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Page 1 of * 30

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2019 - * 047

Amendment No. (req. for Amendments *)

Filing by Cboe Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

The Exchange proposes to amend its Fees Schedule.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Rebecca Last Name * Tenuta

Title * Counsel

E-mail * rtenuta@cboe.com

Telephone * (312) 786-7068 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 08/13/2019

By Rebecca Tenuta

(Name *)

(Title *)

Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

rtenuta@cboe.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. **Text of the Proposed Rule Change**

(a) 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.

(b) Not applicable.

(c) Not applicable.

Item 2. **Procedures of the Self-Regulatory Organization**

(a) The Exchange's President (or designee) pursuant to delegated authority approved the proposed rule change on August 1, 2019.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Rebecca Tenuta (312) 786-7068, Cboe Exchange, Inc., 400 South LaSalle, Chicago, Illinois 60605.

Item 3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

The Exchange proposes to amend its Fees Schedule in connection with the Volume Incentive Program ("VIP"). The Exchange intends to implement the proposed change on August 1, 2019.[1]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more

[1] The Exchange initially filed the proposed fee change pursuant to SR-CBOE-2019-041 and has withdrawn that filing and submitted this filing.

than 20% of the market share.[2] The Exchange notes that a similar statistic is also true for exchange market share in connection with customer volume; no single options exchange has more than 19% of customer volume.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers tiered pricing in it Fees Schedule, like that of other options exchanges fees schedules,[4] which provides Trading Permit Holders ("TPHs") opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for TPHs to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

For example, under VIP, the Exchange credits each TPH the per contract amount set forth in the VIP table for Public Customer (origin code "C") orders transmitted by

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2 See Cboe Global Markets U.S. Options Market Volume Summary (July 31, 2019), available at https://markets.cboe.com/us/options/market_statistics/.

3 Options Clearing Corporation ("OCC") cleared customer volume, available at https://www.theocc.com/market-data/volume/default.jsp.

4 See e.g., NASDAQ Stock Market Rules, Options Rules, Options 7 Pricing Schedule, Sec. 2 Options Market - Fees and Rebates, Tiers 1-6; see also NYSE Arca Options, Fees and Charges, Customer Posting Credit Tiers in Non-Penny Pilot Issues.

TPHs (with certain exceptions)[5] and executed electronically on the Exchange, provided the TPH meets certain volume thresholds, in which volume for Professional Customers and Voluntary Professionals ("Professional Customers") (origin code "W"), Broker-Dealers (origin code "B"), and Joint Back-Offices ("JBO") (origin code "J") orders are counted toward reaching such thresholds. Specifically, the percentage thresholds are calculated per month based on the percentage of national customer volume in all underlying symbols entered and executed, excluding those in Underlying Symbol List A,[6] Sector Indexes,[7] the MSCI EAFE Index ("MXEA"), the MSCI Emerging Market Index ("MXEF"), Mini-NDX Index ("MNX"), the NASDAQ-100 Index ("NDX"), the Dow Jones Industrial Average Index ("DJX"), Mini-SPX Index ("XSP") and Mini-XSP Index (AM Settlement) ("XSPAM"). VIP offers rates for both Complex and Simple orders (both in AIM and Non-AIM orders, respectively). The Exchange notes that its market share in customer volume (which includes Customer, Professional Customers, Broker-Dealer, and JBO order flow)[8] has historically been between 16.5% and 18.3%. In recent months, the Exchange's percentage of such market share has hovered closer to the lower end of this scale. As stated, the Exchange operates in a highly competitive market where no single options exchange possesses significant pricing power in the execution of option order flow, and the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow. Therefore, in light of

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5 See Cboe Options Fees Schedule, Footnote 36.

6 See Cboe Options Fees Schedule, Footnote 34. Underlying Symbol List A includes Underlying Symbol List A: OEX, XEO, RUT, RLG, RLV, RUI, AWDE, FTEM, FXTM, UKXM, SPX (includes SPXw), VIX, VOLATILITY INDEXES and binary options.

