

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 22	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 008 Amendment No. (req. for Amendments *)
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Filing by Cboe Exchange, Inc.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).  
  
The Exchange proposes to amend its Fees Schedule.

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

First Name \* Rebecca Last Name \* Tenuta  
Title \* Counsel  
E-mail \* rtenuta@cboe.com  
Telephone \* (312) 786-7068 Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  
(Title \*)  
VP, Associate General Counsel

Date 01/19/2021  
By Laura G. Dickman  
(Name \*)

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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. 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 January 13, 2021.

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

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

(a) Purpose

The Exchange proposes to amend its Fees Schedule in connection with Related Future Cross (“RFC”) orders, effective January 19, 2021.

By way of background, from March 16 to June 12, 2020, the Exchange closed its trading floor in response to the coronavirus pandemic. As a result, the Exchange operated in an all-electronic configuration. Because the trading floor was closed during this time, floor brokers could not execute crosses of option combos (i.e., synthetic futures) on the trading floor on behalf of market participants who were exchanging futures contracts in either VIX or SPX for related options positions in order to swap related exposures, and there was no means to electronically pair and execute the options legs of these transactions

on the Exchange. To enable Trading Permit Holders (“TPHs”) to execute the options part of these transactions when the floor was closed, the Exchange adopted the electronic RFC order type for when the trading floor facilities were inoperable.<sup>1</sup> Footnote 12 of the Fees Schedule was also amended to, among other things, 1) provide a waiver for SPX/SPXW Execution Surcharges<sup>2</sup> for RFC orders, and 2) adopt an RFC Execution Surcharge for all SPX/SPXW and VIX initiating orders, applicable while the trading floor remained inoperable.<sup>3</sup> More specifically, pursuant to the Underlying Symbol List A Rate Table in the Fees Schedule, a \$0.05 per contract fee is assessed for SPX and SPXW RFC initiating orders and a \$0.04 per contract fee is assessed for VIX RFC initiating orders while the trading floor is inoperable.

After the Exchange reopened its trading floor, the Exchange submitted a rule filing which permanently adopted RFC orders for trading in the Exchange’s normal hybrid trading environment under Rule 5.33(b)(5).<sup>4</sup> The Exchange plans to launch the RFC order type for its normal hybrid trading environment on January 19, 2021. For purposes of electronic trading, an RFC order is an SPX or VIX complex order comprised of an option combo order coupled with a contra-side order or orders totaling an equal number of option combo orders. For purposes of open outcry trading, an RFC order is an SPX or VIX

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<sup>1</sup> See Securities Exchange Act Release No. 88447 (March 20, 2020), 85 FR 17129 (March 26, 2020) (CBOE-2020-023).

<sup>2</sup> See Cboe Options Fees Schedule, “Rate Table - Underlying Symbol List A”, which assesses an SPX Execution Surcharge of \$0.21 per contract and a SPXW Execution Surcharge of \$0.13 per contract for non-Market Maker orders in SPX and SPXW, respectively.

<sup>3</sup> See Securities Exchange Act Release No.

<sup>4</sup> See Securities Exchange Act Release No. 89768 (September 4, 2020), 85 FR 55869 (September 10, 2020) (SR-CBOE-2020-060).

complex order comprised of an option combo that may execute against a contra-side RFC order or orders totaling an equal number of option combo orders. An RFC order must be identified to the Exchange as being part of an exchange of option contracts for related futures positions.

