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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-91288; File No. SR-CBOE-2021-015]**

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Update its Fees Schedule in Connection with the Exchange’s Plans to List and Trade Options on the Mini-RUT Index (“MRUT” or “Mini-RUT”)**

March 10, 2021

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 March 1, 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 update its Fees Schedule in connection with the Exchange’s plans to list and trade options on the

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

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

Mini-RUT Index (“MRUT” or “Mini-RUT”). 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. 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 its plans to list and trade MRUT options, effective March 1, 2021.

Background

MRUT options are options on the Mini-RUT Index, the value of which is 1/10th the value of the Russell 2000 (“RUT”) Index. The Russell 2000 Index measures the performance of small-cap segment of the U.S. equity universe. It is a subset of the Russell 3000 Index and includes approximately 2,000 U.S.-based securities based on a combination of their market cap and current index membership. The Russell 2000 Index is constructed to provide a comprehensive and unbiased small-cap barometer and is

completely reconstituted annually to ensure larger stocks do not distort the performance and characteristics of the true small-cap opportunity set. The Russell 2000 Index is a commonly used benchmark for mutual funds that identify themselves as “small-cap,” and much like the S&P 500 Index (“SPX”), is used to benchmark large capitalization stocks. The Exchange understands that investors often use Russell 2000 Index-related products to diversify their portfolios and benefit from market trends. RUT options currently offer these benefits to investors but may be expensive given their larger notional value and are therefore primarily used by institutional market participants. By contrast, MRUT options are reduced-value options (1/10th) compared to RUT options that will offer individual investors lower cost options to obtain the potential benefits of options on the Russell 2000 Index.

The Exchange believes that investors will benefit from the availability of Mini-RUT option contracts by making options overlying the higher-valued RUT Index more readily available as an investing tool and at more affordable prices for investors. The Exchange also believes that the investor-base for MRUT options are likely to be the same investor-base for Mini-SPX options (“XSP”), which are also proprietary, reduced-value options on a broad-based index (SPX), as they are both designed to provide low-cost means to hedge investors’ portfolios in connection with higher-value broad-based indexes (i.e., the RUT and SPX Index) with a smaller outlay of capital. As such, the Exchange will allow the same type of expirations, settlement and exercise style, minimum increments, strike price intervals and Market-Maker appointment weights for MRUT options as it currently does for XSP options and anticipates that MRUT options will have

the same investor base as XSP options.<sup>3</sup> The Exchange now proposes to amend its Fees Schedule to accommodate the planned listing and trading of MRUT options. The Exchange notes that because both MRUT and XSP are mini-index options intended for the same investor-base, the majority of the proposed changes amend the Fees Schedule in connection with trading in MRUT options in a manner that is generally consistent with the way in which existing transactions fees and programs currently apply to trading in XSP options.

#### Standard Transaction Rates and Surcharges

First, the Exchange proposes to adopt certain standard transaction fees in connection with MRUT options in a manner that closely aligns the fees assessed for MRUT options with that of the fees assessed for RUT options. As described above, MRUT options and RUT options track the same underlying index, yet MRUT options are 1/10<sup>th</sup> the size of standard RUT options contracts. As such, the proposed rule change adopts certain fees for MRUT options in the Rate Table for All Products Excluding Underlying Symbol A<sup>4</sup> that are approximately 1/10<sup>th</sup> of the fees currently assessed for RUT options, as follows:

- Adopts fee code CQ, appended to all Customer (capacity “C”) orders in MRUT options and assesses a fee of \$0.02 per contract. This proposed fee is

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<sup>3</sup> See Securities Exchange Act Release Nos. 90748 (December 21, 2020), 85 FR 85759 (December 29, 2021) (SR-CBOE-2020-118); and 91067 (February 5, 2021), 86 FR 9108 (February 11, 2021) (SR-CBOE-2020-118) [sic].

<sup>4</sup> Underlying Symbol List A includes OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXW), SPESG and VIX. See Cboe Options Fees Schedule, Footnote 34.

approximately 1/10<sup>th</sup> of the fees assessed for Customer orders in RUT options (\$0.18).

