



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99727; File No. SR-CBOE-2024-010]

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

March 13, 2024.

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 February 29, 2024, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.³ Specifically, the Exchange proposes to amend the Global Trading Hours (“GTH”) Executing Agent Subsidy Program, set forth in the Fees Schedule. The GTH Executing Agent Subsidy Program offers a monthly subsidy to Trading Permit Holders (“TPHs”) with executing agent operations⁴ during the GTH trading session. Pursuant to the current program, a designated GTH executing agent receives 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 shown in the table below. Qualifying customer volume is limited to those symbols that trade during GTH (i.e., SPX, VIX, and XSP).

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

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

³ The Exchange initially filed the proposed fee changes on February 1, 2024 (SR-CBOE-2024-007). On February 14, 2024, the Exchange withdrew that filing and submitted SR-CBOE-2024-009. On February 29, 2024, the Exchange withdrew that filing and submitted SR-CBOE-2024-010.

⁴ 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).

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 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.

The Exchange proposes to amend the GTH Executing Agent Subsidy Program to only include SPX and VIX options that trade during GTH; as such, the Exchange proposes to add clarifying language to the table to reflect that qualifying customer volume under the program is limited to GTH monthly customer SPX and VIX Options volume. The Exchange also proposes to increase the GTH monthly customer volume thresholds, as well as certain subsidy amounts, as shown in the table below.

GTH Monthly Customer SPX and VIX Options Volume	Subsidy
0-19,999 contracts	\$0.00
20,000-39,999 contracts	\$10,000
40,000-99,999 contracts	\$15,000
100,000+ contracts	\$50,000

The proposed changes reflect the growth of the GTH trading session, which has occurred predominantly in SPX and VIX options. The proposed changes are designed to continue to encourage designated GTH executing agents to increase their order flow executed as agent in SPX and VIX options that trade during GTH, to meet the proposed amended volume thresholds and receive the proposed corresponding subsidies. The Exchange notes that incentivizing TPHs to conduct executing agent operations willing to accept orders from all customers during GTH is intended 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.

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.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ 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 the Section 6(b)(5)⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ Id.

⁸ 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed rule change to amend the volume thresholds and certain corresponding subsidies for the GTH Executing Agent Subsidy Program is reasonably designed to encourage designated GTH executing agents to increase their customer order flow in SPX and VIX options traded during GTH. The Exchange believes the tiers, as proposed, are reasonable because they amend existing opportunities in a manner that incentivizes increased order flow to the GTH trading session via incrementally more challenging criteria in order to receive incrementally increasing subsidy amounts.

Further, the Exchange believes such changes are reasonable, as the proposed increased subsidy amounts remain commensurate with the higher volume thresholds proposed. The current program provides a maximum subsidy of \$20,000 for designated GTH executing agents that submit 30,000 customer contracts or more in XSP, SPX or VIX options. The amended tiers, as proposed, present additional opportunities for designated GTH executing agents to receive larger subsidies than that which is currently offered by the program, for submitting a larger number of customer orders. Under the program as proposed, the maximum subsidy available is \$50,000 for designated GTH executing agents that submit 100,000 customer contracts or more in SPX or VIX options. As noted above, the proposed changes reflect the growth of the GTH trading session, which has occurred predominantly in SPX and VIX options. The proposed changes are designed to continue to encourage designated GTH executing agents to increase their order flow executed as agent in SPX and VIX options that trade during GTH, to meet the proposed amended volume thresholds and receive the proposed corresponding subsidies. 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 believes the proposed volume thresholds and corresponding subsidy amounts provide benefits, similar to other volume incentives offered by the Exchange and other options exchanges, that are reasonably related to the value to an exchange's market quality and associated higher levels of market activity, in this case, increased executing agent operations. The proposed changes to the volume thresholds are designed as an incentive to any and all TPHs conducting executing agent operations willing to accept orders from all customers during GTH to submit additional customer orders to the Exchange. Each will have the opportunity to submit the requisite order flow and will receive the applicable subsidy if the volume criteria is met. Under current criteria, one firm qualifies for the \$15,000 subsidy and two firms qualify for the \$20,000 subsidy. While the Exchange has no way of predicting with certainty how the proposed tiers will impact TPH activity, the Exchange anticipates that approximately one TPH may be able to achieve the \$10,000 subsidy (20,000-39,999 contracts tier), one TPH may be able to achieve the \$15,000 subsidy (40,000-99,999 contracts tier), and one TPH may be able to achieve the \$50,000 subsidy (100,000 or more contracts tier). The Exchange also notes that the proposed volume tiers will not adversely impact any TPH's pricing or their ability to qualify for other incentive programs. Rather, should a TPH that conducts executing agent operations not meet the criteria for a tier, the TPH will merely not receive the corresponding subsidy.

