

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94670; File No. SR-CBOE-2022-017)

April 11, 2022

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 April 1, 2022, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with certain LMM Incentive Programs, effective April 1, 2022.

The Exchange proposes to amend its Regular Trading Hours (“RTH”) SPESG LMM Incentive Program, MRUT LMM Incentive Program and MSCI LMM Incentive Program. All three 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 (both currently offered and as proposed; described in further detail below) is optional for an LMM appointed to a program. Rather, 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 appointed LMMs to provide liquidity in the applicable class and trading session (*i.e.*, RTH). 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, 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.

The proposed rule change amends the RTH SPESG LMM Incentive Program. Currently, the RTH SPESG LMM Incentive Program provides that if, for SPESG, the appointed LMM provides continuous electronic quotes during RTH that meet or exceed the above heightened quoting standards in at least 60% of SPESG series 90% of the time in a given month, the LMM will receive a rebate for that month in the amount of \$20,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month. The program additionally provides that, if the appointed LMM meets or exceeds the heightened quoting standards in a given month, the LMM will receive the monthly average daily volume (“ADV”) payment amount that corresponds to the level of ADV provided by the LMM in SPESG for that month per the SPESG Volume Incentive Pool program. The proposed rule change reduces the monthly rebate offered under the program from \$20,000 to \$10,000. The proposed rule change also amends certain quote sizes in the program’s heightened quoting requirements. Specifically, the proposed rule change marginally decreases certain quote sizes, thus easing the heightened quoting standards in a manner that makes it easier for appointed LMMs to achieve such requirements. The program’s current heightened quoting requirements are as follows:

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 or Greater	
	Width	Size	Width	Size	Width	Size	Width	Size
\$0.00 - \$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
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The proposed changes to the program’s heightened quoting requirements are as follows (proposed sizes are denoted with an asterisk):

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 or Greater	
	Width	Size	Width	Size	Width	Size	Width	Size
\$0.00 - \$5.00	\$0.50	10	\$0.40	15*	\$0.60	10*	\$1.00	5*
\$5.01 - \$15.00	\$2.00	5*	\$1.60	10*	\$2.40	10*	\$4.00	5*
\$15.01 - \$50.00	\$5.00	5	\$4.00	10*	\$6.00	5*	\$10.00	5
\$50.01 - \$100.00	\$10.00	1*	\$8.00	5*	\$12.00	5	\$20.00	1*
\$100.01 - \$200.00	\$20.00	1*	\$16.00	1*	\$24.00	1*	\$40.00	1*
Greater than \$200.00	\$30.00	1	\$24.00	1*	\$36.00	1	\$60.00	1

Lastly, regarding the RTH SPESG LMM Incentive Program, the proposed rule change amends the payments provided under the SPESG LMM Volume Incentive Pool. Currently, the incentive pool offers \$5,000 where an LMM submits an ADV in SPESG of 1,000 to 4,999 contracts in a month, \$15,000 for an ADV of 5,000 to 10,000 contracts in a month, and \$20,000 for an ADV of greater than 10,000 contracts in a month. The proposed rule change increased the payments so that an LMM that submits an ADV in SPESG of 1,000 to 4,999 contracts in a month receives a payment of \$10,000, an ADV of 5,000 to 10,000 contracts in a month, a payment of \$20,000 and an ADV of greater than 10,000 contracts in a month, a payment of \$25,000. The proposed rule change to increase the SPESG Volume Incentive Pool payments is designed to incentivize appointed LMMs to further increase the provision of liquidity in SPESG options to meet the same ADV thresholds in return for increased corresponding payments. Increased liquidity in SPESG options would, in turn, provide greater trading opportunities, added market transparency and enhanced price discovery for all market participants in SPESG.

The proposed rule change amends the MRUT LMM Incentive Program. Currently, the MRUT LMM Incentive Program provides that, for MRUT, if the appointed LMM provides continuous electronic quotes during RTH that meet or exceed the heightened quoting standards in at least 99% of the MRUT series 90% of the time in a given month, the LMM will receive a rebate for that month in the amount of \$25,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month). The proposed rule change reduces the monthly rebate provided under the program from \$25,000 to \$15,000. Additionally, the proposed rule change also slightly increases the quote width requirement under the near term expiration category (15 to 60 days) for the premium level of \$1.01 to \$3.00, from a quote width of \$0.13 to \$0.14. Thus, the proposed rule change makes the quote size requirement under this expiration and premium category slightly easier to achieve.

