

**Item 1. Text of the Proposed Rule Change**

(a) Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to adopt fees for its new offering of market data reports. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**Item 2. Procedures of the Self-Regulatory Organization**

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on January 31, 2025.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Allyson Van Marter, (312) 786-7098, Cboe Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

**Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

The Exchange proposes to amend its fee schedule to adopt fees for Cboe Timestamping Service reports, effective February 3, 2025.<sup>1</sup> The Exchange recently adopted a new data product known as the Cboe Timestamping Service.<sup>2</sup> The Cboe Timestamping Service provides timestamp information for quotes, orders<sup>3</sup> and cancels for

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<sup>1</sup> The Exchange initially submitted the proposed rule change on February 3, 2025 (SR-CBOE-2025-007). On February 13, 2025, the Exchange withdrew that filing and submitted this filing.

<sup>2</sup> See Securities Exchange Act Release No. 102237 (January 17, 2025), 90 FR 8065 (January 23, 2025) (SR-CBOE-2025-003).

<sup>3</sup> Orders shall include both complex and simple orders.

market participants. More specifically, the Cboe Timestamping Service reports provide various timestamps relating to the message lifecycle throughout the exchange system. The first report – the Missed Liquidity Report – covers order and quote messages of the Trading Permit Holder (“TPH”) only and the second report – Cancels Report – covers cancel messages of the TPH only. The reports are optional products that are available to all TPHs and TPHs may opt to choose both reports, one report, or neither report.

The Cancels Report provides response time details for orders and quotes that rest on the book where the TPH attempted to cancel that resting order or quote or any other resting order or quote but was unable to do so as the resting order or quote was executed before the system processed the cancel message. The Cancels Report assists the TPH in determining by how much time that order or quote missed being canceled instead of executing.

The Missed Liquidity Report provides time details for executions of orders and quotes that rest on the book where the TPH attempted to execute against that resting order or quote within an Exchange-determined amount of time (not to exceed 1 millisecond) after receipt of the first attempt to execute against the resting order or quote and within an Exchange-determined amount of time (not to exceed 100 microseconds) before receipt of the first attempt to execute against the resting order or quote.

Both the Missed Liquidity Report and Cancels Report will include the following data elements for orders and quotes<sup>4</sup> and cancel messages,<sup>5</sup> respectively: (1) Message Type;<sup>6</sup> (2) Date; (3) Recipient Member Firm ID; (4) Session Sub ID;<sup>7</sup> (5) Clearing Identifier;<sup>8</sup> (6) Client Identifier;<sup>9</sup> (7) Trade Condition;<sup>10</sup> (8) Auction ID,<sup>11</sup> (9) Symbol; (10) Cboe Order ID;<sup>12</sup> (11) Execution ID;<sup>13</sup> (12) Exchange System Timestamps for orders, quotes, and cancels;<sup>14</sup> (13)

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<sup>4</sup> The Missed Liquidity Report will only include trade events which are triggered by an order or quote that removed liquidity on entry and will exclude trade events resulting from: elected stop orders, orders routed and executed at away venues, and peg order movements, and auctions (except step up), floor trades, customer-to-customer automated improvement mechanism (immediate cross), qualified contingent cross order trades, and compression trades. . Further, in the event of a quote packet, only the first quote within a packet would be included as a potential trade event.

<sup>5</sup> Includes individual order cancellations, mass cancels, purge orders, and quote updates (when quantity and price fields are both zero) messages that are sent via Financial Information Exchange (“FIX”) protocol or Binary Order Entry (“BOE”) protocol by a subscriber.

<sup>6</sup> The Missed Liquidity Report will indicate if the message is a firm order record, firm modify record, firm quote record, or trade record with aggressor information. The Cancels Report will indicate if the message is firm cancel record, firm mass cancel or purge record, firm cancel rejected record, firm quote update cancel record, or trade record with aggressor information.

<sup>7</sup> Session Sub ID is the ID of the originating logical port.

<sup>8</sup> EFID identified on the message.

<sup>9</sup> Unique CIOrdID (for orders), QuoteUpdateID (for quotes) or MassCancelID (for mass cancels or purges) assigned by the client.

<sup>10</sup> The Trade Condition will indicate if it is an electronic trade, or complex to complex electronic trade, or SUM Auction.

<sup>11</sup> This field will include the auction ID for a SUM auction; field will not be populated for any other order or trade type.

<sup>12</sup> Assigned to the order by Cboe and will be blank for trade records.

<sup>13</sup> The Execution ID is a unique reference number assigned by the Exchange for each trade.

<sup>14</sup> Includes Network Discovery Time (which is a network hardware switch timestamp taken at the network capture point); Order Handler NIC Timestamp (which is a hardware timestamp that represents when a BOE order handler server NIC observed the message and may not be available for certain reject cases); Order Handler Received Timestamp (which is software timestamp that represents when the FIX or BOE order handler has begun processing the order after the socket read and may not be available for certain reject cases); Order Handler Send Timestamp (which represents when the FIX or BOE order handler has finished processing the order and begun sending to the matching engine and may not be available for certain reject cases); Matching Engine NIC Timestamp (which is a hardware timestamp that represents when the target matching engine server NIC observed the message); and Matching Engine Transaction Timestamp (which is a software timestamp that represents when the matching engine has started processing an event).

