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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88638; File No. SR-CBOE-2020-032]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend its Fees Schedule

April 15, 2020.

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 April 1, 2020, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make various amendments to its Fees Schedule, including amending Footnote 12 of the Fees Schedule, effective April 1, 2020. By way of background, Footnote 12 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 would operate using that configuration only until the Exchange's trading floor facility became operational. Open outcry trading would not be available in the event the trading floor becomes inoperable. The exchange initially adopted Footnote 12 in anticipation of the temporary closing of the trading floor in the middle of March 2020 to help prevent the spread of the novel coronavirus. As of March 16, 2020, the Exchange suspended open outcry trading and is currently operating in an all-electronic configuration. In light of the extended closure of the trading floor, the Exchange proposes to update a number of its previous fee changes and adopt new pricing changes that the Exchange believes is appropriate when the trading floor is inoperable for an extended period of time.

Footnote 12 of the Fees Schedule currently provides that in the event the trading floor becomes inoperable, holders of a Market-Maker Floor Permit will be entitled to act as an electronic Market-Maker and holders of a Floor Broker Permit will be entitled to access the Exchange electronically to submit orders to the Exchange, at no further cost. Generally, in order to act as a Market-Maker electronically a Trading Permit Holder (“TPH”) must purchase a Market-Maker Electronic Access Permit (“MM EAP”). In order to access the Exchange electronically and submit orders to the Exchange, a TPH must purchase an “Electronic Access Permit” (“EAP”). Conversely, TPHs that wish to act as a Market-Maker on the floor have to purchase a Market-Maker Permit and TPHs that wish to act as a Floor Broker on the floor of the Exchange have to purchase a Floor Broker Permit. Effective March 16, 2020, the Exchange proposed to provide that holders of a Market-Maker Floor Permit and Floor Broker Permit were entitled to operate electronically in their registered capacity at no additional cost (i.e., not charge for an additional Market-Maker Electronic Access Permit or Electronic Access Permit). This proposal was adopted in order to encourage floor-based market participants to continue to participate on the Exchange electronically if the trading floor becomes inoperable for the remainder of the month.³ The Exchange now proposes to provide that any floor Market-Maker or Floor Broker that did not also already hold a MM EAP or EAP, respectively, will be assessed the monthly fee for one MM EAP or EAP, respectively, should such participant wish to continue to participate electronically on the Exchange while the trading floor is inoperable. The Exchange also proposes to provide that in the event that the trading floor reopens mid-month, that floor

³ See Securities and Exchange Act Release No. 88426 (March 19, 2020), 85 FR 16978 (March 25, 2020) (SR-CBOE-2020-021).

Trading Permit fees would be pro-rated based on the remaining trading days in that calendar month.

The Exchange next proposes to eliminate an exception relating to the Market-Maker EAP Appointments Sliding Scale. Currently, Footnote 12 provides that for purposes of the Market-Maker EAP Appointments Sliding Scale, the total quantity will be determined by the highest quantity used at any point during the month excluding additional quantity added during the time the Exchange operates in a screen-based only environment. By way of background, Electronic Market-Makers must select appointments and are charged for one or more “Appointment Units” (which are scaled from 1 “unit” to more than 5 “units”), depending on which classes they elect appointments in. Appointment weights for each appointed class are set forth in Cboe Options Rule 5.50(g) and are summed for each Market-Maker in order to determine the total Appointment Units, to which fees will be assessed. To determine final fees, historically the total quantity was determined by the highest quantity used at any point during the month. In anticipation of the trading floor closing mid-month, the Exchange amended its fees schedule to exclude from the total Appointment Units any additional quantity added during the time the Exchange operates in a screen-based only environment, in order to encourage continued participation on the Exchange by Market-Makers for the remainder of the month. The Exchange wishes to eliminate this exclusion in light of the continued trading floor closure, as Market-Makers would otherwise be able to add appointments unrelated to the floor closure throughout the month at no cost.

