

OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 37

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

File No.* SR - 2020 - * 001

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) * |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| | | | Rule | | |
| Pilot | Extension of Time Period for Commission Action * | Date Expires * | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="text"/> | <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) | |

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 with respect to expiring fee waivers and incentive programs.

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.

(Title *)

Date 01/02/2020

By Rebecca Tenuta

(Name *)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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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 *

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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

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Exhibit Sent As Paper Document

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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

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Exhibit Sent As Paper Document

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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

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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

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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

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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 with respect to expiring fee waivers and incentive programs. 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 23, 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 relating to various fee waivers and incentive programs that are set to expire December 31, 2019. The amendments include proposals to make some waivers permanent as well as proposals to extend or remove others. The Exchange proposes to implement these amendments to its Fees Schedule on January 2, 2020.

Sector Indexes Facilitation Fee

First, the Exchange proposes to permanently waive fees for facilitation orders in Sector Index options,¹ thereby continuing to assess a fee of \$0.00 for all qualifying orders. Currently, Footnote 11 of the Fees Schedule provides that for facilitation orders for Sector Index options executed in open outcry the Exchange will assess no Clearing Trading Permit Holder Proprietary transaction fees through December 31, 2019. By way of background, “facilitation orders” in open outcry are defined as any order in which a Clearing Trading Permit Holder (“F” capacity code) or Non-Trading Permit Holder Affiliate (“L” capacity code) is contra to any other capacity code order, provided the same executing broker and clearing firm are on both sides of the transaction.² In adopting a waiver for facilitation fees in Sector Index options,³ the Exchange recognized that Clearing Trading Permit Holders can be an important source of liquidity when they facilitate their own customers’ trading activity. As such, the Exchange believes that continuing to encourage the important role Clearing Trading Permit Holders play with respect to facilitating their own customers’ trading activity will continue to add transparency to the markets and promote price discovery to the benefit of all market participants. Therefore, the Exchange proposes to permanently waive fees for facilitation of orders in open outcry in Sector Index options permanent, and thereby would continue to assess \$0.00 for such orders.

¹ See Cboe Options Fees Schedule, Footnote 47.

² See Cboe Options Fees Schedule, Footnote 11.

³ See Securities Exchange Act Release No. 85167 (February 20, 2019), 84 FR 6039 (February 25, 2019) (SR-CBOE-2019-011).

Sector Indexes License Surcharge

The Exchange next proposes to permanently waive the Index License Surcharge of \$0.10 per contract, thereby continuing to assess an Index License Surcharge fee of \$0.00 for transactions in Sector Index options. In order to promote and encourage trading of the Sector Index options, listed in 2018, the Exchange adopted a waiver of the Index License Surcharge for non-customer Sector Index option transactions.⁴ The waiver has since been extended and is currently set to expire on December 31, 2019.⁵ Because the volume in these products has remained on the lower side since their listing, the Exchange wishes to continuously assess a surcharge of \$0.00 for transactions in Sector Index options, instead of continuing to extend each waiver upon expiration, to indefinitely incentivize the trading of Sector Index options and continue to grow the products. The \$0.00 surcharge would continue to apply to all non-customer transactions, as it does with the current waiver.

VIX License Index Surcharge

The Exchange next proposes to permanently waive the Index License Surcharge of \$0.10 per contract for Clearing Trading Permit Holder Proprietary (“Firm”) (capacity codes “F” or “L”) VIX orders that have a premium of \$0.10 or lower and have series with an expiration of seven (7) calendar days or less. The Exchange adopted the waiver in 2016⁶ to reduce transaction costs on expiring, low-priced VIX options, which the Exchange believed would encourage Firms to seek to close and/or roll over such positions close to

⁴ See Securities Exchange Act Release No. 82854 (March 12, 2018), 83 FR 11803 (March 16, 2018) (SR-CBOE-2018-012). The Exchange notes that this surcharge does not apply to customer orders.

⁵ See supra note 4.

⁶ See Securities Exchange Act Release No. 76923 (January 15, 2016), 81 FR 3841 (January 22, 2016) (SR-CBOE-2016-002).

expiration at low premium levels, including facilitating customers to do so, in order to free up capital and encourage additional trading.⁷ Since its adoption, the Exchange has continued to extend the waiver, which is currently set to expire on December 31, 2019,⁸ at which time the Exchange had stated that it would evaluate whether the waiver has in fact prompted Firms to close and roll over these positions close to expiration as intended. The Exchange has determined that the waiver has incentivized, and continues to incentivize, Firms to close and/or roll over such positions close to expiration at low premium levels, as well as facilitate customers to do the same. The Exchange believes that if such a waiver was not in place, and Firms were charged standard costs to roll or exit positions close to expiration at low premium levels, the closing transactions and positions currently and consistently taken by Firms would not occur. Accordingly, the Exchange proposes to permanently waive this fee, and thereby continue to assess an Index License Surcharge of \$0.00 per contract for Firm VIX orders that have a premium of \$0.10 or lower and have series with an expiration of seven (7) calendar days or less.

RLG, RLV, RUI, and UKXM Transaction Fees

In order to promote and encourage trading in certain FTSE Russell Index products (i.e., Russell 1000 Growth Index (“RLG”), Russell 1000 Value Index (“RLV”), Russell 1000 Index (“RUI”), and FTSE 100 Index (“UKXM”)), the Exchange adopted waivers (in 2015 and then in 2016)⁹ of all transaction fees (including the Floor Brokerage Fee, Index

⁷ See Securities Exchange Act Release No. 76923 (January 15, 2016), 81 FR 3841 (January 22, 2016) (SR-CBOE-2016-002).

⁸ See supra note 4.

⁹ See Securities Exchange Act Release No. 76288 (October 28, 2015), 80 FR 67805 (November 3, 2015) (SR-CBOE-2015-096) (adopting fee waivers for RUI, RLV,

License Surcharge and CFLEX Surcharge Fee) for each of these products for all market participants.¹⁰ Since its adoption, the Exchange has continued to extend the waiver, which is currently set to expire on December 31, 2019.¹¹ Like with the Sector Indexes License Surcharge above, because the volume in these products is consistently low, the Exchange now proposes to continuously assess a fee of \$0.00 for transactions in such products, as opposed to extending the waiver every six months. As such, the Exchange proposes to permanently waive transaction fees for orders in RLG, RLV, RUI, and UKXM options in order to continue to encourage growth and trading of these products.

