in a given month during GTH:

<b>Premium</b>	<b>Expiring</b>		<b>Near Term</b>		<b>Mid Term</b>		<b>Long Term</b>	
<b>Level</b>	<b>7 days or less</b>		<b>8 days to 60 days</b>		<b>61 days to 270 days</b>		<b>271 days or Greater</b>	
	<b>Width</b>	<b>Size</b>	<b>Width</b>	<b>Size</b>	<b>Width</b>	<b>Size</b>	<b>Width</b>	<b>Size</b>
\$0-\$5.00	\$0.50	10	\$0.40	25	\$0.60	15	\$1.00	10
\$5.01-\$15.00	\$2.00	7	\$1.60	18	\$2.40	11	\$4.00	7
\$15.01-\$50.00	\$5.00	5	\$4.00	13	\$6.00	8	\$10.00	5
\$50.01-\$100.00	\$10.00	3	\$8.00	8	\$12.00	5	\$20.00	3
\$100.01-\$200.00	\$20.00	2	\$16.00	5	\$24.00	3	\$40.00	2
Greater Than \$200.00	\$30.00	1	\$24.00	3	\$36.00	1	\$60.00	1

A GTH LMM in SPX/SPXW is not currently obligated to satisfy the heightened quoting standards described in the table above. Rather, an LMM is eligible to receive the rebate if they satisfy the heightened quoting standards above. The Exchange now proposes to amend the rebate available to LMM(s) under the program. Specifically, the Exchange proposes to eliminate the current compensation pool structure and reduce a straight rebate per product per LMM. More specifically, the Exchange proposes to

provide that if a GTH SPX/SPXW LMM meets the proposed heightened quoting standard described above, it will receive \$10,000 per product. As is the case today, SPX/SPXW GTH LMM(s) will still not be obligated to satisfy the amended heightened quoting standard. The Exchange believes the program, as amended, will continue to encourage SPX/SPXW GTH LMM(s) to provide liquidity in SPX/SPXW during GTH.

Additionally, the Exchange notes that a SPX/SPXW GTH LMM may need to undertake expenses to be able to quote at a significantly heightened standard in SPX/SPXW, such as purchase more logical connectivity based on its increased capacity needs.

The Exchange also proposes to eliminate (1) the example of how the compensation pool works as it is no longer necessary given the elimination of the compensation pool structure, and (2) obsolete language regarding how the program was billed for October 2019.

## 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>14</sup>

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>15</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

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<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 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, and does not unfairly discriminate between customers, issuers, brokers or dealers. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>16</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 the proposed increases to Customer SPX transaction fees are reasonable as the proposed increases are modest and modifies fees that have not been otherwise amended in well over 10 years.<sup>17</sup> The Exchange notes the proposed fees are also in line with customer transaction fees assessed in other index products.<sup>18</sup> Similarly, the Exchange believes the proposed fee increase for Broker-Dealer, Joint Back-Office, Non-TPH Market-Maker and Professional SPX/SPX orders is reasonable as it too is a modest increase to a fee that has not been modified in over ten years.<sup>19</sup> The Exchange notes the proposed fee is still in line with transaction fees assessed in other index products.<sup>20</sup> The Exchange believes the proposed standard transaction fee increases are

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<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> See Securities Exchange Act Release No. 55193 (January 30, 2007) 72 FR 5476 (February 6, 2007) (SR-CBOE-2006-111) and Securities Exchange Act Release No. 57191 (January 24, 2008) 73 FR 5611 (January 30, 2008) (SR-CBOE-2007-150).

<sup>18</sup> See e.g., Cboe Options Fees Schedule, Rate Table – Underlying Symbol List A, customer transaction fees.

<sup>19</sup> See Securities Exchange Act Release No. 55193 (January 30, 2007) 72 FR 5476 (February 6, 2007) (SR-CBOE-2006-111).

<sup>20</sup> See e.g., Cboe Options Fees Schedule, Rate Table – Underlying Symbol List A, Broker-Dealer, Joint Back-Office, Non-TPH Market-Maker and Professional fees

also equitable and not unfairly discriminatory because the changes apply to similarly situated market participants uniformly.