The Exchange next proposes to waive the following Facility Fees for as long as the trading floor is inoperable as such services and products cannot be utilized while the trading floor is closed:

Description	Fee
Standard Booth Rental Fees	\$195/month (Perimeter); \$550/month (OEX, Dow Jones/MNX/VIX)
Non Standard Booth Rental Fees	\$1,250/month; \$1.70 per sq ft./month
Access Badges	\$130/month (Floor Manager); \$70/month (Clerks)
Printer Maintenance	\$75/month
Wireless Phone Rental	\$110/month
ExchangeFone Maintenance	\$57/month
Single Line Maintenance	\$11.50/month
Lines- Intra Floor	\$57.75/per month
Lines – Voice Circuits	\$16/month
Data Circuits (DC) at Local Carrier (entrance)	\$16/month
DC @ In-House Frame- Lines Between Comms Center and Trading Floor	\$12.75/month
DC @ In-House Frame – Lines between Local Carrier and Comms Center	\$12.75/month
DC @ In-House Frame – Lines Direct from Local Carrier to Trading Floor	\$12.75/month
Arbitrage Phone Positions	\$550/month
PAR Workstation	\$125/month
Satellite TV	\$50/month
Cboe Options Trading Floor Terminal	\$250/month
Thomas/Refinitive/Other (Basic Service)	\$425/month

Should the trading floor re-open mid-month, the Exchange shall assess the fees listed above on a pro-rated basis for the remainder of the month.

The Exchange next proposes to amend a current waiver of Routing Fees. Currently, the Exchange assesses certain fees in connection with orders routed to other exchanges. The Fees Schedule provides however, that it will not pass through or otherwise charge customer orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from the trading floor through an Exchange- sponsored terminal (e.g. a PULSe Workstation).⁴ The Exchange proposes to eliminate the requirement that a customer order be transmitted to the

⁴ See Cboe Options Fees Schedule, Routing Fees.

Exchange from the trading floor in the event the trading floor is inoperable. More specifically, the Exchange proposes to provide that it will not pass through or otherwise charge customer orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from a registered Floor Broker through an Exchange-sponsored terminal (e.g. a PULSe Workstation). The Exchange notes that the primary objective of routing fees are to recoup some of the costs associated with large electronic orders that are initially transmitted to the Exchange by parties who, in many instances, could be seeking to avoid being assessed another market's transaction fees. The Exchange adopted the current waiver because orders that are initially transmitted from the trading floor are not attempting to avoid fees since they incur brokerage commission charges in connection with manual handling.⁵ Rather, orders that are generally transmitted from the floor are large, complex orders that are primarily executed on the Exchange, which only are transmitted to away markets if, during their execution on the Exchange, it is necessary to sweep some away markets. As such, the Exchange believed it was appropriate to waive linkage fees for these orders. The Exchange believes the waiver should apply to the same type of orders even when the Exchange operates in a screen-based only environment. Particularly, the Exchange notes that customer orders may still incur brokerage commission charges when the operates in a screen-based only environment in connection with handling by registered Floor Brokers (who may participate electronically when the trading floor is inoperable, as discussed above). As such, the Exchange believes it's appropriate to continue to apply the waiver to such orders that are still handled by Floor Brokers, albeit in a screen-based only environment instead of the trading floor, and still otherwise incur brokerage commission charges.

⁵ See Securities and Exchange Act Release No. 87799 (December 18, 2019), 84 FR 71021 (December 26, 2019) (SR-CBOE-2019-124).

Lastly, the Exchange proposes to eliminate language in the notes section of the Logical Connectivity Fees Table. Currently, fees for one FIX Logical Port used to access PULSe and one FIX Logical Port connection used to access Cboe Silexx (for FLEX trading purposes) will be waived per TPH. The Exchange notes that when it adopted this fee waiver, Cboe Silexx only supported direct access to the Exchange for trading of FLEX options. The Exchange anticipates expanding the current Cboe Silexx platform to also support the trading of non-FLEX options in the near future. As such, the Exchange proposes to eliminate “(for FLEX trading purposes)” such that the waiver may apply to the use of Silexx for trading of FLEX and non-FLEX options.

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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(4).

equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change to allow holders of Floor Trading Permits to operate in their registered capacity electronically at the cost of one MM EAP or EAP, respectively, is reasonable as such market participants would be paying the same amount as any other market participant that holds a MM EAP or EAP, respectively. The Exchange notes floor participants would also pay less than the amount otherwise charged for floor Trading Permits. The Exchange notes that it wishes to encourage floor-based market participants to continue to participate on the Exchange electronically when the Exchange must operate in a screen-based only environment, but also notes it does not believe it's appropriate to allow such TPHs to participate on the Exchange indefinitely at no cost, while other participants are still subject to Trading Permit fees. The Exchange believes the proposed rule change is equitable and not unfairly discriminatory as all such floor participants will be treated equally. Indeed, all similarly situated market participants will be treated equally as all such market participants will be subject to the same electronic Trading Permit fees.