MXEA and MXEF LMM Incentive Program

The Exchange also proposes to extend the financial program for Lead Market-Makers (“LMMs”) appointed in MSCI EAFE Index (“MXEA”) options and MSCI Emerging Markets Index (“MXEF”) options.¹² Currently, if the appointed LMM in MXEA and MXEF provides continuous electronic quotes during Regular Trading Hours that meet or exceed the above heightened quoting standards in at least 90% of the MXEA and MXEF series 80% of the time in a given month, the LMM will receive a payment for that month in the amount of \$20,000 per class, per month. The Fees Schedule currently provides that this program will be in place through December 31, 2019. In order to continue to encourage LMM(s) in MXEA and MXEF to continue serving as LMMs and provide significant

and RLG transactions); 77547 (April 6, 2016), 81 FR 21611 (April 12, 2016) (SR-CBOE-2016-021) (adopting waivers for UKXM and FXTM transactions)

¹⁰ See Cboe Options Fees Schedule, Footnote 40.

¹¹ See supra note 4.

¹² See Cboe Options Fees Schedule, “MSCI LMM Incentive Program” Table; and Securities Exchange Act Release No. 83585 (July 2, 2018), 83 FR 31825 (July 9, 2018) (SR-CBOE-2018-050); see also supra note 4.

liquidity in these options, which, in turn, would continue to provide greater trading opportunities for all market participants, the Exchange proposes to renew this program through June 30, 2020.

UKXM DPM Incentive Program

The Exchange currently has a compensation plan in place for the Designated Primary Market-Maker(s) (“DPM(s)”) appointed in UKXM to offset its DPM costs, which is set to expire on December 31, 2019.¹³ Specifically, the DPM appointed for an entire month in UKXM will receive a payment of \$5,000 per month through December 31, 2019.¹⁴ The Exchange notes that DPMs incur costs when receiving an appointment, and this compensation plan is designed to offset those costs in order to encourage DPMs to continue to serve as a DPM in this product. The Exchange notes that there is low volume in UKXM and, as such, the Exchange proposes to extend this plan through December 31, 2020 to continue to incentivize DPMs to uphold its DPM commitments in this product, thereby continuing to provide the necessary liquidity and, as a result, greater trading opportunities for all market participants in this option class.

MXEF Customer Transactions Fee Waiver

Lastly, the Exchange proposes to remove the current waiver of the \$0.25 fee assessed for Customer (“C”) transactions in MXEF upon its expiration on December 31, 2019.¹⁵ The Exchange adopted this waiver in October 2019 in order to incentivize an

¹³ See Securities Exchange Act Release No. 77547 (April 6, 2016), 81 FR 21611 (April 12, 2016) (SR-CBOE-2016-021).

¹⁴ See Cboe Options Fees Schedule, Footnote 43.

¹⁵ See Securities Exchange Release No. 87249 (October 8, 2019), 84 FR 55203 (October 15, 2019) (SR-CBOE-2019-076).

increase of Customer volume in MXEF on the Exchange as a result of a precipitous decrease in MXEF Customer volume in the months leading up to October 2019. The Exchange has determined that there has since been a revived increase in Customer executions in MXEF, therefore, the Exchange proposes to let this waiver expire upon December 31, 2019 and remove it from the Fees Schedule.

(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.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁸ 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.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78f(b)(4).

Sector Indexes Facilitation Fee

The Exchange believes that the proposal to permanently waive the Clearing Trading Permit Holder Proprietary transaction fee for facilitation orders in open outcry in Sector Index options is reasonable because these orders will continue to not be charged any fee. As stated above, the Exchange believes this waiver is, and will continue to be, a reasonable means to incentivize the facilitation of customer orders by Clearing Trading Permit Holders, an important source of liquidity. This, in turn, adds to market transparency and promotes price discovery to the benefit of all market participants. The Exchange believes that this is equitable and not unfairly discriminatory because a similar fee of no charge already applies to Firm manual orders in Sector Index options as well as in other products.¹⁹ Moreover, The Exchange believes that continuing to assess no charge for Firm facilitation orders in open outcry in Sector Index options is equitable and not unfairly discriminatory because Clearing Trading Permit Holders have obligations which normally do not apply to other market participants (e.g., must have higher capital requirements, clear trades for other market participants, and must be members of OCC).

Sector Indexes License Surcharge

The Exchange believes it is reasonable to permanently waive the Index License Surcharge for Sector Indexes because the Sector Indexes have continued to experience lower volume and are still relatively new products and the Exchange wishes to continuously encourage and promote trading of these products. Therefore, the Exchange believes that consistently and more definitively assessing no surcharge for non-customer

¹⁹ See Cboe Fees Schedule, “Rate Table – Underlying Symbol List A”, which currently assesses a fee of \$0.00 for Firm orders in RLG, RLV, RUI, and UKXM options.

orders, as opposed to repeatedly extending the fee waiver, is a reasonable means to continue to encourage market participants to trade these products. The Exchange also believes that the proposal to permanently waive the Index License Surcharge for non-customer transactions in Sector Index options is equitable and not unfairly discriminatory because all market participants would equally continue to be assessed a surcharge of \$0.00 for transactions in Sector Indexes (the Exchange notes that customer orders are not subject to this surcharge).

