



**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-96793; File No. SR-CBOE-2023-008]**

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

February 2, 2023.

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 January 20, 2023, 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

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

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

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 to modify the fee for the SPX (and SPXW) Floor Market-Maker Tier Appointment Fee.<sup>3</sup>

By way of background, Exchange Rule 5.50(g)(2) provides that the Exchange may establish one or more types of tier appointments and Exchange Rule 5.50(g)(2)(B) provides such tier appointments are subject to such fees and charges the Exchange may establish. In 2010, the Exchange established the SPX Tier Appointment and adopted an initial fee of \$3,000 per Market-Maker trading permit, per month.<sup>4</sup> The SPX (and SPXW) Tier Appointment fee for Floor Market-Makers currently applies to any Market-Maker that executes any contracts in SPX and/or SPXW on the trading floor.<sup>5</sup> The Exchange now seeks to increase the fee for the SPX/SPXW Floor Market-Maker Tier Appointment from \$3,000 per Market-Maker Floor Trading Permit to \$5,000 per Market-Maker Floor Trading Permit.

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<sup>3</sup> The Exchange initially filed the proposed fee change, among other changes, on June 1, 2022 (SR-CBOE-2022-026). On June 10, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-029. On August 5, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-042. On September 26, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-050 to address the proposed fee change relating to the SPX/SPXW Floor Market-Maker Tier Appointment Fee. On November 23, 2022, the Exchange advised of its intent to withdraw that filing and submitted SR-CBOE-2022-060. On January 20, 2023, the Exchange withdrew SR-CBOE-2022-060 and submitted this filing. No comment letters were received in connection with any of the foregoing rule filings.

<sup>4</sup> See Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR-CBOE-2010-060).

<sup>5</sup> The Exchange notes that the fee is not assessed to a Market-Maker Floor Permit Holder who only executes SPX (including SPXW) options transactions as part of multi-class broad-based index spread transactions. See Cboe Options Fees Schedule, Market-Maker Tier Appointment Fees, Notes.

In connection with the proposed change, the Exchange also proposes to update Footnote 24 in the Fees Schedule, as well as remove the reference to Footnote 24 in the Market-Maker Tier Appointment Fee Table. By way of background, in June 2020, the Exchange adopted Footnote 24 to describe pricing changes that would apply for the duration of time the Exchange trading floor was being operated in a modified manner in connection with the COVID-19 pandemic.<sup>6</sup> Among other changes, Footnote 24 provided that the monthly fee for the SPX/SPXW Floor Market-Maker Tier Appointment Fee was to be increased to \$5,000 per Trading Permit from \$3,000 per Trading Permit. As the Exchange now proposes to maintain the \$5,000 rate on a permanent basis (i.e., regardless of whether the Exchange is operating in a modified state due to COVID-19 pandemic), the Exchange proposes to eliminate the reference to the SPX/SPXW Floor Market-Maker Tier Appointment Fee in Footnote 24.<sup>7</sup>

## 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.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</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

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<sup>6</sup> See Securities Exchange Act Release No. 89189 (June 30, 2020), 85 FR 40344 (July 6, 2020) (SR-CBOE-2020-058).

<sup>7</sup> The Exchange notes that since its transition to a new trading floor facility on June 6, 2022, it has not been operating in a modified manner. As such Footnote 24 (i.e., the modified fee changes it describes) does not currently apply.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly competitive environment. The SEC Division of Trading and Markets' Fee Guidance provides that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.<sup>11</sup> As described in further detail below, the Exchange believes substitutable products are in fact available to market participants, including in the Over-the-Counter (OTC) markets. Indeed, there are currently 16 registered options exchanges that trade options, with a 17<sup>th</sup> options exchange expected to launch in 2023. Based on publicly available information, no single options exchange has more than 17% of the market share as of January 19, 2023.<sup>12</sup> Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers, including exclusively listed products as discussed further below. For example, there are 3 exchanges that have been added in the U.S. options markets in the last 5 years (i.e., Nasdaq MRX, LLC, MIAX Pearl, LLC, and MIAX Emerald LLC) and one additional options exchange that is expected to launch in 2023 (i.e., MEMX LLC).

The Exchange believes that competition in the marketplace constrains the ability of exchanges to charge supracompetitive fees for access to its products exclusive to that market ("proprietary products"). Notably, just as there is no regulatory requirement to become a member of any one options exchange, there is also no regulatory requirement for any market participant

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<sup>10</sup> Id.

<sup>11</sup> See Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019.

