

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-101634; File No. SR-CBOE-2024-050)

November 15, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 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 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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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 November 1, 2024.

The Exchange first proposes to amend a fee related to transactions in Mini-SPX Index (“XSP”) options, as set forth in the Rate Table for All Products Excluding Underlying Symbol List A. Specifically, the proposed rule change 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 \$0.30 per contract, to assess a fee of \$0.50 per contract.

Next, the Exchange proposes clarifying changes to fees related to certain orders and auction responses executed in S&P 500 Index (“SPX”), SPX Weekly (“SPXW”), S&P 500 ESG Index (“SPESG”) and Cboe Volatility Index (“VIX”) options in the Automated Improvement Mechanism (“AIM”) Auction.

By way of background, AIM includes functionality in which a Trading Permit Holder (“TPH”) (an “Initiating TPH”) may electronically submit for execution an order it represents as agent on behalf of a customer,<sup>3</sup> broker dealer, or any other person or entity (“Agency Order”) against any other order it represents as agent, as well as against principal interest in AIM (an “Initiating Order”), provided it submits the Agency Order for electronic execution into an AIM

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<sup>3</sup> The term “customer” means a Public Customer or a broker-dealer. The term “Public Customer” means a person that is not a broker-dealer. See Rule 1.1.

Auction.<sup>4</sup> The Exchange may designate any class of options traded on Cboe Options as eligible for AIM. The Exchange notes that all Users, other than the Initiating TPH, may submit responses to an Auction (“AIM Responses”). AIM Auctions take into account AIM Responses to the applicable Auction as well as contra interest resting on the Cboe Options Book at the conclusion of the Auction (“unrelated orders”), regardless of whether such unrelated orders were already present on the Book when the Agency Order was received by the Exchange or were received after the Exchange commenced the applicable Auction. If contracts remain from one or more unrelated orders at the time the Auction ends, they are considered for participation in the AIM order allocation process.

Certain AIM-related surcharges under the Rate Table for Underlying Symbol List A apply when the Exchange is operating in a hybrid environment (i.e., the trading floor is operable). Specifically, the SPX AIM Hybrid Surcharge of \$0.50 per contract applies to all Joint Back-Office (capacity “J”), Market-Maker (capacity “M”), Broker-Dealer (capacity “B”), Non-TPH Market-Maker (capacity “N”) and Professional (capacity “U”) (collectively, “Non-Customers”) orders in SPX/SPXW options executed in AIM, while the SPX AIM Hybrid Surcharge of \$0.39 per contract applies to all Clearing TPHs (capacity “F”) and for Non-Clearing TPH Affiliates (capacity “L”) (collectively, “Firms”) orders in SPX/SPXW options executed in AIM. The SPX AIM Hybrid Originator Surcharge of \$0.10 per contract applies to all SPX/SPXW Agency/Primary orders. Footnote 26 is appended to the aforementioned surcharges and provides that the SPX AIM Hybrid Surcharges, including the Originator Surcharge, apply only to SPX/SPXW orders executed in AIM and C-AIM during Regular Trading Hours (“RTH”) when the Exchange is operating in a hybrid environment (i.e., the trading floor is operable).

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<sup>4</sup> See Rule 5.37 (AIM); Rule 5.38 (Complex AIM); and Rule 5.73 (FLEX AIM).

Footnote 26 further provides the SPX AIM Hybrid Surcharge will apply to all SPX/SPXW AIM Agency/Primary, Contra and Response orders; and the SPX AIM Hybrid Originator Surcharge will apply to all SPX/SPXW Agency/Primary orders and such fee will be invoiced to the executing TPH.<sup>5</sup>

In contrast, the Exchange notes that the Rate Table for Underlying Symbol List A includes the following fees, which apply when the Exchange trading floor is inoperable: AIM Response Surcharge Fee (for SPX/SPXW and SPESG) of \$0.05 per contract, AIM Contra Surcharge Fee (for SPX/SPXW and SPESG) of \$0.10 per contract, and AIM Agency/Primary Surcharge Fee (for SPX/SPXW) of \$0.10 per contract and (for VIX) of \$0.04 per contract.<sup>6</sup>

Each of the aforementioned fees has appended to it Footnote 12, which governs pricing changes in the event the Exchange trading floor becomes inoperable. Particularly, in the event the trading floor becomes inoperable, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor facility is inoperable. The Exchange will operate using that configuration only until

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<sup>5</sup> See Securities Exchange Act Release No. 91252 (March 3, 2021), 86 FR 13598 (March 9, 2021) (SR-CBOE-2021-021[sic]), wherein the Exchange adopted these surcharges.

