

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100091; File No. SR-CBOE-2024-021)

May 9, 2024

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 May 1, 2024, 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 the 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, effective May 1, 2024.

New GTH SPX Customer Rebate Program

The Exchange proposes to amend its Fees Schedule to adopt a Global Trading Hours (“GTH”)³ SPX Customer Rebate Program (the “GTH SPX Customer Rebate Program” or the “Program”). Under the Program, the Exchange shall credit each Trading Permit Holder (“TPH”) the per contract amount set forth in the table below resulting from each Customer SPX order transmitted by that TPH which is executed on the Exchange during GTH, provided the TPH meets certain volume thresholds in a month as described below. The volume thresholds are calculated based on the customer average daily volume over the course of the month. Volume will be recorded for, and rebates will be delivered to, the TPH that submits the order to the Exchange. Tier thresholds are defined by two criteria sets: (1) minimum SPX Customer capacity volume during GTH1 (i.e., 7:15 pm CT to 2:00 am CT) and (2) minimum SPX Customer capacity volume during the entirety of GTH. The Exchange proposes to append Footnote 33 to the Program table and amend Footnote 33 to include the Program in the list of programs from which FLEX Micro Options are excluded.

³ Global Trading Hours are from 8:15pm ET (previous day) to 9:15am ET on Monday through Friday. See Rule 5.1(c).

Tier	Rebate per Contract	Required Criteria
1	\$0.00	(1) TPH has SPX Customer capacity volume during GTH1 (7:15PM-2:00AM CST) \leq 50,000 contracts; and (2) TPH has SPX Customer capacity volume during the entirety of GTH \leq 500,000 contracts
2	\$0.02	(1) TPH has SPX Customer capacity volume during GTH1 $>$ 50,000 contracts; and (2) TPH has SPX Customer capacity volume during the entirety of GTH $>$ 500,000 contracts
3	\$0.04	(1) TPH has SPX Customer capacity volume during GTH1 $>$ 200,000 contracts; and (2) TPH has SPX Customer capacity volume during the entirety of GTH $>$ 1,000,000 contracts
4	\$0.06	(1) TPH has SPX Customer capacity volume during GTH1 $>$ 400,000 contracts; and (2) TPH has SPX Customer capacity volume during the entirety of GTH $>$ 1,300,000 contracts

A TPH's tier and associated rebate payment will be determined by the lower tier determined by each criteria set. For example, if, during the month of May, a TPH trades a total of 100,000 SPX customer contracts during GTH1 and 300,000 customer contracts during GTH (i.e., achieves Tier 2 on the GTH1 criteria and Tier 3 on the overall GTH criteria), then the TPH would receive Tier 2 rebates of \$0.04 on all 300,000 SPX Customer contracts executed in the month of May.

The purpose of the Program is to encourage TPHs to direct greater Customer SPX trade volume to the Exchange during GTH. Increased Customer volume will provide for greater liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market

participants. The specific volume thresholds of the Program’s tiers were set based upon business determinations and an analysis of current volume levels. The volume thresholds are intended to incentivize firms that route some Customer orders to the Exchange to increase the number of orders that are sent to the Exchange to achieve the next threshold and to incentivize new participants to send Customer orders as well. Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall. Similarly, the different rebate amounts at the different tier levels were based on an analysis of revenue and volume levels and are intended to provide increasing “rewards” for increasing the volume of trades sent to the Exchange. The specific amounts of the tiers and rates were set in order to encourage suppliers of Customer order flow to reach for higher tiers.

Update to GTH Executing Agent Subsidy Program

Additionally, the Exchange proposes to amend the GTH Executing Agent Subsidy Program, set forth in the Fees Schedule. The GTH Executing Agent Subsidy Program offers a monthly subsidy to TPHs with executing agent operations⁴ during the GTH trading session. Pursuant to the current GTH Executing Agent Subsidy Program, a designated GTH executing agent receives the monthly subsidy amount that corresponds to the number of contracts executed on behalf of customers (including public and broker-dealer customers) during GTH in a calendar month, as shown in the table below. Qualifying customer volume is limited to SPX and VIX options.

GTH Monthly Customer SPX and VIX Options Volume	Subsidy
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⁴ An executing agent operation is one that accepts orders from customers (who may be public or broker-dealer customers) and submits the orders for execution (either directly to the Exchange or through another TPH).

