

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93743; File No. SR-CBOE-2021-073)

December 9, 2021

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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 2, 2021, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with the Exchange’s planned extension of Global Trading Hours (“GTH”) and the GTH Cboe Volatility Index (“VIX”)/VIX Weekly (“VIXW”) Lead Market-Maker (“LMM”) Incentive Program and GTH S&P 500 Index (“SPX”)/SPX Weekly (“SPXW”) LMM Incentive Program.³

Beginning Sunday, November 21, 2021, the Exchange plans to extend the hours of its GTH session by starting the GTH trading session at 7:15 p.m. CT⁴ on the immediately preceding calendar day, rather than at the current start time of 2:00 a.m. The GTH trading session will continue to end at 8:15 a.m. As such, the proposed rule change updates the Fees Schedule to reflect the extended GTH trading session. Specifically, footnote 37 of the Fees Schedule currently provides that GTH is a separate trading session from Regular Trading Hours (“RTH”) for VIX, SPX and SPW.⁵ GTH commences at 2:00AM CST and terminates at 8:15AM CST, and is conducted on an all-electronic trading model with no open outcry capability. Footnote 37 is currently appended to various transaction and surcharge fees for orders in VIX, SPX and SPXW under the Rate Table – Underlying Symbol List A of the Fees Schedule, as well as certain

³ The Exchange initially filed the proposed fee changes on November 19, 2021 (SR-CBOE-2021-069). On December 2, 2021, the Exchange withdrew that filing and submitted this filing.

⁴ Unless otherwise specified, all times herein this proposal are in Central Time.

⁵ The proposed rule change makes a nonsubstantive change to capitalize the “W” in SPXW to make the term consistent with the manner in which the symbol is formatted throughout the Fees Schedule.

programs in the Fees Schedule.⁶ Such fees, surcharges and programs apply⁷ during both Regular Trading Hours (“RTH”) and GTH. In line with the newly extended GTH hours, the proposed rule change amends footnote 37 to provide that GTH commences at 7:15PM CST and terminates at 8:15AM CST. The fees, surcharges and programs applicable during GTH will continue to apply in the same manner as they currently do; the trading hours in which such fees, surcharges and programs apply are merely being extended.

The proposed rule change also amends the GTH VIX/VIXW LMM Incentive Program and GTH SPX/SPXW LMM Incentive Program. Both LMM Incentive Programs provide a rebate to Trading Permit Holders (“TPHs”) with LMM appointments to the respective incentive program that meet certain quoting standards in the applicable series in a month. The Exchange notes that meeting or exceeding the quoting standards (both current and as proposed; described in further detail below) in each of the LMM Incentive Program products to receive the applicable rebate is optional for an LMM appointed to a program. Particularly, an LMM appointed to an incentive program is eligible to receive the corresponding rebate if it satisfies the applicable quoting standards, which the Exchange believes encourages the LMM to provide liquidity in the applicable class and trading session (i.e., GTH, including as extended). The Exchange may consider other exceptions to the programs’ quoting standards based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM appointed to an incentive program meets the applicable program’s quoting standards each month,

⁶ See Cboe Options, Fees Schedule, Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scale, Cboe Options Clearing Trading Permit Holder VIX Sliding Scale, Customer Large Trade Discount, Large Trade Discount, Electronic Trading Permit Fees, Trade Processing Services, Regulatory Fees, and TPH Transaction Fee Policies and Rebate Programs.

⁷ The Fees Schedule also provides for the GTH Executing Agent Subsidy Program, which applies only during GTH.

the Exchange excludes from the calculation in that month the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of the applicable series.⁸

In light of the extended GTH trading session, the Exchange proposes to adopt an additional GTH LMM Incentive Program for both VIX/VIXW and SPX/SPXW to cover the newly extended portion of the GTH trading session. Specifically, the LMMs appointed to the proposed additional programs must provide continuous electronic quotes during GTH from 7:15PM CST to 2:00AM CST (“GTH1”)⁹ that meet or exceed the proposed quoting standards under each program (as described in further detail below) for the same amount of time in the same number of series as they are currently required to quote pursuant to the current GTH VIX/VIXW and GTH SPX/SPX LMM Incentive Programs,¹⁰ as applicable, in order to receive the same rebates for each series as currently offered under the GTH VIX/VIXW and GTH SPX/SPX LMM Incentive Programs,¹¹ as applicable. As with the current programs, the

⁸ The Exchange notes that, regarding the VIX/VIXW LMM Incentive Program, which has multiple sets of quoting standards, an LMM’s worst quoting day will be excluded from the calculation applicable to each set of quoting standards for that month.