VIX Index License Surcharge

The Exchange believes it is reasonable to waive the Index License Surcharge for Clearing Trading Permit Holder Proprietary VIX orders that have a premium of \$0.10 or lower and have series with an expiration of seven calendar days or less, because the Exchange believes the current waiver has incentivized Firms to roll and close over positions close to expiration at low premium levels. Therefore, the proposal to remove the waiver and continue to assess a fee of \$0.00 for such transactions would serve to consistently encourage Firms to transact and/or take positions close to expiration at low premium levels. Particularly, the Exchange believes it is reasonable to make permanent the waiver of the \$0.10 per contract surcharge by consistently assessing no surcharge because Firms would be less likely to engage in these transactions, as opposed to other VIX transactions, due to the associated transaction costs. The Exchange believes that it is equitable and not unfairly discriminatory to limit the \$0.00 surcharge to Clearing Trading Permit Holder Proprietary orders because they contribute capital to facilitate the execution of VIX customer orders with a premium of \$0.10 or lower and series with an expiration of seven calendar days or less. Additionally, as noted above, Clearing Trading Permit Holders

have obligations, which normally do not apply to other market participants (e.g., must have higher capital requirements, clear trades for other market participants, must be members of OCC).

RLG, RLV, RUI, and UKXM Transaction Fees

The Exchange believes it is reasonable to permanently waive all transaction fees for RLG, RLV, RUI, and UKXM transactions, including the Floor Brokerage fee, the License Index Surcharge and CFLEX Surcharge Fee, and consistently assess a fee of \$0.00, because the waiver of the respective fees currently in place and has continuously been extended since its adoption. Thus, permanently waiving these transaction fees would better serve to consistently promote and encourage trading of these products which have experienced relatively low volume since their listing. The proposal to make this waiver permanent is not unfairly discriminatory and is equitable because it would result in an equal assessment of no charge for any market participant's orders in RLG, RLV, RUI, and UKXM.

MXEA and MXEF LLM Incentive Program

The Exchange believes it is reasonable to extend the MXEA and MXEF LLM Incentive Program because the Exchange wants to ensure it continues incentivizing the LLM(s) in these products to provide liquid and active markets in these products to encourage its growth. The Exchange notes that without the proposed financial incentive, there may not be sufficient incentive for TPHs to undertake an obligation to quote at heightened levels, which could result in lower levels of liquidity to the detriment of all market participants. The Exchange believes the waiver is equitable and not unfairly discriminatory to only offer this financial incentive to MXEA and MXEF LLM(s), because

it benefits all market participants trading in these options to encourage the LMM(s) to satisfy the heightened quoting standard, in turn, increasing liquidity and providing more trading opportunities and tighter spreads. Indeed, the Exchange notes that LMMs provide a crucial role in providing quotes and the opportunity for market participants to trade products, including MXEA and MXEF, which can lead to increased volume, thereby providing for a robust market. In addition, the Exchange notes that all Market-Maker types (i.e. LMMs, DPMs, as well as Primary Market-Makers (“PMMs”)) take on a number of obligations, including quoting obligations, that other market participants do not have. Such Market-Makers have added market-making and regulatory requirements, which normally do not apply to other market participants. For example, Market-Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing. Also, if a MSCI LMM does not satisfy the heightened quoting standard, then it simply will not receive the offered per class payment for that month.

UKXM DPM Incentive Program

The Exchange believes that the proposed extension of the UKXM DPM incentive program is reasonable because it will continue to incentivize the DPM(s) to serve as a DPM(s) in this product. Continued DPM commitments in UKXM would continue to provide the necessary liquidity in this product, resulting in tighter spreads and increased trading opportunities for all market participants in this option class. The Exchange believes that the extension of this incentive program is equitable and not unfairly discriminatory, because it will apply equally to all DPMs appointed in UKXM. Like LMMs (as indicated

above), DPMs play a crucial role in providing liquid and active markets in options classes in order to encourage growth and provide trading opportunities to the benefit all market participants, and uphold certain obligations and adhere to certain regulatory requirements that other market participants do not have.

MXEF Customer Transactions Fee Waiver

Finally, the Exchange believes it is reasonable to remove the waiver of transaction fees for Customer orders in MXEF as it will expire on December 31, 2019. As the waiver was implemented in order to incentivize Customer MXEF executions following a noticeable decrease in Customer volume in MXEF, and the Exchange has determined that Customer executions in MXEF have increased since the application of the waiver, the Exchange believes it is reasonable to let the waiver expire as scheduled and remove it from the Fees Schedule. The proposed removal of the waiver is not unfairly discriminatory and is equitable because the waiver will no longer be applicable, as scheduled, to any orders in MXEF. Instead, the standard fee of \$0.25 that applied to such transactions prior to the adoption of the waiver, will again apply equally to all Customer orders in MXEF.

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

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

First, the Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes either make permanent or extend existing fee waivers and incentive programs that already apply to all similarly situated TPHs in a

uniform manner. Also, the proposed change to remove an existing fee waiver does not impose any burden on intramarket competition, as the same fees that applied prior to the implementation of the waiver will continue to apply after its removal. To the extent certain market participants receive a benefit that others do not, these different market participants have different obligations and circumstances. For example, DPMs and LMMs play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have. Additionally, Clearing Trading Permit Holders can be an important source of liquidity when they facilitate their own customers' trading activity and also have other obligations, which normally do not apply to other market participants (e.g., must have higher capital requirements, clear trades for other market participants, must be members of OCC). The Exchange also notes that consistently and definitively assessing no charge (in lieu of continuously extending the relevant waivers) and that the proposed extensions of the incentive programs are designed to attract additional order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and tighter spreads and encourages all TPHs to send orders, thereby contributing to robust levels of liquidity.

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. First, the proposed changes only affect trading on Cboe Options, as the waivers and incentive programs apply to transactions in products exclusively listed on Cboe Options. Next, the Exchange notes it operates in a highly competitive market. In

addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 options exchanges, as well as off-exchange venues. Based on publicly available information, no single options exchange has more than 22% of the market share of executed volume of options trades.²⁰ Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²¹ 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

²⁰ See Cboe Global Markets, U.S. Options Market Volume Summary by Month (December 17, 2019), available at http://markets.cboe.com/us/options/market_share/.

²¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

otherwise, in the execution of order flow from broker dealers'....".²² Accordingly, the Exchange does not believe its proposed changes to extend the above-mentioned fee waivers and incentive programs impose any burden on competition that is 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 Act²³ and Rule 19b-4(f)(2)²⁴ 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

²² 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)).