- Adopts fee code FM, appended to all Clearing Trading Permit Holder (“TPHs”) (capacity “F”) and for Non-TPH Affiliate of a Clearing TPH (capacity “L”) (collectively, “Firms”) orders in MRUT options and assesses a fee of \$0.02 per contract. The proposed fee is approximately 1/10<sup>th</sup> of the fees assessed for Firm orders in RUT options (\$0.26);
- Adopts fee code MM, which is appended to all Market-Maker (capacity “M”) orders in MRUT options and assesses a fee of \$0.03 per contract. The proposed fee is approximately 1/10<sup>th</sup> of the fees assessed for Market-Maker orders in RUT options (\$0.30); and
- Adopts fee code BM, appended to all Broker-Dealer (capacity “B”), Joint Back-Office (capacity “J”), Non-TPH Market-Maker (capacity “N”), and Professional (capacity “U”) (collectively, “Non-Customers”) orders in MRUT options and assesses a fee of \$0.04 per contract. The proposed fee is approximately 1/10<sup>th</sup> of the difference between the two rates assessed for Non-Customer orders in RUT options (\$0.25 for manual and AIM transactions and \$0.65 for non-AIM electronic transactions).

The Exchange also proposes to waive the proposed MRUT transaction fees for Firms and Market-Makers through August 31, 2021. Specifically, proposed footnote 32 (appended to MRUT options for Market-Maker and Firm transaction fees in the Rate Table - All Products Excluding Underlying Symbol List A) provides that transaction fees for orders executed in MRUT options with a capacity code of “F”, “L”, or “M” will be

waived through August 31, 2021. The proposed waiver is intended to encourage liquidity in a newly listed and traded product on the Exchange.

In addition to the above transaction fees, the proposed rule change also adopts certain surcharges to MRUT transactions within the Rate Table - All Products Excluding Underlying Symbol List A. The proposed rule change applies an Index License Surcharge Fee of \$0.02 to all Firm, Market-Maker and Non-Customer transactions in MRUT options. Currently, the Index License Surcharge Fee assesses a \$0.10 charge for transactions in DJX, MXEA and MXEF options. The proposed lower Index License Surcharge rate for MRUT options is intended to promote and encourage trading of MRUT options once listed. The Exchange notes that this is similar to lower (or waived) Index License fees for other options classes in order to similarly continue to promote their trading and growth.<sup>5</sup>

The proposed rule change adds MRUT options to the list of options, which currently includes XSP, for which the FLEX Surcharge Fee of \$0.10 (capped at \$250 per trade) applies to electronic FLEX orders executed by all capacity codes.<sup>6</sup> The proposed rule change adopts an Exotic Surcharge of \$0.03 for Customer transactions in MRUT, which is consistent with the Exotic Surcharge currently assessed for Customer

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<sup>5</sup> See e.g. Securities Exchange Act Release No 90093 (October 5, 2020), 85 FR 64189 (October 9, 2020) (SR-CBOE-2020-088), which provides that “[t]he Exchange does not at this time propose to assess the Index License fee on transactions in SPESG in order to promote and encourage trading of SPESG once listed.”; and Securities Exchange Act Release No. 87953 (January 13, 2020), 85 FR 3091 (January 17, 2020) (SR-CBOE-2020-001), which waived permanently the Index License fees for transactions in Sector Index options to continue to encourage their growth and trading.

<sup>6</sup> The FLEX Surcharge Fee will only be charged up to the first 2,500 contracts per trade. See Cboe Options Fees Schedule, Footnote 17.

transactions in XSP. Additionally, the Exchange proposes to exclude MRUT orders from the AIM Contra Fee by amending footnote 18 (appended to the AIM Contra Fee) to provide that the AIM Contra Execution Fee applies to all orders (excluding facilitation orders, per footnote 11) in all products, except MRUT, XSP,<sup>7</sup> Sector Indexes and Underlying Symbol List A, executed in the Automated Improvement Mechanism (“AIM”), Solicitation Auction Mechanism (“SAM”), FLEX AIM and FLEX SAM auctions, that were initially entered as the contra party to an Agency/Primary Order. Applicable standard transaction fees will apply to AIM, SAM, FLEX AIM and FLEX SAM executions in MRUT, XSP, Sector Indexes and Underlying Symbol List A. The Exchange also proposes to exclude Firm, Market-Maker and Non-Customer complex orders in MRUT from the Complex Surcharge by amending footnote 35 (appended to the Complex Surcharge) to provide that the Complex Surcharge applies per contract per side surcharge for noncustomer complex order executions that remove liquidity from the COB and auction responses in the Complex Order Auction (“COA”) and AIM in all classes except MRUT, XSP, Sector Indexes and Underlying Symbol List A. The proposed FLEX and Exotic surcharges and exclusion from the AIM Contra Fee (and, instead, the application of the proposed standard transaction fees) and Complex Surcharge in connection with transactions in MRUT will provide consistency with the fees and exclusions currently applicable to transactions in XSP.