The Exchange believes the proposed amendment to the discounted Market-Maker fees in Tiers 4 and 5 of the SPX Liquidity Provider Sliding Scale is reasonable because Market-Makers are still eligible to receive discounted fees for satisfying the corresponding criteria (albeit less of a discount). The Exchange believes that notwithstanding the proposed transaction fee increase under Tiers 4 and 5, the SPX Liquidity Provider Sliding Scale will continue to provide incremental incentives for Market-Makers to reach the highest tier level and encourage trading of SPX options, as it continues to provide progressively lower rates if increased volume thresholds in SPX (including SPXW) options are attained during a month. The Exchange also believes the rebates, as amended, are still commensurate with the difficulty level of satisfying the respective tier's criteria. The Exchange believes the proposed fee change is equitable and not unfairly discriminatory as it applies uniformly to all Market-Makers.

The Exchange believes amending the Execution Surcharge for SPXW Surcharge is reasonable as such fee is still lower than the Execution Surcharge for SPX transactions.<sup>21</sup> Additionally, the proposed increase helps to ensure that there is reasonable cost equivalence between the primary execution channels for SPXW. More specifically, the SPXW Surcharge was adopted to minimize the cost differentials between manual and electronic executions, which is in the interest of the Exchange as it must both maintain robust electronic systems as well as provide for economic opportunity for floor brokers to

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<sup>21</sup> See Cboe Options Fees Schedule, Rate Table, Underlying Symbol List A, which provides for a \$0.21 per contract Execution Surcharge for SPX orders.

continue to conduct business, as they serve an important function in achieving price discovery and customer executions.<sup>22</sup> The Exchange believes the proposed change is also equitable and not unfairly discriminatory as it applies uniformly to all similarly situated market participants.

Increasing the SPX Surcharge is reasonable because the Exchange still pays more for the SPX license than the amount of the proposed SPX Surcharge (meaning that the Exchange is, and will still be, subsidizing the costs associated with the SPX license). This increase is equitable and not unfairly discriminatory because the increased amount will be assessed to all market participants to whom the SPX Surcharge applies.

The Exchange believes the proposed increase to the standard Firm transaction fee in Underlying Symbol List A (excluding VIX) orders is reasonable as the proposed increase is modest and modifies a fee that has not been amended in over 9 years.<sup>23</sup> The Exchange notes the proposed fees are also in line with customer transaction fees assessed in other index products.<sup>24</sup> The Exchange also notes that Firms continue to have an opportunity to earn a discounted fee via the Clearing Trading Permit Holder Proprietary Products Sliding Scale. The Exchange believes the proposed fee increase is also equitable and not unfairly discriminatory because the change applies to Firms uniformly.

The Exchange next believes its proposed change to reduce certain VIX transaction fees is reasonable as Customers will be paying lower fees for such

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<sup>22</sup> See Securities Exchange Act Release No. 71295 (January 14, 2014) 79 FR 3443 (January 21, 2014) (SR-CBOE-2013-129).

<sup>23</sup> See Securities Exchange Act Release No. 63701 (January 11, 2011) 76 FR 2934 (January 18, 2011) (SR-CBOE-2010-116).

<sup>24</sup> See, e.g., Cboe Options Fees Schedule, Rate Table – Underlying Symbol List A, customer transaction fees.

transactions. The Exchange notes the proposed changes to VIX Customer transaction fees are designed to encourage the sending of additional VIX orders, including complex orders. The Exchange notes the proposed change is also in line with other fee programs that are designed to incentivize the sending of complex orders to the Exchange. For example, the Exchange provides higher rebates under the Volume Incentive Program for complex orders as compared to simple orders.<sup>25</sup> The Exchange believes the proposed fee changes are also equitable and not unfairly discriminatory because they apply to all Customers uniformly.

The Exchange believes adopting fee codes for waived linkage transactions is reasonable and equitable because the Exchange believes such fee codes provide further clarity in the Fees Schedule and the fee codes do not amend the current linkage fees or fee waiver. Rather, the Exchange is merely adopting fee codes in light of the transition from manual processing of the current linkage waiver to automated processing. Additionally, the Exchange believes the proposed fee codes allow TPHs to more easily validate the bills they receive from the Exchange, thus alleviating potential confusion.