The Exchange proposes to amend the Fees Schedule in light of the adoption of RFC orders on a permanent basis. As noted above, footnote 12 currently provides that the SPX and SPXW Execution Surcharges will be waived for SPX/SPXW RFC orders, and that the RFC Execution Surcharge for SPX/SPXW and VIX will apply to all SPX/SPXW and VIX RFC initiating orders, only when the trading floor is inoperable.<sup>5</sup> The proposed rule change removes the SPX/SPXW Execution Surcharge waiver language in connection with RFC orders from footnote 12 and relocates it to footnote 21, which footnote sets forth other exceptions to the SPX and SPXW Execution Surcharges.<sup>6</sup> Particularly, the Exchange proposes to relocate the language as the waiver will now apply at all times (once the RFC order type is implemented on the Exchange), as RFC orders will be available at all times rather than only when the trading floor is inoperable. Additionally, the Exchange believes it is appropriate to include the waiver language in a footnote that already contains other

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<sup>5</sup> Footnote 12 also provides that contracts executed as an RFC order during a time when the Exchange operates in a screen-based only environment will not count towards the 1,000 contract thresholds for the SPX/SPXW, VIX and RUT Tier Appointment Fees. The Exchange notes that the proposed rule change does not amend this exclusion applicable during which the trading floor may be inoperable because if the trading floor become inoperable then a TPH would only have the option of using electronic RFC orders, which may cause a TPH to hit the Electronic Tier Appointment surcharge where a TPH may not have hit the threshold before when using the trading floor to execute RFC orders.

<sup>6</sup> The proposed rule change appends footnote 21 to the RFC Execution Surcharge Fee in the “Rate Table - Underlying Symbol List A” section of the Fees Schedule.

exceptions to the SPX and SPXW Execution Surcharges. Specifically, footnote 25 as proposed provides that all electronic executions in SPX, SPXW and SPESG shall be assessed the SPX, SPXW and SPESG Execution Surcharge, respectively, except that this fee shall not apply to SPX/SPXW Related Future Cross (“RFC”) orders (among the current list of other orders). Likewise, the proposed rule change also removes the language from footnote 12 providing that the RFC Execution Surcharge for SPX/SPXW and VIX RFC initiating orders will apply to all SPX/SPXW and VIC RFC initiating orders, and relocates it to new footnote 25, as the RFC Execution Surcharges will now apply at all times.<sup>7</sup> As a result of the proposed relocation of the RFC execution surcharge language from footnote 12 to footnote 25, the proposed rule change also removes footnote 12 appended to the RFC Execution Surcharge Fee in the “Rate Table - Underlying Symbol List A” section of the Fees Schedule. The Exchange notes that the proposed rule change does not alter the current waiver language or surcharge rates already in place pursuant to footnote 12 for transactions in temporary RFC orders (while the Exchange’s trading floor was inoperable), but merely removes the applicable RFC waiver and execution surcharge language in footnote 12 and relocates it to footnotes 21 and 25, respectively so that the same waiver and surcharge rates may apply to permanent RFC orders trading in the Exchange’s normal hybrid environment.

(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

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<sup>7</sup> The proposed rule change appends footnote 25 to the RFC Execution Surcharge Fee in the “Rate Table - Underlying Symbol List A” section of the Fees Schedule.

the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>10</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change is consistent with the Act, in that, it is reasonable, equitable and not unfairly discriminatory. The proposed rule change is reasonable because it does not alter the SPX/SPXW Execution Surcharge fee waiver and SPX/SPXW and VIX RFC Execution Surcharges currently applicable to RFC orders (while the trading floor may be inoperable), but merely updates the waiver and surcharge language to appropriately reflect its application to the permanent RFC orders recently adopted by the Exchange. The Exchange believes that, generally, the SPX/SPXW Execution Surcharge waiver in place for RFC orders is reasonable and equitable because it will encourage market

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

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

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

participants to submit volume executed as RFC orders both electronically and on the trading floor, assisting the Exchange in maintaining a robust hybrid environment. Also, the Exchange believes that, generally, the RFC Execution Surcharges currently in place are reasonable and equitable, as they are generally in line with or lower than other execution surcharges assessed under the Fees Schedule,<sup>11</sup> and are less than the SPX/SPXW Execution Surcharges (\$0.21 and \$0.13, respectively) that will ultimately be waived for RFC transactions. Finally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because the SPX/SPXW Execution Surcharge waiver and the RFC Execution Surcharge will continue to apply in the same uniform manner for the same transactions, both electronically and in open outcry, for all TPHs that submit RFC orders to the Exchange.