<sup>12</sup> See Cboe Global Markets U.S. Options Market Volume Summary (January 19, 2023), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

to participate on the Exchange in any particular capacity nor trade any particular product. Additionally, there is no requirement that any Exchange create or indefinitely maintain any particular product.<sup>13</sup> The Exchange also highlights that market participants may trade an exchange's proprietary products through a third-party without directly or indirectly connecting to the exchange. Further, market participants, including Market-Makers, may trade the Exchange's products, including proprietary products, on or off the Exchange's trading floor (i.e., all products are available both electronically and via open outcry on the Exchange's trading floor). Indeed, market participants are not obligated to trade on the Exchange's trading floor and therefore a market participant, including Market-Makers, can choose to trade a product electronically instead of on the Exchange's trading floor at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

Additionally, market participants may trade any options product, including proprietary products, in the unregulated Over-the-Counter (OTC) markets for which there is no requirement for fees related to those markets to be public. Given the benefits offered by trading options on a listed exchange, such as increased market transparency and heightened contra-party creditworthiness due to the role of the Options Clearing Corporation as issuer and guarantor, the Exchange generally seeks to incentivize market participants to trade options on an exchange, which further constrains fees that an Exchange may assess. Market participants may also access other exchanges to trade other similar or competing proprietary or multi-listed products. Alternative products to the Exchange's proprietary products may include other options products,

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<sup>13</sup> If an option class is open for trading on another national securities exchange, the Exchange may delist such option class immediately. For proprietary products, the Exchange may determine to not open for trading any additional series in that option class; may restrict series with open interest to closing transactions, provided that, opening transactions by Market-Makers executed to accommodate closing transactions of other market participants and opening transactions by TPH organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with Rule 6.74(b) or (d) may be permitted; and may delist the option class when all series within that class have expired. See Cboe Rule 4.4, Interpretations and Policies .11.

including options on ETFs or options futures, as well as particular ETFs or futures. Particularly, exclusively listed SPX options (i.e., a proprietary product) may compete with the following products traded on other markets: multiply-listed SPY options (options on the ETF), E-mini S&P 500 Options (options on futures), and E-Mini S&P 500 futures (futures on index). Indeed, as a practical matter, investors utilize SPX and SPY options and their respective underlying instruments and futures to gain exposure to the same benchmark index: the S&P 500.

Notably, the Commission itself has affirmed that notwithstanding the exclusive nature of SPX options, alternatives to this product exist in the marketplace. Particularly, in approving SPXPM (the PM-settled S&P 500 cash settled contract) on its affiliate exchange Cboe C2 Exchange, Inc. (which product was later transferred to the Exchange), the Commission stated that it “recognizes the potential impact on competition resulting from the inability of other options exchanges to list and trade SPXPM. In acting on this proposal, however, the Commission has balanced the potentially negative competitive effects with the countervailing positive competitive effects of C2's proposal. The Commission believes that the availability of SPXPM on the C2 exchange will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the S&P 500 stocks. Further, this product could offer a competitive alternative to other existing investment products that seek to allow investors to gain broad market exposure. Also, we note that it is possible for other exchanges to develop or license the use of a new or different index to compete with the S&P 500 index and seek Commission approval to list and trade options on such index.”<sup>14</sup>

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<sup>14</sup> See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR-C2-2011-008). The Exchanges notes SPXPM was later transferred to the Exchange, where it currently remains listed. See Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR-CBOE-2012-120).

The economic equivalence of SPX and SPY options was further acknowledged and cited as a basis for the elimination of position limits for SPY options across the industry not long after the Commission’s findings above in 2011.<sup>15</sup> Moreover, other exchanges have acknowledged that SPY options are considered to be an economic equivalent to SPX options.<sup>16</sup>

Additionally, in connection with a previous proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”),<sup>17</sup> the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models. Similar to, and consistent with, its findings in approving SPXPM, the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.<sup>18</sup> Accordingly, although the Exchange may have proprietary products not offered by other competitors, not unlike unique business models, a competitor could create similar products to an existing proprietary product if demand were adequate. As an illustration of this point, MIAX created its exclusive product SPIKES specifically to compete against VIX options, another product exclusive to the Exchange.<sup>19</sup>

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<sup>15</sup> See e.g., Securities Exchange Act Release No. 67936 (September 27, 2012), 77 FR 60491 (October 3, 2012) (SR-BOX-2012-013). See also Securities Exchange Act Release No. 67999 (October 5, 2012), 77 FR 62295 (October 12, 2012) (SR-Phlx-2012-122).

