

OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

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

File No.* SR - 2020 - * 069

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"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			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)		

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

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

Section 806(e)(1) *

☐

Section 806(e)(2) *

☐

Section 3C(b)(2) *

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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 relating to the Options Regulatory Fee.

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 * Corinne Last Name * Klott
 Title * Assistant General Counsel
 E-mail * cklott@cboe.com
 Telephone * (312) 786-7793 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 07/21/2020

By Laura G. Dickman

(Name *)

VP, Associate General 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.

ldickman@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

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 relating to the Options Regulatory Fee. 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 Chief Regulatory Officer pursuant to delegated authority approved the proposed rule change on July 21, 2020.

(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 to reduce the Options Regulatory Fee (“ORF”) from \$0.0045 per contract to \$0.0023 per contract, effective August 3, 2020, in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange’s total regulatory costs.

The ORF is assessed by Cboe Options to each Trading Permit Holder (“TPH”) for options transactions cleared by the TPH that are cleared by the Options Clearing Corporation (“OCC”) in the customer range, regardless of the exchange on which the

transaction occurs.¹ In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a TPH, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Trading Permit Holder (“CTPH”) or non-CTPH that ultimately clears the transaction. With respect to linkage transactions, Cboe Options reimburses its routing broker providing Routing Services pursuant to Cboe Options Rule 5.36 for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of TPH customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day to day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, information technology, facilities and accounting. These indirect expenses are estimated to be approximately 26% of Cboe Options’ total regulatory costs for 2020. Thus, direct expenses are estimated to be approximately 74% of total regulatory costs for 2020. In addition, it is Cboe Options’ practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs.

¹ The Exchange notes ORF also applies to customer-range transactions executed during Global Trading Hours.

The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange also notifies TPHs of adjustments to the ORF via regulatory circular and/or Exchange Notice.² Based on the Exchange's most recent semi-annual review, the Exchange is proposing to reduce the amount of ORF that will be collected by the Exchange from \$0.0045 per contract side to \$0.0023 per contract side. The proposed decrease is based on the Exchange's estimated projections for its regulatory costs, which have decreased, balanced with recent options volumes, which has significantly increased. For example, total options contract volume in June 2020 was 82.2% higher than the total options contract volume in June 2019.³ In fact, June 2020 was the highest options volume month in the history of U.S. equity options industry.⁴ In particular, customer options volume across the industry has also significantly increased year to date. For example, total customer options contract volume in April 2020 was 50.27% higher than total customer volume in April 2019 and total customer options contract volume in May 2020, was 29.10% higher than total customer volume in May 2019. These expectations are

² The Exchange endeavors to provide TPHs with such notice at least 30 calendar days prior to the effective date of the change. The Exchange notified TPHs of the proposed rate change for August 3, 2020 on July 1, 2020. See Cboe Options Regulatory Circular RG20-042 "Options Regulatory Fee Decrease and Discontinuation of Regulatory Circular" and Exchange Notice, C2020070100 "Cboe Options Exchanges Regulatory Fee Update Effective August 3, 2020."

³ See <https://www.theocc.com/Newsroom/Press-Releases/2020/07-01-OCC-June-2020-Total-Volume-Up-Nearly-81-Perc>.

⁴ Id. The previous record for highest U.S. equity options volume was March 2020. For further context, the Exchange notes that The Options Clearing Corporation total volume for March 2020 was up 62.8% as compared to March 2019.

estimated, preliminary and may change. There can be no assurance that the Exchange's final costs for 2020 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with the Exchange's other non-ORF regulatory fees and fines, the revenue being generated by ORF using the current rate results in revenue that is running in excess of the Exchange's estimated regulatory costs for the year.⁵ Particularly, as noted above, the options market has seen a substantial increase in volume over the first half of the year, due in large part to the extreme volatility in the marketplace as a result of the COVID-19 pandemic. This unprecedented spike in volatility resulted in significantly higher volume than was originally projected by the Exchange (thereby resulting in substantially higher ORF revenue than projected). Moreover, in addition to projected reductions in regulatory expenses, the Exchange experienced further unanticipated reductions in costs, in connection with COVID-19 (e.g., reduction in travel expenses).⁶ The Exchange therefore proposes to decrease the ORF in order to ensure it does not exceed its regulatory costs for the year. Particularly, the Exchange believes that by decreasing the ORF, as amended, when combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the

⁵ Consistent with Rule 2.2 (Regulatory Revenue), the Exchange notes that notwithstanding the excess ORF revenue collected to date, it has not used such revenue for nonregulatory purposes.

