



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91028; File No. SR-CBOE-2021-008]

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

February 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 19, 2021, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“SEC” or “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 Item IV below.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 in connection with Related Future Cross (“RFC”) orders, effective January 19, 2021.

By way of background, from March 16 to June 12, 2020, the Exchange closed its trading floor in response to the coronavirus pandemic. As a result, the Exchange operated in an all-electronic configuration. Because the trading floor was closed during this time, floor brokers could not execute crosses of option combos (i.e., synthetic futures) on the trading floor on behalf of market participants who were exchanging futures contracts in either VIX or SPX for related options positions in order to swap related exposures, and there was no means to electronically pair and execute the options legs of these transactions on the Exchange. To enable Trading Permit Holders (“TPHs”) to execute the options part of these transactions when the floor was closed, the Exchange adopted the electronic RFC order type for when the trading floor facilities were inoperable.³ Footnote 12 of the Fees Schedule was also amended to, among other things, 1) provide a waiver for SPX/SPXW Execution Surcharges⁴ for RFC orders, and 2) adopt an RFC Execution Surcharge for all SPX/SPXW and VIX initiating orders, applicable while the trading floor remained inoperable.⁵ More specifically, pursuant to the Underlying Symbol List A Rate Table in the Fees Schedule, a \$0.05 per contract fee is assessed for SPX and SPXW RFC

³ See Securities Exchange Act Release No. 88447 (March 20, 2020), 85 FR 17129 (March 26, 2020) (CBOE-2020-023).

⁴ See Cboe Options Fees Schedule, “Rate Table - Underlying Symbol List A”, which assesses an SPX Execution Surcharge of \$0.21 per contract and a SPXW Execution Surcharge of \$0.13 per contract for non-Market Maker orders in SPX and SPXW, respectively.

⁵ See Securities Exchange Act Release No. [sic]

initiating orders and a \$0.04 per contract fee is assessed for VIX RFC initiating orders while the trading floor is inoperable.

After the Exchange reopened its trading floor, the Exchange submitted a rule filing which permanently adopted RFC orders for trading in the Exchange's normal hybrid trading environment under Rule 5.33(b)(5).⁶ The Exchange plans to launch the RFC order type for its normal hybrid trading environment on January 19, 2021. For purposes of electronic trading, an RFC order is an SPX or VIX complex order comprised of an option combo order coupled with a contra-side order or orders totaling an equal number of option combo orders. For purposes of open outcry trading, an RFC order is an SPX or VIX complex order comprised of an option combo that may execute against a contra-side RFC order or orders totaling an equal number of option combo orders. An RFC order must be identified to the Exchange as being part of an exchange of option contracts for related futures positions.

The Exchange proposes to amend the Fees Schedule in light of the adoption of RFC orders on a permanent basis. As noted above, footnote 12 currently provides that the SPX and SPXW Execution Surcharges will be waived for SPX/SPXW RFC orders, and that the RFC Execution Surcharge for SPX/SPXW and VIX will apply to all SPX/SPXW and VIX RFC initiating orders, only when the trading floor is inoperable.⁷ The proposed rule change removes the SPX/SPXW Execution Surcharge waiver language in connection with RFC orders from footnote 12 and relocates it to footnote 21, which footnote sets forth other exceptions to the SPX

⁶ See Securities Exchange Act Release No. 89768 (September 4, 2020), 85 FR 55869 (September 10, 2020) (SR-CBOE-2020-060).

⁷ Footnote 12 also provides that contracts executed as an RFC order during a time when the Exchange operates in a screen-based only environment will not count towards the 1,000 contract thresholds for the SPX/SPXW, VIX and RUT Tier Appointment Fees. The Exchange notes that the proposed rule change does not amend this exclusion applicable during which the trading floor may be inoperable because if the trading floor become inoperable then a TPH would only have the option of using electronic RFC orders, which may cause a TPH to hit the Electronic Tier Appointment surcharge where a TPH may not have hit the threshold before when using the trading floor to execute RFC orders.

