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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule with Respect to Certain Fees Related to Qualified Contingent Cross Orders and the Clearing Trading Permit Holder Fee Cap

July 13, 2021.

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 July 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 amend the Fees Schedule with respect to certain fees related to Qualified Contingent Cross orders and the Clearing Trading Permit Holder (“TPH”) Fee Cap. 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

¹ 15 U.S.C. 78s(b)(1).

² 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 with respect to Qualified Contingent Cross (“QCC”) transaction fees and the Clearing TPH fee cap.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 15% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to competitive pricing, the Exchange, like other options exchanges, offers rebates and assesses fees for certain order types executed on or routed through the Exchange.

By way of background, a QCC order is comprised of an ‘initiating order’ to buy (sell) at least 1,000 contracts, coupled with a contra-side order to sell (buy) an equal number of contracts and that for complex QCC transactions, the 1,000 contracts minimum is applied per leg.

³ See Cboe Global Markets U.S. Options Monthly Market Volume Summary (June 29, 2021), available at https://markets.cboe.com/us/options/market_statistics/.

Currently, the Exchange assesses no fee for Customer (“C” capacity), and Professional (“U” capacity), and collectively referred to as “customer transactions” which are identified by fee code “QC”) QCC transactions and \$0.17 per contract side for non-Customer transactions and non-Professional transactions (collectively referred to as “non-customer transactions” which are identified by fee code “QN”). In addition, the Exchange provides a \$0.10 per contract credit for the initiating order side, regardless of origin code. Now, the Exchange proposes to increase the per contract credit for the initiating QCC order from \$0.10 to \$0.11 per contract. The proposed change is intended to incentivize TPHs to direct QCC order flow to the Exchange. Additionally, to offset the cost associated with the credit increase, the Exchange proposes to increase the transaction fee for QCC trades applied to non-customer transactions from \$0.17 to \$0.18 per contract. The proposed credit⁴ and fee⁵ change are in line with, yet also competitive with, rates assessed by other options exchanges.

The Exchange also applies a transaction fee cap of \$55,000 per month per Clearing TPH for non-facilitation transactions executed in AIM, open outcry, or as a QCC or FLEX transaction in all products except Sector Indexes and products in Underlying Symbol List A as provided in footnote 34 of the Fees Schedule. The Exchange proposes to increase such fee cap to \$65,000 per month per Clearing TPH. The proposed fee cap is in line with, albeit lower than, similar fee caps applied by other Exchanges.⁶

⁴ See e.g., Cboe EDGX Options Fees Schedule, footnote 7, which offers rebates ranging from \$0.14 up to \$0.26 based on QCC volume thresholds.

⁵ See e.g., NYSE American Options Fee Schedule, Section I, paragraph F “QCC Fees & Credits”, which provides that non-customer participants excluding specialists and e-specialists, are assessed a fee of \$0.20 per contract to volume executed as part of a QCC trade. See also MIA X Options Exchange Fee Schedule, Transaction Fees, QCC Fees, which assesses fees ranging from \$0.00 up to \$0.17 per contract for QCC trades depending on the type of market participant and initiator of the order.

⁶ See e.g., NYSE American Options Fee Schedule, Section I, paragraph I “Firm Monthly Fee Cap”, which provides a fee cap ranging from \$65,000 up to \$100,000 per month per firm for manual transactions. See also PHLX Options Pricing Schedule, Section 4, Fee per contract, which provides a monthly fee cap of \$75,000.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Exchange Act of 1934 (the “Act”),⁷ in general, and furthers the objectives of Section 6(b)(4),⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Trading Permit Holders (“TPHs”) 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)⁹ 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.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all TPHs.

The Exchange believes that the proposed amendments to the Fees Schedule are reasonable, equitable and not unfairly discriminatory. In particular, the Exchange believes the proposal to increase the fee assessed to non-customer QCC trades is reasonable because the

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f.(b)(5).

proposed fee is less than fees assessed for similar transactions on other exchanges.¹⁰

Furthermore, the proposed fee increase is intended to offset the cost associated with the proposed credit increase applied to the initiating order of a QCC trade. The Exchange believes the proposed fee increase is equitable and not unfairly discriminatory because it will apply equally to all non-customer transactions and the proposed change reflects a competitive pricing structure designed to compete with other exchanges that similarly assess fees to these market participants.

The Exchange also believes the proposed credit increase applied to the initiating order of a QCC trade is reasonable because it is intended to incentivize market participants to direct their QCC order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all TPHs. Additionally, the Exchange believes the proposed increase to the Clearing TPH transaction fee cap is reasonable because it is in line with similar fee caps offered on another exchange.¹¹ The Exchange believes the proposed credit increase and fee cap increase are equitable and not unfairly discriminatory because they will each apply to all market participants equally.

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 competition that is not necessary or appropriate in furtherance of the purposes of the Act. First, the Exchange notes that the proposed changes apply uniformly to similarly-situated TPHs. The Exchange believes the proposed rule change serves to increase intramarket competition by incentivizing TPHs to direct their QCC orders to the Exchange, which will bring greater volume and liquidity, thereby benefitting all market participants by providing more trading opportunities and tighter spreads. Further, the Exchange notes that other Exchanges provide similar fees and credits as it relates to QCC transactions, and also provide similar fee caps.

¹⁰ Supra note 5.

¹¹ Supra note 6.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. TPHs have numerous alternative venues they may participate on and direct their order flow, including 15 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 15% of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange believes that the proposed fee changes are comparable to that of other exchanges offering similar functionality. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.” The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 TPHs 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 Act¹² and paragraph (f) of Rule 19b-4¹³ 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-2021-039 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.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2021-039. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2021-039 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.¹⁴

J. Matthew DeLesDernier,
Assistant Secretary.

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¹⁴ 17 CFR 200.30-3(a)(12).