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(2).

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-2020-001]

[Insert date]

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

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

The Exchange proposes to amend its Fees Schedule relating to various fee waivers and incentive programs that are set to expire December 31, 2019. The amendments include proposals to make some waivers permanent as well as proposals to extend or remove others. The Exchange proposes to implement these amendments to its Fees Schedule on January 2, 2020.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in 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 relating to various fee waivers and incentive programs that are set to expire December 31, 2019. The amendments include proposals to make some waivers permanent as well as proposals to extend or remove others. The Exchange proposes to implement these amendments to its Fees Schedule on January 2, 2020.

Sector Indexes Facilitation Fee

First, the Exchange proposes to permanently waive fees for facilitation orders in Sector Index options,³ thereby continuing to assess a fee of \$0.00 for all qualifying orders. Currently, Footnote 11 of the Fees Schedule provides that for facilitation orders for Sector Index options executed in open outcry the Exchange will assess no Clearing Trading Permit Holder Proprietary transaction fees through December 31, 2019. By way of background, “facilitation orders” in open outcry are defined as any order in which a Clearing Trading Permit Holder (“F” capacity code) or Non-Trading Permit Holder Affiliate (“L” capacity

³ See Cboe Options Fees Schedule, Footnote 47.

code) is contra to any other capacity code order, provided the same executing broker and clearing firm are on both sides of the transaction.⁴ In adopting a waiver for facilitation fees in Sector Index options,⁵ the Exchange recognized that Clearing Trading Permit Holders can be an important source of liquidity when they facilitate their own customers' trading activity. As such, the Exchange believes that continuing to encourage the important role Clearing Trading Permit Holders play with respect to facilitating their own customers' trading activity will continue to add transparency to the markets and promote price discovery to the benefit of all market participants. Therefore, the Exchange proposes to permanently waive fees for facilitation of orders in open outcry in Sector Index options permanent, and thereby would continue to assess \$0.00 for such orders.

Sector Indexes License Surcharge

The Exchange next proposes to permanently waive the Index License Surcharge of \$0.10 per contract, thereby continuing to assess an Index License Surcharge fee of \$0.00 for transactions in Sector Index options. In order to promote and encourage trading of the Sector Index options, listed in 2018, the Exchange adopted a waiver of the Index License Surcharge for non-customer Sector Index option transactions.⁶ The waiver has since been extended and is currently set to expire on December 31, 2019.⁷ Because the volume in these products has remained on the lower side since their listing, the Exchange wishes to

⁴ See Cboe Options Fees Schedule, Footnote 11.

⁵ See Securities Exchange Act Release No. 85167 (February 20, 2019), 84 FR 6039 (February 25, 2019) (SR-CBOE-2019-011).

⁶ See Securities Exchange Act Release No. 82854 (March 12, 2018), 83 FR 11803 (March 16, 2018) (SR-CBOE-2018-012). The Exchange notes that this surcharge does not apply to customer orders.

⁷ See supra note 6.

continuously assess a surcharge of \$0.00 for transactions in Sector Index options, instead of continuing to extend each waiver upon expiration, to indefinitely incentivize the trading of Sector Index options and continue to grow the products. The \$0.00 surcharge would continue to apply to all non-customer transactions, as it does with the current waiver.

VIX License Index Surcharge

The Exchange next proposes to permanently waive the Index License Surcharge of \$0.10 per contract for Clearing Trading Permit Holder Proprietary (“Firm”) (capacity codes “F” or “L”) VIX orders that have a premium of \$0.10 or lower and have series with an expiration of seven (7) calendar days or less. The Exchange adopted the waiver in 2016⁸ to reduce transaction costs on expiring, low-priced VIX options, which the Exchange believed would encourage Firms to seek to close and/or roll over such positions close to expiration at low premium levels, including facilitating customers to do so, in order to free up capital and encourage additional trading.⁹ Since its adoption, the Exchange has continued to extend the waiver, which is currently set to expire on December 31, 2019,¹⁰ at which time the Exchange had stated that it would evaluate whether the waiver has in fact prompted Firms to close and roll over these positions close to expiration as intended. The Exchange has determined that the waiver has incentivized, and continues to incentivize, Firms to close and/or roll over such positions close to expiration at low premium levels, as well as facilitate customers to do the same. The Exchange believes that if such a waiver

⁸ See Securities Exchange Act Release No. 76923 (January 15, 2016), 81 FR 3841 (January 22, 2016) (SR-CBOE-2016-002).

⁹ See Securities Exchange Act Release No. 76923 (January 15, 2016), 81 FR 3841 (January 22, 2016) (SR-CBOE-2016-002).

¹⁰ See supra note 6.

was not in place, and Firms were charged standard costs to roll or exit positions close to expiration at low premium levels, the closing transactions and positions currently and consistently taken by Firms would not occur. Accordingly, the Exchange proposes to permanently waive this fee, and thereby continue to assess an Index License Surcharge of \$0.00 per contract for Firm VIX orders that have a premium of \$0.10 or lower and have series with an expiration of seven (7) calendar days or less.

RLG, RLV, RUI, and UKXM Transaction Fees

In order to promote and encourage trading in certain FTSE Russell Index products (i.e., Russell 1000 Growth Index (“RLG”), Russell 1000 Value Index (“RLV”), Russell 1000 Index (“RUI”), and FTSE 100 Index (“UKXM”)), the Exchange adopted waivers (in 2015 and then in 2016)¹¹ of all transaction fees (including the Floor Brokerage Fee, Index License Surcharge and CFLEX Surcharge Fee) for each of these products for all market participants.¹² Since its adoption, the Exchange has continued to extend the waiver, which is currently set to expire on December 31, 2019.¹³ Like with the Sector Indexes License Surcharge above, because the volume in these products is consistently low, the Exchange now proposes to continuously assess a fee of \$0.00 for transactions in such products, as opposed to extending the waiver every six months. As such, the Exchange proposes to permanently waive transaction fees for orders in RLG, RLV, RUI, and UKXM options in order to continue to encourage growth and trading of these products.

