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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-93552; File No. SR-CBOE-2021-065]
Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule

November 10, 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 November 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 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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: the Global Trading Hours ("GTH") Executing Agent Subsidy Program; surcharges applicable to Non-Customer orders executed in long-term index options series ("LEAPS") for S&P 500 Index ("SPX") options; a waiver applicable to transaction fees for Customer orders executed in Cboe Volatility Index ("VIX") options during GTH; and the GTH VIX/VIX Weekly ("VIXW") Lead Market-Maker ("LMM") Incentive Program, effective November 1, 2021.

GTH Executing Agent Subsidy Program

The proposed rule change amends the GTH Executing Agent Subsidy Program to adopt volume-based tiers that correspond to increasingly higher subsidies. In particular, the GTH Executing Agent Subsidy Program offers a monthly subsidy to Trading Permit Holders ("TPHs") with executing agent operations[3] during the GTH trading session. Pursuant to the current program, a designated GTH executing agent will receive a $5,000 monthly subsidy if it executes at least 1,000 contracts executed on behalf of customers (including public and broker-dealer customers) during GTH in a calendar month. To become a designated GTH executing agent, a TPH must submit a form to the Exchange no later than 3:00 p.m. on the second to last business day of a calendar month to be designated an GTH executing agent under the program, and thus eligible for the subsidy, beginning the following calendar month. The TPH must include on or with the form information demonstrating it maintains an GTH executing agent operation: (1) physically staffed throughout each entire GTH trading session and (2) willing to accept and execute orders on behalf of customers, including customers for which the agent does not hold accounts. The designation will be effective the first business day of the following calendar

3 An executing agent operation is one that accepts orders from customers (who may be public or broker-dealer customers and including customers for which the agent does not hold accounts) and submits the orders for execution (either directly to the Exchange or through another TPH).

month, subject to the Exchange's confirmation the TPH's GTH executing agent operations satisfies these two conditions and will remain in effect until the Exchange receives an email from the TPH terminating its designation or the Exchange determines the TPH's GTH executing agent operation no longer satisfies these two conditions. Within two business days following the end of a calendar month, in order to receive the subsidy for that month, the designated GTH executing agent must submit to the Exchange (in a form and manner determined by the Exchange) documentation and other evidence it executed at least 1,000 contracts on behalf of customers during GTH that month.

As stated above, the Exchange now proposes to adopt volume-based tiers that correspond to increasingly higher monthly subsidies for designated GTH executing agents. Specifically, as proposed, a designated GTH executing agent will receive the monthly subsidy amount that corresponds to the number of contracts executed on behalf of customers (including public and broker-dealer customers) during GTH in a calendar month per the GTH Executing Agent Subsidy Program table, as follows:

GTH Monthly Customer Volume	**Subsidy**
0-999 contracts	$0.00
1,000-4,999 contracts	$5,000
5,000-29,999 contracts	$15,000
30,000+ contracts	$20,000

The proposed rule change removes the language related to the requirement that a designated GTH executing agent must submit to the Exchange (in a form and manner determined by the Exchange) documentation and other evidence of the number of contracts it executed on behalf of customers in a month, as the Exchange has automated the process for documenting this for designated GTH executing agents each month. The current timing, process, requirements and all other documentation applicable to designated GTH executing agent under the GTH Executing Agent Subsidy Program will continue to apply in the same manner.

The proposed volume-based tiers are designed to encourage designated GTH executing agents to increase their order flow executed as agent in the symbols that trade during GTH (SPX and VIX) to meet the proposed volume thresholds in order to receive the proposed corresponding subsidies, as the proposed tiers present additional opportunities for designated GTH agents to receive larger subsidies than that which is currently offered by the program. As such, the proposed tiers may also incentivize more TPHs to become designated GTH executing agents that may submit customer (including public and broker-dealer customer) order flow during GTH to meet the proposed volume thresholds and receive the corresponding subsidies. The Exchange notes that incentivizing TPHs to conduct executing agent operations willing to accept orders from all customers during GTH is designed to increase customer accessibility to the GTH trading session. The Exchange believes that increased order flow through designated GTH executing agents would allow the Exchange to grow participation during GTH, which may benefit all market participants, as additional liquidity to the Exchange during GTH would create more trading opportunities during GTH, and in turn attract market participants to submit additional order flow during GTH.