The Exchange believes the proposal to eliminate the exclusion of Appointment Units added during a time when the Exchange operates in a screen-based only environment toward the total quantity of Appointment Units for purposes of calculating the Market-Maker EAP Appointments Sliding Scale is reasonable, as the Exchange now expects the trading floor to be inoperable for an extended period of time. Particularly, as noted above, the Exchange adopted the current exclusion in anticipation of closing the trading floor mid-month (in March 2020) in order to encourage Market-Makers to continue to quote for the remainder of the month in classes electronically that they quoted on the trading floor. The Exchange notes however, that if the

trading floor remains closed for an extended period of time, the current exclusion would “freeze” each Market-Makers Appointment Unit weight to the highest quantity maintained between March 1 – March 13, 2020 (the last day the trading floor was open). For example, absent the proposed change, if the trading floor remains closed for the entire calendar months of April and May, any Market-Maker, including Market-Makers that historically only participated electronically, would be able to continuously add new appointments at no further cost, even if such appointment was unrelated to the trading floor being unavailable. The Exchange also notes that it is not required to maintain the current exclusion in the Fees Schedule. The proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated market participants, as it will apply to all Market-Makers.

The Exchange believes the proposal to waive the identified facility fees is reasonable as market participants won’t be subject to such fees. The listed facility fees each apply to a product or service that may only be utilized when the trading floor is open and operable. The Exchange believes it’s therefore appropriate to waive such fees when the Exchange operates in a screen-based only environment. The Exchange also believes its appropriate to pro-rate such fees if the trading floor reopens mid-month as market participants will have the benefit of using such services/products for the remainder of the month. The Exchange believes the proposed rule change is equitable and not unfairly discriminatory as it applies equally to all market participants.

The Exchange next believes it’s reasonable and appropriate to waive certain routing fees for customer orders that were transmitted by a registered Floor Broker through an Exchange sponsored terminal (currently only PULSe workstation) when the trading floor is inoperable as customers would not be subject to these fees. As noted above, the Exchange adopted the current

waiver because orders that are initially transmitted from the trading floor are not attempting to avoid fees since they incur brokerage commission charges in connection with manual handling.⁹ Rather, orders that are generally transmitted from the floor are large, complex orders that are primarily executed on the Exchange, which only are transmitted to away markets if, during their execution on the Exchange, it is necessary to sweep some away markets. As such, the Exchange believed it was appropriate to waive linkage fees for these orders. The Exchange believes it's reasonable and appropriate that the waiver should apply to the same type of orders even when the Exchange operates in a screen-based only environment. As discussed, customer orders may still incur brokerage commission charges when the Exchange operates in a screen-based only environment in connection with handling by registered Floor Brokers (who may participate electronically when the trading floor is inoperable). As such, the Exchange believes it's appropriate to modify the waiver to eliminate the requirement that such order be transmitted from the trading floor and instead provide that it be transmitted by a registered Floor Broker, as such order is still incurring a brokerage commission charge and otherwise being handled by a Floor Broker (albeit in an electronic environment instead of on the trading floor). The proposed waiver is equitable and not unfairly discriminatory as it would apply to all similarly situated market participants.

Lastly, the Exchange believes its proposal to modify the notes section of the Logical Connectivity Fees Table in order to provide that the current fee waiver for one FIX Logical Port may apply to Cboe Silexx for both FLEX and non-FLEX trading purposes is reasonable as such users of Cboe Silexx that trade non-FLEX options will not be subject to the FIX Logical Port fee. As discussed, when the Exchange adopted the current logical connectivity fees, Cboe Silexx only

⁹ See Securities and Exchange Act Release No. 87799 (December 18, 2019), 84 FR 71021 (December 26, 2019) (SR-CBOE-2019-124).

supported direct access for trading of FLEX options only. As the Exchange proposes to expand the Cboe Silexx platform shortly to support the trading of non-FLEX options, the Exchange believes it's appropriate to eliminate the "for FLEX trading purposes" language and apply the fee waiver to Cboe Silexx generally. The proposed waiver is equitable and not unfairly discriminatory as it would apply to all similarly situated market participants.

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 changes relating to Footnote 12 are not intended to address any competitive issue, but rather to address fee changes it believes are reasonable because the trading floor remains inoperable, thereby only permitting electronic participation on the Exchange. 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. Additionally, the proposed change to eliminate the restriction that the FIX Logical Port fee waivers applies to Cboe Silexx for FLEX trading only is also not intended to address any competitive issue, but rather extend the current waiver to the new version of Silexx that will also support non-FLEX trading, which would apply to all users of Silexx. 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 Act¹⁰ and paragraph (f) of Rule 19b-4¹¹ 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-2020-032 on the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 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-2020-032. 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, DC 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-2020-032 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.¹²

J. Matthew DeLesDernier,

Assistant Secretary.

¹² 17 CFR 200.30-3(a)(12).

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