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<sup>7</sup> The proposed rule change also makes clear in the first sentence of footnote 18 that the AIM Contra Execution Fee is not applicable to transaction in XSP. This is currently the case and is clear in the subsequent language within footnote 18 as well as the manner in which the fees are presented in Rate Table - All Products Excluding Underlying Symbol List A.

## Fees Programs

The proposed rule change excludes MRUT volume from the Liquidity Provider Sliding Scale, which offers credits on Market-Maker orders where a Market-Maker achieves certain volume thresholds based on total national Market-Maker volume in all underlying symbols, excluding Underlying Symbol List A and XSP, during the calendar month. Specifically, the proposed rule change updates the Liquidity Provider Sliding Scale table to provide that volume thresholds are based on total national Market-Maker volume in all underlying symbols excluding Underlying Symbol List A, MRUT and XSP during the calendar month, and that it applies in all underlying symbols excluding Underlying Symbol List A, MRUT and XSP. The proposed rule change also updates footnote 10 (appended to the Liquidity Provider Sliding Scale) to provide that the Liquidity Provider Sliding Scale applies to Liquidity Provider (Cboe Options Market-Maker, DPM and LMM) transaction fees in all products except (1) Underlying Symbol List A (34), MRUT and XSP,<sup>8</sup> and (2) volume executed in open outcry.<sup>9</sup>

The proposed rule change updates the Volume Incentive Program (“VIP”) table to exclude MRUT volume from the VIP, which currently offers a per contract credit for

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<sup>8</sup> The proposed rule change corrects an inadvertent grammatical error in footnote 10 in connection with the exclusion of XSP from the Liquidity Provider Sliding Scale.

<sup>9</sup> The proposed rule change also updates footnote 6, which is appended to the Liquidity Provider Sliding Scale Program, the VIP, and the ORS/CORS Programs to reflect the exclusion of MRUT options from these programs in the same manner as the options classes currently excluded from these programs. Specifically, amended footnote 6 provides that in the event of a Cboe Options System outage or other interruption of electronic trading on Cboe Options that lasts longer than 60 minutes, the Exchange will adjust the national volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, MRUT, MXEA, MXEF, DJX and XSP for the entire trading day.

certain percentage threshold levels of monthly Customer and Non-Customer volume in all underlying symbols, excluding Underlying Symbol List A, Sector Indexes, DJX, MXEA, MXEF and XSP. The proposed rule change also amends footnote 36 (appended to the VIP table) to reflect the proposed exclusion of MRUT from the VIP by providing (in relevant part) that: the Exchange shall credit each Trading Permit Holder the per contract amount resulting from each public customer (“C” capacity code) order transmitted by that Trading Permit Holder which is executed electronically on the Exchange in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF, XSP, QCC trades, public customer to public customer electronic complex order executions, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 5.67, provided the Trading Permit Holder meets certain percentage thresholds in a month as described in the Volume Incentive Program (VIP) table; the percentage thresholds are calculated based on the percentage of national customer volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, MRUT, MXEA, MXEF, DJX and XSP entered and executed over the course of the month; and in the event of a Cboe Options System outage or other interruption of electronic trading on Cboe Options, the Exchange will adjust the national customer volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, MRUT, MXEA, MXEF, DJX and XSP for the entire trading day.<sup>10</sup>

The proposed rule change excludes MRUT from the list of products eligible to receive Break-Up Credits in orders executed in AIM, SAM, FLEX AIM, and FLEX

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<sup>10</sup> See supra note 8.