SPX LEAPS Surcharge

The Exchange intends to begin listing SPX LEAPS options with expirations more than three years out on November 1, 2021. Index LEAPS are index options series that expire from 12 to 180 months from the date of issuance.[4] In connection with the planned listing of SPX LEAPS options, the Exchange proposes to adopt surcharge fees for Non-Customer[5] orders executed in SPX LEAPS options that vary according to time-to-expiration in Rate Table - Underlying Symbol List A of the Fees Schedule, as follows:

- Non-Customer orders executed in SPX LEAPS options that expire three years to less than four years out will be assessed a surcharge fee of $1.00 per contract;

4 See Rule 4.13(b).

5 Non-Customers include all capacities except for "C" (Customer), specifically: "M" capacity (Market-Maker); "N" capacity (Non-TPH Market-Maker); "F" capacity (Clearing TPH); "L" capacity (Non-Clearing TPH Affiliates); "J" capacity (Joint Back-Office); "U" capacity (Professional); and "B" capacity (Broker-Dealer).

- Non-Customer orders executed in SPX LEAPS options that expire four years to less than five years out will be assessed a surcharge fee of $1.50 per contract;
- Non-Customer orders executed in SPX LEAPS options that expire five years to less than six years out will be assessed a surcharge fee of $2.00; and
- Non-Customer orders executed in SPX LEAPS options that expire six years out or more will be assessed a surcharge fee of $2.50.

The Exchange anticipates SPX LEAPS may attract a different customer-base and generally sustain lower volumes than that of standard SPX options given the relatively higher premium prices, implied volatility, and overall risk associated with trading SPX LEAPS as a result of their long-dated expirations. Therefore, in order to initially and continue to list SPX LEAPS, as well as attempt to grow liquidity in these series, the Exchange must expend a number of resources. As such, the proposed SPX LEAPS surcharge fees are designed to assist the Exchange in recouping the resources expended in developing and maintaining a market for SPX LEAPS options. The Exchange notes that other index options are also subject to surcharge fees.[6]

GTH VIX Transaction Fees Waiver

The Exchange proposes to waive transaction fees for Customer orders executed in VIX options during GTH through December 31, 2022. Pursuant to the Rate Table – Underlying Symbol List A in the Fees Schedule, Customer simple orders and Customer complex orders executed in VIX options are assessed a transaction fee by premium price. Such transaction fees are applicable during Regular Trading Hours ("RTH") and GTH. Customer simple orders in VIX options with a premium price between $0.00 and $0.10 are assessed a transaction fee of $0.10 per contract and complex orders with the same premium price range are assessed a transaction fee of $0.05 per contract. Customer simple orders in VIX options with a premium price between $0.11 and $0.99 are assessed a transaction fee of $0.25 per contract and complex orders with the

6 See generally Cboe Options Fees Schedule, Rate Table – Underlying Symbol List A.

same premium price range are assessed a transaction fee of $0.17 per contract. Customer simple orders in VIX options with a premium price between $1.00 and $1.99 are assessed a transaction fee of $0.40 per contract and complex orders with the same premium price range are assessed a transaction fee of $0.30 per contract. Both Customer simple and complex orders in VIX options with a premium price of $2.00 or more are assessed a transaction fee of $0.45 per contract.

Proposed footnote 32 provides that transactions fees will be waived for Customer orders executed in VIX options during GTH through December 31, 2022 and the proposed rule change appends footnote 32 to the line items in Rate Table – Underlying Symbol List A applicable to transaction fees for Customer simple and complex orders in VIX options.[7] The proposed waiver is designed to encourage customer order flow in VIX options during GTH. As described above, the Exchange wishes to promote the growth of its GTH trading session. Additionally, the Exchange has observed lower volume and participation in VIX options during GTH than compared to volume and participation in SPX options (the other class currently available for trading during GTH). As such, it believes that incentivizing increased customer order flow in VIX options during GTH would attract additional liquidity to the Exchange, providing market participants with more trading opportunities and signaling an increase in Market-Maker activity, which facilitates tighter spreads. This may cause an additional corresponding increase in order flow from other market participants, contributing overall towards a robust and well-balanced market ecosystem, particularly in VIX options during GTH.

