SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101367; File No. SR-CBOE-2024-044)

October 16, 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 October 1, 2024, Cboe Exchange, Inc. (the "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 its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

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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 October 1, 2024.

XSP Fees

The Exchange first proposes to amend certain fees related to transactions in Mini-SPX Index ("XSP") options. Specifically, the proposed rule changes amends and adopts certain fees for XSP in the "Rate Table for All Products Excluding Underlying Symbol List A", as follows:

- Amends fee code XC, appended to all Customer (capacity "C") orders in XSP that are for less than 10 contracts and provides a rebate of $0.13 per contract, to provide a rebate of $0.30 per contract.
- Amends fee code MY, appended to all Market-Maker (capacity "M") in XSP contra to non-customers that remove liquidity and that are executed electronically and assesses a fee of $0.14 per contract, to assess a fee of $0.30 per contract.

GTH Executing Agent Subsidy Program

Next, the Exchange proposes to amend the Global Trading Hours ("GTH") Executing Agent Subsidy Program, set forth in the Fees Schedule. The GTH Executing Agent Subsidy Program offers a monthly subsidy to Trading Permit Holders ("TPHs") with executing agent operations[3] 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

[3] Under current rules, 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).

corresponds to the number of contracts executed on behalf of customers (including public and broker-dealer customers) during GTH in a calendar month per the GTH Executing Agent Subsidy Program table, 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**
0-19,999 contracts	$0.00
20,000-99,999 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. 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 Executing Agent Subsidy Program to include Professional Customers (i.e., capacity "U") in the program, so that a designated GTH executing agent receives the monthly subsidy amount that corresponds to the number of contracts executed on behalf of customers (including professional, public and broker-dealer customers) during GTH in a calendar month per the GTH Executing Agent Subsidy Program table.

The proposed changes are designed to continue to encourage designated GTH executing agents to increase their order flow executed as agent (on behalf of customers, including professional customers) in SPX and VIX options that trade during GTH, to meet the volume thresholds and receive the corresponding subsidies. The Exchange notes that incentivizing TPHs to conduct executing agent operations willing to accept orders from all customers, including professional 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.

Flex Surcharge Fee

The Exchange also proposes to adopt the FLEX Surcharge fee for XND (Nasdaq 100 Micro Index Options) FLEX Options orders. Currently, the Exchange assesses a FLEX Surcharge Fee of $0.10-per-contract credit for DJX, MRUT, MXEA, MXEF, MXACW, MXUSA, MXWLD, NDX, NDXP and XSP FLEX Options orders (all capacity codes) executed electronically (except for Cboe Compression Service ("CCS") and FLEX Micro transactions). The FLEX Surcharge Fee is only charged up to the first 2,500 contracts per trade ($250 per trade). The Exchange proposes to amend its Fees Schedule, to assess the FLEX Surcharge Fee to XND. The FLEX Surcharge Fee assists the Exchange in recouping the cost of developing and maintaining the FLEX system.

RTH XSP LMM Incentive Program

Finally, the Exchange proposes to amend its Regular Trading Hours ("RTH") XSP Lead Market-Maker ("LMM") Incentive Program (the "Program"). By way of background, the Exchange offers several LMM Incentive Programs which provide a rebate to 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 in each of the LMM Incentive Program products to receive the applicable 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 appointed LMMs to provide liquidity in the applicable class and trading session (i.e., RTH or GTH). 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 Exchange proposes to amend the current Program. Currently, the Program provides that, if an LMM appointed to the Program provides continuous electronic quotes during RTH that meet or exceed the basic quoting standards (below) in at least 95% of the series 93% of the time in a given month, the LMM will receive (i) a payment for that month in the amount of $40,000 (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) and (ii) a rebate of $0.09 per XSP contract that is executed in RTH in Market-Maker capacity and adds liquidity electronically contra to non-customer capacity.