SAM, by amending the Break-Up Credits table to exclude MRUT along with the products currently excluded — Underlying Symbol List A, Sector Indexes, DJX, MXEA, MXEF and XSP.

The Exchange also proposes to exclude Firm transactions in MRUT from the Clearing TPH Fee Cap. Specifically, it amends footnote 22 (appended to the Clearing TPH Fee Cap table) to provide that all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction, transaction fees for Clearing TPH Proprietary and/or their Non-TPH Affiliates in all products except MRUT, XSP, Sector Indexes and Underlying Symbol List A (which includes SPX), in the aggregate, are capped at \$55,000 per month per Clearing TPH. It additionally updates footnote 11 (which is also appended to the Clearing TPH Fee Cap table) to provide that the Clearing TPH Fee Cap in all products except MRUT, XSP, Underlying Symbol List A and Sector Indexes (the “Fee Cap”)<sup>11</sup>, among other programs, apply to (i) Clearing TPH proprietary orders (“F” capacity code), and (ii) orders of Non-TPH Affiliates of a Clearing TPH.

The Exchange proposes to exclude MRUT from eligibility for the Order Router Subsidy (“ORS”) and Complex Order Router Subsidy (“CORS”) Programs, in which Participating TPHs or Participating Non-Cboe TPHs may receive a payment from the Exchange for every executed contract routed to the Exchange through their system in certain classes. Specifically, the proposed rule change updates the ORS/CORS Program tables to provide that ORS/CORS participants whose total aggregate non-customer ORS and CORS volume is greater than 0.25% of the total national volume (excluding volume

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<sup>11</sup> The Exchange notes that it also corrects an error in footnote 11 by moving the abbreviated definition for the Clearing TPH Fee Cap (“Fee Cap”) [sic], to the end of the clause describing the cap.

in options classes included in Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF or XSP) will receive an additional payment for all executed contracts exceeding that threshold during a calendar month, and updates footnote 30 (appended to the ORS/CORS Program tables) to accordingly provide that Cboe Options does not make payments under the program with respect to executed contracts in options classes included in Underlying Symbols List A, Sector Indexes, DJX, MRUT, MXEA, MXEF or XSP.<sup>12</sup>

The Exchange notes that excluding MRUT transactions from the above-described programs is consistent with the manner in which XSP transactions are also excluded each of these programs today.

Additionally, the Exchange proposes to exclude MRUT from the Marketing Fee Program by updating the Marketing Fee table to provide that the marketing fee will be assessed on transactions of Market-Makers (including DPMs and LMMs), resulting from customer orders at the per contract rate provided above on all classes of equity options, options on ETFs, options on ETNs and index options, except that the marketing fee shall not apply to Sector Indexes, DJX, MXEA, MXEF or Underlying Symbol List A. The Exchange notes that, in this way, MRUT will be treated as most of the Exchange's other exclusively listed products that are currently excluded from the Marketing Fee Program. The Exchange does believe that it is necessary at the point of newly listing and trading for MRUT options to be eligible for the Marketing Fee Program and may determine in the future to submit a fee filing to add MRUT to the Marketing Fee Program if the Exchange believes it would potentially generate more customer order flow in MRUT.

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<sup>12</sup> See supra note 8.

MRUT LMM Program

Finally, the Exchange proposes to adopt a financial program for LMMs appointed in MRUT options. As proposed, the MRUT LMM Incentive Program provides that if the appointed LMM in MRUT provides continuous electronic quotes during Regular Trading Hours that meet or exceed the proposed heightened quoting standards (below) in at least 99% of the series 90% of the time in a given month, the LMM will receive a payment for that month in the amount of \$20,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month).