and SPXW Execution Surcharges.⁸ Particularly, the Exchange proposes to relocate the language as the waiver will now apply at all times (once the RFC order type is implemented on the Exchange), as RFC orders will be available at all times rather than only when the trading floor is inoperable. Additionally, the Exchange believes it is appropriate to include the waiver language in a footnote that already contains other exceptions to the SPX and SPXW Execution Surcharges. Specifically, footnote 25 as proposed provides that all electronic executions in SPX, SPXW and SPESG shall be assessed the SPX, SPXW and SPESG Execution Surcharge, respectively, except that this fee shall not apply to SPX/SPXW Related Future Cross (“RFC”) orders (among the current list of other orders). Likewise, the proposed rule change also removes the language from footnote 12 providing that the RFC Execution Surcharge for SPX/SPXW and VIX RFC initiating orders will apply to all SPX/SPXW and VIC RFC initiating orders, and relocates it to new footnote 25, as the RFC Execution Surcharges will now apply at all times.⁹ As a result of the proposed relocation of the RFC execution surcharge language from footnote 12 to footnote 25, the proposed rule change also removes footnote 12 appended to the RFC Execution Surcharge Fee in the “Rate Table - Underlying Symbol List A” section of the Fees Schedule. The Exchange notes that the proposed rule change does not alter the current waiver language or surcharge rates already in place pursuant to footnote 12 for transactions in temporary RFC orders (while the Exchange’s trading floor was inoperable), but merely removes the applicable RFC waiver and execution surcharge language in footnote 12 and relocates it to footnotes 21 and 25, respectively so that the same waiver and surcharge rates may apply to permanent RFC orders trading in the Exchange’s normal hybrid environment.

⁸ The proposed rule change appends footnote 21 to the RFC Execution Surcharge Fee in the “Rate Table - Underlying Symbol List A” section of the Fees Schedule.

⁹ The proposed rule change appends footnote 25 to the RFC Execution Surcharge Fee in the “Rate Table - Underlying Symbol List A” section of 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 Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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,¹² 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 is consistent with the Act, in that, it is reasonable, equitable and not unfairly discriminatory. The proposed rule change is reasonable because it does not alter the SPX/SPXW Execution Surcharge fee waiver and SPX/SPXW and VIX RFC Execution Surcharges currently applicable to RFC orders (while the trading floor may be inoperable), but merely updates the waiver and surcharge language to appropriately reflect its application to the permanent RFC orders recently adopted by the Exchange. The Exchange believes that, generally, the SPX/SPXW Execution Surcharge waiver in place for RFC orders is reasonable and equitable because it will encourage market participants to submit volume executed as RFC orders both electronically and on the trading floor, assisting the Exchange in

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(4).

maintaining a robust hybrid environment. Also, the Exchange believes that, generally, the RFC Execution Surcharges currently in place are reasonable and equitable, as they are generally in line with or lower than other execution surcharges assessed under the Fees Schedule,¹³ and are less than the SPX/SPXW Execution Surcharges (\$0.21 and \$0.13, respectively) that will ultimately be waived for RFC transactions. Finally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because the SPX/SPXW Execution Surcharge waiver and the RFC Execution Surcharge will continue to apply in the same uniform manner for the same transactions, both electronically and in open outcry, for all TPHs that submit RFC orders to the Exchange.

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 intramarket or intermarket 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 will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the SPX/SPXW Execution Surcharge waiver and the RFC Execution Surcharges will continue to apply to all TPHs that submit RFC orders to the Exchange as it does today, and will uniformly apply to RFC orders executed electronically and in open outcry. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the transaction fee waiver will continue to apply to RFC orders available only for Exchange proprietary products, SPX/SPXW and VIX.

¹³ See Cboe Options Fees Schedule, "Rate Table - Underlying Symbol List A", which assesses a VIX Customer Priority Surcharge of \$0.20 per contract, and AIM Surcharge fees (while the trading floor is operating in an all-electronic environment) ranging between \$0.04 and \$0.10 per contract depending on the type of AIM order and options class (i.e., SPX, SPXW, SPESG or VIX).

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 Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ 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-2021-008 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.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2021-008. 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 offices 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-2021-008, 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.¹⁶

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-02396 Filed: 2/4/2021 8:45 am; Publication Date: 2/5/2021]

¹⁶ 17 CFR 200.30-3(a)(12).