Width					
VIX Value at Prior Close ≤ 30					
Moneyness*	**Expiring Option**	**1 day**	**2 days to 5 days**	**6 days to 14 days**	**15 days to 35 days**
[> 3% ITM)	$0.20	$0.25	$0.25	$0.50	$1.00
[3% ITM to 2% ITM)	$0.10	$0.15	$0.15	$0.25	$0.75
[2% ITM to 0.25% ITM)	$0.04	$0.05	$0.05	$0.06	$0.10
[0.25% ITM to ATM)	$0.02	$0.03	$0.04	$0.05	$0.08
[ATM to 1% OTM)	$0.02	$0.02	$0.02	$0.03	$0.06
[> 1% OTM]	$0.02	$0.02	$0.02	$0.02	$0.04
VIX Value at Prior Close > 30					
[> 3% ITM)	$0.25	$0.30	$0.30	$0.55	$1.05
[3% ITM to 2% ITM)	$0.15	$0.20	$0.20	$0.30	$0.80
[2% ITM to 0.25% ITM)	$0.05	$0.06	$0.06	$0.07	$0.11
[0.25% ITM to ATM)	$0.03	$0.04	$0.05	$0.06	$0.09
[ATM to 1% OTM)	$0.03	$0.03	$0.03	$0.04	$0.07
[> 1% OTM]	$0.03	$0.03	$0.03	$0.03	$0.05

* Moneyness is calculated as 1 – strike/index for calls, strike/index – 1 for puts. Negative numbers are Out of the Money ("OTM") and positive values are In the Money ("ITM"). A Moneyness value of zero for either calls or puts is considered At the Money ("ATM"). For example, if the index is at 400, the 396 call = 1 – 396/400 = 0.01 = 1% ITM, whereas the 396 put = 396/400 – 1 = -0.01 = 1% OTM.

Moneyness	**Size (0 to 35 days to expiry)**
[> 3% ITM)	5
[3% ITM to 2% ITM)	10
[2% ITM to 0.25% ITM)	15
[0.25% ITM to ATM)	20
[ATM to 1% OTM)	20
[>1% OTM]	20

The Exchange proposes to restructure the Program by adopting two sets of quoting standards for XSP options, a set of basic quoting standards and a set of advanced quoting standards. First, the Exchange proposes to adopt the basic quoting standards (below) under the Program.

Width					
VIX Value at Prior Close ≤ 30					
Moneyness	**Expiring Option**	**1 day**	**2 days to 5 days**	**6 days to 14 days**	**15 days to 35 days**
[> 3% ITM)	$0.40	$0.40	$0.40	$0.40	$0.75
[3% ITM to 2% ITM)	$0.30	$0.30	$0.30	$0.30	$0.50
[2% ITM to 0.25% ITM)	$0.12	$0.12	$0.15	$0.20	$0.30
[0.25% ITM to ATM)	$0.08	$0.08	$0.10	$0.12	$0.18
[ATM to 1% OTM)	$0.05	$0.05	$0.06	$0.06	$0.12
[> 1% OTM]	$0.03	$0.04	$0.05	$0.05	$0.08
VIX Value at Prior Close > 30					
[> 3% ITM)	$0.50	$0.50	$0.50	$0.80	$1.00
[3% ITM to 2% ITM)	$0.30	$0.30	$0.30	$0.50	$0.75
[2% ITM to 0.25% ITM)	$0.20	$0.20	$0.20	$0.25	$0.50
[0.25% ITM to ATM)	$0.08	$0.10	$0.12	$0.15	$0.20
[ATM to 1% OTM)	$0.05	$0.06	$0.07	$0.09	$0.12
[> 1% OTM]	$0.04	$0.05	$0.05	$0.06	$0.10

Size					
	Expiring Option	**1 day**	**2 days to 5 days**	**6 days to 14 days**	**15 days to 35 days**
[> 3% ITM)	5	5	5	5	5
[3% ITM to 2% ITM)	5	5	5	10	10
[2% ITM to 0.25% ITM)	10	10	10	15	15
[0.25% ITM to ATM)	20	20	20	20	20
[ATM to 1% OTM)	20	20	20	20	20
[> 1% OTM]	20	20	20	20	20

As proposed, under the Program, if an appointed LMM provides continuous electronic quotes during RTH that meet or exceed the basic quoting standards in at least 90% the series 90% of the time in a given month, the LMM will receive $15,000 (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). In addition, the proposed rule change adopts a performance payment under the Program, which provides that, in addition to the above rebate, the LMM with the highest performance in satisfying the above basic quoting standards in a month will receive a performance payment of $10,000 for that month. In order to be eligible to receive the performance payment in a month, an LMM must meet or exceed the above quoting standards in that month. Highest performance is measured as the cumulative sum of series in which an LMM meets or exceeds the basic quoting requirements by the total series each day (excluding the day in which an LMM missed meeting or exceeding the basic quoting standard in the highest number of series).