<sup>16</sup> NYSE Euronext, on behalf of its subsidiary options exchanges, NYSE Arca Inc. and NYSE Amex LLC, commented on a Nasdaq OMX PHLX LLC (“PHLX”) proposal to increase the position limits for SPY options, noting “...when a contract that is considered by many to be economically equivalent to SPY options - namely SPX options...” See (<http://www.sec.gov/comments/sr-phlx-2011-58/phlx201158-1.pdf>).

<sup>17</sup> See Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7-13-19).

<sup>18</sup> Id.

<sup>19</sup> MIAX has described SPIKES options as “designed specifically to compete head-to-head against Cboe’s proprietary VIX® product.” See MIAX Press Release, *SPIKES Options Launched on MIAX*, February 21, 2019, available at [https://www.miaxoptions.com/sites/default/files/press\\_release-](https://www.miaxoptions.com/sites/default/files/press_release-)

Accordingly, if a market participant views the Exchange's proprietary products, including SPX and SPXW, as more or less attractive than the competition they can switch between similar products. As such, the Exchange is subject to competition and does not possess anti-competitive pricing power, even with its offering of proprietary products such as SPX.

The Exchange also believes the proposed fee is reasonable as the Exchange believes it remains commensurate with the value of operating as a Market-Maker on the Exchange's trading floor in the SPX pit. For example, the Exchange recently transitioned from its previous trading floor, which it had occupied since the 1980s, to a brand new, modern and upgraded trading floor facility. The Exchange believes customers continue to find value in open outcry trading and rely on the floor for price discovery and the deep liquidity provided by floor Market-Makers. The build out of a new modern trading floor reflects the Exchange's commitment to open outcry trading and focus on providing the best possible trading experience for its customers, including Market-Makers. For example, the new trading floor provides a state-of-the-art environment and technology and more efficient use of physical space, which the Exchange believes better reflects and supports the current trading environment. The Exchange also believes the new infrastructure provides a cost-effective, streamlined, and modernized approach to floor connectivity. For example, the new trading floor has more than 330 individual kiosks, equipped with top-of-the-line technology, that enable floor participants to plug in and use their devices with greater ease and flexibility. It also provides floor Market-Makers with more space and increased capacity to support additional floor-based traders on the trading floor.

Indeed, notwithstanding the proposed fee change, Market-Maker presence on the new trading floor in SPX and SPXW has increased. Particularly, as of December 30, 2022, there are 12 additional Market-Makers trading SPX and SPXW on the trading floor as compared to May 2022 (which was the month prior to the proposed fee change being implemented on a permanent

basis and transition to the new trading floor).<sup>20</sup> Further, in June 2022, the month in which the proposed fee change took effect on the new trading floor on a permanent basis, there were 5 additional Market-Makers trading SPX and SPXW on the trading Floor as compared to May 2022. Further, as of December 30, 2022, there are 4 additional Market-Makers trading SPX and SPXW on the trading floor as compared to March 2020, which was the last month the Exchange assessed \$3,000 for the SPX and SPXW Floor Market Maker Tier Appointment fee. The Exchange believes the increasing SPX and SPXW Market-Maker presence on the trading floor since the last time the Exchange assessed \$3,000 for the SPX and SPXW Floor Market Maker Tier Appointment fee (i.e., March 2020) and since the time the current proposal was submitted (i.e., June 2020) speaks not only to the value Market-Makers find in participating as a Market-Maker in SPX and SPXW on the (new and improved) trading floor, but also to the reasonableness of the fee. Moreover, as established above, if a Market-Maker viewed trading SPX and SPXW as less attractive than competitive products, including those described above, they can switch between such similar products and choose not to remain as a Market-Maker trading SPX and SPX on the trading floor. As such, the Exchange is subject to competition and does not possess anti-competitive pricing power, even with its offering of proprietary products such as SPX.

Also, as noted above, market participants are not obligated to trade on the Exchange's trading floor and therefore a market participant, including Market-Makers, can choose to trade a product electronically instead of on the Exchange's trading floor at any time and for any reason, including due to an assessment of the reasonableness of fees charged. In particular, SPX and SPXW open outcry volume currently accounts for only approximately 26% of total SPX and SPXW volume (i.e., approximately 74% is traded electronically). Accordingly, Market-Makers

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<sup>20</sup> As noted above, the Exchange has been assessing \$5,000 for the SPX and SPXW Floor Market Maker Tier Appointment fee since June 2020 as the Exchange was operating in a modified state until its transition to the new trading floor in June 2022, at which time the Exchange submitted this proposal to make such increase permanent.

may also choose to trade SPX and SPXW electronically should they deem fees associated with trading on the trading floor as unreasonable, further demonstrating that the Exchange is constrained from imposing unreasonable and supracompetitive fees.