⁶ The Exchange notes that in connection with proposed ORF rate changes, it provides the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a breakout of its projected regulatory expenses, including both direct and indirect allocations.

current rate⁷.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

(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.⁸ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act⁹, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because customer transactions will be subject to a lower ORF fee than the current rate. Moreover, the proposed reduction is necessary in order for the Exchange to not collect revenue in excess of its anticipated regulatory costs, in combination with other regulatory fees and fines, which is consistent with the Exchange’s practices. The Exchange had designed the ORF

⁷ The Exchange notes that its regulatory responsibilities with respect to TPH compliance with options sales practice rules have largely been allocated to FINRA under a 17d-2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

to generate revenues that would be less than or equal to 75% of the Exchange's regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after its semi-annual review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it would be collecting revenue in excess of 75% of its regulatory costs. Indeed, the Exchange notes that when taking into account the recent options volume, coupled with the projected reduction in regulatory costs, it estimates the ORF will generate revenues that would cover more than the approximated 75% of the Exchange's projected regulatory costs. Moreover, when coupled with the Exchange's other regulatory fees and revenues, the Exchange estimates ORF to generate over 100% of the Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to decrease the ORF amount from \$0.0045 to \$0.0023 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all TPHs on all their transactions that clear in the customer range at the OCC. The Exchange believes the ORF ensures fairness by assessing higher fees to those TPHs that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (e.g., staff and travel expenses), as well as

investigations into customer complaints and the terminations of Registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., TPH proprietary transactions) of its regulatory program.¹¹ Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to its TPHs' activities, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity irregardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group ("ISG")¹² the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to its TPH's customer trading activity.

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

¹¹ If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on TPH proprietary transactions if the Exchange deems it advisable.

¹² ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

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 Act¹³ and Rule 19b-4(f)(2)¹⁴ thereunder.

¹³ 15 U.S.C. 78s(b)(3)(A).

(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.

(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-2020-069]

[Insert date]

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Fees Schedule relating to the Options Regulatory Fee. 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.

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 reduce the Options Regulatory Fee ("ORF") from \$0.0045 per contract to \$0.0023 per contract, effective August 3, 2020, in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

The ORF is assessed by Cboe Options to each Trading Permit Holder ("TPH") for options transactions cleared by the TPH that are cleared by the Options Clearing Corporation ("OCC") in the customer range, regardless of the exchange on which the transaction occurs.³ In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a TPH, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Trading Permit Holder ("CTPH") or non-CTPH that ultimately clears the transaction. With respect to linkage transactions, Cboe Options reimburses its routing broker

³ The Exchange notes ORF also applies to customer-range transactions executed during Global Trading Hours.

providing Routing Services pursuant to Cboe Options Rule 5.36 for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of TPH customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day to day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, information technology, facilities and accounting. These indirect expenses are estimated to be approximately 26% of Cboe Options' total regulatory costs for 2020. Thus, direct expenses are estimated to be approximately 74% of total regulatory costs for 2020. In addition, it is Cboe Options' practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs.

The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange also notifies TPHs of adjustments to the ORF via regulatory circular and/or

Exchange Notice.⁴ Based on the Exchange's most recent semi-annual review, the Exchange is proposing to reduce the amount of ORF that will be collected by the Exchange from \$0.0045 per contract side to \$0.0023 per contract side. The proposed decrease is based on the Exchange's estimated projections for its regulatory costs, which have decreased, balanced with recent options volumes, which has significantly increased. For example, total options contract volume in June 2020 was 82.2% higher than the total options contract volume in June 2019.⁵ In fact, June 2020 was the highest options volume month in the history of U.S. equity options industry.⁶ In particular, customer options volume across the industry has also significantly increased year to date. For example, total customer options contract volume in April 2020 was 50.27% higher than total customer volume in April 2019 and total customer options contract volume in May 2020, was 29.10% higher than total customer volume in May 2019. These expectations are estimated, preliminary and may change. There can be no assurance that the Exchange's final costs for 2020 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with the Exchange's other non-ORF regulatory fees and fines, the revenue being generated by

⁴ The Exchange endeavors to provide TPHs with such notice at least 30 calendar days prior to the effective date of the change. The Exchange notified TPHs of the proposed rate change for August 3, 2020 on July 1, 2020. See Cboe Options Regulatory Circular RG20-042 "Options Regulatory Fee Decrease and Discontinuation of Regulatory Circular" and Exchange Notice, C2020070100 "Cboe Options Exchanges Regulatory Fee Update Effective August 3, 2020."