Further, the Exchange believes limiting the GTH Executing Agent Subsidy Program to only include SPX and VIX options that trade during GTH is reasonable, given the Exchange wishes to incentivize increased order flow in SPX and VIX options during GTH. The Exchange also believes the proposed change is reasonable, as the Exchange no longer wishes to include XSP in the GTH Executing Agent Subsidy Program and is not required to do so.

The Exchange also believes that the proposed rule change is equitable and not unfairly discriminatory. In particular, the Exchange believes that increasing the volume

thresholds and certain corresponding subsidies for the GTH Executing Agent Subsidy Program 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 commensurate with applicable customer volumes. As noted above, the proposed changes reflect the growth of the GTH trading session and are designed to continue to encourage designated GTH executing agents to increase their order flow executed as agent in SPX and VIX symbols that trade during GTH, to meet the proposed amended volume thresholds and receive the proposed corresponding subsidies.

The Exchange believes the proposed change to offer up to a \$50,000 subsidy to designated GTH executing agents that submit up to 100,000 contracts or more of customer SPX and VIX options orders is equitable and not unfairly discriminatory. As noted above, 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. For example, SPX and VIX options are high notional products and liquidity may be more challenging to navigate during GTH, which session runs for a total of thirteen hours, from 7:15pm CT to 8:15am CT. Further, achieving higher volume threshold may require TPHs to incur additional and incrementally higher costs, such as adding additional staff needed to handle such volumes during the GTH session. The proposed changes are therefore designed to encourage TPHs to incur these additional risks and potentially higher costs and not only act as designated GTH executing agents, but also incentivize them to strive to achieve the highest thresholds, by providing increasingly higher

benefits for satisfying increasingly more stringent criteria. As such, the Exchange believes it is not unfairly discriminatory to offer incrementally higher subsidies to TPHs who act as designated GTH executing agents and submit up to 100,000 or more customer contracts in SPX or VIX. All designated GTH executing agents that participate in the program are eligible to receive the subsidy amounts, if they meet the corresponding volume threshold.

Finally, the Exchange believes the proposed change to limit the GTH Executing Agent Subsidy Program to only include SPX and VIX options is equitable and not unfairly discriminatory, as the change will uniformly apply to all designated GTH executing agents that participate in the program.

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. 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."⁹

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. The Exchange notes that the proposed changes apply uniformly to similarly situated TPHs. As stated, all TPHs that conduct executing agent operations willing to accept orders from all customers will continue to have an opportunity to be

⁹ See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

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. The proposed changes reflect the growth of the GTH trading session and are designed to continue to encourage designated GTH executing agents to increase their order flow executed as agent in SPX and VIX symbols that trade during GTH, to meet the proposed amended volume thresholds and receive the proposed corresponding subsidies.

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.

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 Act¹⁰ and paragraph (f) of Rule 19b-4¹¹ 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2024-010 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-2024-010. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal

office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2024-010 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.¹²

Sherry R. Haywood,

Assistant Secretary.

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¹² 17 CFR 200.30-3(a)(12).