

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-89189; File No. SR-CBOE-2020-058)

June 30, 2020

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 June 24, 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

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

The Exchange proposes to adopt new Footnote 24 of the Fees Schedule to govern pricing changes that apply for the duration of time the Exchange trading floor is being operated in a modified manner in connection with the COVID-19 pandemic.<sup>3</sup> By way of background, on March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of COVID-19<sup>4</sup> and has been operating in an all-electronic configuration since then. The Exchange intends to reopen its trading floor on June 15, 2020, but with a modified configuration of trading crowds in order to implement social distancing and other measures consistent with local and state health and safety guidelines to help protect the safety and welfare of individuals accessing the trading floor. As a result, the Exchange is relocating and modifying the physical area of certain trading crowds and will also be determining and reducing how many floor participants may access the trading floor, along with determining where floor participants may stand.

Proposed Changes

The Exchange first proposes to amend how floor trading permit fees are assessed during the time the Exchange is operating in a modified state in connection with COVID-19. Pursuant to

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<sup>3</sup> The Exchange initially filed the proposed fee changes on June 15, 2020 (SR-CBOE-2020-056). On business date June 24, 2020, the Exchange withdrew that filing and submitted this filing. The Exchange also notes that pricing changes governed by Footnote 12 would not apply when the Exchange operates in a modified state.

<sup>4</sup> On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic and to slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses.

the Fees Schedule, in order to act as a Market-Maker on the floor, a Trading Permit Holder (“TPH”) must purchase a Market-Maker Floor Permit (“MM Floor Permit), and in order to act as a Floor Broker on the floor, a TPH must purchase a Floor Broker Permit (“FB Permit”). Fees for MM Floor Permits and FB Permits (collectively, “trading floor permits”) are assessed based on the Floor Trading Permit Sliding Scales. As noted above, in order to help protect the safety and welfare of individuals that may access the trading floor, upon reopening on June 15, 2020, the Exchange will regulate how many individuals, including TPH nominees, may access the trading floor. As such, the Exchange does not wish to assess floor trading permit fees for trading permits that the TPH may hold but cannot use to access the trading floor. The Exchange therefore proposes to instead assess floor trading permit fees based on the number of trading permits that are “used” (i.e., based on the maximum number of nominees a TPH can, and does have, on the floor on a given day).<sup>5</sup> More specifically, the Exchange proposes to provide that while operating in a modified state in connection with COVID-19, the Exchange will calculate floor trading permit fees by using the following formula: (i) the number of floor trading permits that have a nominee assigned to it in the Customer Web Portal system (“Portal”) in a given month, multiplied by the number of trading days that the floor is open and that a nominee is assigned to each respective trading permit in that month, divided by (ii) the total number of trading days in a month. The Exchange will round up to determine the total number of trading permits assessed fees using the Floor Trading Permit Sliding Scales. The Exchange also proposes to make clear that if the trading floor becomes fully operational mid-month, trading floor permit fees will

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<sup>5</sup> For example, if a TPH organization that normally has 5 floor Trading Permits is only allowed to have no more than 2 individuals on the trading floor when the floor is operated in a modified manner, that TPH organization will only be assessed for 2 trading permit fees if both trading permits are used, even if the TPH organization rotates which associated individuals are on the trading floor.

continue to be assessed using the foregoing formula. The following is an example of how the proposed change in floor trading permit fees would be applied during a month where the trading floor is operating in a modified manner:

*Example:* A SPX Market-Maker TPH holds a total of 6 Market-Maker Floor Permits (“MM Floor Permits”) and is assigned 3 trading spaces on the trading floor in its modified configuration (i.e., may have up to 3 nominees on the floor at a time). In a month with 22 trading days, 2 of the MM Floor Permits are assigned to a nominee in the Customer Web Portal for 17 trading days and 1 of the permits is assigned to a nominee in the Customer Web Portal for 7 trading days that overlaps with the other 2 nominees (i.e., for 7 days in the month, the TPH has 3 nominees on the floor). The Exchange would calculate the trading floor permit fees as follows: (i) 2 permits x 17 days + 1 permit x 7 days (i.e., total 41 days), divided by (ii) 22 trading days, which equals = 1.9 permits. Rounding up, the Exchange would apply the Floor Trading Permit Sliding Scale to 2 MM Floor Permits. Based on the Market-Maker Floor Trading Permit Sliding Scale, the TPH’s total MM Floor Permit Fees for the month would be \$10,500 (i.e., 1 @ \$6,000 + 1 @ \$4,500).<sup>6</sup>