The proposed rule change amends the MSCI LMM Incentive Program. Currently, the MSCI LMM Incentive Program provides that, for MXEF and MXEA (i.e., MSCI options), if the appointed LMM provides continuous electronic quotes during RTH that meet or exceed the heightened quoting standards in at least 90% of the MXEA and MXEF series 80% of the time in a given month, the LMM will receive a rebate for that month in the amount of \$20,000 per class, per month (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month). The proposed rule change reduces the monthly rebate provided under the program from \$25,000 to \$15,000. The proposed rule change also amends a quote width and certain sizes in the program's heightened quoting requirements. Specifically, by marginally increasing a quote width and marginally decreases certain quote sizes, the proposed rule change eases the heightened quoting standards in a manner that makes it

easier for appointed LMMs to achieve such requirements. The program’s current heightened quoting requirements are as follows:

Premium Level	Expiring		Near Term		Mid Term		Long Term	
	6 days or less		7 days to 60 days		61 days to 270 days		271 days or Greater	
	Width	Size	Width	Size	Width	Size	Width	Size
\$0.00 - \$5.00	\$2.50	5	\$1.05	12	\$2.50	10	\$5.00	10
\$5.01 - \$15.00	\$6.00	3	\$2.50	9	\$5.00	8	\$10.00	7
\$15.01 - \$50.00	\$15.00	2	\$4.50	7	\$9.00	7	\$20.00	5
\$50.01 - \$100.00	\$25.00	1	\$15.00	5	\$20.00	5	\$30.00	3
\$100.01 - \$200.00	\$40.00	1	\$25.00	2	\$35.00	2	\$48.00	2
Greater than \$200.00	\$60.00	1	\$40.00	1	\$50.00	1	\$72.00	1

The proposed changes to the program’s heightened quoting requirements are as follows (proposed width and sizes are denoted with an asterisk):

Premium Level	Expiring		Near Term		Mid Term		Long Term	
	6 days or less		7 days to 60 days		61 days to 270 days		271 days or Greater	
	Width	Size	Width	Size	Width	Size	Width	Size
\$0.00 - \$5.00	\$2.50	5	\$1.10*	10*	\$2.50	5*	\$5.00	5*
\$5.01 - \$15.00	\$6.00	3	\$2.50	10*	\$5.00	5*	\$10.00	5*
\$15.01 - \$50.00	\$15.00	2	\$4.50	5*	\$9.00	5*	\$20.00	5
\$50.01 - \$100.00	\$25.00	1	\$15.00	5	\$20.00	5	\$30.00	3
\$100.01 - \$200.00	\$40.00	1	\$25.00	2	\$35.00	2	\$48.00	2
Greater than \$200.00	\$60.00	1	\$40.00	1	\$50.00	1	\$72.00	1

The proposed rule change also adopts a performance payment under the MSCI LMM Incentive Program, which provides that, in addition to the above rebate, the LMM with the highest performance in satisfying the above heightened quoting standards, measured

independently per class, in a month will receive a performance payment of \$10,000 per class for that month. In order to be eligible to receive the performance payment in a month, an LMM must meet or exceed the above heightened quoting standards in that month. Highest performance is measured as the cumulative sum of series in which an LMM meets or exceeds the heightened quoting requirements by the total series each day (excluding the day in which an LMM missed meeting or exceeding the heightened quoting standard in the highest number of series). The proposed performance payment offered by the MSCI LMM Incentive Program is designed to incentivize LMMs appointed to the program to increase the provision of liquidity in MXEA and MXEF by encouraging appointed LMMs to compete each month to achieve the highest performance and receive the additional performance payment. Increased liquidity in MSCI options would, in turn, provide greater trading opportunities, added market transparency and enhanced price discovery for all market participants in MSCI options.

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.³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴ 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

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

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,⁵ 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.

Regarding the RTH SPESG, MRUT and MSCI LMM Incentive Programs generally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to continue to offer these financial incentives, including as amended, to LMMs appointed to the programs, because it benefits all market participants trading in the corresponding products during RTH. These incentive programs encourage the LMMs appointed to such programs to satisfy the heightened 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 SPESG, MRUT, MXEA and MXEF options, as applicable, which can lead to increased volume, providing for robust markets. The Exchange ultimately offers the LMM Incentive Programs, 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 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).