¹¹ See Securities Exchange Act Release No. 76288 (October 28, 2015), 80 FR 67805 (November 3, 2015) (SR-CBOE-2015-096) (adopting fee waivers for RUI, RLV, and RLG transactions); 77547 (April 6, 2016), 81 FR 21611 (April 12, 2016) (SR-CBOE-2016-021) (adopting waivers for UKXM and FXTM transactions)

¹² See Cboe Options Fees Schedule, Footnote 40.

¹³ See supra note 6.

MXEA and MXEF LMM Incentive Program

The Exchange also proposes to extend the financial program for Lead Market-Makers (“LMMs”) appointed in MSCI EAFE Index (“MXEA”) options and MSCI Emerging Markets Index (“MXEF”) options.¹⁴ Currently, if the appointed LMM in MXEA and MXEF provides continuous electronic quotes during Regular Trading Hours that meet or exceed the above heightened quoting standards in at least 90% of the MXEA and MXEF series 80% of the time in a given month, the LMM will receive a payment for that month in the amount of \$20,000 per class, per month. The Fees Schedule currently provides that this program will be in place through December 31, 2019. In order to continue to encourage LMM(s) in MXEA and MXEF to continue serving as LMMs and provide significant liquidity in these options, which, in turn, would continue to provide greater trading opportunities for all market participants, the Exchange proposes to renew this program through June 30, 2020.

UKXM DPM Incentive Program

The Exchange currently has a compensation plan in place for the Designated Primary Market-Maker(s) (“DPM(s)”) appointed in UKXM to offset its DPM costs, which is set to expire on December 31, 2019.¹⁵ Specifically, the DPM appointed for an entire month in UKXM will receive a payment of \$5,000 per month through December 31, 2019.¹⁶ The Exchange notes that DPMs incur costs when receiving an appointment, and

¹⁴ See Cboe Options Fees Schedule, “MSCI LMM Incentive Program” Table; and Securities Exchange Act Release No. 83585 (July 2, 2018), 83 FR 31825 (July 9, 2018) (SR-CBOE-2018-050); see also *supra* note 6.

¹⁵ See Securities Exchange Act Release No. 77547 (April 6, 2016), 81 FR 21611 (April 12, 2016) (SR-CBOE-2016-021).

¹⁶ See Cboe Options Fees Schedule, Footnote 43.

this compensation plan is designed to offset those costs in order to encourage DPMs to continue to serve as a DPM in this product. The Exchange notes that there is low volume in UKXM and, as such, the Exchange proposes to extend this plan through December 31, 2020 to continue to incentivize DPMs to uphold its DPM commitments in this product, thereby continuing to provide the necessary liquidity and, as a result, greater trading opportunities for all market participants in this option class.

MXEF Customer Transactions Fee Waiver

Lastly, the Exchange proposes to remove the current waiver of the \$0.25 fee assessed for Customer (“C”) transactions in MXEF upon its expiration on December 31, 2019.¹⁷ The Exchange adopted this waiver in October 2019 in order to incentivize an increase of Customer volume in MXEF on the Exchange as a result of a precipitous decrease in MXEF Customer volume in the months leading up to October 2019. The Exchange has determined that there has since been a revived increase in Customer executions in MXEF, therefore, the Exchange proposes to let this waiver expire upon December 31, 2019 and remove it from the Fees Schedule.

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.¹⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁹

¹⁷ See Securities Exchange Release No. 87249 (October 8, 2019), 84 FR 55203 (October 15, 2019) (SR-CBOE-2019-076).

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,²⁰ 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.

Sector Indexes Facilitation Fee

The Exchange believes that the proposal to permanently waive the Clearing Trading Permit Holder Proprietary transaction fee for facilitation orders in open outcry in Sector Index options is reasonable because these orders will continue to not be charged any fee. As stated above, the Exchange believes this waiver is, and will continue to be, a reasonable means to incentivize the facilitation of customer orders by Clearing Trading Permit Holders, an important source of liquidity. This, in turn, adds to market transparency and promotes price discovery to the benefit of all market participants. The Exchange believes that this is equitable and not unfairly discriminatory because a similar fee of no charge already applies to Firm manual orders in Sector Index options as well as in other products.²¹

²⁰ 15 U.S.C. 78f(b)(4).

²¹ See Cboe Fees Schedule, “Rate Table – Underlying Symbol List A”, which currently assesses a fee of \$0.00 for Firm orders in RLG, RLV, RUI, and UKXM options.

Moreover, The Exchange believes that continuing to assess no charge for Firm facilitation orders in open outcry in Sector Index options is equitable and not unfairly discriminatory because Clearing Trading Permit Holders have obligations which normally do not apply to other market participants (e.g., must have higher capital requirements, clear trades for other market participants, and must be members of OCC).

Sector Indexes License Surcharge

The Exchange believes it is reasonable to permanently waive the Index License Surcharge for Sector Indexes because the Sector Indexes have continued to experience lower volume and are still relatively new products and the Exchange wishes to continuously encourage and promote trading of these products. Therefore, the Exchange believes that consistently and more definitively assessing no surcharge for non-customer orders, as opposed to repeatedly extending the fee waiver, is a reasonable means to continue to encourage market participants to trade these products. The Exchange also believes that the proposal to permanently waive the Index License Surcharge for non-customer transactions in Sector Index options is equitable and not unfairly discriminatory because all market participants would equally continue to be assessed a surcharge of \$0.00 for transactions in Sector Indexes (the Exchange notes that customer orders are not subject to this surcharge).

