



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103961; File No. SR-CBOE-2025-063]

### **Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule to Adopt an Administrative Fee to Offset its Costs in Administering the Marketing Fee Program**

September 12, 2025.

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 September 2, 2025, 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 and II 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 to adopt an administrative fee to offset its costs in administering the Marketing Fee program. 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>) and at the Exchange’s Office of the Secretary.

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

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

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

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective September 2, 2025.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 18 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 14% of the market share.<sup>3</sup> Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to competitive pricing, the Exchange, like other options exchanges, offers rebates and assesses fees for certain order types executed on or routed through the Exchange.

By way of background, the Marketing Fee is assessed on transactions of Market-Makers, resulting from customer orders at the per contract rate provided in the Fees Schedule on all classes of equity options, options on ETFs, options on ETNs and index options.<sup>4</sup> A Designated

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<sup>3</sup> See Cboe Global Markets U.S. Options Monthly Market Volume Summary (August 25, 2025), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

<sup>4</sup> A Marketing Fee of \$0.25 per contract will be assessed to Market-Makers for transactions in Penny Program

Primary Market-Maker (“DPM”), a “Preferred Market-Maker (“PMM”), or a Lead Market-Maker (“LMM”) (collectively “Preferred Market-Maker”) are given access to the Marketing Fee funds generated from a Preferred order. The funds collected via this Marketing Fee are then put into pools controlled by the Preferred Market-Maker. The Preferred Market-Maker controlling a certain pool of funds can then determine the order flow provider(s) to which the funds should be directed in order to encourage such order flow provider(s) to send orders to the Exchange. Each month, undisbursed Marketing Fees in excess of \$250,000 will be reimbursed to the Market-Makers that contributed to the pool based upon a one month look back and their pro-rata portion of the entire amount of Marketing Fee collected during that month.

The Exchange now proposes to adopt an administrative fee to offset its costs in administering the Marketing Fee program. Specifically, the Exchange proposes to assess an administrative fee of 0.45% of the total amount of funds collected each month. The Exchange will closely monitor the amount of funds raised by this administrative fee and amend the fee in the future if necessary, so that the fee provides sufficient funds to adequately offset the Exchange’s costs in administering the program. The Exchange is not making any other changes to its Marketing Fee program. The Exchange also notes that the proposed administrative fee is identical to the fee that at least one other options exchange assesses in connection with administering their respective marketing fee program.<sup>5</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

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Classes and a Marketing Fee of \$0.70 per contract will be assessed to Market-Makers for transactions in all other classes. The Marketing Fee does not apply to Sector Indexes, DJX, CBTX, MBTX, MRUT, MXEA, MXEF, MXACW, MXUSA, MXWLD, XSP, SPEQX, NANOS, FLEX Micros or Underlying Symbol List A. The fee also does not apply to: Market-Maker-to-Market-Maker transactions, including transactions resulting from orders from non-Trading Permit Holder market-makers; transactions resulting from penny cabinet trades and sub-penny cabinet trades; transactions in Flexible Exchange Options; transactions executed as a qualified contingent cross (“QCC”) under Rule 6.53(u); transactions executed in open outcry; and transactions in the Penny Program classes resulting from orders executed through the Step Up Mechanism under Rule 5.35.

<sup>5</sup> See Nasdaq PHLX LLC Rules, Options 7 (Pricing Schedule), Section 4, Marketing Fees.

Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> 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,<sup>9</sup> 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.

The Exchange believes that it is reasonable to assess the proposed administrative fee to offset its costs in administering the Marketing Fee program. As noted above, the Exchange will closely monitor the amount of funds raised by this administrative fee and amend the fee in the future if necessary, so that the fee provides sufficient funds to adequately offset the Exchange's costs in administering the Marketing Fee program. The Exchange believes that it is equitable and not unfairly discriminatory to assess the administrative fee because it would apply uniformly to all funds collected under the Marketing Fee program as a means to offset costs of collecting and administering such funds.

Also, as described above, the proposed rule change is reasonable, equitable and not unfairly discriminatory as the proposed administrative fee is identical to the fee that at least one

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> Id.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

other options exchange assesses in connection with administering their respective marketing fee program.<sup>10</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 change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the proposed change will apply uniformly to all funds collected under the Marketing Fee program as a means to offset costs of collecting and administering such funds.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as noted above, at least one competing options exchange, and currently has an identical fee in place in connection with administering their respective marketing fee program.<sup>11</sup> The Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and direct their order flow, including 17 other options exchanges, 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 18% of the market share of executed volume of options trades.<sup>12</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

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<sup>10</sup> See Nasdaq PHLX LLC Rules, Options 7 (Pricing Schedule), Section 4, Marketing Fees.

<sup>11</sup> Id.

<sup>12</sup> See Cboe Global Markets U.S. Options Monthly Market Volume Summary (August 25, 2025), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>13</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>14</sup> Accordingly, the Exchange does not believe 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>15</sup> and paragraph (f) of Rule 19b-4<sup>16</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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<sup>13</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>14</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) (SR-NYSEArca-2006-21)).

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

<sup>16</sup> 17 CFR 240.19b-4(f).

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CBOE-2025-063 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-2025-063. 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 filing 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-2025-063 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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