7 See Cboe Options Fees Schedule, Footnote 47.

8 See supra note 3.

the declination of the Exchange's market share in customer volume and competitive forces, the Exchange now proposes to amend the volume thresholds for Tiers 4 and 5. Currently, a TPH may meet the criteria under Tier 4 if its qualifying volume in the qualifying classes is above 3.00% and up to 3.75% of national customer volume, and may meet criteria under Tier 5 if their qualifying volume is above 3.75% of national customer volume. The Exchange now proposes to increase the volume threshold percentage in Tier 4 to above 3.00% and up to 4.00% and to increase the threshold percentage in Tier 5 to above 4.00%. The purpose of these changes is to adjust for current volume trends by encouraging more volume as the Exchange's market share in customer volume has declined over recent months and the proposed increased threshold is designed to incentivize more volume to earn the same credits while also maintaining an incremental incentive for TPHs to strive for the highest tier level. The Exchange notes that the credits offered under VIP are not changing. The proposed change is designed to increase the amount of volume TPHs provide on the Exchange and further encourage them to contribute to a deeper, more liquid market, as well as to increase transactions and take such execution opportunities provided by such increased liquidity. The Exchange believes that this, in turn, benefits all market participants by contributing towards a robust and well-balanced market ecosystem. The Exchange notes the proposed tiers are competitively achievable for all TPHs that submit significant customer order flow, in that all firms that submit the requisite significant customer order flow could compete to meet the tiers.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(4), in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

In particular, the Exchange believes the proposed tier is reasonable because it continues to encourage TPHs to take the opportunity to receive credits on Customer orders by reaching the proposed volume thresholds. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges[9] and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates/credits and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.[10]

The Exchange believes adjusting the VIP volume thresholds for Tiers 4 and 5 is reasonable because it adjusts for the current volume trends and is a reasonable means to continue to encourage TPHs to increase their overall order flow to the Exchange based on increasing their Customer, Professional Customer, Broker-Dealer, and JBO executed orders as a percentage of national customer volume. Particularly, the Exchange believes the proposed threshold change is reasonable because it will encourage increased volume, thus a deeper, more liquid market, and an increase in transaction opportunities provided by the increased liquidity. In turn, these increases benefit all TPHs by contributing towards a robust and well-balanced market ecosystem. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, providing greater

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9 See supra note 4.

10 Id.

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 proposed volume thresholds also do not represent a significant departure from the current required criteria under the Exchange's existing tiers and is therefore still reasonable based on the difficulty of satisfying the tiers' criteria and ensures the existing credit and proposed thresholds appropriately reflect the incremental difficulty to achieve the existing VIP tiers. For example, the volume threshold amount under existing Tier 3 is currently set as a range within a whole percentage point, between 2.00% up to 3.00%. The Exchange believes the proposed tiers are in line with this existing tier, as the natural next highest tier, both in required criteria and credits, is reasonable to also set as a range within a whole percentage point, between 3.00% and 4.00%, and then over 4.00%, as proposed. The Exchange also believes that a volume threshold increase of .25 percentage points is a reasonable increment to encourage overall order flow to the Exchange without so significantly increasing the difficulty in reach the tiers' criteria.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all TPHs have the opportunity to meet the proposed tier thresholds. Given that TPHs change their trading strategies and patterns month-to-month to align with changing market trends and conditions, as well as pricing and functionality changes across other exchanges, and without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitively result in a shift of TPHs qualifying for the proposed tiers. While the Exchange has no way of predicting with certainty how the rule change will impact Trading Permit Holders, the Exchange anticipates the impact of the proposed change to be minimal in at least one TPH will be able to reach proposed Tier 5. The Exchange notes that typically five or six firms compete to qualify across all of the VIP tiers and at least two such firms typically compete to qualify for the top two tiers. As stated, the Exchange believes that the proposed threshold increases do not represent a significant departure from the current required criteria, is still reasonable based on the difficulty of satisfying each tier's criteria, and is appropriately aligned with the incremental difficulty to achieve the existing VIP tiers. As such, the Exchange does not anticipate the proposed threshold change to impact the number of firms that compete across all tiers, including those that regularly compete across the top two tiers, but instead encourages competition by encouraging increase in order flow to meet the proposed tiers. Therefore, the Exchange does not believe that the proposed tiers are unfairly discriminatory as it would not impact the range of typical competition across such tiers.