⁹ The proposed rule change also renames the existing GTH VIX/VIXW and GTH SPX/SPXW LMM Incentive Programs as “GTH2 VIX/VIXW LMM Incentive Program” and “GTH2 SPX/SPXW LMM Incentive Program” and clarifies in the programs’ descriptions that GTH2 runs from 2:00AM CST to 8:15AM CST. The Exchange notes that the scope of these current programs is not changing as the “GTH2” hours are the same as the current GTH hours.

¹⁰ That is, at least 99% of each of the VIX and VIXW series, 90% of the time in a given month pursuant to the GTH1 (as proposed) and current GTH (GTH2, as renamed) VIX/VIXW LMM Incentive Program, and in at least 85% of each of the SPX and SPXW series 90% of the time in a given month pursuant to the GTH1 (as proposed) and current GTH (GTH2, as renamed) SPX/SPXW LMM Incentive Program.

¹¹ That is: (1) a rebate for that month in the amount of \$15,000 for VIX and \$10,000 for VIXW, pursuant to the GTH1 (as proposed) and GTH (GTH2, as renamed) VIX/VIXW LMM Incentive Program, if the appointed LMM meets or exceeds the basic quoting standards (as proposed for the GTH1 program and currently for the GTH2 program); (2)

Exchange may consider other exceptions to the quoting standards for the proposed GTH1 LMM Incentive Programs based on demonstrated legal or regulatory requirements or other mitigating circumstances, and, in calculating whether an LMM met the applicable GTH1 LMM Incentive Program’s quoting standards each month, the Exchange will exclude from the calculation in that month the business day in which the LMM missed meeting or exceeding the applicable quoting standard in the highest number of series.

Like the current GTH VIX/VIXW LMM Incentive Program, the proposed GTH1 VIX/VIXW LMM Incentive Program offers basic quoting standards for VIXW options and for VIX options, and heightened quoting standards for VIX options, that apply based on the VIX Index value at the prior market close (i.e., at the close of the preceding RTH session) as follows:

Proposed GTH1 VIXW options basic quoting standards:

VIX Value at Prior Close < 18				
Premium Level	Less than 21 days to expiration		21 days or greater to expiration	
	Width	Size	Width	Size
\$0.00 - \$1.00	\$1.00	10	\$1.50	10
\$1.01 - \$3.00	\$1.50	10	\$2.50	10
\$3.01 - \$5.00	\$2.50	3	\$4.00	3
\$5.01 - \$10.00	\$4.00	1	\$6.00	1
\$10.01 - \$30.00	\$6.00	1	\$10.00	1
Greater than \$30.00	\$10.00	1	\$10.00	1
VIX Value at Prior Close from 18 - 25				
\$0.00 - \$1.00	\$1.50	5	\$2.00	5
\$1.01 - \$3.00	\$2.50	5	\$4.00	5
\$3.01 - \$5.00	\$4.00	1	\$5.00	1

a rebate for that month of \$0.02 per VIX/VIXW contract executed in its Market-Maker capacity during RTH, pursuant to the proposed GTH1 and current GTH2 VIX/VIXW LMM Incentive Program, if the appointed LMM meets or exceeds the heightened quoting standards; and (3) a rebate for that month in the amount of \$15,000 for SPX and \$35,000, pursuant to the SPXW GTH1 (as proposed) and GTH (GTH2, as renamed) SPX/SPXW LMM Incentive Program, if the appointed LMM meets or exceeds the heightened quoting standards (as proposed for the GTH1 program and currently for the GTH2 program).

