

## OMB APPROVAL

OMB Number: 3235-0045  
 Estimated average burden  
 hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 26	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2019 - * 124 Amendment No. (req. for Amendments *)
Filing by Cboe Exchange, Inc. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934		
Initial * <input checked="" type="checkbox"/> Amendment * <input type="checkbox"/> Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/> Section 19(b)(3)(A) * <input checked="" type="checkbox"/> Section 19(b)(3)(B) * <input type="checkbox"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input checked="" type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires *		
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/>		Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/> Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>		
<b>Description</b> Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div style="border: 1px solid black; padding: 5px; min-height: 40px;">           The Exchange proposes to amend its Fees Schedule.         </div>		
<b>Contact Information</b> 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 * Corinne      Last Name * Klott Title * Assistant General Counsel E-mail * ckloott@cboe.com Telephone * (312) 786-7793      Fax		
<b>Signature</b> 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. <div style="text-align: right;">(Title *)</div> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 30%;">         Date 12/18/2019          By Corinne Klott          (Name *)       </div> <div style="width: 60%; text-align: center;">         Assistant General Counsel  <div style="border: 1px solid black; width: 100%; height: 40px; margin-top: 5px;"></div> <div style="border: 1px solid black; width: 100%; height: 20px; background-color: #ccc; margin-top: 5px; text-align: center;">ckloott@cboe.com</div> </div> </div>		
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.		

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT 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

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 Sent As Paper Document

☐

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

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 Sent As Paper Document

☐

**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 December 2, 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 Corinne Klott (312) 786-7793, 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 various amendments to its Fees Schedule.<sup>1</sup>

SPX Select Market-Makers

Footnote 49 of the Fees Schedule currently provides that any appointed SPX Select Market-Maker (“SMM”) will receive a monthly rebate of \$8,000 if the SMM provides continuous electronic quotes in at least 99% of the SPX series 90% of the time in a given month. SMMs are not obligated to satisfy the heightened quoting standards described in the Fees Schedule. Rather, SMMs are eligible to receive a rebate if they

---

<sup>1</sup> The Exchange originally filed the proposed fee changes on December 2, 2019 (SR-CBOE-2019-114). On December 12, 2019, the Exchange withdrew that filing and submitted SR-CBOE-2019-120. On December 18, 2019, the Exchange withdrew that filing and submitted this filing.

satisfy the heightened standards. SMMs must still comply with the continuous quoting obligation and other obligations of Market-Makers described in Cboe Options Rules.<sup>2</sup> The Exchange adopted the monthly rebate program to encourage SMMs to provide liquidity in SPX. The Exchange now proposes to eliminate the SMM rebate program. The Exchange no longer believes additional liquidity by an SMM is necessary and notes the Exchange is not required to maintain such an incentive program. The Exchange also notes that Market-Makers that were previously appointed as SMMs will still be required to comply with the continuous quoting obligation and other obligations of Market-Makers described in Cboe Options Rules.

#### Linkage

The Exchange currently assesses certain fees in connection with orders routed to other exchanges. The Exchange proposes to not pass through or otherwise charge customer (capacity code “C”) orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from the trading floor through an Exchange-sponsored terminal (e.g. PULSe Workstation). The primary objective of linkage fees are to recoup some of the costs associated with large electronic orders that are initially transmitted to the Exchange by parties who, in many instances, could be seeking to avoid being assessed another market’s transaction fees. Orders that are initially transmitted from the trading floor are not attempting to avoid fees since they incur brokerage commission charges in connection with manual handling. Rather, orders that are generally transmitted from the floor are large, complex orders that are primarily executed on the Exchange, which only are transmitted to away markets if, during their execution on the Exchange, it is necessary to

---

<sup>2</sup> See e.g., Cboe Options Rule 5.51.

sweep some away markets. As such, the Exchange believes it's appropriate to waive linkage fees for these orders. The Exchange lastly notes that the proposed waiver is not novel. Indeed, the Exchange maintained the proposed waiver prior to the migration to a new billing system on October 7, 2019, but had eliminated the waiver upon migration<sup>3</sup>. After further evaluation, the Exchange now wishes to re-adopt the proposed waiver. The Exchange notes the proposed waiver is identical to the waiver in place pre-migration.