The Exchange also notes that the proposed tier will not adversely impact any TPH's pricing or ability to qualify for other credit tiers. Rather, should a TPH not meet the proposed criteria, the TPH will merely not receive the proffered credit.

The Exchange also notes that, while only certain orders would count towards the qualifying thresholds, specifically, Customer, Professional Customer, Broker-Dealer and JBO order, these market participants' orders are primarily executed by an agent and VIP is an incentive program for agency trading, whose order flow would bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads. The Exchange notes that incentive programs based on aggregate volume of certain agency trading market participants also exist on other options exchanges.[11]

Additionally, the Exchange believes that it is equitable and not unfairly discriminatory to continue to only apply credits to Customer orders (i.e., "C" origin code) because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer volume is important because it continues to attract liquidity to the Exchange, which benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in Market-Maker activity, in turn, facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, the options industry has a long history of providing preferential pricing to Customers orders and the Exchange's current Fees Schedule currently does so in many places, as do the fees structures of multiple other exchanges.[12]

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will not 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 a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all TPHs. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of

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11 See NASDAQ Stock Market Rules, Options Rules, Options 7 Pricing Schedule, Sec. 2 Options Market - Fees and Rebates, Tiers 1-6.

12 See id, specifically, Tier 6.

fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small." [13]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all TPHs submitting qualified orders equally, in that all TPHs submitting such orders are eligible for the proposed tiers, have a reasonable opportunity to meet the tiers' criteria and will all receive the existing credit if such criteria is met. As described above, while only certain orders would count towards the qualifying thresholds, specifically, Customers, Professionals, Broker-Dealers and JBOs, these market participants' orders are primarily executed as agency orders, whose order flow would bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads. Moreover, the Exchange does not believe the current application of the credit to Customer orders imposes any burden on intermarket competition because, as stated, preferential pricing to Customers is a long-standing options industry practice which serves to enhance Customer order flow, thereby attracting Marker-Makers to facilitate tight spreads and trading opportunities to the benefit of all market participants. Overall, the proposed change is designed to encourage additional order flow to the Exchange, which the Exchange believes benefits all market participants on the Exchange by providing more liquidity, thus trading opportunities, encouraging even more TPHs to send orders, thereby contributing towards a robust and well-balanced market ecosystem to the benefit of all market participants.

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

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges. Based on publicly available information, no single options exchange has more than 20% of the market share.[14] 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."[15] 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

14 See supra note 2.

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

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'….".[16] 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.

Item 5. <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others</u>

The Exchange neither solicited nor received comments on the proposed rule change.

Item 6. <u>Extension of Time Period for Commission Action</u>

Not applicable.

Item 7. <u>Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)</u>

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b-4(f)(2)[18] thereunder.

(b) The Exchange designates that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, which renders the proposed rule change effective upon filing with the Securities and Exchange Commission (the "Commission"). At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

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16 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)).

17 15 U.S.C. 78s(b)(3)(A).

18 17 CFR 240.19b-4(f)(2).

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.

(c) Not applicable.

(d) Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. Proposed rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CBOE-2019-047]

[Insert date]

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

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 [insert date], 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

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

2 17 CFR 240.19b-4.

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.

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 Volume Incentive Program ("VIP"). The Exchange intends to implement the proposed change on August 1, 2019.[3]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 20% of the market share.[4] The Exchange notes that a similar statistic is also true for exchange market share in connection with customer volume; no single options exchange has more than 19% of customer volume.[5] 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

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3 The Exchange initially filed the proposed fee change pursuant to SR-CBOE-2019-041 and has withdrawn that filing and submitted this filing.

4 See Cboe Global Markets U.S. Options Market Volume Summary (July 31, 2019), available at https://markets.cboe.com/us/options/market_statistics/.

5 Options Clearing Corporation ("OCC") cleared customer volume, available at https://www.theocc.com/market-data/volume/default.jsp.