The Exchange believes it is reasonable to offer a rebate when a Clearing Trading Permit Holder re-assigns a position, as the Clearing Trading Permit Holder may not have elected to take that position in the first place (and may just have been erroneously listed as a party to the transaction). The Exchange believes that this change is equitable and not unfairly discriminatory for the same reason; it is equitable to rebate fees to a Clearing Trading Permit Holder that was assessed fees for taking a position from a transaction to which that Clearing Trading Permit Holder was not a party. Otherwise, the Exchange

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<sup>25</sup> See Cboe Options Fees Schedule, Volume Incentive Program.

believes it is equitable for a party that made an error reporting a transaction to be responsible for paying the fees associated with making that error. Further, the proposed changes will apply equally to all market participants. The Exchange also notes that the proposed rebate is not novel. Indeed, the Exchange's Fees Schedule had included the proposed rebate prior to the migration to a new billing system on October 7, 2019, but had eliminated the rebate upon migration.<sup>26</sup> After further evaluation, the Exchange now wishes to re-adopt the proposed rebate.

The Exchange believes the proposal to allow TPHs to continue to utilize legacy Network Access Ports through February 29, 2020 is reasonable as a few TPHs have not yet been able to transition from the Network Access Ports to the new Physical Ports with respect to their connection to PULSe. Any remaining Network Access ports would be configured to only allow routing of orders to PULSe, The Exchange believes updating the notes section for Network Access Ports provides further clarity in the rules as to the availability of such ports. The Exchange believes its proposal to eliminate obsolete language in the notes section of the Network Access Ports also alleviates potential confusion.

The Exchange believes the amount of the amended rebate for SPX/SPXW GTH LMMs (\$10,000 per product) is reasonable because it continues to provide a rebate (albeit a reduced rebate) for meeting the heightened quoting standard and takes into consideration additional costs an LMM may incur. Particularly, the Exchange believes the proposed amount is such that it will still incentivize an appointed LMM to meet the

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<sup>26</sup> See Securities and Exchange Act Release No. 87303 (October 15, 2019), 84 FR 56276 (October 21, 2019) (SR-CBOE-2019-080).

GTH quoting standards for SPX and SPXW, thereby protecting investors and the public interest. Additionally, if an LMM does not satisfy the heightened quoting standard, then it will simply not receive the rebate. The Exchange believes it is equitable and not unfairly discriminatory to only offer the rebate to SPX/SPXW LMMs because GTH LMMs provide a crucial role in providing quotes and the opportunity for market participants to trade during GTH, which can lead to increased volume, thereby providing a robust market. The Exchange also notes that the GTH LMM 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).

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. First, the Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes as described above apply to all similarly situated TPHs in a uniform manner.

Additionally, while different fees and rebates are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances. For example, Market-Makers, including Lead Market-Makers play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have. There is also a history in the options markets of providing preferential treatment to customers, as they often do not have as sophisticated trading operations and systems as



other market participants, which often makes other market participants prefer to trade with customers. Further, the Exchange fees and rebates, both current and those proposed to be changed, are intended to encourage market participants to bring increased volume to the Exchange (which benefits all market participants), while still covering Exchange costs (including those associated with the upgrading and maintenance of Exchange systems).

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. First, changes relating to the Exchange's proprietary products only affect trading on Cboe Options, as such products are exclusively listed on Cboe Options. Next, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 options exchanges, as well as off-exchange venues. Based on publicly available information, no single options exchange has more than 22% of the market share of executed volume of options trades.<sup>27</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market

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<sup>27</sup> See Cboe Global Markets, U.S. Options Market Volume Summary by Month (February 3, 2020) available at [http://markets.cboe.com/us/options/market\\_share/](http://markets.cboe.com/us/options/market_share/).

competition in its broader forms that are most important to investors and listed companies.”<sup>28</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>29</sup> Accordingly, the Exchange does not believe its proposed changes to extend the above-mentioned fee waivers and incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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<sup>28</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>29</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>30</sup> and paragraph (f) of Rule 19b-4<sup>31</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-2020-011 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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<sup>30</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>31</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2020-011. 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, D.C. 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-2020-011 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>32</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>32</sup> 17 CFR 200.30-3(a)(12).