Premium Level	Expiring		Near Term		Mid Term		Long Term	
	14 days or less		15 days to 60 days		61 days to 270 days		271 days or Greater	
	Width	Size	Width	Size	Width	Size	Width	Size
\$0.00 - \$1.00	\$0.08	1	\$0.10	1	\$0.15	1	\$0.80	1
\$1.01 - \$3.00	\$0.15	1	\$0.15	1	\$0.15	1	\$0.85	1
\$3.01 - \$5.00	\$0.15	1	\$0.18	1	\$0.20	1	\$1.00	1
\$5.01 - \$10.00	\$0.45	1	\$0.20	1	\$0.35	1	\$1.25	1
\$10.01 - \$25.00	\$1.25	1	\$0.55	1	\$0.50	1	\$2.25	1
\$25.01 - \$100.00	\$3.00	1	\$2.00	1	\$1.75	1	\$4.00	1
Greater than \$100.00	\$8.00	1	\$8.00	1	\$8.00	1	\$8.00	1

Meeting or exceeding the heightened quoting standards in MRUT, as proposed, to receive the proposed compensation payment is optional for an MRUT LMM. The Exchange may consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM met the heightened quoting standard each month, the Exchange will exclude from

the calculation in that month the business day in which the LMM missed meeting or exceeding the heightened quoting standard in the highest number of series. In addition to the above rebate, if the appointed LMM meets or exceeds the above heightened quoting standards in a given month and provides an average daily volume (“ADV”) in MRUT that meets or exceeds 25,000 contracts in a given month, the LMM will receive the Monthly ADV Payment amount that corresponds to the level of ADV in MRUT provided for that month per the MRUT Volume Incentive Pool program below:

<b>MRUT ADV</b>	<b>Monthly ADV Payment</b>
0 - 24,999 contracts	\$0.00
25,000 - 49,999 contracts	\$25,000
50,000 - 100,000 contracts	\$35,000
Greater than 100,000 contracts	\$50,000

The heightened requirements and MRUT Volume Incentive Pool offered by the MRUT LMM Incentive Program are designed to incentivize LMMs to provide significant liquidity in MRUT options during the trading day upon their listing and trading on the Exchange, which, in turn, would provide greater trading opportunities, added market transparency and enhanced price discovery for all market participants in MRUT.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>14</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)<sup>15</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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

### Standard Transaction Rates and Surcharges

The Exchange believes that the proposed amendments to the Fees Schedule in connection with standard transaction rates and surcharges for MRUT transactions are reasonable, equitable and not unfairly discriminatory. Specifically, the Exchange believes that it is reasonable to assess fees for Customer, Market-Maker, Firm, and Non-Customer orders in MRUT that reflect approximately 1/10<sup>th</sup> of the transactions fees

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<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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

assessed for corresponding orders in RUT because of the relation between MRUT options and RUT options, wherein MRUT options overlie an index 1/10<sup>th</sup> the value of the index that underlies RUT options. Additionally, the Exchange believes it is reasonable to waive the transaction fees for Market-Maker and Firm orders in MRUT options through August 31, 2021 because the waiver is designed to encourage order flow from these market participants in a newly listed and traded options class on the Exchange. The Exchange recognizes that Market-Makers and Firms each provide important and distinct sources of liquidity to the Exchange and increased liquidity provides more trading opportunities, in turn, signaling additional corresponding increase in order flow from other market participants, and, as a result, contributing towards a robust, well-balanced market ecosystem. The Exchange also believes that it is reasonable to assess a lower Index License fee on transactions in MRUT because MRUT is a new product and the Exchange wishes to promote and encourage trading of MRUT once listed. The Exchange notes that, similar to assessing a lower Index License fee, the Index License fees for certain options in other classes are waived in order to continue to promote their trading and growth.<sup>16</sup> Moreover, the Exchange believes it is reasonable to assess the same FLEX and Exotic surcharge rates to orders in MRUT as it does for XSP and to exclude MRUT from the Complex Surcharge and AIM Contra Fee (and to apply the standard transaction fees for MUT orders in lieu of the AIM Contra Fee) because these proposed surcharges and surcharge exclusions will provide consistency between the fees assessed for orders in MRUT and XSP, which are both mini-index options designed to offer investors lower cost options to obtain the potential benefits of options on a broad-based index options and

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<sup>16</sup> See supra note 5.

intended for the same investor-base. Therefore, the Exchange believes it is appropriate to amend the Fees Schedule in a manner that similarly situates fees assessed for orders in MRUT options with those assessed for orders in XSP options.