#### Tier Appointment Fees

The Exchange currently assesses a SPX Tier Appointment Fee of \$3,000 per month to any Market-Maker holding a Market-Maker Electronic Access Permit ("EAP") ("MM EAP") that trades any SPX (including SPXW) contracts at any time during the month. The Exchange proposes to amend the Fees Schedule to adopt a contract threshold. Particularly, the Exchange proposes to provide that the SPX Tier Appointment Fee will be assessed to any MM EAP that executes at least 1,000 contracts in SPX (including SPXW) excluding contracts executed during the opening rotation on the final settlement date of VIX options and futures with the expiration used in the VIX settlement calculation. The Exchange proposes to exclude SPX and SPXW volume executed during opening rotation on the final settlement date of VIX options and futures which have the expiration that contribute to the VIX settlement, as such orders help to facilitate the calculation of a settlement price for VIX options and futures and the Exchange does not wish to discourage the sending of such orders.<sup>4</sup> The Exchange notes that the SPX Tier

---

<sup>3</sup> See Securities and Exchange Act Release No. 87495 (November 8, 2019), 84 FR 63701 (November 18, 2019) (SR-CBOE-2019-106).

<sup>4</sup> The Exchange notes that only electronic SPX and SPXW orders participate in the opening rotation on the final settlement date of VIX options and futures. As open-outcry volume does not facilitate the calculation of the settlement price for VIX

Appointment fee is intended to be assessed to Market-Maker TPHs who actually act as Market-Makers in SPX and engage in trading in SPX (as opposed to those who primarily execute volume during the opening rotation on VIX settlement days and subsequently execute volume to close out of such positions). The electronic Tier Appointment Surcharges for VIX and RUT similarly have a 1,000 contract threshold.<sup>5</sup>

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>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, and does not unfairly discriminate between customers, issuers, brokers or dealers. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</sup> which requires that Exchange rules provide for the equitable

---

options and futures, the Exchange does not believe it’s necessary to adopt a corresponding exception to the SPX Tier Appointment for Floor Market-Makers.

<sup>5</sup> See Cboe Options Fees Schedule, Market-Maker Tier Appointment Fees.

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

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes eliminating the SPX SMM Program is reasonable, equitable and not unfairly discriminatory because the Exchange is not required to maintain such a rebate program and no longer desires to do so. The Exchange believes that there is sufficient liquidity in SPX and does not believe a rebate program is necessary to further incentivize liquidity. The Exchange believes the proposed change is not unfairly discriminatory because it will apply equally to all SMMs.

The Exchange believes it's reasonable to waive linkage fees for customer orders that were transmitted from the trading floor through an Exchange sponsored terminal (currently only PULSe workstation) as customers would not be subject to linkage fees. The proposed waiver would apply to all similarly situated market participants. The Exchange believes limiting the exception to customer orders that were originally transmitted from the trading floor through an exchange-sponsored terminal is equitable, reasonable and not unfairly discriminatory as the primary objective of linkage fees are to recoup some of the costs associated with large electronic orders that are initially transmitted to the Exchange by parties who, in many instances, could be seeking to avoid being assessed another market's transaction fees. As discussed above, orders that are generally transmitted from the floor are large, complex orders that are primarily executed on the Exchange and transmitted to away markets if, during their execution on the Exchange, it is necessary to sweep some away markets. The Exchange also believes limiting the exception from Linkage Fees to customer orders is equitable, reasonable and not unfairly discriminatory because non-customer (e.g., broker-dealer proprietary) orders originate from broker-

dealers who are by and large more sophisticated than public customers (i.e., orders yielding capacity code “C”) and can readily control the exchange to which their orders are routed. While there may be some customers who direct the exchange to which their orders are routed, generally, customers submit orders to their brokerages but do not or cannot specify the exchange to which its order is sent. Therefore, non-customer order flow can, in most cases, more easily route directly to other markets if desired and thus avoid Linkage Fees. This includes the ability of broker-dealers to sweep better-priced away markets in connection with routing large orders to the Exchange’s floor for handling by floor brokers. Moreover, the Commission has a long history of permitting differential treatment of customers and non-customer investors.

Finally, as noted above, the proposed waiver is not novel. Indeed, the Exchange maintained the proposed waiver prior to the migration to a new billing system on October 7, 2019, but had eliminated the waiver upon migration<sup>9</sup>. After further evaluation, the Exchange has determined to re-adopt the proposed waiver, which waiver is identical to the waiver in place pre-migration.