GTH VIX/VIXW LMM Incentive Program

The proposed rule change also amends the GTH VIX/VIXW LMM Incentive Program. The GTH VIX/VIXW LMM Incentive Program provides a rebate to TPHs appointed as LMMs to the program that meet certain quoting standards in VIX and VIXW options series in a month. The Exchange notes that meeting or exceeding the quoting standards (both current and as

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7 For clarity, the proposed rule change also appends proposed footnote 32 to the line item containing VIX in the Customer Large Trade Discount table in the Fees Schedule.

proposed; described in further detail below) in VIX or VIXW to receive the applicable rebate (both currently offered and as proposed; described in further detail below) is optional for an LMM appointed to the program. Rather, an LMM appointed to the program is eligible to receive a rebate if it satisfies the applicable quoting standards, which the Exchange believes encourages the LMM to provide liquidity in VIX/VIXW options during GTH. The Exchange may consider other exceptions to the programs' quoting standards based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM appointed to the program meets the program's basic and heightened quoting standards each month, the Exchange excludes from the calculation for each set of quoting standards the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of the applicable series that month.[8]

Currently, the program provides that if an LMM in VIX/VIXW provides continuous electronic quotes during GTH that meet or exceed the basic quoting standards in at least 99% of each of the VIX and VIXW series, 90% of the time in a given month, the LMM will receive a rebate for that month in the amount of $15,000 for VIX and $5,000 for VIXW (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) for that month. Additionally, if the appointed LMM provides continuous electronic quotes during GTH that meet or exceed the VIX heightened quoting standards in at least 99% of the VIX series, 90% of the time in a given month, the LMM will receive a rebate for that month of $0.03 per VIX/VIXW contract executed in its Market-Maker capacity during RTH.

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8 The Exchange recently implemented basic and heightened quoting standards in the program. See Securities Exchange Act Release No. 93348 (October 15, 2021), 86 FR 58335 (October 21, 2021) (SR-CBOE-2021-058). The proposed rule change now makes a clarifying update to the language regarding the Exchange's exclusion of an LMM's worst quoting day in a month to account for the separate sets of quoting requirements. Specifically, the proposed rule change clarifies that an LMM's worst quoting day will be excluded from the calculation applicable to each set of quoting standards for that month.

The proposed rule change seeks to amend the VIXW basic quoting standards, which are currently as follows:

Premium Level	Maximum Allowable Width
$0.00-$100.00	$10.00
$100.01 - $200.00	$16.00
Greater than $200.000	$24.00

The proposed rule change amends the VIXW basic quoting standards to reflect the following:

VIX Value at Prior Close < 18				
Premium Level	**Less than 21 days to expiration**		**21 days or greater to expiration**	
	Width	**Size**	**Width**	**Size**
$0.00 - $1.00	$1.00	10	$1.50	10
$1.01 - $3.00	$1.50	10	$2.50	10
$3.01 - $5.00	$2.50	3	$4.00	3
$5.01 - $10.00	$4.00	1	$6.00	1
$10.01 - $30.00	$6.00	1	$10.00	1
Greater than $30.00	$10.00	1	$10.00	1
VIX Value at Prior Close from 18 - 25				
$0.00 - $1.00	$1.50	5	$2.00	5
$1.01 - $3.00	$2.50	5	$4.00	5
$3.01 - $5.00	$4.00	1	$5.00	1
$5.01 - $10.00	$6.00	1	$8.00	1
$10.01 - $30.00	$10.00	1	$10.00	1
Greater than $30.00	$10.00	1	$10.00	1
VIX Value at Prior Close from > 25				
$0.00 - $1.00	$10.00	1	$10.00	1
$1.01 - $3.00	$10.00	1	$10.00	1
$3.01 - $5.00	$10.00	1	$10.00	1
$5.01 - $10.00	$10.00	1	$10.00	1
$10.01 - $30.00	$10.00	1	$10.00	1
Greater than $30.00	$10.00	1	$10.00	1