0-19,999 contracts	\$0.00
20,000-39,999 contracts	\$10,000
40,000-99,999 contracts	\$15,000
100,000+ contracts	\$50,000

To become a designated GTH executing agent, a TPH must submit a form to the Exchange no later than 3:00 p.m. on the second to last business day of a calendar month to be designated an GTH executing agent under the program, and thus eligible for the subsidy, beginning the following calendar month. The current criteria states that a TPH must include on or with the form information demonstrating it maintains an GTH executing agent operation: (1) physically staffed throughout each entire GTH trading session and (2) willing to accept and execute orders on behalf of customers, including customers for which the agent does not hold accounts. The designation will be effective the first business day of the following calendar month, subject to the Exchange's confirmation the TPH's GTH executing agent operations satisfies these two conditions and will remain in effect until the Exchange receives an email from the TPH terminating its designation or the Exchange determines the TPH's GTH executing agent operation no longer satisfies these two conditions.

The Exchange proposes to amend the GTH monthly customer volume thresholds and corresponding subsidy amounts, as shown in the table below.

GTH Monthly Customer SPX and VIX Options Volume	Subsidy
0-19,999 contracts	\$0.00
20,000-99,999 contracts	\$15,000
100,000+ contracts	\$50,000

The proposed changes are designed to continue to encourage designated GTH executing agents to increase their order flow executed as agent in SPX and VIX options that trade during

GTH, to meet the volume thresholds, as amended, and receive the corresponding subsidies. The Exchange notes that incentivizing TPHs to conduct executing agent operations willing to accept orders from all customers during GTH is intended to increase customer accessibility to the GTH trading session. The Exchange believes that increased order flow through designated GTH executing agents would allow the Exchange to grow participation during GTH, which may benefit all market participants, as additional liquidity to the Exchange during GTH would create more trading opportunities during GTH, and in turn attract market participants to submit additional order flow during GTH.

The Exchange also proposes to make a clarifying change to the GTH Executing Agent Subsidy Program criteria. As noted above, current criteria require, in relevant part, that a TPH maintains a GTH executing agent operation willing to accept and execute orders on behalf of customers, including customers for which the agent does not hold accounts. The Exchange proposes to delete language referring to customers for which the agent does not hold accounts, as this is not in fact a requirement of the program and may result in potential confusion for TPHs in regards to their responsibilities, both under the program and in general as TPH.

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.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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 the Section 6(b)(5)⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that the proposed rule change to adopt a GTH SPX Customer Rebate Program is reasonably designed to encourage TPHs to direct greater Customer SPX trade volume to the Exchange during GTH. The program intends to attract Customer order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants.

The Exchange believes the proposed volume thresholds and corresponding subsidy amounts provide benefits, similar to other volume incentives offered by the Exchange and other options exchanges, that are reasonably related to the value to an exchange's market quality and associated higher levels of market activity, in this case, increased SPX customer volumes. The proposed change is designed as an incentive to all TPHs to submit additional SPX customer orders

⁷ Id.

⁸ 15 U.S.C. 78f(b)(4).

to the Exchange during GTH. Each will have the opportunity to submit the requisite order flow and will receive the applicable rebate if the volume criteria is met. While the Exchange has no way of predicting with certainty how the proposed tiers will impact TPH activity, the Exchange anticipates that approximately two TPHs may be able to achieve Tier 1 criteria, one TPH may be able to achieve Tier 2 criteria, and one TPH may be able to achieve Tier 3 criteria (with no firms currently projected to achieve Tier 4 criteria). The Exchange also notes that the proposed changes will not adversely impact any TPH's pricing or their ability to qualify for other incentive programs. Rather, should a TPH not meet the criteria for a tier, the TPH will merely not receive the corresponding subsidy.

Further, the Exchange believes the proposed rule change to adopt a GTH SPX Customer Rebate Program is equitable and not unfairly discriminatory, as the program will be open to all TPHs.

Additionally, the Exchange believes that the proposed amendments to the GTH Executing Agent Subsidy Program are reasonable. The GTH Executing Agent Subsidy Program is overall designed to encourage designated GTH executing agents to increase their customer order flow in SPX and VIX options traded during GTH. The Exchange believes the tiers, as amended, remain reasonable because they amend existing opportunities in a manner that incentivizes increased order flow to the GTH trading session via incrementally more challenging criteria in order to receive incrementally increasing subsidy amounts.