The Exchange believes the proposed change to adopt a contract threshold to trigger the electronic SPX Tier Appointment Surcharge is reasonable as MM EAPs that trade below such threshold will not be subject to the MM EAP SPX Tier Appointment Fee. The Exchange believes the proposed change is reasonable as the SPX Tier Appointment surcharge was intended to apply to TPHs who act as Market-Makers in SPX, not those that do not regularly trade SPX electronically. Additionally, while liquidity is important to open all series on the Exchange, given the potential impact on the exercise settlement value

---

<sup>9</sup> See Securities and Exchange Act Release No. 87495 (November 8, 2019), 84 FR 63701 (November 18, 2019) (SR-CBOE-2019-106).

determined for expiring volatility index derivatives, it is very important to encourage a fair and orderly opening of the series that are used to calculate the final settlement value of expiring VIX derivatives. Accordingly, the Exchange does not wish to assess the SPX Tier Appointment fee to MM EAPs who do not conduct significant electronic volume in SPX (or SPXW) other than volume executed during opening rotation on the final settlement date of VIX options and futures which have the expiration that are used in the VIX settlement calculation and subsequent volume executed to close out of such positions. The Exchange believes it's equitable and not unfairly discriminatory to adopt a threshold for off-floor Markets-Markets and not on-floor Market-Makers as only electronic SPX and SPXW orders participate in the opening rotation on the final settlement date of VIX options and futures. As open-outcry volume does not facilitate the calculation of the settlement price for VIX options and futures, the Exchange does not believe it's necessary to adopt a corresponding exception to the SPX Tier Appointment for on-floor Market-Makers. The Exchange notes that any TPH that electronically executes more than 1 contract but less than 1,000 contracts in SPX (including SPXW), excluding volume executed during opening rotation on the final settlement date of VIX options and futures which have the expiration that are used in the VIX settlement calculation will no longer have to pay the Tier Appointment fee. As noted above, the Exchange is not proposing to change the amount assessed for the electronic SPX Tier Appointment Fee. The proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all TPHs. The Exchange lastly notes that a similar 1,000 contract threshold also applies to MM EAP Tier Appointment Fees in RUT and VIX.<sup>10</sup>

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

---

<sup>10</sup> See Cboe Options Fees Schedule, Market-Maker Tier Appointment Fees.

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. Specifically, the Exchange does not believe that the proposed change will impose any burden on intramarket competitions that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes will be applied equally to all similarly situated market participants. For example, although the proposed routing exception only applies to Customers, as discussed, above, the Exchange believes limiting the exception to customer orders is not unfairly discriminatory because non-customer (e.g., broker-dealer proprietary) orders originate from broker-dealers who are by and large more sophisticated than public customers and can readily control the exchange to which their orders are routed. Moreover, as discussed, the Commission has a long history of permitting differential treatment of customers and non-customer investors.

The Exchange does not believe that the proposed rule change regarding the SMM Program or the SPX Tier Appointment Fee will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed waiver applies to a product traded exclusively on the Exchange. Additionally, the Exchange believes the proposed rule change relating to linkage does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, 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 and off-exchange venues. The Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 24%

of the market share.<sup>11</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can choose to send their orders to other exchanges and 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.”<sup>12</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>13</sup> Accordingly, the Exchange does not believe its proposed fee changes

---

<sup>11</sup> See Cboe Global Markets U.S. Options Market Volume Summary (December 2, 2019), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

<sup>12</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>13</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)).

imposes any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act.

**Item 5. 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.

**Item 6. Extension of Time Period for Commission Action**

Not applicable.

**Item 7. 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)**

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(2)<sup>15</sup> 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 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.

---

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

(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.

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CBOE-2019-124]

[Insert date]

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

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 [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

---

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

<sup>2</sup> 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 various amendments to its Fees Schedule.<sup>3</sup>

SPX Select Market-Makers

Footnote 49 of the Fees Schedule currently provides that any appointed SPX Select Market-Maker ("SMM") will receive a monthly rebate of \$8,000 if the SMM provides continuous electronic quotes in at least 99% of the SPX series 90% of the time in a given month. SMMs are not obligated to satisfy the heightened quoting standards described in the Fees Schedule. Rather, SMMs are eligible to receive a rebate if they satisfy the heightened standards. SMMs must still comply with the continuous quoting obligation and other obligations of Market-Makers described in Cboe Options Rules.<sup>4</sup> The Exchange adopted the monthly rebate program to encourage SMMs to provide liquidity in SPX. The Exchange now proposes to eliminate the SMM rebate program. The Exchange no longer believes additional liquidity by an SMM is necessary and notes the Exchange is not required to maintain such an incentive program. The Exchange also notes that Market-Makers that were previously appointed as SMMs will still be required

---

<sup>3</sup> The Exchange originally filed the proposed fee changes on December 2, 2019 (SR-CBOE-2019-114). On December 12, 2019, the Exchange withdrew that filing and submitted SR-CBOE-2019-120. On December 18, 2019, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> See e.g., Cboe Options Rule 5.51.

to comply with the continuous quoting obligation and other obligations of Market-Makers described in Cboe Options Rules.