The Exchange believes the proposed basic quoting requirements for VIXW options under the GTH VIX/VIXW LMM Incentive Program are designed to continue to encourage LMMs appointed to the program to provide significant liquidity in VIXW options during GTH. The proposed basic quoting standards for VIXW options provide for tighter widths than the current basic quoting standards and implement size standards based on finer premium ranges. As such, the proposed rule change offers LMMs appointed to the program a more challenging opportunity, thus further incentive, to strive to meet the VIXW basic quoting standards in order to receive the applicable rebate. The Exchange notes that the proposed rule change also seeks to tailor the VIXW basic quoting standards to better reflect then-current market conditions and market characteristics the Exchange has observed in VIXW options, as the proposed VIXW basic quoting standards that are applicable depend on the VIX Index value at the prior market close (i.e., at the close of the preceding RTH session). Spreads in VIXW options generally widen when the market experiences higher volatility (i.e., the VIX Index level is higher in value). Therefore, to encourage LMMs to meet the proposed basic quoting standards regardless of market volatility, the proposed rule change adopts generally wider widths and smaller quote sizes where the market may be experiencing higher volatility (i.e., when the value of the VIX Index in the proposed VIX value categories becomes relatively higher compared to the closing index value from the preceding trading session). The proposed rule change also adopts generally tighter widths in the nearer in term expiration category (less than 21 days to expiration) than that of the longer in term expiration category (21 days or greater to expiration). The Exchange believes the proposed rule change provides a balance between providing more challenging opportunities, thus greater quoting incentive, in the expiration category that is nearer in term and easing the width requirements in the expiration category that is longer in term, as the Exchange understands that demand and participation is generally lower for options that expire farther out, which may make it more difficult for LMMs to quote within tighter widths. The Exchange notes that the basic quoting standards currently in place for VIX options under the program are tailored in a similar manner.

The Exchange also proposes to update the rebate amount received for meeting the VIXW basic quoting standards, as proposed, in a given month, by slightly increasing the rebate amount from $5,000 to $10,000. The proposed increase is designed to further incentivize LMMs appointed to the program to provide significant liquidity in VIXW options in order to meet the proposed basic quoting standards. Finally, the proposed rule change marginally decreases the amount of the additional rebate that applies to VIX/VIXW contracts executed in RTH where an appointed LMM meets the VIX heightened quoting standards from $0.03 to $0.02. The Exchange notes that it is not required to maintain this additional incentive at any amount and that an LMM will continue to have the opportunity to receive the additional rebate on its VIX/VIXW orders executed in RTH, albeit at a marginally lower rate.

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.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] 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,[11] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

First, the Exchange believes that the proposed rule changes are reasonable. In particular, the Exchange believes that the proposed rule change to adopt a volume-based tier structure for the GTH

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9 15 U.S.C. 78f(b).

10 15 U.S.C. 78f(b)(5).

11 15 U.S.C. 78f(b)(4).

Executing Agent Subsidy Program is reasonably designed to encourage designated GTH executing agents to increase their customer order flow in the symbols that trade during GTH and to incentivize more TPHs to become designated GTH executing agents that may submit order flow during GTH, to meet the proposed volume thresholds and receive the corresponding subsidies. By incentivizing TPHs to conduct executing agent operations willing to accept orders from all customers during GTH, the proposed rule change is reasonably designed to increase customer accessibility and increase order flow to the GTH trading session. The Exchange believes that increased order flow would allow the Exchange to grow participation in the GTH trading session to the benefit of all market participants that trade during GTH, by providing greater trading opportunities as a result of increased liquidity, thereby attracting additional order flow from market participants during GTH. The Exchange notes that the Fees Schedule currently offers many other programs with similar volume-based incentive tier structures.[12]

The Exchange believes that the proposed rule change to adopt surcharge fees based on the time to expiration for SPX LEAPS (which the Exchange intends to begin listing on November 1, 2021) is reasonable because the surcharge fees will assist the Exchange in recouping some of the resources it expends developing and maintaining a market for SPX LEAPS, which the Exchange anticipates will have a different customer base and sustain relatively lower volume than that of standard SPX options. The Exchange notes that it also assesses other surcharge fees on proprietary index options pursuant to Rate Table – Underlying Symbol List A in the Fees Schedule for similar reasons. While the proposed surcharge fees for SPX LEAPS are generally higher than the other surcharges fees in Rate Table – Underlying Symbol List A, the Exchange believes the proposed amounts are reasonably commensurate with the market characteristics of SPX LEAPS, where relatively lower volumes generally result in liquidity providers quoting wider spreads, which may absorb higher premiums and costs.

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12 See e.g., Cboe Options Fees Schedule, Liquidity Provider Sliding Scale and Floor Broker Sliding Scale Rebate Program.