The Exchange next proposes to include language in Footnote 24 of the Fees Schedule to provide that certain registration fees will not be assessed when the trading floor is operating in a modified manner. By way of background, every TPH organization must designate an individual nominee to represent the organization with respect to each Floor Broker Trading Permit or

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<sup>6</sup> The Exchange notes that Market-Maker Floor Tier Appointment Fees will continue to be assessed based on the number of trading permits “used” during a given month (i.e., the number of Tier Appointment Fees assessed will be determined by the highest number of trading permits used in the respective class on any particular day during the month, subject to any applicable thresholds being met). As such, in this example, the Market-Maker TPH would also be assessed 3 SPX Market-Maker Floor Tier Appointment Fees.

Market-Maker Floor Trading Permit in all matters relating to the Exchange.<sup>7</sup> An “inactive nominee” of a TPH organization is an individual who is eligible to become an effective nominee of that organization with respect to any Floor Broker Trading Permit or Market-Maker Floor Trading Permit which the organization holds.<sup>8</sup> Only active nominees are permitted to act as a Market-Maker or Floor Broker on the trading floor. In order for an inactive nominee to act as a Market-Maker or Floor Broker on the trading floor, the TPH organization it is associated with must purchase an additional Floor Trading Permit or must swap places with an active nominee on a Trading Permit, which nominee would then become inactive. The Exchange currently assesses a monthly fee of \$300 for any nominee that retains inactive status (i.e., “Inactive Nominee Status Fee (Parking Space)”). The Exchange also assesses \$100 each time an inactive nominee swaps places with a nominee on a Trading Permit (“Inactive Nominee Status Change (Trading Permit Swap)” fee). As TPH organizations will not purchase additional floor Trading Permits while the trading floor is operating in a modified manner, and as the Exchange will be regulating how many nominees may access the trading floor, the Exchange believes the Inactive Nominee Status fee (Parking Space) and Inactive Nominee Status Change (Trading Permit Swap) fee should not apply during a month that the Exchange operates in a modified manner. The Exchange notes these fees also did not apply when the Exchange operated in an electronic-only configuration.<sup>9</sup>

The Exchange next proposes to amend the Floor Broker ADV Discount. Under this discount program, FB Trading Permit fees are eligible for rebates based on the average customer

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<sup>77</sup> See Cboe Options Rule 3.9(b).

<sup>8</sup> See Cboe Options Rule 3.9(e).

<sup>9</sup> See Cboe Options Fees Schedule, Footnote 12.

("C") open-outcry contracts executed per day over the course of a calendar month in all underlying symbols. As the trading floor was closed from June 1 through June 12, 2020 (and therefore there were no open-outcry contracts executed during this time), the Exchange proposes that for the month of June 2020, ADV will be based on June 15 - June 30, 2020 volume.

The Exchange next proposes to increase the floor SPX/SPXW Market-Maker Tier Appointment fee from \$3,000 per permit to \$5,000 per permit when the Exchange is operating in a modified state. As noted above, Market-Maker Floor Tier Appointment Fees will continue to be assessed based on the number of trading permits "used" during a given month (i.e., the number of Tier Appointment Fees assessed will be determined by the highest number of trading permits used in the respective class on any particular day during the month, subject to any applicable thresholds being met).

The Exchange also proposes to increase the Floor Brokerage fees for SPX and SPXW transactions. Specifically, the Exchange proposes to modestly increase the fee for non-crossed orders from \$0.04 per contract to \$0.05 per contract and the fee for crossed orders from \$0.02 per contract to \$0.03 per contract when the Exchange is operating in a modified state.