### Linkage

The Exchange currently assesses certain fees in connection with orders routed to other exchanges. The Exchange proposes to not pass through or otherwise charge customer (capacity code “C”) orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from the trading floor through an Exchange-sponsored terminal (e.g. PULSe Workstation). The primary objective of linkage fees are to recoup some of the costs associated with large electronic orders that are initially transmitted to the Exchange by parties who, in many instances, could be seeking to avoid being assessed another market’s transaction fees. Orders that are initially transmitted from the trading floor are not attempting to avoid fees since they incur brokerage commission charges in connection with manual handling. Rather, orders that are generally transmitted from the floor are large, complex orders that are primarily executed on the Exchange, which only are transmitted to away markets if, during their execution on the Exchange, it is necessary to sweep some away markets. As such, the Exchange believes it’s appropriate to waive linkage fees for these orders. The Exchange lastly notes that the proposed waiver is not novel. Indeed, the Exchange maintained the proposed waiver prior to the migration to a new billing system on October 7, 2019, but had eliminated the waiver upon migration<sup>5</sup>. After further evaluation, the Exchange now wishes to re-adopt the proposed waiver. The Exchange notes the proposed waiver is identical to the waiver in place pre-migration.

### Tier Appointment Fees

---

<sup>5</sup> See Securities and Exchange Act Release No. 87495 (November 8, 2019), 84 FR 63701 (November 18, 2019) (SR-CBOE-2019-106).

The Exchange currently assesses a SPX Tier Appointment Fee of \$3,000 per month to any Market-Maker holding a Market-Maker Electronic Access Permit (“EAP”) (“MM EAP”) that trades any SPX (including SPXW) contracts at any time during the month. The Exchange proposes to amend the Fees Schedule to adopt a contract threshold. Particularly, the Exchange proposes to provide that the SPX Tier Appointment Fee will be assessed to any MM EAP that executes at least 1,000 contracts in SPX (including SPXW) excluding contracts executed during the opening rotation on the final settlement date of VIX options and futures with the expiration used in the VIX settlement calculation. The Exchange proposes to exclude SPX and SPXW volume executed during opening rotation on the final settlement date of VIX options and futures which have the expiration that contribute to the VIX settlement, as such orders help to facilitate the calculation of a settlement price for VIX options and futures and the Exchange does not wish to discourage the sending of such orders.<sup>6</sup> The Exchange notes that the SPX Tier Appointment fee is intended to be assessed to Market-Maker TPHs who actually act as Market-Makers in SPX and engage in trading in SPX (as opposed to those who primarily execute volume during the opening rotation on VIX settlement days and subsequently execute volume to close out of such positions). The electronic Tier Appointment Surcharges for VIX and RUT similarly have a 1,000 contract threshold.<sup>7</sup>

---

<sup>6</sup> The Exchange notes that only electronic SPX and SPXW orders participate in the opening rotation on the final settlement date of VIX options and futures. As open-outcry volume does not facilitate the calculation of the settlement price for VIX options and futures, the Exchange does not believe it’s necessary to adopt a corresponding exception to the SPX Tier Appointment for Floor Market-Makers.

<sup>7</sup> See Cboe Options Fees Schedule, Market-Maker Tier Appointment Fees.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and does not unfairly discriminate between customers, issuers, brokers or dealers. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>10</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 eliminating the SPX SMM Program is reasonable, equitable and not unfairly discriminatory because the Exchange is not required to maintain such a rebate program and no longer desires to do so. The Exchange believes that there is sufficient liquidity in SPX and does not believe a rebate program is necessary to further incentivize

---

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

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

liquidity. The Exchange believes the proposed change is not unfairly discriminatory because it will apply equally to all SMMs.