The Exchange believes that the proposed rule change to waive transaction fees for Customer orders executed in VIX options during GTH is reasonably designed to encourage customer order flow in VIX options during GTH. The Exchange wishes to promote the growth of its GTH trading session, and, as the Exchange has observed comparatively lower volume and participation in VIX options during GTH, it believes that incentivizing increased customer order flow in VIX options during GTH would attract additional liquidity to the Exchange. As described above, increased customer order flow facilitates increase trading opportunities and attracts Market-Maker activity, which facilitates tighter spreads and may ultimately signal an additional corresponding increase in order flow from other market participants, contributing overall towards a robust and well-balanced market ecosystem, particularly in VIX options during GTH. The Exchange notes that it similarly waives fees for other types of Customer orders in the Fees Schedule.[13]

The Exchange believes that the proposed rule change to amend the GTH VIX/VIXW LMM Incentive Program is reasonable. Particularly, the Exchange believes the proposed basic quoting requirements are reasonably designed to continue to encourage LMMs appointed to the program to provide significant liquidity in VIXW options during GTH. Additionally, the Exchange believes that it is reasonable to adopt tighter widths and implement sizes based on finer premium categories in the basic quoting standards for VIXW options in order to provide more challenging opportunities, thus greater quoting incentive, for LMMs to strive to meet the basic quoting standards and receive the corresponding rebate, as proposed. As such, the Exchange believes the proposed rule change is reasonably designed to encourage LMMs appointed to the program to meet the VIXW basic quoting standards (and receive the rebate, as amended) by increasing their quoting activity and posting tighter spreads and more aggressive

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13 See Cboe Options Fees Schedule, footnote 8, which waives the transaction fee for customer orders in ETF and ETN options executed in open outcry or in AIM or as a QCC or as a FLEX Options transaction, and footnote 9, which waives transaction fees for customer orders that provide or remove liquidity that are 99 contracts or less in ETF and ETN options.

quotes in VIXW options. An increase in quoting activity and tighter quotes tends to signal additional corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that the proposed basic quoting standards are reasonably tailored to reflect then-current market conditions and market characteristics in VIXW options, as they relate to volatility in the market (i.e., VIX Index level) as well as time-to-expiration. The Exchange notes that the basic quoting standards currently in place for VIX options under the program are tailored in a similar manner.

In addition to this, the Exchange believes that it is reasonable to amend the monthly rebate amounts applicable to VIXW options under the GTH VIX/VIXW LMM Incentive Program. The Exchange believes that the proposed increased rebate amount (from $5,000 to $10,000) for VIXW options is reasonably designed to continue to incentivize an appointed LMM to meet the applicable quoting standards for VIXW options, 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. The Exchange also believes that the proposed increase is reasonably commensurate with the proposed basic quoting standards for VIXW, which, as described above, present more challenging opportunities for LMMs. The Exchange also believes that the proposed rule change to reduce the additional rebate applicable to an LMM's VIX/VIXW orders executed in RTH where an LMM meets the VIX heightened quoting requirements in a month is reasonable because an LMM will still be able to meet the heightened quoting requirements and receive the additional rebate, albeit at a marginally reduced rate (from $0.03 to $0.02). The Exchange notes that it is not required to maintain this additional incentive at any amount.

The Exchange also believes that the proposed rule changes are equitable and not unfairly discriminatory. In particular, the Exchange believes that offering volume-based incentives that correspond to higher subsidies to designated GTH executing agents is equitable and not unfairly discriminatory because TPHs that conduct executing agent operations willing to accept orders from all customers take on additional risks and potential costs (including those related to staffing and clearing) associated with this type of business. Such TPHs also provide benefits to investors during GTH, including increased customer accessibility to the GTH trading session and increased order flow. All TPHs that conduct this type of operation during GTH will continue to have the opportunity to become a designated GTH executing agent and thus eligible for the monthly subsidy.

The Exchange believes that the proposed surcharge fees for SPX LEAPS are equitable and not unfairly discriminatory because each proposed surcharge will apply equally to all Non-Customer orders SPX LEAPS in the corresponding expiry category. Likewise, the Exchange believes that the proposed waiver for Customer orders executed in VIX options in GTH is equitable and not unfairly discriminatory because the waiver will apply equally to all Customer transactions in VIX options during GTH. The Exchange also notes that, regarding the application of the proposed surcharge fees to Non-Customer orders and the transaction fee waiver to Customer orders, there is a history in the options markets of providing preferential treatment to customers and, as described herein, customer order flow tends to attract key liquidity from other market participants.