Matching Unit number;<sup>15</sup> (14) Queued;<sup>16</sup> (15) Port Type;<sup>17</sup> and (16) Aggressor Order Type.<sup>18</sup>

No specific information about resting orders on the Exchange book will be provided.

These reports are in response to requests from TPHs for additional data concerning the timeliness of their incoming orders, cancel messages and executions against resting orders.<sup>19</sup> The Exchange believes these reports will increase transparency by providing TPHs with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates and improve order cancel success.

The Exchange notes that the data included in the reports are based only on the data of the market participant that opts to subscribe to the reports (“Recipient TPH”) and do not include information related to any TPH other than the Recipient TPH. Additionally, neither report includes real-time market data. Rather, the reports contain historical data from the prior trading day and are available after the end of the trading day, generally on a T+1 basis.

The Exchange now proposes to assess the following monthly fees for TPHs that wish to purchase the Cancels Report and/or the Missed Liquidity Report. The Exchange proposes a monthly flat fee of \$1,500 for the Cancels Report for a subscribing TPH. The

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<sup>15</sup> Represents the matching unit number.

<sup>16</sup> Flag to indicate whether a message was delayed due to message in flight limits (i.e., a limit on the total number of messages in flight between an order handler and a matching engine); this will be blank for trade records.

<sup>17</sup> Refers to the port type used by the session to send the applicable message (BOE2 Order, BOE3 Convenience, FIX, or BOE2 Quote for the Missed Liquidity Report and BOE2 Order, BOE3 Convenience, FIX, BOE2 Purge, or FIX Purge for the Cancels Report).

<sup>18</sup> Indicates whether the order type of the response order that executed against the resting order was a new order, modify order, or quote update message.

<sup>19</sup> The Exchange’s affiliated equities exchanges have previously introduced these reports and have since adopted fees. See e.g., Securities Exchange Act Release No. 100802 (August 28, 2024), 89 FR 68952 (August 22, 2024) (SR-CboeEDGX-2024-053) and see also Securities Exchange Act Release No. 101583 (November 12, 2024), 89 FR 90800 (November 18, 2024) (SR-CboeEDGX-2024-075).

Exchange also proposes a monthly flat fee of \$3,500 for the Missed Liquidity Report for a subscribing TPH. For a mid-month subscription, the monthly fee(s) shall be prorated based on the initial date of the subscription.<sup>20</sup>

(b) 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>21</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>22</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>23</sup> 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,<sup>24</sup> which requires that Exchange

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<sup>20</sup> The Exchange proposes to make clear in its fee schedule that new subscribers will be charged a prorated fee for a mid-month subscription based on the initial date of the subscription.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> Id.

<sup>24</sup> 15 U.S.C 78f(b)(4).

rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed reports are the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition: “[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.”<sup>25</sup>

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.<sup>26</sup> The Cboe Timestamping Service (i.e., the Missed Liquidity and Cancels Reports) provides investors with new options for receiving market

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<sup>25</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>26</sup> See H.R. Rep. No. 94-229, 94th Cong., 1st Sess. (1975), at 92 (“It is the intent of the [House and Senate] conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.”).

data, which was a primary goal of the market data amendments adopted by Regulation NMS.<sup>27</sup>

The reports are designed for TPHs that are interested in gaining additional insight into their respective (1) orders and quotes that failed to execute against an order or quote resting on the Exchange order book and/or (2) cancel messages that failed to cancel resting orders or quotes. The Exchange believes that providing this optional data to interested TPHs for a fee is consistent with facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest because it provides TPHs with an opportunity to receive additional information and insight into their trading activity on the Exchange.

The Exchange believes the fee proposals for both the Missed Liquidity Report and Cancels Report are reasonable as the Exchange is offering any TPH access to subscribe to one or both report(s) in the TPH's sole discretion based on their unique business needs. The reports are optional for TPH to subscribe to if they believe it to be helpful and are not required for TPHs to purchase in order to access the Exchange. Additionally, TPHs may cancel their usage of this report at any time.

The Exchange believes that the fee structure for the Missed Liquidity Report is reasonable as it is set at a rate comparable to or lower than other exchanges. The Exchange believes that that a flat fee for the Missed Liquidity Report is appropriate here as, there is generally more data within the options report than within the equities reports, making it more valuable to TPHs who choose to purchase this report. Further, this monthly flat-fee

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<sup>27</sup> See Regulation NMS Adopting Release, *supra*, at 37503.

is similar to the fee of the previously offered Missed Opportunity – Latency report as part of the NASDAQ Trader Insights offering.<sup>28</sup> While, the NASDAQ Missed Opportunity – Latency report did have a tiered structure based on the number of ports, the fee for over 25 ports was a monthly fee of \$3500- the same as the proposed monthly fee for the Missed Liquidity Report.<sup>29</sup>

The Exchange believes its proposed fee for the Cancels Report is reasonable as it's a modest, flat fee of \$1,500/month. As the Exchange offers mass cancels through Purge Ports in addition to standard cancels through a variety of port types as opposed to just the Ports, the Exchange found a modest, flat fee to be more appropriate for the Cancels Report.