The Exchange believes it's reasonable to waive linkage fees for customer orders that were transmitted from the trading floor through an Exchange sponsored terminal (currently only PULSe workstation) as customers would not be subject to linkage fees. The proposed waiver would apply to all similarly situated market participants. The Exchange believes limiting the exception to customer orders that were originally transmitted from the trading floor through an exchange-sponsored terminal is equitable, reasonable and not unfairly discriminatory as the primary objective of linkage fees are to recoup some of the costs associated with large electronic orders that are initially transmitted to the Exchange by parties who, in many instances, could be seeking to avoid being assessed another market's transaction fees. As discussed above, orders that are generally transmitted from the floor are large, complex orders that are primarily executed on the Exchange and transmitted to away markets if, during their execution on the Exchange, it is necessary to sweep some away markets. The Exchange also believes limiting the exception from Linkage Fees to customer orders is equitable, reasonable and not unfairly discriminatory because non-customer (e.g., broker-dealer proprietary) orders originate from broker-dealers who are by and large more sophisticated than public customers (i.e., orders yielding capacity code "C") and can readily control the exchange to which their orders are routed. While there may be some customers who direct the exchange to which their orders are routed, generally, customers submit orders to their brokerages but do not or cannot specify the exchange to which its order is sent. Therefore, non-customer order flow can, in most cases, more easily route directly to other markets if desired and thus

avoid Linkage Fees. This includes the ability of broker-dealers to sweep better-priced away markets in connection with routing large orders to the Exchange's floor for handling by floor brokers. Moreover, the Commission has a long history of permitting differential treatment of customers and non-customer investors.

Finally, as noted above, the proposed waiver is not novel. Indeed, the Exchange maintained the proposed waiver prior to the migration to a new billing system on October 7, 2019, but had eliminated the waiver upon migration<sup>11</sup>. After further evaluation, the Exchange has determined to re-adopt the proposed waiver, which waiver is identical to the waiver in place pre-migration.

The Exchange believes the proposed change to adopt a contract threshold to trigger the electronic SPX Tier Appointment Surcharge is reasonable as MM EAPs that trade below such threshold will not be subject to the MM EAP SPX Tier Appointment Fee. The Exchange believes the proposed change is reasonable as the SPX Tier Appointment surcharge was intended to apply to TPHs who act as Market-Makers in SPX, not those that do not regularly trade SPX electronically. Additionally, while liquidity is important to open all series on the Exchange, given the potential impact on the exercise settlement value determined for expiring volatility index derivatives, it is very important to encourage a fair and orderly opening of the series that are used to calculate the final settlement value of expiring VIX derivatives. Accordingly, the Exchange does not wish to assess the SPX Tier Appointment fee to MM EAPs who do not conduct significant electronic volume in SPX (or SPXW) other than volume executed during opening rotation on the final settlement date of VIX options and futures which have the

---

<sup>11</sup> See Securities and Exchange Act Release No. 87495 (November 8, 2019), 84 FR 63701 (November 18, 2019) (SR-CBOE-2019-106).

expiration that are used in the VIX settlement calculation and subsequent volume executed to close out of such positions. The Exchange believes it's equitable and not unfairly discriminatory to adopt a threshold for off-floor Markets-Markets and not on-floor Market-Makers as only electronic SPX and SPXW orders participate in the opening rotation on the final settlement date of VIX options and futures. As open-outcry volume does not facilitate the calculation of the settlement price for VIX options and futures, the Exchange does not believe it's necessary to adopt a corresponding exception to the SPX Tier Appointment for on-floor Market-Makers. The Exchange notes that any TPH that electronically executes more than 1 contract but less than 1,000 contracts in SPX (including SPXW), excluding volume executed during opening rotation on the final settlement date of VIX options and futures which have the expiration that are used in the VIX settlement calculation will no longer have to pay the Tier Appointment fee. As noted above, the Exchange is not proposing to change the amount assessed for the electronic SPX Tier Appointment Fee. The proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all TPHs. The Exchange lastly notes that a similar 1,000 contract threshold also applies to MM EAP Tier Appointment Fees in RUT and VIX.<sup>12</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. Specifically, the Exchange does not believe that the proposed change will impose any burden on intramarket competitions that is not necessary or appropriate in furtherance of

---

<sup>12</sup> See Cboe Options Fees Schedule, Market-Maker Tier Appointment Fees.

the purposes of the Act because the proposed changes will be applied equally to all similarly situated market participants. For example, although the proposed routing exception only applies to Customers, as discussed, above, the Exchange believes limiting the exception to customer orders is not unfairly discriminatory because non-customer (e.g., broker-dealer proprietary) orders originate from broker-dealers who are by and large more sophisticated than public customers and can readily control the exchange to which their orders are routed. Moreover, as discussed, the Commission has a long history of permitting differential treatment of customers and non-customer investors.