VIX Index License Surcharge

The Exchange believes it is reasonable to waive the Index License Surcharge for Clearing Trading Permit Holder Proprietary VIX orders that have a premium of \$0.10 or lower and have series with an expiration of seven calendar days or less, because the Exchange believes the current waiver has incentivized Firms to roll and close over

positions close to expiration at low premium levels. Therefore, the proposal to remove the waiver and continue to assess a fee of \$0.00 for such transactions would serve to consistently encourage Firms to transact and/or take positions close to expiration at low premium levels. Particularly, the Exchange believes it is reasonable to make permanent the waiver of the \$0.10 per contract surcharge by consistently assessing no surcharge because Firms would be less likely to engage in these transactions, as opposed to other VIX transactions, due to the associated transaction costs. The Exchange believes that it is equitable and not unfairly discriminatory to limit the \$0.00 surcharge to Clearing Trading Permit Holder Proprietary orders because they contribute capital to facilitate the execution of VIX customer orders with a premium of \$0.10 or lower and series with an expiration of seven calendar days or less. Additionally, as noted above, Clearing Trading Permit Holders have obligations, which normally do not apply to other market participants (e.g., must have higher capital requirements, clear trades for other market participants, must be members of OCC).

RLG, RLV, RUI, and UKXM Transaction Fees

The Exchange believes it is reasonable to permanently waive all transaction fees for RLG, RLV, RUI, and UKXM transactions, including the Floor Brokerage fee, the License Index Surcharge and CFLEX Surcharge Fee, and consistently assess a fee of \$0.00, because the waiver of the respective fees currently in place and has continuously been extended since its adoption. Thus, permanently waiving these transaction fees would better serve to consistently promote and encourage trading of these products which have experienced relatively low volume since their listing. The proposal to make this waiver permanent is not unfairly discriminatory and is equitable because it would result in an equal

assessment of no charge for any market participant's orders in RLG, RLV, RUI, and UKXM.

MXEA and MXEF LLM Incentive Program

The Exchange believes it is reasonable to extend the MXEA and MXEF LMM Incentive Program because the Exchange wants to ensure it continues incentivizing the LMM(s) in these products to provide liquid and active markets in these products to encourage its growth. The Exchange notes that without the proposed financial incentive, there may not be sufficient incentive for TPHs to undertake an obligation to quote at heightened levels, which could result in lower levels of liquidity to the detriment of all market participants. The Exchange believes the waiver is equitable and not unfairly discriminatory to only offer this financial incentive to MXEA and MXEF LMM(s), because it benefits all market participants trading in these options to encourage the LMM(s) to satisfy the heightened quoting standard, in turn, increasing liquidity and providing more trading opportunities and tighter spreads. Indeed, the Exchange notes that LMMs provide a crucial role in providing quotes and the opportunity for market participants to trade products, including MXEA and MXEF, which can lead to increased volume, thereby providing for a robust market. In addition, the Exchange notes that all Market-Maker types (i.e. LMMs, DPMs, as well as Primary Market-Makers ("PMMs")) take on a number of obligations, including quoting obligations, that other market participants do not have. Such Market-Makers have added market-making and regulatory requirements, which normally do not apply to other market participants. For example, Market-Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers

or enter into transactions that are inconsistent with a course of dealing. Also, if a MSCI LMM does not satisfy the heightened quoting standard, then it simply will not receive the offered per class payment for that month.

UKXM DPM Incentive Program

The Exchange believes that the proposed extension of the UKXM DPM incentive program is reasonable because it will continue to incentivize the DPM(s) to serve as a DPM(s) in this product. Continued DPM commitments in UKXM would continue to provide the necessary liquidity in this product, resulting in tighter spreads and increased trading opportunities for all market participants in this option class. The Exchange believes that the extension of this incentive program is equitable and not unfairly discriminatory, because it will apply equally to all DPMs appointed in UKXM. Like LMMs (as indicated above), DPMs play a crucial role in providing liquid and active markets in options classes in order to encourage growth and provide trading opportunities to the benefit all market participants, and uphold certain obligations and adhere to certain regulatory requirements that other market participants do not have.

MXEF Customer Transactions Fee Waiver

Finally, the Exchange believes it is reasonable to remove the waiver of transaction fees for Customer orders in MXEF as it will expire on December 31, 2019. As the waiver was implemented in order to incentivize Customer MXEF executions following a noticeable decrease in Customer volume in MXEF, and the Exchange has determined that Customer executions in MXEF have increased since the application of the waiver, the Exchange believes it is reasonable to let the waiver expire as scheduled and remove it from the Fees Schedule. The proposed removal of the waiver is not unfairly discriminatory and

is equitable because the waiver will no longer be applicable, as scheduled, to any orders in MXEF. Instead, the standard fee of \$0.25 that applied to such transactions prior to the adoption of the waiver, will again apply equally to all Customer orders in MXEF.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

First, the Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes either make permanent or extend existing fee waivers and incentive programs that already apply to all similarly situated TPHs in a uniform manner. Also, the proposed change to remove an existing fee waiver does not impose any burden on intramarket competition, as the same fees that applied prior to the implementation of the waiver will continue to apply after its removal. To the extent certain market participants receive a benefit that others do not, these different market participants have different obligations and circumstances. For example, DPMs and LMMs play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have. Additionally, Clearing Trading Permit Holders can be an important source of liquidity when they facilitate their own customers' trading activity and also have other obligations, which normally do not apply to other market participants (e.g., must have higher capital requirements, clear trades for other market participants, must be members of OCC). The

Exchange also notes that consistently and definitively assessing no charge (in lieu of continuously extending the relevant waivers) and that the proposed extensions of the incentive programs are designed to attract additional order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and tighter spreads and encourages all TPHs to send orders, thereby contributing to robust levels of liquidity.

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. First, the proposed changes only affect trading on Cboe Options, as the waivers and incentive programs apply to transactions in products exclusively listed on Cboe Options. Next, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 options exchanges, as well as off-exchange venues. Based on publicly available information, no single options exchange has more than 22% of the market share of executed volume of options trades.²² Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market

²² See Cboe Global Markets, U.S. Options Market Volume Summary by Month (December 17, 2019), available at http://markets.cboe.com/us/options/market_share/.

competition in its broader forms that are most important to investors and listed companies.”²³ 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’....”²⁴ Accordingly, the Exchange does not believe its proposed changes to extend the above-mentioned fee waivers and incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and paragraph (f) of Rule 19b-4²⁶ thereunder. At any time within 60 days of the

²³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁴ *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)).

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f).