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 the competitive environment, the Exchange offers tiered pricing in it Fees Schedule, like that of other options exchanges fees schedules,[6] which provides Trading Permit Holders ("TPHs") opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for TPHs to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

For example, under VIP, the Exchange credits each TPH the per contract amount set forth in the VIP table for Public Customer (origin code "C") orders transmitted by TPHs (with certain exceptions)[7] and executed electronically on the Exchange, provided the TPH meets certain volume thresholds, in which volume for Professional Customers and Voluntary Professionals ("Professional Customers") (origin code "W"), Broker-Dealers (origin code "B"), and Joint Back-Offices ("JBO") (origin code "J") orders are counted toward reaching such thresholds. Specifically, the percentage thresholds are calculated per month based on the percentage of national customer volume in all underlying symbols entered and executed, excluding those in Underlying Symbol List

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6 See e.g., NASDAQ Stock Market Rules, Options Rules, Options 7 Pricing Schedule, Sec. 2 Options Market - Fees and Rebates, Tiers 1-6; see also NYSE Arca Options, Fees and Charges, Customer Posting Credit Tiers in Non-Penny Pilot Issues.

7 See Cboe Options Fees Schedule, Footnote 36.

A,[8] Sector Indexes,[9] the MSCI EAFE Index ("MXEA"), the MSCI Emerging Market Index ("MXEF"), Mini-NDX Index ("MNX"), the NASDAQ-100 Index ("NDX"), the Dow Jones Industrial Average Index ("DJX"), Mini-SPX Index ("XSP") and Mini-XSP Index (AM Settlement) ("XSPAM"). VIP offers rates for both Complex and Simple orders (both in AIM and Non-AIM orders, respectively). The Exchange notes that its market share in customer volume (which includes Customer, Professional Customers, Broker-Dealer, and JBO order flow)[10] has historically been between 16.5% and 18.3%. In recent months, the Exchange's percentage of such market share has hovered closer to the lower end of this scale. As stated, the Exchange operates in a highly competitive market where no single options exchange possesses significant pricing power in the execution of option order flow, and the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow. Therefore, in light of the declination of the Exchange's market share in customer volume and competitive forces, the Exchange now proposes to amend the volume thresholds for Tiers 4 and 5. Currently, a TPH may meet the criteria under Tier 4 if its qualifying volume in the qualifying classes is above 3.00% and up to 3.75% of national customer volume, and may meet criteria under Tier 5 if their qualifying volume is above 3.75% of national customer volume. The Exchange now proposes to increase the volume threshold percentage in Tier 4 to above 3.00% and up to 4.00% and to increase the threshold percentage in Tier 5 to

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8 See Cboe Options Fees Schedule, Footnote 34. Underlying Symbol List A includes Underlying Symbol List A: OEX, XEO, RUT, RLG, RLV, RUI, AWDE, FTEM, FXTM, UKXM, SPX (includes SPXw), VIX, VOLATILITY INDEXES and binary options.

9 See Cboe Options Fees Schedule, Footnote 47.

10 See supra note 5.

above 4.00%. The purpose of these changes is to adjust for current volume trends by encouraging more volume as the Exchange's market share in customer volume has declined over recent months and the proposed increased threshold is designed to incentivize more volume to earn the same credits while also maintaining an incremental incentive for TPHs to strive for the highest tier level. The Exchange notes that the credits offered under VIP are not changing. The proposed change is designed to increase the amount of volume TPHs provide on the Exchange and further encourage them to contribute to a deeper, more liquid market, as well as to increase transactions and take such execution opportunities provided by such increased liquidity. The Exchange believes that this, in turn, benefits all market participants by contributing towards a robust and well-balanced market ecosystem. The Exchange notes the proposed tiers are competitively achievable for all TPHs that submit significant customer order flow, in that all firms that submit the requisite significant customer order flow could compete to meet the tiers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(4), in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

In particular, the Exchange believes the proposed tier is reasonable because it continues to encourage TPHs to take the opportunity to receive credits on Customer orders by reaching the proposed volume thresholds. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges[11] and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates/credits and fees that apply based upon members