Regarding the VIX/VIXW LMM Incentive Program, the Exchange believes that it is equitable and not unfairly discriminatory generally to continue to offer this financial incentive, including as amended, to LMMs appointed to the program, because it benefits all market participants trading in the corresponding products during GTH. As described above, the program encourages the appointed LMMs to satisfy the quoting standards, which may increase liquidity and provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade VIX/VIXW options, which can lead to increased volume, providing for robust markets. The

Exchange ultimately offers the GTH VIX/VIXW LMM Incentive Program, as amended, to sufficiently incentivize the appointed LMMs to provide key liquidity and active markets in VIX/VIXW options during GTH, and believes that the program, as amended, will continue to encourage increased quoting to add liquidity in VIX/VIXW options to the benefit of investors. The Exchange also notes that an LMM appointed to the program may undertake added costs each month to satisfy that heightened quoting standards (e.g., having to purchase additional logical connectivity).

In particular, the Exchange believes it is equitable and not unfairly discriminatory to adopt new VIXW quoting standards because such quoting standards will equally apply to any and all TPHs with LMM appointments to the GTH VIX/VIXW LMM Incentive Program that seek to meet the program's quoting standards in order to receive the rebates offered. The Exchange believes the amended rebate for VIXW options and the amended additional rebate applicable during RTH are equitable and not unfairly discriminatory because they, too, will equally apply to any TPH that is appointed as an LMM to the GTH VIX/VIXW LMM Incentive Program. Additionally, if an LMM appointed to the GTH VIX/VIXW LMM Incentive Program does not satisfy the quoting standards for any given month, then it simply will not receive the corresponding rebate offered by the program for that month.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to the floor of a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution and price improvement opportunities for all TPHs. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[14]

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. As stated, all TPHs that conduct executing agent operations willing to accept orders from all customers will continue to have an opportunity to be eligible for the GTH Executing Agent Subsidy program. Also, such TPHs that conduct this type of operation take on additional risks and potential costs (including those related to staffing and clearing) associated with this type of business, and may provide benefits to investors during GTH, including increased customer accessibility to, and liquidity and trading opportunities during, the GTH trading session. Additionally, the proposed surcharge fees and fee waiver will apply equally to the applicable orders for all similarly situated market participants (i.e. all Non-Customer orders in SPX LEAPS in the corresponding expiry categories and all Customer transactions in VIX options during GTH). The Exchange again notes that there is a history in the options markets of providing preferential treatment to customers and customer order flow tends to attract key liquidity from other market participants. Further, the proposed changes to the GTH VIXW/VIX LMM Incentive Program will apply to all LMMs appointed to the program in a uniform manner. To the extent the LMMs appointed to the program receive a benefit that other market participants do not, as stated, these LMMs in their role as Market-Makers on the Exchange have different obligations and are held to different standards. For example, Market-Makers play a crucial role in providing active and liquid markets in their appointed products, 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. An LMM appointed to the program may undertake added costs each month that it needs to satisfy the quoting standards (e.g., having

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14 Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

to purchase additional logical connectivity). The program is ultimately designed to attract additional order flow in VIX/VIXW options to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity

The Exchange also does not believe that the proposed changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act because each of the proposed changes applies only to fees and programs applicable to transactions in products exclusively listed on the Exchange. Additionally, the Exchange notes that it operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, many of which offer substantially similar price improvement auctions. Based on publicly available information, no single options exchange has more than 16% of the market share.[15] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem fee levels at those other venues to be more favorable. 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."[16] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission,

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15 See Cboe Global Markets U.S. Options Market Volume Summary, Month-to-Date (October 25, 2021), available at https://markets.cboe.com/us/options/market_statistics/.

16 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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'….".[17] 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 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[18] and paragraph (f) of Rule 19b-4[19] 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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17 NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

18 15 U.S.C. 78s(b)(3)(A).

19 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. Please include File Number SR-CBOE-2021-065 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-2021-065. 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-2021-065 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.[20]

J. Matthew DeLesDernier,
Assistant Secretary.

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20 17 CFR 200.30-3(a)(12).