The Exchange finally believes its proposal to increase the SPX (and SPXW) Floor Market-Maker Tier Appointment fee is reasonable because the proposed amount is not significantly higher than was previously assessed (and is the same amount that has been assessed under Footnote 24 for the last two years). Additionally, the Exchange believes its proposal to increase the fee is reasonable as the fee amount has not been increased since it was adopted over 12 years ago in July 2010.<sup>21</sup> Particularly, since its adoption 12 years ago, there has been notable inflation. Indeed, the dollar has had an average inflation rate of 2.6% per year between 2010 and today, producing a cumulative price increase of approximately 37% inflation since 2010, when the SPX and SPXW Floor Market-Maker Tier Appointment was first adopted.<sup>22</sup> Additionally, for nearly ten years, Market-Makers were only subject to the original rate that was adopted in 2010 (i.e., \$3,000) notwithstanding an average inflation rate of 2.64% per year. The Exchange acknowledges its proposed fee exceeds 37%. However, the Exchange believes such increase is reasonable given many Market-Makers for nearly 10 years did not have to pay increased fees notwithstanding yearly inflation. For example, by not increasing the fee each year to correspond to the average per year inflation rate of 2.6%, Market-Makers trading SPX on the trading floor since 2011 through 2020 (when then Exchange originally increased the fee due to the COVID-19 pandemic) have saved nearly \$10,000. The Exchange therefore believes that proposing a fee in excess of the cumulative 37% inflation rate is still reasonable, especially when considered in conjunction with all of the additional and further rationale discussed above. The Exchange is also

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<sup>21</sup> See Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR-CBOE-2010-060).

<sup>22</sup> See <https://www.officialdata.org/us/inflation/2010?amount=1>.

unaware of any standard that suggests any fee proposal that exceeds a yearly or cumulative inflation rate is unreasonable.

The proposed change is also equitable and not unfairly discriminatory as it applies to all Market-Makers that trade SPX on the trading floor uniformly. The Exchange believes it's reasonable equitable and not unfairly discriminatory to increase the SPX/SPXW floor Market-Maker Tier Appointment fee and not the SPX/SPXW electronic Market-Maker Tier Appointment fee, as Floor Market-Makers are not subject to other costs that electronic Market-Makers are subject to. For example, while all Floor Market-Makers automatically have an appointment to trade open outcry in all classes traded on the Exchange and at no additional cost per appointment, electronic Market-Makers must select an appointment in a class (such as SPX) to make markets electronically and such appointments are subject to fees under the Market-Maker Electronic Appointments Sliding Scale.<sup>23</sup>

**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. The Exchange does not believe that the proposed rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes would be applied in the same manner to all Floor Market-Makers that trade SPX (and/or SPXW). As noted above, the Exchange believes it's reasonable to increase the SPX/SPWX Tier Appointment Fee for only Floor Market-Makers only as opposed to electronic Market-Makers, because electronic Market-Makers are subject to costs Floor Market-Makers are not, such as the fees under Market-Maker EAP Appointments Sliding Scale.

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

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<sup>23</sup> See Cboe Options Rules 5.50(a) and (e). See also Cboe Options Fees Schedule, Market-Maker EAP Appointments Sliding Scale.

Act because the proposed rule changes apply only to a fee relating to a product exclusively listed on the Exchange. Additionally, the Exchange operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on (which, as described above, list products that compete with SPX options) and direct their order flow, including 15 other options exchanges (four of which also maintain physical trading floors), as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 17% of the market share of executed volume of options trades.<sup>24</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. 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.”<sup>25</sup> 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’ ....”<sup>26</sup> Accordingly, the Exchange does not believe

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<sup>24</sup> See Cboe Global Markets, U.S. Options Market Volume Summary by Month (January 19, 2023), available at [http://markets.cboe.com/us/options/market\\_share/](http://markets.cboe.com/us/options/market_share/).

<sup>25</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>26</sup> *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)).

its proposed changes to the incentive programs impose 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<sup>27</sup> and paragraph (f) of Rule 19b-4<sup>28</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2023-008 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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(SR-NYSEArca-2006-21)).

<sup>27</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>28</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2023-008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal 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-2023-008 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>29</sup> 17 CFR 200.30-3(a)(12).