

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92078; File No. SR-CBOE-2021-035)

June 1, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Silexx Trading Platform 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 May 21, 2021, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“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 the Silexx trading platform (“Silexx” or the “platform”) 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places 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 purpose of this filing is to amend the Silexx Fees Schedule to amend the “CAT File” fee.³

By way of background, the Silexx platform consists of a “front-end” order entry and management trading platform (also referred to as the “Silexx terminal”) for listed stocks and options that supports both simple and complex orders,⁴ and a “back-end” platform which provides a connection to the infrastructure network. From the Silexx platform (*i.e.*, the collective front-end and back-end platform), a Silexx user has the capability to send option orders to U.S. options exchanges, send stock orders to U.S. stock exchanges (and other trading centers), input parameters to control the size, timing, and other variables of their trades, and also includes access to real-time options and stock market data, as well as access to certain historical data. The Silexx platform is designed so that a user may enter orders into the platform to send to an executing broker (including Trading Permit Holders (“TPHs”)) of its choice with connectivity to the platform, which broker will then send the orders to Cboe Options (if the broker is a TPH) or other U.S. exchanges (and trading centers) in

³ The Exchange initially filed the proposed fee changes [sic] May 1, 2021 (SR-CBOE-2021-032). On May 12, 2021, the Exchange withdrew that filing and SR-CBOE-2021-033. On May 21, 2021, the Exchange withdrew that filing and submitting [sic] this filing.

⁴ The platform also permits users to submit orders for commodity futures, commodity options and other non-security products to be sent to designated contract markets, futures commission merchants, introducing brokers or other applicable destinations of the users’ choice.

accordance with the user's instructions. With the exception of Silexx FLEX and Cboe Silexx, users cannot directly route orders through any of the current versions of Silexx to an exchange or trading center nor is the platform integrated into, or directly connected to, Cboe Options' System. The Exchange has more recently made available additional versions of the Silexx platform, Silexx FLEX and Cboe Silexx, which do support the trading of FLEX and non-FLEX Options, respectively, and allows authorized Users with direct access to the Exchange. The Silexx front-end and back-end platforms are a software application that are installed locally on a user's desktop. Silexx grants users licenses to use the platform, and a firm or individual does not need to be a TPH to license the platform. Use of Silexx is completely optional.

The Exchange recently adopted a fee for CAT Files.⁵ Particularly, Silexx makes Consolidated Audit Trail ("CAT")-formatted files available to Silexx users for orders processed by the user via Silexx applications. Users may also elect to have Silexx, which is a CAT Reporter Agent, submit these files to CAT on their behalf. The Exchange assesses a monthly fee of \$250 per CAT Industry Member ID ("IMID")⁶, payable by the trading firm, for CAT Files. The Exchange however currently waives the CAT Files fee for Silexx FLEX and Cboe Silexx. The Exchange now wishes to eliminate the current CAT Files fee waiver and assess the monthly \$250 fee to all Silexx users, including Silexx FLEX and Cboe Silexx users. The Exchange proposes to also provide that the CAT Files fee will be assessed per trading firm, instead of per IMID.

⁵ See Securities Exchange Release No. 89285 (July 10, 2020) 85 FR 43284 (July 16, 2020) (SR-CBOE-2020-062).

⁶ CAT uses the IMID to determine the firm for which data is submitted and to facilitate event linkages within a firm and between venues.

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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,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.

In particular, the Exchange believes eliminating the current CAT File fee waiver for Silexx FLEX and Cboe Silexx users is reasonable as the Exchange believes the CAT File fee is substantially lower than the cost assessed by third-party vendors for similar CAT files and is the same rate for other similar reports (i.e., Equity Order Reports). The Exchange notes it is not changing the amount of the CAT File fee, but rather eliminating the current waiver for Silexx FLEX and Cboe Silexx users. The Exchange believes the elimination of the waiver is reasonable,

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(4).

equitable and not unfairly discriminatory because all users who elect to receive CAT Files will now be subject to the same monthly fee. Additionally, the Exchange originally adopted the CAT Files fee waiver for Silexx FLEX and Cboe Silexx as such platforms at the time were still relatively new and the Exchange wished to incentivize their use to market participants.¹⁰ The Exchange notes that both platforms have now been available to market participants for over a year and therefore the Exchange no longer believes it's necessary to continue to provide market participants this particular incentive. The Exchange also believes it's reasonable, equitable and not unfairly discriminatory to assess the CAT File fee per trading firm instead of IMID. Particularly, the Exchange notes it's reasonable as trading firms with more than one IMID would be subject to less fees for CAT Files¹¹. Moreover, charging on a per trading firm basis is consistent with how the Exchange assesses fees for other similar reports (i.e., Equity Order Reports). Additionally, the proposed change applies to all users that elect to receive CAT Files. The proposal is equitable and not unfairly discriminatory as it applies to all users of Silexx FLEX and Cboe Silexx uniformly. Finally, the Exchange notes receipt of the CAT Files is completely voluntary and not compulsory. Indeed, all users of Silexx are able to extract the necessary data from Silexx to create a CAT report themselves to comply with their reporting obligations even if they choose not to purchase the optional CAT Files.

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

Cboe Options 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

¹⁰ See Securities Exchange Release No. 89285 (July 10, 2020) 85 FR 43284 (July 16, 2020) (SR-CBOE-2020-062).

¹¹ For example, if a trading firm has 2 IMIDs, that trading firm will only be assessed \$250 per month, as proposed, as compared to \$500 per month under the current methodology (2 x \$250).

Exchange believes that the proposed rule change will not impose any burden on intramarket competition because the proposed rule changes apply to all similarly situated users of Silexx uniformly. The Exchange notes that CAT Files are available to all Silexx users, and users have discretion to determine which, if any, types of reports to purchase.

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 change applies only to Cboe Options and to the ability to receive certain reports from an Exchange system. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

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 Act¹² and paragraph (f) of Rule 19b-4¹³ 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.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2021-035 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-2021-035. 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-2021-035 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.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).