The Exchange proposes to eliminate the additional credit of $0.03 per contract applied to all XSP contracts executed in a Market-Maker capacity which add liquidity electronically contra to non-customer capacity, currently offered to an LMM appointed to the Program which provides continuous electronic quotes during RTH that meet or exceed the XSP heightened quoting standards.

The Exchange proposes to amend the Program to adopt advanced quoting standards (provided below). As proposed, if an LMM appointed to the Program provides continuous electronic quotes during RTH that meet or exceed the proposed advanced quoting standards (below) in at least 85% of the series 85% of the time in a given month, the LMM will receive a payment 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).

Width					
VIX Value at Prior Close ≤ 30					
Moneyness	**Expiring Option**	**1 day**	**2 days to 5 days**	**6 days to 14 days**	**15 days to 35 days**
[> 3% ITM)	$0.30	$0.25	$0.30	$0.40	$0.75
[3% ITM to 2% ITM)	$0.12	$0.15	$0.20	$0.25	$0.50
[2% ITM to 0.25% ITM)	$0.10	$0.10	$0.15	$0.16	$0.25
[0.25% ITM to ATM)	$0.06	$0.06	$0.08	$0.10	$0.15
[ATM to 1% OTM)	$0.03	$0.03	$0.05	$0.06	$0.10
[> 1% OTM]	$0.02	$0.03	$0.04	$0.05	$0.06
VIX Value at Prior Close > 30					
[> 3% ITM)	$0.30	$0.40	$0.50	$0.70	$1.00
[3% ITM to 2% ITM)	$0.20	$0.25	$0.25	$0.30	$0.75
[2% ITM to 0.25% ITM)	$0.15	$0.20	$0.20	$0.25	$0.40
[0.25% ITM to ATM)	$0.08	$0.09	$0.12	$0.15	$0.20
[ATM to 1% OTM)	$0.05	$0.06	$0.07	$0.09	$0.10
[> 1% OTM]	$0.03	$0.04	$0.05	$0.06	$0.07

Size					
	Expiring Option	**1 day**	**2 days to 5 days**	**6 days to 14 days**	**15 days to 35 days**
[> 3% ITM)	5	5	5	5	5
[3% ITM to 2% ITM)	5	5	5	10	10
[2% ITM to 0.25% ITM)	10	10	10	15	15
[0.25% ITM to ATM)	20	20	20	20	20
[ATM to 1% OTM)	20	20	20	20	20
[> 1% OTM]	20	20	20	20	20

The Exchange believes the proposed basic and advanced quoting requirements for XSP options under the Program are designed to continue to encourage LMMs appointed to the program to provide significant liquidity in XSP options during RTH, which, in turn, would provide greater trading opportunities, added market transparency and enhanced price discovery for all market participants in XSP. Further, by providing a set of advanced quoting standards that provide for tighter width standards, the proposed rule change offers LMMs appointed to the

Program a more challenging opportunity, thus further incentive, to strive to meet the heightened quoting standards in order to receive the additional rebate.

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

The Exchange believes that the proposed fee changes for certain Customer and Market-Maker orders in XSP are reasonable, equitable and not unfairly discriminatory. The Exchange

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4 15 U.S.C. 78f(b).

5 15 U.S.C. 78f(b)(5).

6 Id.

7 15 U.S.C. 78f(b)(4).

believes that it is equitable and not unfairly discriminatory to provide a rebate of $0.30 per contract for all Customer orders in XSP that are for less than 10 contracts, as such rebate is designed to incentivize Customer volume in XSP on the Exchange. The Exchange believes that incentivizing more Customer orders in XSP will create more trading opportunities, which, in turn attracts Market-Makers. A resulting increase in Market-Maker activity facilitates tighter spreads, which may lead to additional increase of order flow in XSP from other market participants, further contributing to a deeper, more liquid market to the benefit of all market participants by creating a more robust and well-balanced market ecosystem.