The Exchange next proposes to waive the following facilities fees for as long as the trading floor is operating in a modified manner as such services and products cannot be utilized during such time; provided however that such fees will be pro-rated based on the remaining trading days in the calendar month if the trading floor becomes fully operational mid-month:

<b>Description</b>	<b>Fee</b>
Standard Booth Rental Fees	\$195/month (Perimeter); \$550/month (OEX, Dow Jones/MNX/VIX)
Non-Standard Booth Rental Fees	\$1,250/month; \$1.70 per sq ft./month
Wireless Phone Rental	\$110/month
Arbitrage Phone Positions	\$550/month
Satellite TV	\$50/month

Lastly, the Exchange proposes to eliminate an obsolete footnote reference in the Floor Brokerage Fees table. Particularly, the Exchange proposes to eliminate the reference to Footnote “(40)”. The Exchange notes that although it recently eliminated Footnote 40 in its entirety (which is now “reserved”), it inadvertently omitted eliminating the appended reference in the Floor Brokerage Fees table.<sup>10</sup> The proposed deletion maintains clarity in the Fees Schedule and alleviates potential confusion.

## 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>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</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 is consistent with Section 6(b)(4) of the Act,<sup>13</sup> which requires that Exchange rules provide for the

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<sup>10</sup> See Securities and Exchange Act Release No. 88341 (March 6, 2020), 85 FR 14513 (March 12, 2020) (SR-CBOE-2020-006).

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

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 rule change to assess fees to only those floor Trading Permits that are “used” to access the trading floor when the trading floor is operated in a modified manner is reasonable because TPHs will not be assessed fees for floor Trading Permits that cannot be used to use to access the trading floor. The Exchange believes the proposed formula is reasonable as it assesses fees based on the number of nominees that can, and do, access the trading floor and on the dates that such nominee is assigned to a Trading Permit. The Exchange believes using the number of days a nominee is assigned to a permit to calculate the floor trading permit fees is appropriate as there may be instances in which a TPH does not have a nominee available to occupy one of its assigned trading spaces (e.g., if a nominee must avoid the Exchange’s facilities for a reason enumerated in the Covid-19 Policy<sup>14</sup>). The Exchange believes the proposed rule change relating to floor trading permit fees is also reasonable, equitable and not unfairly discriminatory as it applies to all floor TPHs equally.

The Exchange believes the proposal to waive the Inactive Nominee Status fee and Inactive Nominee Status Change fee is reasonable, equitable and not unfairly discriminatory as TPHs would not be subject to such fees and it would apply uniformly to all nominees and inactive nominees. Also as discussed above, the Exchange does not believe it’s appropriate to apply such fees, as TPH organizations will not be purchasing additional floor Trading Permits while the trading floor is operating in a modified manner, and as the Exchange is regulating how

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<sup>14</sup> See Cboe Trade Notice “Standards of Conduct related to the Reopening of the Cboe Options Trading Floor and COVID-19”, Reference ID C2020052601, available at [https://cdn.cboe.com/resources/release\\_notes/2020/Standards-of-Conduct-related-to-the-Reopening-of-the-Cboe-Options-Trading-Floor-Notice-Final.pdf](https://cdn.cboe.com/resources/release_notes/2020/Standards-of-Conduct-related-to-the-Reopening-of-the-Cboe-Options-Trading-Floor-Notice-Final.pdf).



many nominees may access the trading floor. Moreover, as noted above, the Exchange already waives both fees when the trading floor is fully inoperable.<sup>15</sup>

The Exchange also believes its proposal to base the ADV thresholds for the Floor Broker ADV Discount program on volume from June 15 through June 30, 2020 is reasonable as such discount is based on open-outcry volume only and the Exchange floor was closed between June 1 – June 12, 2020. The Exchange believes the proposed change is equitable and not unfairly discriminatory as it applies uniformly to all Floor Brokers.