The proposed fees are also reasonable as they are lower than the fees assessed for similar reports offered by other exchanges. For example, the MIAX Emerald Liquidity Taker Event Report is substantially similar to the Missed Liquidity Report and Cancels Report<sup>30</sup> and has a monthly fee of \$4,000 or an annual fee of \$24,000 for simple orders, a monthly fee of \$2,000 or an annual fee of \$12,000 for resting simple orders, and a monthly fee of \$4,000 or an annual fee of \$24,000 for complex orders.<sup>31</sup> A TPH is able to receive

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<sup>28</sup> See Securities Exchange Act Release No. 78886 (September 20, 2016), 81 FR 66113 (September 26, 2016) (SR-NASDAQ-2016-101) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Add NASDAQ Rule 7046 (Nasdaq Trading Insights)).

<sup>29</sup> See Securities Exchange Act Release No. 79035 (October 11, 2016), 81 FR 70207 (October 4, 2016) (SR-NASDAQ-2016-124).

<sup>30</sup> See e.g., MIAX Emerald Rule 531. See also Securities Exchange Act Release No. 91356 (March 18, 2021), 86 FR 15759 (March 24, 2021) (SR-EMERALD-2021-09). Although not clearly defined, the Exchange believes that MIAX Emerald's Liquidity Taker Event Report also provides information relating to cancel messages. Particularly, MIAX Emerald Liquidity Taker Event Report provides, among other things, data relating to the "type of each response submitted by the Recipient Member." See MIAX Emerald Rule 5.31(a)(iii)(C). MIAX Emerald's technical specifications outline the various types of available liquidity messages including, Simple Mass Quote Cancel Request and Mass Liquidity Cancel Request See MIAX Express Interface for Quoting and Trading Options, MEI Interface Specification, Section 4.1 (Liquidity Messages), available at: [MIAX\\_Express\\_Interface\\_MEI\\_v2.2a.pdf \(miaxglobal.com\)](https://www.miaxglobal.com/MIAX_Express_Interface_MEI_v2.2a.pdf).

<sup>31</sup> See MIAX Emerald Fee Schedule, Section 7, Reports.

both the Cancels Report and the Missed Liquidity Report that includes simple orders, resting simple orders and complex orders for a monthly fee of \$5,000 a month- making the Cboe Timestamping Reports less than the similar MIAX Emerald reports. With the Exchange's approach of bifurcating the orders and cancels into two separate and distinct offerings (Missed Liquidity Report and Cancels Report) it allows TPHs to further curb costs if they choose to subscribe to one or both of these reports. As such, the Exchange believes that the proposed fees for the both the Missed Liquidity Report and Cancels Report are fair and reasonable as they are set at a level either similar to or lower than other exchanges that offer similar reports.

The proposal would also not permit unfair discrimination as both the Cancels Report and Missed Liquidity Report will be available to all TPHs, who may opt to subscribe to one, both, or neither, and will help to protect a free and open market by continuing to provide additional non-core data (offered on an optional basis for a fee) to the marketplace and by providing investors with greater choices.<sup>32</sup> As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's reports and instead purchase another exchange's similar data product(s), which may offer similar data points, albeit based on that other market's trading activity.

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<sup>32</sup> See Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data). See also the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010) ("NetCoalition I") (upholding the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data).

**Item 4. 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 reports will contribute to robust competition among national securities exchanges. The Missed Liquidity Report and Cancels Report further enhances competition between exchanges by allowing the Exchange to expand its product offerings to include reports similar to reports that are currently offered by other exchanges.<sup>33</sup>

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable reports with lower prices to better compete with the Exchange's offerings. The Exchange operates in a highly competitive environment, and its ability to price the reports is constrained by competition among exchanges who choose to adopt similar products. The Exchange must consider this in its pricing discipline in order to compete for subscribers of the Exchange's market data via the reports. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's reports, which as discussed, TPHs are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

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<sup>33</sup> See e.g., MIAX Emerald Rule 531.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees apply uniformly to any purchaser in that the Exchange does not differentiate between the different TPHs that may purchase the reports. The proposed fees are set at a modest level that would allow any interested TPH to purchase such data based on their business needs.

**Item 5. 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.

**Item 6. Extension of Time Period for Commission Action**

Not applicable.

**Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act<sup>34</sup> and Rule 19b-4(f)(2)<sup>35</sup> thereunder.

(b) The Exchange designates that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, which renders the proposed rule change effective upon filing with the Securities and Exchange Commission (the “Commission”). At any time within 60 days of the filing of this 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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<sup>34</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>35</sup> 17 CFR 240.19b-4(f)(2).

Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

(c) Not applicable.

(d) Not applicable.

**Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**Item 11. Exhibits**

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. Proposed rule text.