Further, the Exchange believes the proposed change to the fee for Market-Maker orders in XSP contra to non-customers that remove liquidity and that are executed electronically is reasonable. The proposed fee, in general, aligns with current fees for other types of orders in XSP, namely Non-Customer, Non-Market Maker XSP orders contra to a customer or contra to a non-customer that add liquidity and are executed electronically (which yield fee code XF). The Exchange believes that the changes are reasonable and that the fee, even as amended, will continue to incentivize TPHs to send additional Market-Maker orders to the Exchange.

The Exchange believes that the proposed fees for certain Customer and Market-Maker orders in XSP are equitable and not unfairly discriminatory because the proposed fees will apply automatically and uniformly to all applicable Customer and Market-Maker orders in XSP which yield fee codes XC and MY, respectively.

Additionally, the Exchange believes that the proposed amendment to the GTH Executing Agent Subsidy Program, to include Professional Customers (i.e., capacity “U”) in the program, so that a designated GTH executing agent may receive specified subsidy amounts that correspond to the number of contracts executed on behalf of customers (including professional, public and broker-dealer customers) during GTH in a calendar month, is 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 that adding professional customer capacity orders to the program will encourage increased order flow, which 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.

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 the proposed changes are 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 to execute relevant orders on behalf of customers, including professional customers, and thus be 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 and receive corresponding subsidies. TPHs that conduct executing agent operations provide benefits to investors during GTH, including increased customer accessibility, including for professional customers, to the GTH trading session and increased order flow.

The Exchange believes assessing a FLEX Surcharge Fee of $0.10 per contract for all XND orders executed electronically on FLEX and capping it at $250 (i.e., first 2,500 contracts per trade) is reasonable because it is the same amount currently charged to other index products for the same transactions.[8] The proposed Surcharge is also equitable and not unfairly discriminatory because the amount will be assessed to all market participants to whom the FLEX Surcharge applies.

The Exchange believes the amended XSP RTH LMM Incentive Program, as proposed, is reasonable, equitable and not unfairly discriminatory. The Exchange believe the series and time requirement for the basic quoting standards (which are less than current Program requirements), as well as the basic quoting standards themselves (which are in general wider in quote size and quote width than current Program standards), are reasonable. As compared to the current Program, such changes are reasonably designed to slightly ease the difficulty in meeting the heightened quoting standards offered under the Program (for which an appointed LMM receives the respective rebates), which, in turn, provides increased incentive for LMMs appointed to these programs to provide significant liquidity in XSP options. Such 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 also believes the proposed rebate offered under the Program to an LMM appointed to the program for meeting the basic quoting standards in a given month ($15,000) remains reasonably designed to incentivize an appointed LMM to meet the applicable quoting standards for XSP options, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all

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8 See Cboe Options Fees Schedule, Rate Table - All Products Excluding Underlying Symbol List A, FLEX Surcharge Fee.

market participants. The Exchange further believes that the proposed rule change is reasonable because it is comparable to and within the range of the rebates offered by other LMM Incentive Programs. For example, the GTH1 and GTH2 XSP LMM Programs each currently offer $15,000 to appointed LMMs for XSP options if the heightened quoting standards are met in a given month.

Further, the Exchange believes the proposed performance payment of $10,000 provided to the LMM with the highest performance in satisfying the relevant heightened quoting standards for the Program is reasonable and equitable as the LMM Incentive Programs for MXEA and MXEF, MXACW, MXUSA, and MXWLD options offers a similar performance payment. All appointed LMMs are eligible for the performance payment, which is designed to incentivize LMMs to provide liquid and active markets in XSP options to encourage product growth.

The Exchange also believes the elimination of the additional per contract credit incentive is reasonable, as the Exchange is not required to maintain the additional per contract incentive and now wishes to eliminate it from the Program.

Additionally, the Exchange believes the proposed advanced quoting standards are reasonable. As noted above, by providing a set of advanced quoting standards that provide for tighter width standards, the proposed rule change offers LMMs appointed to the Program a more challenging opportunity, thus further incentive, to strive to meet the heightened quoting standards in order to receive the additional rebate.