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[11] See supra note 6.

achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.[12]

The Exchange believes adjusting the VIP volume thresholds for Tiers 4 and 5 is reasonable because it adjusts for the current volume trends and is a reasonable means to continue to encourage TPHs to increase their overall order flow to the Exchange based on increasing their Customer, Professional Customer, Broker-Dealer, and JBO executed orders as a percentage of national customer volume. Particularly, the Exchange believes the proposed threshold change is reasonable because it will encourage increased volume, thus a deeper, more liquid market, and an increase in transaction opportunities provided by the increased liquidity. In turn, these increases benefit all TPHs by contributing towards a robust and well-balanced market ecosystem. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, providing 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 proposed volume thresholds also do not represent a significant departure from the current required criteria under the Exchange's existing tiers and is therefore still reasonable based on the difficulty of satisfying the tiers' criteria and ensures the existing credit and proposed thresholds appropriately reflect the incremental difficulty to achieve the existing VIP tiers. For example, the volume threshold amount under existing Tier 3 is currently set as a range within a whole percentage point, between 2.00% up to 3.00%.

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12 Id.

The Exchange believes the proposed tiers are in line with this existing tier, as the natural next highest tier, both in required criteria and credits, is reasonable to also set as a range within a whole percentage point, between 3.00% and 4.00%, and then over 4.00%, as proposed. The Exchange also believes that a volume threshold increase of .25 percentage points is a reasonable increment to encourage overall order flow to the Exchange without so significantly increasing the difficulty in reach the tiers' criteria.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all TPHs have the opportunity to meet the proposed tier thresholds. Given that TPHs change their trading strategies and patterns month-to-month to align with changing market trends and conditions, as well as pricing and functionality changes across other exchanges, and without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitively result in a shift of TPHs qualifying for the proposed tiers. While the Exchange has no way of predicting with certainty how the rule change will impact Trading Permit Holders, the Exchange anticipates the impact of the proposed change to be minimal in at least one TPH will be able to reach proposed Tier 5. The Exchange notes that typically five or six firms compete to qualify across all of the VIP tiers and at least two such firms typically compete to qualify for the top two tiers. As stated, the Exchange believes that the proposed threshold increases do not represent a significant departure from the current required criteria, is still reasonable based on the difficulty of satisfying each tier's criteria, and is appropriately aligned with the incremental difficulty to achieve the existing VIP tiers. As such, the Exchange does not anticipate the proposed threshold change to impact the number of firms that compete across all tiers, including those that regularly compete across the top two tiers, but instead encourages competition by encouraging increase in order flow to meet the proposed tiers. Therefore, the Exchange does not believe that the proposed tiers are unfairly discriminatory as it would not impact the range of typical competition across such tiers.

The Exchange also notes that the proposed tier will not adversely impact any TPH's pricing or ability to qualify for other credit tiers. Rather, should a TPH not meet the proposed criteria, the TPH will merely not receive the proffered credit.

The Exchange also notes that, while only certain orders would count towards the qualifying thresholds, specifically, Customer, Professional Customer, Broker-Dealer and JBO order, these market participants' orders are primarily executed by an agent and VIP is an incentive program for agency trading, whose order flow would bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads. The Exchange notes that incentive programs based on aggregate volume of certain agency trading market participants also exist on other options exchanges.[13]

Additionally, the Exchange believes that it is equitable and not unfairly discriminatory to continue to only apply credits to Customer orders (i.e., "C" origin code) because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer volume is important because it continues to attract liquidity to the Exchange, which benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in Market-Maker activity, in turn, facilitates tighter spreads, which may cause an additional corresponding

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13 See NASDAQ Stock Market Rules, Options Rules, Options 7 Pricing Schedule, Sec. 2 Options Market - Fees and Rebates, Tiers 1-6.

increase in order flow from other market participants. Moreover, the options industry has a long history of providing preferential pricing to Customers orders and the Exchange's current Fees Schedule currently does so in many places, as do the fees structures of multiple other exchanges.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will not 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 a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution 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." [15]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all TPHs submitting qualified orders equally, in that all TPHs submitting such orders are eligible for the proposed tiers, have a reasonable opportunity to meet the tiers' criteria and will all receive the existing credit if such criteria is met. As described above, while only certain orders would count towards the qualifying thresholds, specifically, Customers,

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14 See id, specifically, Tier 6.