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-2020-001 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CBOE-2020-001. 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-2020-001 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.²⁷

Secretary

²⁷ 17 CFR 200.30-3(a)(12).

| Rate Table - All Products Excluding Underlying Symbol List A (34)(13) | | | Options Transaction Fees (1)(3)(4)(7)(15)(33)(39) | | | | | | | | |
|--|--|-----------------|--|---|-------------|-------------|--|-----------------|---------------|-------------------|--|
| Capacity | Products | Capacity Code | Transaction Fee Per Contract | | | | | | | AIM Response (20) | |
| | | | Manual | | Electronic | | AIM Agency/Primary (19) | AIM Contra (18) | Penny Classes | Non-Penny Classes | |
| Customer (2)(8)(9) | Equity Options | C | | | {CK} \$0.00 | | | | {CK} \$0.00 | | |
| | ETF and ETN Options | | {CK} \$0.00 | {CE} \$0.00 if adding liquidity {CA} \$0.18 if original order size is ≥100 contracts and removing liquidity {CD} \$0.00 if original order size is <100 contracts and removing liquidity | | | | | | | |
| | XSP | | {CC} \$0.04 | | {YB} \$0.07 | | | | | | |
| | MXEA | | {CM} \$0.25 | | | | | | | | |
| | MXEF | | {CN} \$0.25 [(This fee is waived through December 31, 2019)] | | | | | | | | |
| | All Other Index Products | | {CB} \$0.18 | | {YB} \$0.07 | | | | | | |
| | Sector Indexes (47) | | {CP} \$0.30 | | | | | | | | |
| Clearing Trading Permit Holder Proprietary (11)(16) | Equity, ETF, and ETN Options and All Other Index Products | F L | {FA} \$0.20 - See Clearing Trading Permit Holder Fee Cap | | {FB} \$0.43 | {FC} \$0.70 | {FD} \$0.20 - See Clearing Trading Permit Holder Fee Cap | {YB} \$0.07 | {NB} \$0.50 | {NC} \$1.05 | |
| | Sector Indexes (47) | | {FI} \$0.25 | | | | | | | | |
| | Facilitation (11) | | {FF} \$0.00 | {FI} \$0.25 | | | | | | | |
| Cboe Options Market-Maker/DPM/LMM (10) | XSP | M | {MX} \$0.23 | | | | {YB} \$0.07 | | | | |
| | Equity, ETF, and ETN Options, Sector Indexes (47) and All Other Index Products | | {MA} \$0.23 - See Liquidity Provider Sliding Scale and Liquidity Provider Sliding Scale Adjustment Table | | | | | | | | |
| Broker-Dealer (16) | Equity, ETF, and ETN Options and All Other Index Products | B N U J | {BA} \$0.25 | | {BB} \$0.47 | {BC} \$0.75 | {BD} \$0.20 | | {NB} \$0.50 | {NC} \$1.05 | |
| Non-Trading Permit Holder Market Maker (16) Professional /Joint Back-Office | Sector Indexes (47) | | {WA} \$0.12 "U" Capacity Code Only | | | | | | | | |
| Complex Surcharge (35) | Equity, ETF, and ETN Options and All Other Index Products | F J L M B N U | | | \$0.12 | | | | | | |
| Surcharge Fee (14) Index License - DJX, MXEA and MXEF and Sector Indexes | | | \$0.10 (This surcharge is waived, through December 31, 2019, \$0.00 for Sector Indexes (47)) | | | | | | | | |
| FLEX Surcharge Fee (17) - DJX, MXEA, MXEF and XSP Only | | C F J L M B N U | \$0.10 (capped at \$250 per trade) | | | | | | | | |
| Exotic Surcharge (42) | | C | \$0.25 (\$0.03 for XSP Only) | | | | | | | | |

| Rate Table - Underlying Symbol List A (34) (Also applies to GTH)(37) | | | Options Transaction Fees (1)(3)(4)(7)(15)(33)(39) | | | | | |
|--|----------------------------------|---|---|---|-----------------|-------------------|---|-----------------|
| Capacity | | Products | Capacity Code | Transaction Fee Per Contract by Premium Price | | | VIX Only SPX (incl SPXw) in GTH Only | |
| | | | | \$0.00 - \$0.10 | \$0.11 - \$0.99 | \$1.00+ | AIM Agency/Primary (19) | AIM Contra (18) |
| Customer (2) | OEX and XEO | | C | {CO} \$0.40 | | | | |
| | OEX Weeklys, XEO Weeklys (47) | | | {CP} \$0.30 | | | | |
| | RUT, RLG, RLV, RUI and UKXM (40) | | | {CR} \$0.18/ {WR} \$0.00 RLG, RLV, RUI, UKXM only | | | | |
| | SPX (incl SPXW) | | | {CS} \$0.35 | {CT} \$0.44 | See Rates to Left | | |
| | VIX | | | {CV} \$0.10 | {CW} \$0.25 | {CX} \$0.45 | | |
| Clearing Trading Permit Holder Proprietary (11)(12)(16)(40) | | Underlying Symbol List A (34) | F L | {FH} \$0.25 - See Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scales/ {WR} \$0.00 RLG, RLV, RUI, UKXM Only | | | | |
| VIX | | {FK} \$0.25 - See Cboe Options Clearing Trading Permit Holder VIX Sliding Scale | | | | | | |
| Cboe Options Market-Maker/ DPM/LMM (10)(42)(43) | | SPX (incl SPXW)(41) | M | {MS} \$0.28 - See SPX Liquidity Provider Sliding Scale/ {SC} \$0.00 | | | | |
| | | RUT | | {MT} \$0.30 | | | | |
| | | RLG, RLV, RUI, UKXM, OEX and XEO (40) | | {MR} \$0.20/ {WR} \$0.00 RLG, RLV, RUI, UKXM only | | | | |
| | | VIX (43)(45) | | {MV} \$0.05 | {MW} \$0.23 | See Rates to Left | | |
| Joint Back-Office (45) Broker-Dealer (16)(45) Non-Trading Permit Holder Market Maker (16)(45) Professional (45) | | OEX, XEO, SPX (incl SPXW) and VIX | B N U J | {BR} \$0.40 | | | | |
| | | RUT, RLG, RLV, RUI and UKXM (40) | | {BS} \$0.25 Manual and AIM/ {BK} \$0.65 non-AIM Electronic/ {WR} \$0.00 RLG, RLV, RUI, UKXM only | | | | |
| Surcharge Fee (14) (Also applies to GTH)(37) | Index License (41) | RUT | F J L M B N U | \$0.45 | | | | |
| | | SPX (incl SPXW) (41) | | \$0.16/ {SC} \$0.00 | | | | |
| | | OEX, RLG, RLV, RUI, UKXM, XEO and VIX (40) | | \$0.10 | | | ((This surcharge is waived, through December 31, 2019,)\$0.00 for capacity codes F and L for VIX transactions where the VIX Premium is ≤ \$0.10 and the related series has an expiration of seven (7) calendar days or less.) | |
| FLEX Surcharge Fee (17)(40) | | | C F J L M B N U | \$0.10 (capped at \$250 per trade) | | | | |
| Exotic Surcharge (42) | | | C | \$0.25 | | | | |
| Execution Surcharge (21) (Also applies to GTH)(37) | | SPX Only (15) | C F J L B N U | \$0.21 | | | | |
| | | SPXW (electronic only) | | \$0.10 | | | | |
| Customer Priority Surcharge (31) (Also applies to GTH)(37) | | VIX (Maker non-turner) | C | \$0.00 | \$0.20 | | | |