In general, the proposed Program is a reasonable financial incentive program because the proposed heightened quoting standards and rebate amounts for meeting the heightened quoting standards in XSP series are reasonably designed to incentivize LMMs appointed to the Program to meet the proposed heightened quoting standards during RTH for XSP, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants.

The Exchange believes that the proposed heightened quoting standards are reasonable because they are similar to the detail and format of the quoting standards currently in place for LMM Incentive Programs for other proprietary Exchange products that trade during RTH.[9] The Exchange also believes that proposed heightened quoting requirements are reasonably tailored to reflect market characteristics of XSP. For example, the Exchange believes the generally smaller widths appropriately reflect the lower-priced and smaller notional sized XSP product (XSP options are 1/10th the size of SPX options). The Exchange believes continuing to utilize moneyness as a quoting standard is reasonable, given the program objectives to achieve tight liquidity in a market where options premiums change quickly.

Finally, the Exchange believes it is equitable and not unfairly discriminatory to offer the financial incentive to LMMs appointed to the Program because it will benefit all market participants trading in XSP during RTH by encouraging the appointed LMMs to satisfy the basic and advanced quoting standards, which incentivizes continuous increased liquidity and thereby may 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 XSP, which can lead to increased volume, providing for robust markets. The Exchange ultimately proposes to offer the Program to sufficiently incentivize the appointed LMMs to provide key liquidity and active markets in XSP options to encourage liquidity, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to

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9 See Cboe Options Fees Schedule, "RTH SPESG LMM Incentive Program", "MRUT LMM Incentive Program", "MXACW LMM Incentive Program", "MXUSA LMM Incentive Program", "MXWLD Incentive Program", "NANOS LMM Incentive Program", and "MSCI LMM Incentive Program."

the Program may undertake added costs each month to satisfy that heightened quoting standards (e.g., having to purchase additional logical connectivity). The Exchange believes the Program is equitable and not unfairly discriminatory because similar programs currently exist for LMMs appointed to programs in other proprietary products,[10] including for XSP during the GTH sessions, and the Program will equally apply to any TPH that is appointed as an LMM to the Program. Additionally, if an appointed LMM does not satisfy the heightened quoting standard in XSP for any given month, then it simply will not receive the offered payments or rebates 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 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 related to XSP fee codes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will apply automatically and uniformly to all applicable Customer and Market-Maker orders in XSP which yield fee codes XC and MY, respectively.

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 (including professional 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

[10] See Cboe Options Fees Schedule, "MRUT LMM Incentive Program", "MSCI LMM Incentive Program", "MXACW LMM Incentive Program", "MXUSA LMM Incentive Program", "MXWLD Incentive Program", "NANOS LMM Incentive Program", "GTH VIX/VIXW LMM Incentive Program", "GTH1/GTH2 SPX/SPXW LMM Incentive Programs", "GTH1/GTH2 XSP LMM Incentive Programs", and "RTH SPESG LMM Incentive Program."

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 receive specified subsidies.

In regard to the proposed FLEX Surcharge rule changes, the Exchange believes that the proposed rule change will not impose any burden on intramarket competition because the proposed rule changes apply to all market participants that trade XND FLEX Options.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the amendments to RTH XSP LMM Program will apply uniformly to any LMM appointment to the programs. To the extent LMMs appointed to these LMM Incentive 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. An LMM appointed to an incentive program may also 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 proposed changes 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. 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.”[11]

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 fees and programs apply to Exchange proprietary products, which are traded exclusively on the Exchange. 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.

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 17 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.[12] 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

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

12 See Cboe Global Markets U.S. Options Market Volume Summary, Month-to-Date (March 29, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

successful in promoting market competition in its broader forms that are most important to investors and listed companies."[13] 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'….".[14] 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 Act[15] and paragraph (f) of Rule 19b-4[16] 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

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

14 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)).

15 15 U.S.C. 78s(b)(3)(A).

16 17 CFR 240.19b-4(f).

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-2024-044 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-2024-044. This file number should be included on the subject line if email 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 (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-2024-044 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.[17]

J. Matthew DeLesDernier,

Deputy Secretary.

[17] 17 CFR 200.30-3(a)(12).