The Exchange does not believe that the proposed rule change regarding the SMM Program or the SPX Tier Appointment Fee will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed waiver applies to a product traded exclusively on the Exchange. Additionally, the Exchange believes the proposed rule change relating to linkage does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, 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 and off-exchange venues. The Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 24% of the market share.<sup>13</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to

---

<sup>13</sup> See Cboe Global Markets U.S. Options Market Volume Summary (December 2, 2019), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

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.”<sup>14</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>15</sup> Accordingly, the Exchange does not believe its proposed fee changes imposes any burden on competition that are 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.

---

<sup>14</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>15</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)).

### **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>16</sup> and paragraph (f) of Rule 19b-4<sup>17</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

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

#### **Electronic comments:**

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2019-124 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.

---

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

All submissions should refer to File Number SR-CBOE-2019-124. 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-2019-124 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Secretary

---

<sup>18</sup> 17 CFR 200.30-3(a)(12).

**Cboe Exchange, Inc.**  
**Fees Schedule - December 1[2] 8, 2019**

\* \* \* \* \*

Market-Maker Tier Appointment Fees			
Symbol	Criteria	Monthly Fees (per unit)	Notes
SPX	MM Floor Permit executes any contracts in SPX/SPXW	\$3,000 per MM Floor Permit	
	Market-Maker EAP executes [any] <u>at least 1,000</u> contracts in SPX/SPXW	\$3,000 per TPH	The Market-Maker EAP SPX Tier Appointment fee will be assessed to any Market-Maker EAP that executes at least <u>1,000</u> contracts in SPX/SPXW, excluding contracts executed during opening rotation on the final settlement date of VIX options and futures which have the expiration that is used in the VIX settlement calculation.
VIX	MM Floor Permit executes at least 1,000 contracts in VIX	\$2,000 per MM Floor Permit	
	Market-Maker EAP executes at least 1,000 contracts in VIX	\$2,000 per TPH	
RUT	MM Floor Permit executes at least 1,000 contracts in RUT	\$1,000 per MM Floor Permit	
	Market-Maker EAP executes at least 1,000 contracts in RUT	\$1,000 per TPH	

\* \* \* \* \*

Routing Fees			
Capacity	Transaction Fee Per Contract	Description	Notes
Customer	<u>{RD}</u> \$0.33	Routed to AMEX, BOX, BX, EDGX, MERC, MIAH, PHLX, ≥ 100 contracts, ETF	Multiple orders from the same executing firm for itself or for a CMTA or correspondent firm in the same series on the same side of the market that are received within 500 milliseconds will be aggregated for purposes of determining the order quantity. <u>Cboe Options will not pass through or otherwise charge</u> customer orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from the trading floor through an Exchange-sponsored terminal (e.g. a PULSe Workstation).
	<u>{RE}</u> \$0.15	Routed to AMEX, BOX, BX, EDGX, MERC, MIAH, PHLX, < 100 contracts ETF, Equity	
	<u>{RF}</u> \$0.83	Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, ≥ 100 contracts ETF, Penny	
	<u>{RG}</u> \$1.18	Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, ≥ 100 contracts ETF, Non-Penny	
	<u>{RH}</u> \$0.65	Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, <100 contracts ETF, Equity, Penny	
	<u>{RI}</u> \$1.00	Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, <100 contracts ETF, Equity, Non-Penny	
Non-Customer	<u>{RJ}</u> \$1.17	Routed, Penny	
	<u>{RK}</u> \$1.45	Routed, Non-Penny	

\* \* \* \* \*

Footnotes (Continued):	
Footnote Number	Description

\* \* \* \* \*

<u>[49]RESERVED</u>	[For SPX, the Exchange may approve one or more Market-Makers to serve as an SPX Select Market-Maker ("SMM") in SPX for terms of at least one year in the Regular Trading Hours session. If an SPX SMM provides continuous electronic quotes in 99% of all SPX series 90% of the time in a given month the SPX SMM will receive \$8,000 for that month. The Exchange may consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances. Various factors will be considered by the Exchange in selecting SPX SMMs, which include: adequacy of capital, experience in trading options, presence in the trading crowd, adherence to Exchange rules and ability to meet the heightened quoting obligations, described above. The Exchange may remove an SPX SMM on the basis of the failure of the SPX SMM to meet the heightened quoting obligations or any other applicable Exchange Rule. If an SPX SMM is removed or if for any reason an SPX SMM is no longer eligible for or resigns its appointment, the Exchange may appoint one or more interim SPX SMMs for the remainder of the term or shorter time period designated by the Exchange.]
---------------------	--

\* \* \* \* \*