The Exchange believes the proposed standard transaction rates and surcharges (or exclusions) are equitable and not unfairly discriminatory because they will apply automatically and uniformly to all Customer, Firm, Market-Maker and/or Non-Customer, orders, as applicable, in MRUT options. The Exchange also believes that it is equitable and not unfairly discriminatory to waive the transaction fees (through August 31, 2021) for Market-Maker and Firm orders in MRUT because, as stated above, the Exchange recognizes that these market participants can provide key and distinct sources of liquidity, which is particularly important for a newly listed and traded options class on the Exchange. An increase in general market-making activity facilitates tighter spreads, which tend to signal additional corresponding increase in order flow from other market participants, ultimately incentivizing more overall order flow and improving liquidity levels and price transparency on the Exchange to the benefit of all market participants. Similarly, the Exchange also recognizes that Firms can be an important source of liquidity when they facilitate their own customers' trading activity, thus, adding transparency and promoting price discovery to the benefit of all market participants. The Exchange notes too that Market-Makers and Firms take on a number of obligations that other market participants do not have. For example, unlike other market participants, Market-Makers take on quoting obligations and other market making requirements and Firms must have higher capital requirements, clear trades for other market participants, and must be members of OCC.

## Fees Programs

The Exchange believes that the proposed updates to the Fees Schedule in connection with the application of certain fees programs to transactions in MRUT options are reasonable, equitable and not unfairly discriminatory. Particularly, the Exchange believes it is reasonable to exclude transactions in MRUT options from the Liquidity Provider Sliding Scale, the VIP, the Break-Up Credits table, the Clearing TPH Fee cap, and the ORS/CORS programs in the same manner in which transactions in XSP options are currently excluded from the same programs today as the Exchange believes it is appropriate to update these fees programs in a manner that similarly situates transactions in MRUT with transactions in XSP, as both mini-index options are designed to offer investors lower cost options to obtain the potential benefits of options on a broad-based index options and are intended for the same investor base. Additionally, the Exchange believes that excluding MRUT from the Marketing Fee Program is reasonable most of the Exchange's other proprietary products are currently excluded from the Marketing Fee Program. The Exchange does believe that it is necessary at the point of newly listing and trading for MRUT transactions to be eligible for the Marketing Fee Program and may determine in the future to submit a fee filing to add MRUT to the Marketing Fee Program if the Exchange believes it would potentially generate more customer order flow in MRUT options.

The Exchange believes that excluding MRUT transactions from certain fees programs is equitable and not unfairly discriminatory because the programs will equally not apply to, or exclude in the same manner, all market participants' orders in MRUT options. The Exchange notes that the proposed rule change does not alter any of the

existing program rates or volume calculations, but instead, merely proposes not to include transactions in MRUT in those programs and volume calculations in the same way that transactions in XSP options are not currently included, or, regarding the Marketing Fee Program, in the same way transactions in most of the Exchange's other exclusively listed products are not currently included.

#### MRUT LMM Program

The Exchange believes the proposed MRUT LMM Incentive Program is reasonable, equitable and not unfairly discriminatory. Particularly, the proposed MRUT LMM Incentive Program is a reasonable financial incentive program because the proposed heightened quoting standards and rebate amount for meeting the heightened quoting standards in MRUT series are reasonably designed to incentivize an appointed LMM to meet the proposed heightened quoting standards during RTH for MRUT, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants, particularly in a newly listed and traded product on the Exchange during the trading day. The Exchange believes that the proposed heightened quoting standards are reasonable because they are similar to the detail and format (specific expiration categories and corresponding premiums, quote widths, and sizes) of the heightened quoting standards currently in place for MSCI LMMs, SPESG LMMs, GTH SPX/SPXW LMMs and GTH VIX LMMs.<sup>17</sup> For example, the expiration categories are the same as those for the GTH VIX LMM heightened quoting standards. The Exchange believes the

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<sup>17</sup> See Cboe Options Fees Schedule, "MSCI LMM Incentive Program", "GTH VIX/VIXW LMM Incentive Program", "GTH SPX/SPXW LMM Incentive Program", and "RTH SPESG LMM Incentive Program".