⁵ 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed changes to the LMM Incentive Programs are reasonable. The proposed rule change to reduce the monthly rebate amounts offered under each of the RTH SPESG, MRUT and MSCI LMM Incentive Programs is reasonable as the proposed rebates remain within a comparable realm of the rebates currently offered across the Exchange's LMM Incentive Programs applicable to other exclusively-listed products,⁶ and LMMs appointed to the respective programs will continue to receive a monthly rebate, albeit at a lower amount, for meeting or exceeding the applicable program's heightened quoting requirements, of which some standards are being eased in difficulty, as proposed. The Exchange believes it is reasonable to marginally decrease certain quote size requirements (across the three programs' heightened quoting requirements) and marginally increase a quote size requirement (in the MSCI LMM Incentive Program's heightened quoting requirements), as these changes are reasonably designed to slightly ease the difficulty in meeting the heightened quoting requirements offered under these programs (for which an appointed LMM receives the proposed respective rebates), which, in turn, provides increased incentive for LMMs appointed to these programs to provide significant liquidity in SPESG, MRUT and MSCI options during RTH. Further, the Exchange believes that increasing the SPESG Volume Incentive Pool payments is reasonably designed to incentivize LMMs appointed to the RTH SPESG LMM Incentive Program to provide the current levels of ADV in SPESG, thereby providing significant liquidity in SPESG options during RTH, in order to receive the proposed increased payments. The Exchange notes that the MRUT LMM Incentive Program also offers a volume incentive pool structured with comparable payments for

⁶ See Cboe Options Fees Schedule, "NANOS LMM Incentive Program", "GTH1 VIX/VIXW LMM Incentive Program", "GTH2 VIX/VIXW LMM Incentive Program", "GTH1 SPX/SPXW LMM Incentive Program", and "GTH2 SPX/SPXW LMM Incentive Program", all of which range by \$5,000 increments.

corresponding ADV. Finally, the Exchange believes that the proposed performance payment offered under the MSCI LMM Incentive Program is reasonably designed to incentivize LMMs appointed to the program to increase the provision of liquidity in MXEA and MXEF options by encouraging appointed LMMs to compete each month to achieve the highest performance and receive the additional performance payment. Increased liquidity in MSCI options would, in turn, provide greater trading opportunities, added market transparency and enhanced price discovery to the benefit of all market participants in MSCI options.

The Exchange believes that the proposed changes to the LMM Incentive Programs are equitable and not unfairly discriminatory. The Exchange believes that it is equitable and not unfairly discriminatory to amend the month rebates offered under the RTH SPESG, MRUT and MSCI LMM Incentive Programs, amend certain quoting sizes and a quote width across the three programs, to amend the volume incentive pool payments for the RTH SPESG LMM Incentive Program and to adopt a performance payment under the MSCI LMM Incentive Program, because such rebates, quote sizes and width, volume pool program payments and performance payment will equally apply to any and all TPHs with LMM appointments to the RTH SPESG, MRUT and MSCI LMM Incentive Programs, as applicable, that seek to meet the programs' heightened quoting standards in order to receive the rebates (as proposed) offered under each respective program. The Exchange additionally notes that, if an LMM appointed to any of the LMM Incentive Programs does not satisfy the corresponding heightened quoting standard for any given month, then it simply will not receive the rebate offered by the respective 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. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because the proposed changes to existing LMM Incentive Programs will apply to all LMMs appointed to the applicable program classes (*i.e.*, MRUT, MXEF, MXEA and SPESG) in a uniform manner. To the extent these LMMs appointed to an incentive program receive a benefit that other market participants do not, as stated, these LMMs in their role as Mark-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 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. 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 also notes that the incentive programs are designed to attract additional order flow to the Exchange, wherein greater liquidity benefits 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.

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 amendments to the LMM Incentive Programs apply only to products traded exclusively on Cboe Options. 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 16% of the market share.⁷ 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 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.”⁸ 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’”⁹ Accordingly, the Exchange does not

⁷ See Cboe Global Markets U.S. Options Market Volume Summary, Month-to-Date (March 28, 2022), available at https://www.cboe.com/us/options/market_statistics/.

⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

⁹ *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)).

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 Act¹⁰ and paragraph (f) of Rule 19b-4¹¹ 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-2022-017 on the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f).

Paper Comments:

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

All submissions should refer to File Number SR-CBOE-2022-017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-CBOE-2022-017 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).