

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91259; File No. SR-CBOE-2021-014)

March 4, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating 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 February 25, 2021, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

on the proposed rule change. The text of these statements may be examined at the places specified in 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 COVID-19 Test Fee which it recently adopted in connection with the COVID-19 pandemic. By way of background, on March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of COVID-19³ and was operating in an all-electronic configuration until June 15, 2020. On June 15, 2020, the Exchange reopened its trading floor, but with a modified configuration of trading crowds in order to implement social distancing and other measures consistent with local and state health and safety guidelines to help protect the safety and welfare of individuals accessing the trading floor. In order to further protect the safety and welfare of individuals accessing the trading floor during the COVID-19 pandemic, the Exchange determined to implement on-site COVID-19 testing for all trading floor personnel, beginning November 16, 2020. The Exchange has contracted with an independent health care provider who conducts the tests, which the Exchange currently conducts twice each week. The Exchange currently assesses a fee of \$150 per test, per Trading Permit Holder (“TPH”) or associated person of a TPH⁴ that is tested, which is the same amount the

³ On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic and to slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses.

⁴ For example, a TPH may have personnel other than Nominees on the floor that need to access the trading floor. Such persons will also be subject to testing

Exchange is charged by the independent health care provider conducting the tests (i.e., the Exchange passes through its costs). The COVID-19 Test Fee allows the Exchange to offset the costs incurred with on-site testing.

The Exchange wishes to amend the language in the Fees Schedule to provide generally that the Exchange will pass through the cost the Exchange is charged for each test, instead of specifying the exact amount (currently \$150) in the Fees Schedule. In adopting the COVID-19 Test Fee, the Exchange represented that the proposed fee is a pass-through of the costs to the Exchange and that the Exchange will not generate any revenue in excess of those costs.⁵ Although the Exchange is currently still subject to the \$150 rate (which it will continue to pass through), the proposed change provides flexibility should the rate change in the future. For example, if the independent health care provider lowers the rate they charge the Exchange for each test (e.g., lowers from \$150 to \$100), the Exchange can charge \$100 per test, per TPH and associated person of a TPH, without having to submit an additional rule filing. The Exchange represents that it will continue to ensure it does not generate any revenue in excess of its costs associated with the tests. The Exchange also does not anticipate the cost exceeding the current rate of \$150.

The Exchange next proposes to provide that in certain limited circumstances, the Exchange will waive the costs of the test in its entirety, regardless of the cost to the Exchange. Particularly, the Exchange proposes to provide that it will not assess any fees, regardless of the cost to the Exchange, when test results are not received from the

requirements and will be assessed the proposed fee.

⁵ See Securities Exchange Release No. 90504 (November 24, 2020) 85 FR 77295 (December 1, 2020) (SR-CBOE-2020-111).

independent health care provider that conducts the tests in a timely manner. The Exchange notes the testing process is rolling and intended to capture any potential positive COVID cases. Accordingly, the Exchange does not believe it's appropriate or equitable to assess the fee if results are delivered past the time such results can no longer be utilized by the Exchange for its intended purpose.

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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(4).

The Exchange believes the proposed change to the COVID-19 Test Fee is reasonable as the Exchange will continue to pass through the costs that the Exchange incurs per test. Indeed, the proposed change to replace the reference to the specific amount currently being passed through with general language providing the COVID-19 Test Fee is a pass-through of the Exchange's costs, merely provides the Exchange more flexibility to adapt to changing rates and avoids the administrative burden of submitting an additional rule filing each time the rate changes. As noted above, the Exchange does not currently anticipate that the COVID-19 Test Fee would increase above the current rate of \$150 per test, per TPH/associated person of a TPH. The fee the Exchange ultimately assesses to TPHs and associated persons of a TPH will always be the same amount that is assessed to the Exchange by the independent health care provider administering the tests. Also as noted above, the revenue generated from the proposed fee will continue to not be more than the cost to the Exchange for administering the tests. The Exchange further notes that to date, it has absorbed all other costs incurred in connection with the safety and health protocols it has taken to ensure the safety and welfare of individuals access the trading floor, including daily deep-cleaning of its facilities. The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies uniformly to any TPH or associated person of a TPH that is tested and accesses the trading floor.

The Exchange believes the proposal to waive the fee in instances where the results of a test are not received in a timely manner by the Exchange from the independent health care provider is reasonable because TPHs and associated persons of TPHs will not be subject to a fee in such cases. The Exchange recognizes there may be unforeseen circumstances which may cause a delay of test results to be received (e.g.,

inclement weather). In such cases, the Exchange does not believe it's equitable or appropriate to continue to assess the COVID-19 Test Fee for impacted tests as the Exchange would not be able to utilize the results as intended. Lastly, the Exchange believes the proposed change to waive the fee when test results are delayed is equitable and not unfairly discriminatory because the waiver will be applied to any TPH or associated person of a TPH that is impacted by such delay.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes the proposed change is not intended to address any competitive issue. Rather, the proposed changes relate to a pass-through fee that allows the Exchange to continue to recoup costs associated with COVID-19 testing in order to help protect the safety and welfare of individuals access the trading floor. 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 proposed changes apply equally to all similarly situated market participants. 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 changes only affect trading on the Exchange in limited circumstances.

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2021-014 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.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2021-014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number

SR-CBOE-2021-014 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).