Further, the Exchange believes such changes are reasonable, as the volume thresholds, as amended, remain commensurate with the corresponding subsidy amounts. The proposed changes effectively consolidate two of the current thresholds into one, so that designated GTH executing agents that submit 20,000 to 99,999 customer contracts in SPX or VIX options will receive a

subsidy of \$15,000. The amended tiers, as proposed, present the opportunity for designated GTH executing agents submitting 20,000 to 39,999 customer contracts in SPX or VIX options to receive a slightly larger subsidy than that which is currently offered by the program. As noted above, the proposed changes are designed to continue to encourage designated GTH executing agents to increase their order flow executed as agent in SPX and VIX options that trade during GTH, to meet the volume thresholds, as amended, and receive the corresponding subsidies. The Exchange believes that increased order flow would allow the Exchange to grow participation in the GTH trading session to the benefit of all market participants that trade during GTH, by providing greater trading opportunities as a result of increased liquidity, thereby attracting additional order flow from market participants during GTH.

Further, the Exchange believes proposed clarifying amendment to the GTH Executing Agent Subsidy Program criteria is reasonable, given the Exchange wishes to correct potentially misleading language.

The Exchange also believes that the proposed rule changes related to the GTH Executing Agent Subsidy Program are equitable and not unfairly discriminatory. In particular, the Exchange believes that amending a volume threshold and corresponding subsidy for the GTH Executing Agent Subsidy Program is equitable and not unfairly discriminatory because all TPHs that conduct this type of operation during GTH will continue to have the opportunity to become a designated GTH executing agent and thus eligible for the monthly subsidy commensurate with applicable customer volumes. As noted above, the proposed changes reflect the growth of the GTH trading session and are designed to continue to encourage designated GTH executing agents to increase their order flow executed as agent in SPX and VIX symbols that trade during GTH, to meet the volume thresholds, as amended, and receive corresponding subsidies. TPHs that conduct executing

agent operations willing to accept orders from all customers take on additional risks and potential costs (including those related to staffing and clearing) associated with this type of business. Such TPHs also provide benefits to investors during GTH, including increased customer accessibility to the GTH trading session and increased order flow. While the Exchange has no way of predicting with certainty how the changes will impact TPH activity, the Exchange anticipates that approximately three TPHs may be able to achieve the 20,000 to 99,999 contracts volume threshold.

Finally, the Exchange believes the proposed change to the GTH Executing Agent Subsidy Program criteria language is equitable and not unfairly discriminatory, as the change is a technical, clarifying amendment designed to avoid potential confusion, to the benefit of all TPHs.

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 competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed changes apply uniformly to similarly situated TPHs. In regard to the proposed GTH SPX Customer Rebate Program, as stated above, the program is open to all TPHs. The Exchange believes the proposed program will incentivize TPHs to direct additional SPX Customer order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded on the Exchange. Enhanced market quality and increased transaction volume that results from any increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

In regard to the proposed changes to the GTH Executing Agent Subsidy Program, all TPHs that conduct executing agent operations willing to accept orders from all customers will continue to have an opportunity to be eligible for the GTH Executing Agent Subsidy program. Also, such TPHs that conduct this type of operation take on additional risks and potential costs (including those related to staffing and clearing) associated with this type of business, and may provide benefits to investors during GTH, including increased customer accessibility to, and liquidity and trading opportunities during, the GTH trading session. The proposed changes are designed to continue to encourage designated GTH executing agents to increase their order flow executed as agent in SPX and VIX symbols that trade during GTH, to meet the proposed amended volume thresholds and receive the proposed corresponding subsidies. Finally, the proposed amendment to the GTH Executing Agent Subsidy Program criteria is not intended to have any impact on competition, as the change is technical, clarifying amendment designed to avoid potential confusion, that makes no substantive changes.

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 each of the proposed changes applies only to fees and programs applicable to transactions in products exclusively listed on the Exchange.

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 Act⁹ and paragraph (f) of Rule 19b-4¹⁰ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2024-021 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-2024-021. This file number should be included on the subject line if email is used. To help the Commission process and

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).

review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-CBOE-2024-021 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Sherry R. Haywood,
Assistant Secretary.

¹¹ 17 CFR 200.30-3(a)(12).