proposed smaller quote widths and sizes in the proposed heightened quoting standards for MRUT LMMs reasonably reflect what the Exchanges believes will be typical market characteristics in MRUT options, given their smaller notional value and minimum increments and general retail base, thus smaller, retail-sized orders. Moreover, the Exchange believes that the proposed \$20,000 monthly rebate for an LMM that meets the proposed heightened quoting standards in MRUT in a month is reasonable and equitable as it equal or comparable to the rebates offered for other LMM incentive programs for other proprietary products.<sup>18</sup> For example, the MSCI LMM Incentive Program also offers \$20,000 per month for each MSCI series in which the appointed LMM meets the given heighten quoting standards. The Exchange also believes it is reasonable to offer an additional payment that corresponds to an MRUT LMM's level of ADV in MRUT options, if it meets the heightened quoting standards, because the proposed MRUT Volume Incentive Pool is a volume-based incentive designed to further encourage LMMs to provide significant liquidity in MRUT options during the trading day, which is particularly important for a newly listed and traded options class on the Exchange. The Exchange also offers many other volume-based incentives in the Fees Schedule.<sup>19</sup>

Finally, the Exchange believes it is equitable and not unfairly discriminatory to offer the financial incentive to MRUT LMMs pursuant to the proposed MRUT LMM Incentive Program, because it will benefit all market participants trading MRUT during

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<sup>18</sup> See id.

<sup>19</sup> See e.g. Cboe Options Fees Schedule, Volume Incentive Program table, Liquidity Provider Sliding Scale table, Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scale table, and Floor Broker ADV Discount table, each of which offers reduced transaction fees for meeting various levels of options volume.

RTH by encouraging the LMMs to satisfy the heightened quoting standard, which incentivizes continuous increased liquidity and thereby may provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that its LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade MRUT, which can lead to increased volume, providing for robust markets. The Exchange ultimately wishes to sufficiently incentivize LMMs to provide liquid and active markets in the newly listed and traded MRUT options during the trading day to encourage liquidity, thereby protecting investors and the public interest. The Exchange also notes that an LMM may have added costs each month that it needs to undertake in order to satisfy that heightened quoting standard (e.g., having to purchase additional logical connectivity). The Exchange believes the proposed program is equitable and not unfairly discriminatory because similar programs currently exist for LMMs in other proprietary products,<sup>20</sup> and the proposed program will equally apply to any TPH that is appointed as a MRUT LMM. Additionally, if an LMM does not satisfy the heightened quoting standard in MRUT for any given month, then it simply will not receive the offered payment for that month.

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

The Exchange believes the proposed amendments to its Fee Schedule will not impose any burden on 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 proposed MRUT transactions fee and

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<sup>20</sup> See supra note 17.

surcharge amounts for each separate type of market participant will be assessed automatically and uniformly to all such market participants, i.e., all qualifying Customer orders in MRUT will be assessed the same amount, all Market-Maker orders in MRUT will be assessed the same amount, and so on. Likewise, the proposed rule change will uniformly exclude all transactions in MRUT from certain programs and fees/surcharges (i.e., the AIM Contra Fee and Complex Surcharge), as it currently does for XSP options or as it does for the Exchange's other proprietary products. The Exchange does not believe that waiving the MRUT transaction fees for Market-Makers and Firms in the first six months of MRUT options listing and trading on the Exchange will impose any burden on intramarket competition because these participants may, as discussed above, provide key and distinct sources of liquidity, which is particularly important for a newly listed and traded options class on the Exchange. Also, Market-Makers and Firms take on a number of obligations that other market participants do not have. Unlike other market participants, Market-Makers take on quoting obligations and other market making requirements and Firms must have higher capital requirements, clear trades for other market participants, and must be members of OCC. The Exchange also does not believe that the proposed LMM incentive program for MRUT options would impose any burden on intramarket competition because it applies to all LMMs appointed to MRUT in a uniform manner, in the same way similar programs apply to LMMs in other proprietary products today. To the extent these LMMs receive a benefit that other market participants do not, as stated, LMMs have different obligations and are held to different standards. For example, LMMs play a crucial role in providing active and liquid markets in their appointed products, especially in the newly developing MRUT market, thereby

providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have.

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 proposed fees assessed and rebates offered apply to a product exclusively listed on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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>21</sup> and paragraph (f) of Rule 19b-4<sup>22</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.

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f).

#### 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-2021-015 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.

All submissions should refer to File Number SR-CBOE-2021-015. 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-2021-015 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>23</sup> 17 CFR 200.30-3(a)(12).