\$5.01 - \$10.00	\$6.00	1	\$8.00	1
\$10.01 - \$30.00	\$10.00	1	\$10.00	1
Greater than \$30.00	\$10.00	1	\$10.00	1
VIX Value at Prior Close from > 25				
\$0.00 - \$1.00	\$10.00	1	\$10.00	1
\$1.01 - \$3.00	\$10.00	1	\$10.00	1
\$3.01 - \$5.00	\$10.00	1	\$10.00	1
\$5.01 - \$10.00	\$10.00	1	\$10.00	1
\$10.01 - \$30.00	\$10.00	1	\$10.00	1
Greater than \$30.00	\$10.00	1	\$10.00	1

Proposed GTH1 VIX options basic quoting standards:

VIX Value at Prior Close < 18								
Premium Level	Expiring		Near Term		Mid Term		Long Term	
	Less than 15 days		15 days to 60 days		61 days to 180 days		181 days or Greater	
	Width	Size	Width	Size	Width	Size	Width	Size
\$0.00 - \$1.00	\$0.35	30*	\$0.25	40*	\$0.35	30*	\$0.80	5*
\$1.01 - \$3.00	\$0.50	15*	\$0.35	25*	\$0.50	15*	\$0.90	5*
\$3.01 - \$5.00	\$0.60	15*	\$0.35	15*	\$0.60	10*	\$1.00	5*
\$5.01 - \$10.00	\$1.00	10	\$0.80	10*	\$1.30	10	\$2.00	5
\$10.01 - \$30.00	\$2.00	5	\$1.50	5	\$2.00	5	\$3.00	3
Greater than \$30.00	\$5.00	3	\$3.00	3	\$5.00	3	\$5.00	3
VIX Value at Prior Close from 18 - 25								
\$0.00 - \$1.00	\$0.50	15*	\$0.35	30*	\$0.50	15*	\$1.00	5*
\$1.01 - \$3.00	\$0.50	10*	\$0.50	20*	\$0.70	10*	\$1.00	5*
\$3.01 - \$5.00	\$0.80	5*	\$0.50	15*	\$0.80	5*	\$1.30	5
\$5.01 - \$10.00	\$1.50	5*	\$1.00	5*	\$2.00	5	\$2.20	5
\$10.01 - \$30.00	\$3.00	1	\$2.50	1	\$3.00	1	\$5.00	1

Greater than \$30.00	\$5.00	1	\$5.00	1	\$5.00	1	\$10.00	1
VIX Value at Prior Close from > 25								
\$0.00 - \$1.00	\$0.80	10*	\$0.50	10*	\$0.60	10*	\$1.20	5*
\$1.01 - \$3.00	\$1.00	10	\$0.75	10*	\$1.00	10	\$1.20	5*
\$3.01 - \$5.00	\$1.20	5*	\$0.90	10	\$1.20	5	\$1.80	5
\$5.01 - \$10.00	\$2.00	5	\$1.50	5	\$2.50	5	\$3.00	3
\$10.01 - \$30.00	\$5.00	1	\$5.00	1	\$5.00	1	\$7.00	1
Greater than \$30.00	\$10.00	1	\$10.00	1	\$10.00	1	\$10.00	1

Proposed GTH1 VIX options heightened quoting standards:

VIX Value at Prior Close < 18				
Premium Level	Expiring		Near Term	
	Less than 15 days		15 days to 60 days	
	Width	Size	Width	Size
\$0.00 - \$1.00	\$0.20	50*	\$0.20	50*
\$1.01 - \$3.00			\$0.25	30*
\$3.01 - \$5.00			\$0.35	20*
VIX Value at Prior Close from 18 - 25				
\$0.00 - \$1.00	\$0.25	30*	\$0.20	30*
\$1.01 - \$3.00			\$0.30	20*
\$3.01 - \$5.00			\$0.40	20*
VIX Value at Prior Close from > 25				
\$0.00 - \$1.00	\$0.30	20*	\$0.25	20*
\$1.01 - \$3.00			\$0.40	15*
\$3.01 - \$5.00			\$0.60	15*