⁵ See <https://www.theocc.com/Newsroom/Press-Releases/2020/07-01-OCC-June-2020-Total-Volume-Up-Nearly-81-Perc>.

⁶ Id. The previous record for highest U.S. equity options volume was March 2020. For further context, the Exchange notes that The Options Clearing Corporation total volume for March 2020 was up 62.8% as compared to March 2019.

ORF using the current rate results in revenue that is running in excess of the Exchange's estimated regulatory costs for the year.⁷ Particularly, as noted above, the options market has seen a substantial increase in volume over the first half of the year, due in large part to the extreme volatility in the marketplace as a result of the COVID-19 pandemic. This unprecedented spike in volatility resulted in significantly higher volume than was originally projected by the Exchange (thereby resulting in substantially higher ORF revenue than projected). Moreover, in addition to projected reductions in regulatory expenses, the Exchange experienced further unanticipated reductions in costs, in connection with COVID-19 (e.g., reduction in travel expenses).⁸ The Exchange therefore proposes to decrease the ORF in order to ensure it does not exceed its regulatory costs for the year. Particularly, the Exchange believes that by decreasing the ORF, as amended, when combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the current rate⁹.

⁷ Consistent with Rule 2.2 (Regulatory Revenue), the Exchange notes that notwithstanding the excess ORF revenue collected to date, it has not used such revenue for nonregulatory purposes.

⁸ The Exchange notes that in connection with proposed ORF rate changes, it provides the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a breakout of its projected regulatory expenses, including both direct and indirect allocations.

⁹ The Exchange notes that its regulatory responsibilities with respect to TPH compliance with options sales practice rules have largely been allocated to FINRA under a 17d-2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

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.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act¹¹, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because customer transactions will be subject to a lower ORF fee than the current rate. Moreover, the proposed reduction is necessary in order for the Exchange to not collect revenue in excess of its anticipated regulatory costs, in combination with other regulatory fees and fines, which is consistent with the Exchange’s practices. The Exchange had designed the ORF to generate revenues that would be less than or equal to 75% of the Exchange’s regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange’s business operations.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

As discussed above, however, after its semi-annual review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it would be collecting revenue in excess of 75% of its regulatory costs. Indeed, the Exchange notes that when taking into account the recent options volume, coupled with the projected reduction in regulatory costs, it estimates the ORF will generate revenues that would cover more than the approximated 75% of the Exchange's projected regulatory costs. Moreover, when coupled with the Exchange's other regulatory fees and revenues, the Exchange estimates ORF to generate over 100% of the Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to decrease the ORF amount from \$0.0045 to \$0.0023 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all TPHs on all their transactions that clear in the customer range at the OCC. The Exchange believes the ORF ensures fairness by assessing higher fees to those TPHs that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (e.g., staff and travel expenses), as well as investigations into customer complaints and the terminations of Registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with

administering the non-customer component (e.g., TPH proprietary transactions) of its regulatory program.¹³ Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to its TPHs' activities, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity irregardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group ("ISG")¹⁴ the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to its TPH's customer trading activity.

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 not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden

¹³ If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on TPH proprietary transactions if the Exchange deems it advisable.

¹⁴ ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

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 Act¹⁵ and paragraph (f) of Rule 19b-4¹⁶ 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.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2020-069 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-2020-069. 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-2020-069 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.¹⁷

Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

Cboe Exchange, Inc.
Fees Schedule - [July 2] August 3, 2020
* * * * *

Regulatory Fees		
Description	Fee	Notes
Options Regulatory Fee ("ORF") <u>(Also applies to GTH)(37)</u> (46)	\$0.00 [45] <u>23</u> per contract	The ORF is assessed by Cboe Options to each Trading Permit Holder for options transactions cleared by the Trading Permit Holder that are cleared by The Options Clearing Corporation (OCC) in the customer range, regardless of the exchange on which the transaction occurs. Cboe Options uses reports from OCC when assessing and collecting the ORF. The fee is collected by OCC on behalf of Cboe Options from the Clearing Trading Permit Holder (CTPH) or nonCTPH that ultimately clears the transaction. With respect to linkage transactions, Cboe Options reimburses its routing broker providing Routing Services pursuant to Cboe Options Rule 5.36 for options regulatory fees it incurs in connection with the Routing Services it provides.

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