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

Professionals, Broker-Dealers and JBOs, these market participants' orders are primarily executed as agency orders, whose order flow would bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads. Moreover, the Exchange does not believe the current application of the credit to Customer orders imposes any burden on intermarket competition because, as stated, preferential pricing to Customers is a long-standing options industry practice which serves to enhance Customer order flow, thereby attracting Marker-Makers to facilitate tight spreads and trading opportunities to the benefit of all market participants. Overall, the proposed change is designed to encourage additional order flow to the Exchange, which the Exchange believes benefits all market participants on the Exchange by providing more liquidity, thus trading opportunities, encouraging even more TPHs to send orders, thereby contributing towards a robust and well-balanced market ecosystem to the benefit of all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges. Based on publicly available information, no single options exchange has more than 20% of the market share.[16] 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

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16 See supra note 4.

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."[17] 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'….".[18] 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.

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

18 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)).

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[19] and paragraph (f) of Rule 19b-4[20] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2019-047 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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19 15 U.S.C. 78s(b)(3)(A).

20 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2019-047. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-047 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.[21]

Secretary

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[21] 17 CFR 200.30-3(a)(12).

Changes are indicated by underlining additions and [bracketing] deletions.

Cboe Exchange, Inc.

Fees Schedule - [August 1] August 13 , 2019

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Volume Incentive Program (VIP)(23)(36)							
Origin	Tier	Percentage Thresholds of National Customer Volume in All Underlying Symbols Excluding Underlying Symbol List A (34), Sector Indexes (47), DJX, MXEA, MXEF, MNX, NDX, XSP and XSPAM (Monthly)	Origin Code	Per Contract Credit			
				Simple		Complex	
				Non-AIM	AIM	Non-AIM	AIM
Customer/Broker-Dealer/Professional/Voluntary Professional/Joint Back-Office	1	0% - 0.75%	C B J W	$0.00	$0.00	$0.00	$0.00
	2	Above 0.75% - 2.00%		$0.10	$0.09	$0.21	$0.19
	3	Above 2.00% - 3.00%		$0.12	$0.10	$0.24	$0.22
	4	Above 3.00% - [3.75]4.00%		$0.15	$0.13	$0.25	$0.23
	5	Above [3.75]4.00%		$0.15	$0.14	$0.25	$0.24

Notes

Volume for origins B, J and W will count towards tier qualification only. Credits on orders executed electronically in AIM will be capped at 1,000 contracts per order for simple executions and 1,000 contracts per leg for complex executions. Credits on orders executed electronically in HAL will be capped at 1,000 contracts per auction quantity. All contracts executed in AIM and all contracts executed in HAL will continue to be counted towards the percentage thresholds even if they exceed the 1,000 contract cap for VIP credits. Additionally, multiple simple orders from the same affiliated TPH(s) in the same series on the same side of the market that are executed in AIM or HAL within a 3 second period will be aggregated for purposes of determining the order quantity subject to the cap. For this aggregation, activity in AIM and HAL will be aggregated separately. The AIM aggregation timer will begin with an order entered into AIM and continue for 3 seconds, aggregating any other orders entered into AIM in the same series on the same side of the market by the same affiliated TPH. The HAL aggregation timer will begin at the start of a HAL auction and continue for 3 seconds, aggregating any other orders executed in HAL in the same series on the same side of the market for the same affiliated TPH. Any portion of the original order quantity that is executed outside of HAL will not be part of the aggregation or counted towards the 1,000 contract threshold. A TPH will only receive the Complex credit rates for Complex volume if at least 38% of that TPH's qualifying VIP volume in the previous month was comprised of Simple volume. If not, then the TPH's Customer (C) Complex volume will receive credits at the applicable Simple credit rate only.

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