The Exchange believes the proposal to increase the floor SPX/SPXW Market-Maker Tier Appointment fee is reasonable because floor Market-Makers trading SPX/SPXW will still be paying similar trading permit-related fees as compared to when the trading floor was fully operational. Particularly, the Exchange notes that because it intends to limit the amount of Market-Makers in SPX/SPXW allowed on the trading floor when the trading floor is operated in a modified manner, Market-Makers will be saving on trading permit fees it would otherwise incur if the trading floor were fully operational.<sup>16</sup> The Exchange also notes that it has not increased the SPX/SPXW Market-Maker Tier Appointment fee amount since it was adopted ten years ago.<sup>17</sup> The Exchange also believes the proposed rule change is reasonable, equitable and not unfairly discriminatory as it applies to all floor Market-Makers trading SPX/SPXW equally. The Exchange believes it's reasonable equitable and not unfairly discriminatory to increase the

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<sup>15</sup> See Cboe Options Fees Schedule, Footnote 12.

<sup>16</sup> The Exchange notes that it intends to allow Market-Maker TPH organizations in SPX to assign nominees to approximately half of the floor MM Floor Permits each TPH organization holds to access the trading floor. As discussed above, Market-Makers would not be assessed fees for the MM Floor Permits it is not allowed to use to access the trading floor.

<sup>17</sup> See Securities Exchange Act Release No. 62386 (June 25, 2010) 75 FR 38566 (July 2, 2010) (SR-CBOE-2010-060).

SPX/SPXW floor Market-Maker Tier Appointment fee and not the SPX/SPXW electronic Market-Maker Tier Appointment fee when the floor is operating in a modified state, as electronic Market-Makers pay the same trading permit fees regardless of whether the floor is open, closed or partially open, as compared to floor Market-Makers who are otherwise paying lower trading permit fees when the floor is partially open, as discussed above.

The Exchange similarly believes it's reasonable to increase the SPX/SPXW floor brokerage fees as it's a modest increase and as Floor Brokers in SPX are also expected to pay less in FB Permit fees when the Exchange is operating in a modified manner.<sup>18</sup> The Exchange also notes that it has not increased the SPX/SPXW Floor Brokerage fee amounts in well over fourteen years.<sup>19</sup> The Exchange believes the proposed rule change is reasonable, equitable and not unfairly discriminatory as it applies to all Floor Brokers equally.

The Exchange believes the proposal to waive the identified facility fees is reasonable as market participants won't be subject to such fees. The listed facility fees each apply to a product or service that may only be utilized when the trading floor is operating at fully capacity and will not be available when the Exchange is operating in a modified manner. The Exchange believes it's therefore appropriate to waive such fees while the Exchange is operating in a modified manner. The Exchange also believes it's appropriate to pro-rate such fees if the trading floor reopens mid-month as market participants will have the benefit of using such services/products

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<sup>18</sup> The Exchange notes that it intends to allow Floor Broker TPH organizations in SPX to assign nominees to approximately half of the floor FB Floor Permits each TPH organization holds to access the trading floor. As discussed above, Floor Brokers would not be assessed fees for the FB Floor Permits it is not allowed to use to access the trading floor.

<sup>19</sup> See Securities Exchange Act Release No. 53372 (February 24, 2006) 71 FR 11003 (March 3, 2006) (SR-CBOE-2006-10).

for the remainder of the month. The Exchange believes the proposed rule change is equitable and not unfairly discriminatory as it applies equally to all market participants.

The Exchange lastly believes the proposed deletion of an obsolete footnote reference maintains clarity in the Fees Schedule and alleviates potential confusion, thereby reducing 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 changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes the proposed changes relating to Footnote 24 are not intended to address any competitive issue, but rather to address fee changes it believes are reasonable because the trading floor is reopening, but must be operated in a modified manner in connection with COVID-19 in order to help protect the safety and welfare of individuals access the trading floor. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply equally to all similarly situated market participants. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only affect trading on the Exchange in limited circumstances.

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>20</sup> and paragraph (f) of Rule 19b-4<sup>21</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-2020-058 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-CBOE-2020-058. 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

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f).

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-2020-058 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>22</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).