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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88836; File No. SR-CBOE-2020-044]

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

May 7, 2020.

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 May 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 the 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Fees Schedule, effective May 1, 2020.

Compression Transaction

The Exchange first proposes to amend its Fees Schedule with respect to compression transactions. By way of background, the Exchange currently waives transaction fees (and applicable surcharges) incurred as a result of transactions that compress or reduce certain open positions in SPX and SPXW.<sup>3</sup> The Exchange adopted fee and surcharge waivers as compression of these positions would improve market liquidity by freeing capital currently tied up in positions for which there is a minimal chance that a significant loss would occur. In order to receive a waiver of transaction fees, a TPH must mark its orders in a form and manner determined by the Exchange to identify them as eligible for the compression rebates.<sup>4</sup> As these orders are not subject to any transaction fees or surcharges, the Exchange wishes to also exclude such volume from any volume thresholds calculated by the Exchange. More specifically, the Exchange proposes to not count SPX and SPXW orders marked as compression towards any volume thresholds for the following programs: (1) SPX Liquidity Provider Sliding Scale, (2) Clearing Trading Permit Holder Proprietary Products Sliding Scale, (3) Select Customer Options Reduction ("SCORE") Program, (4) SPX/SPXW Market-Maker Tier Appointment Fees, (5)

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<sup>3</sup> See CBOE Fees Schedule, Footnote 41 and Footnote 12.

<sup>4</sup> Id.

SPX/SPXW Floor Broker Trading Surcharge, (6) Floor Broker ADV Discount, (7) Floor Brokerage Fees Discount, and (8) Frequent Trader Program. The Exchange proposes to amend Footnotes 12 and 41 to make clear that identified compression transactions (i.e., those properly marked in a manner and form determined by the Exchange) shall not count towards any volume threshold.<sup>5</sup>

### Registration Fees

The Exchange next proposes to add clarifying language to Footnote 12 of the Fees Schedule, which governs pricing changes in the event the Exchange trading floor becomes inoperable. 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. Particularly, the Exchange proposes to amend Footnote 12 to clarify that certain registration fees are not applicable when the trading floor is inoperable.

First, by way of background, every TPH organization must designate an individual nominee to represent the organization with respect to each Floor Broker Trading Permit or Market-Maker Floor Trading Permit in all matters relating to the Exchange.<sup>6</sup> An "inactive nominee" of a TPH organization is an individual who is eligible to become an effective nominee of that organization with respect to any Floor Broker Trading Permit or Market-Maker Floor

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<sup>5</sup> The Exchange proposes to also append Footnotes 12 and 41 to affected programs, as applicable.

<sup>6</sup> See Cboe Options Rule 3.9(b).

Trading Permit which the organization holds.<sup>7</sup> Only active nominees are permitted to act as a Market-Maker or Floor Broker on the trading floor. In order for an inactive nominee to act as a Market-Maker or Floor Broker on the trading floor, the TPH organization it is associated with must purchase an additional Floor Trading Permit or must swap places with an active nominee on a Trading Permit, which nominee would then become inactive. The Exchange currently assesses a monthly fee of \$300 for any nominee that retains inactive status (i.e., “Inactive Nominee Status Fee (Parking Space)”). The Exchange also assesses \$100 each time an inactive nominee swaps places with a nominee on a Trading Permit. The Exchange notes that the Fees Schedule currently provides that when the trading floor is inoperable, floor Market-Makers and Floor Brokers will be entitled to act in their registered capacities electronically, provided that any Floor Broker TPH that did not have an Electronic Access Permit ("EAP") prior to the closure of the trading floor will be charged for one EAP per TPH organization and any floor Market-Maker that did not have a Market Maker EAP will be charged for one Market Maker EAP per TPH organization (i.e., floor TPHs will not be assessed per permit fees for floor Trading Permits).<sup>8</sup> As TPH organizations do not purchase additional floor Trading Permits while the trading floor is inoperable, the Inactive Nominee Status fee and Inactive Nominee Status Change fee would also not apply and the Exchange wishes to make this clear in the Fees Schedule to provide additional transparency in the Fees Schedule.

## 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

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<sup>7</sup> See Cboe Options Rule 3.9(e).

<sup>8</sup> See Cboe Options Fees Schedule, Footnote 41.

Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</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 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 Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change to not count volume executed and marked as a compression transaction towards volume thresholds for any applicable incentive program is reasonable, as such transactions already do not incur any fees or surcharges for such volume. The Exchange also believes it's reasonable to exclude such volume from the volume thresholds for the SPX/SPXW Market-Maker Tier Appointment Fee and SPX/SPXW Floor Broker Trading Surcharge because the Exchange does not want to discourage such transactions. As discussed, the Exchange believes compression of these positions would improve market liquidity by freeing capital currently tied up in positions for which there is a minimal chance that a significant loss would occur. The Exchange believes the proposed change is also equitable and

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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

not unfairly discriminatory as it applies uniformly to all market participants that identify eligible orders in the form and manner determined by the Exchange.

The Exchange believes the proposed clarifications regarding inactive nominee fees is reasonable as such clarifications provide additional transparency in the Fees Schedule and alleviate potential confusion, thereby reducing 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. The Exchange also notes not assessing these fees is reasonable, equitable and not unfairly discriminatory as TPHs would not be subject to such fees and it would apply uniformly to all nominees and inactive nominees.

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 are not intended to address any competitive issue, but rather to address a fee change it believes is reasonable in the event the trading floor becomes 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. 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 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2020-044 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.

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

<sup>13</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2020-044. 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. 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-2020-044, 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.<sup>14</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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

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