MSCI LMM Incentive Program

Capacity

Capacity Code

Premium Level

Expiring

7 days or less

Width

Size

Near Term

8 days to 60 days

Width

Size

Mid Term

61 days to 270 days

Width

Size

Long Term

271 days or Greater

Width

Size

LMM

M

\$0.00 - \$5.00

\$3.00

5

\$1.50

20

\$2.50

15

\$5.00

10

\$5.01 - \$15.00

\$6.00

3

\$3.00

15

\$5.00

10

\$10.00

7

\$15.01 - \$50.00

\$15.00

2

\$7.50

10

\$10.00

7

\$20.00

5

\$50.01 - \$100.00

\$25.00

1

\$15.00

7

\$20.00

5

\$30.00

3

\$100.01 - \$200.00

\$40.00

1

\$25.00

3

\$35.00

3

\$48.00

2

Greater than \$200.00

\$60.00

1

\$40.00

1

\$50.00

1

\$72.00

1

For MXEA and MXEF, if the appointed LMM provides continuous electronic quotes during Regular Trading Hours that meet or exceed the above heightened quoting standards in at least 90% of the MXEA and MXEF series 80% of the time in a given month, the LMM will receive a payment for that month in the amount of \$40,000 per class for the month of February 2019, and \$20,000 per class, per month thereafter. The Exchange may consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances. This program will be in place through [December 31]June 30, 20[19]20.

| Footnotes: | |
|-----------------|---|
| Footnote Number | Description |
| ***** | |
| 11 | The Clearing Trading Permit Holder Fee Cap in all products except Underlying Symbol List A (34) (the "Fee Cap") and Sector Indexes (47), the Cboe Options Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders (the "Proprietary Products Sliding Scale") and the Clearing Trading Permit Holder Proprietary VIX Sliding Scale (the "VIX Sliding Scale") apply to (i) Clearing Trading Permit Holder proprietary orders ("F" capacity code), and (ii) orders of Non-Trading Permit Holder Affiliates of a Clearing Trading Permit Holder. A "Non-Trading Permit Holder Affiliate" for this purpose is a 100% wholly-owned affiliate or subsidiary of a Clearing Trading Permit Holder that is registered as a United States or foreign broker-dealer and that is not a Cboe Options Trading Permit Holder. Only proprietary orders of the Non-Trading Permit Holder Affiliate that clear through a Cboe Options-registered OCC clearing number(s) will be included in calculating the Fee Cap, Proprietary Products Sliding Scale and VIX Sliding Scale. Such orders must be marked with a code approved by the Exchange identifying the orders as eligible for the Fee Cap, Proprietary Products Sliding Scale and VIX Sliding Scale (i.e., "L" capacity code). The Exchange will aggregate the fees and trading activity of separate Clearing Trading Permit Holders for the purposes of the Fee Cap, Proprietary Products Sliding Scale and VIX Sliding Scale if there is at least 75% common ownership between the Clearing Trading Permit Holders as reflected on each Clearing Trading Permit Holder's Form BD, Schedule A. A Clearing Trading Permit Holder's fees and contracts executed pursuant to a CMTA agreement (i.e., executed by another clearing firm and then transferred to the Clearing Trading Permit Holder's account at the OCC) are aggregated with the Clearing Trading Permit Holder's non-CMTA fees and contracts for purposes of the Fee Cap, Proprietary Products Sliding Scale and VIX Sliding Scale. The actual transaction fees resulting from any of the strategies defined in Footnote 13, after relevant caps are applied, will apply towards reaching the Fee Cap. However, contract volume from any such strategies for which the strategy cap is applied will not apply towards reaching the multi-list qualifying tiers for the Proprietary Products Sliding Scale. For facilitation orders (other than Sector Indexes (47) and Underlying Symbol List A (34)) executed in open outcry, Cboe Options will assess no Clearing Trading Permit Holder Proprietary transaction fees. For facilitation orders for Sector Indexes (47) executed in open outcry, Cboe Options [will]does not assess [no] Clearing Trading Permit Holder Proprietary transaction fees [through December 31, 2019]. "Facilitation orders" for this purpose to be defined as any order in which a Clearing Trading Permit Holder (F) capacity code or Non-Trading Permit Holder Affiliate ("L" capacity code) is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the transaction for open outcry. |
| ***** | |
| 40 | \$0.00 for [All] transactions [fees for]in RLG, RLV, RUI and UKXM [are waived through December 31, 2019]. |
| ***** | |
| 43 | The DPM appointed for an entire month in UKXM will receive a payment of \$5,000 per month through December 31, 20[19]20. |