The Exchange notes that the proposed VIXW options basic quoting standards under the proposed GTH1 program are identical to the VIXW options basic quoting standards under the current GTH program. Additionally, the proposed VIX options basic and heightened quoting standards under the proposed GTH1 program are, by and large, substantially the same as the VIX

options basic and heightened quoting standards under the current GTH program, differing only in marginally smaller quote sizes in certain categories as marked by an asterisk in the tables above. The Exchange believes it is appropriate to adopt slightly smaller quote sizes, in general, for the quoting standards applicable during the new overnight hours as the Exchange anticipates that the newly extended portion of GTH may sustain lower volume and general participation and higher volatility, and thus it may be more difficult for LMMs to quote aggressively at the same sizes within the same widths as provided in the existing GTH VIX/VIXW LMM Incentive Program. The Exchange notes that it examined and compared quotes and volume in VIX futures during GTH1 trading hours and current GTH hours to assist it in determining the reduction in certain quote sizes from the current GTH program. Marginally smaller quote sizes are designed to incentivize LMMs appointed to the GTH1 VIX/VIXW program to quote aggressively in VIX options during the new extended hours to receive the rebate offered under the program, resulting in tighter spreads and increased liquidity during the newly extended hours to the benefit of investors.

Like the current GTH SPX/SPXW LMM Incentive Program, the proposed GTH1 SPX/SPXW LMM Incentive Program offers heightened quoting standards for SPX/SPXW VIX Index value at the prior market close (i.e., at the close of the preceding RTH session) as follows:

VIX Value at Prior Close < 20								
Premium Level	Expiring		Near Term		Mid Term		Long Term	
	7 days or less		8 days to 60 days		61 days to 270 days		271 days to 500 days	
	Width	Size	Width	Size	Width	Size	Width	Size
\$0.00 - \$1.00	\$0.50*	15*	\$0.40	15	\$0.60	5	\$1.20	5
\$1.01 - \$3.00	\$0.70*	15*	\$0.70*	15*	\$1.50	5*	\$2.50*	5
\$3.01 - \$5.00	\$1.40*	10*	\$2.00	15	\$2.00	5*	\$5.00*	5
\$5.01 - \$10.00	\$7.00*	5*	\$4.00	10	\$3.50*	5*	\$6.00*	5
\$10.01 - \$30.00	\$18.00*	1	\$6.00*	5	\$5.00*	5	\$8.00*	5

Greater than \$30.00	\$24.00*	1	\$10.00*	1	\$12.00	1	\$50.00	1
VIX Value at Prior Close from 20 - 30								
\$0.00 - \$1.00	\$0.70*	10*	\$0.80	10	\$0.75	5	\$2.00	5
\$1.01 - \$3.00	\$1.20*	10*	\$1.10*	10*	\$2.40*	5	\$3.50*	5
\$3.01 - \$5.00	\$3.00*	10	\$3.50	10	\$3.50*	5	\$6.00*	5
\$5.01 - \$10.00	\$12.00*	5*	\$7.00	5*	\$4.00*	5	\$8.00*	5
\$10.01 - \$30.00	\$24.00*	1	\$10.00*	1*	\$7.00*	5	\$12.00*	5
Greater than \$30.00	\$30.00*	1	\$12.00	1	\$2.00	1	\$60.00	1
VIX Value at Prior Close > 30								
\$0.00 - \$1.00	\$1.20*	5*	\$1.20*	5*	\$1.00	5	\$3.00	5
\$1.01 - \$3.00	\$3.00*	5*	\$2.70*	5*	\$3.00	5	\$5.00*	5
\$3.01 - \$5.00	\$5.00*	5*	\$5.50*	5*	\$6.00*	5	\$8.00	5
\$5.01 - \$10.00	\$16.00*	5	\$12.00*	5	\$5.00*	3	\$10.00	1
\$10.01 - \$30.00	\$20.00	1	\$15.00*	5	\$15.00	1	\$18.00	1
Greater than \$30.00	\$30.00	1	\$30.00*	1	\$30.00	1	\$70.00	1

The proposed SPX/SPXW options heightened quoting standards under the proposed GTH1 program are substantially similar to the SPX/SPXW options heightened quoting standards under the current GTH program, differing only in marginally smaller quote sizes and wider quote widths in certain categories as marked by an asterisk in the tables above. The Exchange believes it is appropriate to adopt slightly smaller quote sizes and wider widths, in general, for the quoting standards applicable during the new overnight hours for the same reasons as described above—the Exchange anticipates that the newly extended portion of GTH may sustain lower volume and general participation and higher volatility, and thus it may be more difficult for LMMs to quote aggressively at the same sizes within the same widths as provided in the existing GTH

SPX/SPXW LMM Incentive Program. The Exchange also examined and compared quotes and volume in S&P 500 E-mini futures during GTH1 trading hours and current GTH hours to assist it in determining the reduction in certain quote sizes and widening of certain quote widths from the current GTH program. Marginally smaller quote sizes and wider widths are designed to incentivize LMMs appointed to the GTH1 SPX/SPXW program to quote aggressively in SPX/SPXW options during the new extended hours to receive the rebate offered under the program, resulting in tighter spreads and increased liquidity during the newly extended hours to the benefit of investors. The Exchange further notes that the quote widths and sizes typical in SPX/SPXW options differ from that in VIX options, therefore, the proposed GTH1 SPX/SPXW heightened quoting requirements reflect quote widths and sizes that align with the market characteristics in SPX/SPXW options.