<sup>6</sup> See Securities Exchange Act Release No. 88883 (May 15, 2020), 85 FR 31012 (May 21, 2020) (SR-CBOE-2020-045), wherein the Exchange adopted the AIM Contra Surcharge and the AIM Response Surcharge. See also Securities Exchange Act Release No. 88426 (March 19, 2020), 85 FR 16978 (March 25, 2020) (SR-CBOE-2020-021), wherein the Exchange adopted the AIM Execution Surcharge for SPX/SPXW/VIX AIM Agency/Primary Orders (later re-named the AIM Agency/Primary Surcharge Fee).

the Exchange's trading floor facility becomes operational. Open outcry trading will not be available in the event the trading floor becomes inoperable.

The Exchange proposes to amend the titles of the AIM Response Surcharge Fee, the AIM Contra Surcharge Fee, and the AIM Agency/Primary Surcharge Fee to include "(Trading Floor Inoperable)", to further distinguish between when the various surcharges would be applicable.<sup>7</sup>

The Exchange also proposes to amend Footnote 12, to provide clarity as to when such changes would apply. As noted above, in the event the trading floor becomes inoperable, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor facility is inoperable. To avoid confusion, since the Exchange also operates a screen-based only environment during its Global Trading Hours ("GTH") trading session, the Exchange propose to amended Footnote 12 to specify that the Exchange will apply the pricing changes in the event the Cboe Options trading floor becomes inoperable and the Exchange operates in a screen-based only environment during RTH, for the duration of the time the Exchange operates in a screen-based only environment during RTH (as well as for the Curb session immediately following a RTH trading session in which the Cboe Options trading floor is inoperable and the Exchange operates in a screen-based only environment). The Exchange also propose to add references throughout the footnote to note that such pricing changes apply when the Exchange operates in a screen-based only environment during RTH.

The Exchange also proposes to amend Footnote 26 to specify that the SPX AIM Hybrid Surcharges, including the Originator Surcharge, apply only to SPX/SPXW Orders executed in

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<sup>7</sup> As part of the proposed rule change, the Exchange proposes to move the AIM-related surcharges applicable when the Exchange trading floor is inoperable to be listed below the AIM-related surcharges applicable when the Exchange is operating in its normal hybrid environment.

AIM (and C-AIM) during RTH and Curb when the Exchange is operating in a hybrid environment (i.e., the trading floor is operable).

Finally, the Exchange also proposes to rename certain fees under the Clearing Trading Permit Holder Fee Cap section of the Fees Schedule. Specifically, the Exchange proposes to rename “AIM Facilitation Contra Order” to “AIM Contra Order” and to rename “AIM Solicitation Contra Order” to “SAM Contra Order”, to more accurately reflect terminology used by the Exchange throughout the Fees Schedule and within the Rulebook.

## 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.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> 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)<sup>10</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> Id.

also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>11</sup> 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 change for Market-Maker orders in XSP that are contra to non-customers that remove liquidity and that are executed electronically is reasonable, equitable and not unfairly discriminatory. Specifically, 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 Clearing Trading Permit Holder Proprietary XSP orders contra to non-customers that remove liquidity and are executed electronically (which yield fee code XB). 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 fee change to the fee for Market-Maker orders in XSP contra to non-customers that remove liquidity and that are executed electronically is equitable and not unfairly discriminatory because the proposed fee will apply automatically and uniformly to all applicable Market-Maker orders in XSP which yield fee code MY.

Additionally, the Exchange believes the clarifying changes to the Fees Schedule will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, will protect investors and the public interest. Specifically, by amending the names of fees related to certain orders and auction responses executed in SPX/SPXW, SPESG and VIX via AIM to better describe when such fees are applicable, the

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<sup>11</sup> 15 U.S.C. 78f(b)(4).

proposed change is designed to add clarity within the Fees Schedule. Similarly, by renaming certain fees under the Clearing Trading Permit Holder Fee Cap section of the Fees Schedule to more accurately reflect terminology used by the Exchange throughout the Fees Schedule and within the Rulebook, the proposed change is designed to mitigate any potential confusion resulting from outdated terminology. Overall, the changes are intended to add clarity to the Fees Schedule, thereby mitigating any potential confusing, to the benefit of investors. The Exchange notes that the proposed clarifying changes do not change the fees (or applicability of such fees).

**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 code MY 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 Market-Maker orders in XSP which yield fee code MY. The Exchange does not believe the proposed clarifying rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the changes will not result in any practical changes to the fees, but rather are being added to eliminate potential confusion.

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 rule change related to a XSP fee code applies 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. The



clarifying rule changes are not intended to have any impact on competition, as they make no substantive change to the Fees Schedule and will have no impact on trading 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 Act<sup>12</sup> and paragraph (f) of Rule 19b-4<sup>13</sup> 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](mailto:rule-comments@sec.gov). Please include file number SR-CBOE-2024-050 on the subject line.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 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-2024-050. 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-2024-050 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.<sup>14</sup>

**Stephanie J. Fouse,**

*Assistant Secretary.*

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<sup>14</sup> 17 CFR 200.30-3(a)(12).