The Exchange believes the proposed quoting requirements for VIX/VIXW options under the proposed GTH1 VIX/VIXW LMM Incentive Program and SPX/SPXW options under the proposed GTH1 VIX/VIXW LMM Incentive Program are designed to encourage LMMs appointed to the program to provide significant liquidity in VIX/VIXW and SPX/SPXW options during the extended portion of the GTH trading session. The Exchange notes that each of the proposed programs provide for quoting standards that apply depending on the VIX Index value at the prior market close (i.e., at the close of the preceding RTH session). The VIX Index value categories under the proposed GTH1 VIX/VIXW and GTH1 SPX/SPXW LMM Incentive Programs are identical to the VIX value categories in the existing GTH VIX/VIXW and GTH SPX/SPXW LMM Incentive Programs, respectively, and are designed to encourage LMMs appointed to the programs to meet the quoting standards by tailoring such quoting standards to reflect market characteristics in VIX/VIXW and SPX/SPXW options depending on the volatility

levels of the VIX Index (i.e., in the proposed categories in which the value of the VIX is relatively higher based on the closing VIX Index value from the preceding trading session indicates that the VIX Index is experiencing generally higher volatility).

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.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ 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,¹⁴ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

First, the Exchange believes that the proposed rule change to update footnote 37 to reflect the extended GTH trading session, set to begin November 21, 2021, is reasonable, equitable and not unfairly discriminatory. In particular, the Exchange believes that the proposed rule change is reasonable because it merely updates footnote 37 to provide for the appropriate trading hours that

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

will be in place for the GTH trading session as of November 21, 2021. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because the newly extended GTH trading session hours will apply equally to all market participants, in that, all market participants that choose to trade during GTH will be able to trade during the new trading hours. The fees, surcharges and programs applicable during GTH will continue to apply in the same manner as they currently do; the trading hours in which such fees, surcharges and programs apply are merely being extended.

Regarding both the GTH1 SPX/SPXW and GTH1 VIX/VIXW LMM Incentive Programs generally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to continue to offer LMM Incentive Programs as financial incentives, including as proposed, to LMMs appointed to the programs, because it benefits all market participants trading in the corresponding products during GTH (including as extended). These incentive programs encourage the LMMs appointed to such programs to satisfy the applicable quoting standards, which may increase liquidity and provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade VIX/VIXW and SPX/SPXW options, as applicable, which can lead to increased volume, providing for robust markets. The Exchange ultimately offers the LMM Incentive Programs, including as amended, to sufficiently incentivize LMMs appointed to each incentive program to provide key liquidity and active markets in the corresponding program products during the corresponding trading sessions (and specific trading session hours, as proposed), and believes that these incentive programs, as amended, will continue to encourage increased quoting to add liquidity in each of the corresponding program products, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to

an incentive program may undertake added costs each month to satisfy that heightened quoting standards (e.g., having to purchase additional logical connectivity).

The Exchange believes that the proposed rule change to adopt the GTH1 VIX/VIXW and GTH1 SPX/SPXW LMM Incentive Programs is reasonable. Particularly, the Exchange believes the proposed quoting requirements under each are reasonably designed to encourage LMMs appointed to each program to provide significant liquidity in VIX/VIXW and SPX/SPXW options during the extended, overnight portion of the GTH trading session in order to meet the applicable quoting standards and receive the corresponding rebate. The provision of liquid and active markets facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants, particularly in during newly extended trading hours which may experience generally lower volume and participation.

As described above, the continuous quoting requirements (i.e., percentage of time and percentage of series), the applicable rebates under the proposed GTH1 VIX/VIXW and GTH1 SPX/SPXW LMM Incentive Programs, and the manner in which the proposed quoting standards are tailored to the VIX Index value are the same as those under the current GTH VIX/VIXW and GTH SPX/SPXW LMM Incentive Programs, respectively. The Exchange believes that the proposed quoting standards under the GTH1 programs are reasonable because they are either identical (as is the case for the proposed basic quoting standards for VIXW options) or substantially similar (as is the case for the proposed basic and heightened quoting standards for VIX options and proposed heighten quoting standards for SPX/SPXW options) to the corresponding quoting standards currently in place for VIX and VIXW and SPX/SPXW under the existing GTH LMM Incentive Programs for these products. Regarding the proposed quoting standards applicable to VIX options and SPX/SPXW, the Exchange believes it is appropriate to

adopt slightly smaller quote sizes (for VIX and SPX/SPXW options) and wider quote widths (for SPX/SPXW options) for the proposed GTH1 quoting standards applicable during the new overnight hours because such overnight hours may sustain lower volume and general participation and higher volatility and, therefore, marginally smaller quote sizes and wider quote widths (where applicable) are designed to incentivize LMMs appointed to the GTH1 VIX/VIXW or GTH1 SPX/SPXW program to quote aggressively in VIX options or SPX/SPXW options, respectively, during the extended GTH hours, resulting in tighter spreads and increased liquidity during the newly extended hours to the benefit of investors. As stated above, the quote widths and sizes typical in SPX/SPXW options differ from that in VIX options, therefore, the proposed GTH1 heightened quoting requirements for SPX/SPXW reflect quote widths and sizes that align with the market characteristics in SPX/SPXW options.

The Exchange also believes it is equitable and not unfairly discriminatory to adopt new GTH1 VIX/VIXW and GTH1 SPX/SPXW LMM Incentive Programs because such programs will equally apply to any and all TPHs with LMM appointments to the GTH1 VIX/VIXW LMM Incentive Program and GTH1 SPX/SPXW LMM Incentive Program, respectively, that seek to meet the applicable program's quoting standards in order to receive the same rebates as currently offered under the existing GTH VIX/VIXW and GTH SPX/SPXW LMM Incentive Programs. Additionally, like with all other existing LMM Incentive Programs in the Fees Schedule, if an LMM appointed to the GTH1 VIX/VIXW or GTH1 SPX/SPXW LMM Incentive Program does not satisfy the quoting standards for any given month, then it simply will not receive the corresponding rebate offered by the program for that month.

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. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution and price improvement opportunities for all TPHs. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁵

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 as the newly extended GTH trading session hours will apply equally to all market participants, in that, all market participants that choose to trade during GTH will be able to trade during the new trading hours and the fees, surcharges and programs applicable during GTH will continue to apply in the same manner as they currently apply. Also, the proposed GTH1 VIX/VIXW and GTH1 SPX/SPXW LMM Incentive Programs will apply to all LMMs appointed to each program in a uniform manner. To the extent the LMMs appointed to one of the proposed programs receive a benefit that other market participants do not, as stated, these LMMs in their role as Market-Makers on the Exchange have different obligations and are held to different standards. For example, Market-Makers play a crucial role in providing active and liquid markets

¹⁵ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

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. An LMM appointed to a program may undertake added costs each month that it needs to satisfy the quoting standards (e.g., having to purchase additional logical connectivity). The programs are ultimately designed to attract additional order flow in VIX/VIXW and SPX/SPXW options to the Exchange during the newly extended GTH trading session, wherein greater liquidity will benefit all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity during new trading hours.

The Exchange also does not believe that the proposed changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act because the proposed programs are applicable to transactions in products exclusively listed on the Exchange. Additionally, the Exchange notes that it operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 15% of the market share.¹⁶ Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its

¹⁶ See Cboe Global Markets U.S. Options Market Volume Summary, Month-to-Date (November 12, 2021), available at https://markets.cboe.com/us/options/market_statistics/.

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 competition in its broader forms that are most important to investors and listed companies.”¹⁷ 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’....”¹⁸ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁸ *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)).

Act¹⁹ and paragraph (f) of Rule 19b-4²⁰ 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. Please include File Number SR-CBOE-2021-073 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-2021-073. 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

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 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-2021-073 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.²¹

J. Matthew DeLesDernier
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12).