**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.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the SPX/SPXW Execution Surcharge waiver and the RFC Execution Surcharges will continue to apply to all TPHs that submit RFC orders to the Exchange as it does today, and will uniformly apply to RFC orders executed electronically

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<sup>11</sup> See Cboe Options Fees Schedule, "Rate Table - Underlying Symbol List A", which assesses a VIX Customer Priority Surcharge of \$0.20 per contract, and AIM Surcharge fees (while the trading floor is operating in an all-electronic environment) ranging between \$0.04 and \$0.10 per contract depending on the type of AIM order and options class (i.e., SPX, SPXW, SPESG or VIX).

and in open outcry. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the transaction fee waiver will continue to apply to RFC orders available only for Exchange proprietary products, SPX/SPXW and VIX.

**Item 5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

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

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

Not applicable.

**Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder.

(b) The Exchange designates that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, which renders the proposed rule change effective upon filing with the Securities and Exchange Commission (the “Commission”). At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 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-2021-008]

[Insert date]

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

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

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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

<sup>2</sup> 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 in connection with Related Future Cross (“RFC”) orders, effective January 19, 2021.

By way of background, from March 16 to June 12, 2020, the Exchange closed its trading floor in response to the coronavirus pandemic. As a result, the Exchange operated in an all-electronic configuration. Because the trading floor was closed during this time, floor brokers could not execute crosses of option combos (i.e., synthetic futures) on the trading floor on behalf of market participants who were exchanging futures contracts in either VIX or SPX for related options positions in order to swap related exposures, and there was no means to electronically pair and execute the options legs of these transactions on the Exchange. To enable Trading Permit Holders (“TPHs”) to execute the options part of these transactions when the floor was closed, the Exchange adopted the electronic RFC order type for when the trading floor facilities were inoperable.<sup>3</sup> Footnote 12 of the Fees Schedule was also amended to, among other things, 1) provide a waiver

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<sup>3</sup> See Securities Exchange Act Release No. 88447 (March 20, 2020), 85 FR 17129 (March 26, 2020) (CBOE-2020-023).

for SPX/SPXW Execution Surcharges<sup>4</sup> for RFC orders, and 2) adopt an RFC Execution Surcharge for all SPX/SPXW and VIX initiating orders, applicable while the trading floor remained inoperable.<sup>5</sup> More specifically, pursuant to the Underlying Symbol List A Rate Table in the Fees Schedule, a \$0.05 per contract fee is assessed for SPX and SPXW RFC initiating orders and a \$0.04 per contract fee is assessed for VIX RFC initiating orders while the trading floor is inoperable.

After the Exchange reopened its trading floor, the Exchange submitted a rule filing which permanently adopted RFC orders for trading in the Exchange's normal hybrid trading environment under Rule 5.33(b)(5).<sup>6</sup> The Exchange plans to launch the RFC order type for its normal hybrid trading environment on January 19, 2021. For purposes of electronic trading, an RFC order is an SPX or VIX complex order comprised of an option combo order coupled with a contra-side order or orders totaling an equal number of option combo orders. For purposes of open outcry trading, an RFC order is an SPX or VIX complex order comprised of an option combo that may execute against a contra-side RFC order or orders totaling an equal number of option combo orders. An RFC order must be identified to the Exchange as being part of an exchange of option contracts for related futures positions.

The Exchange proposes to amend the Fees Schedule in light of the adoption of RFC orders on a permanent basis. As noted above, footnote 12 currently

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<sup>4</sup> See Cboe Options Fees Schedule, "Rate Table - Underlying Symbol List A", which assesses an SPX Execution Surcharge of \$0.21 per contract and a SPXW Execution Surcharge of \$0.13 per contract for non-Market Maker orders in SPX and SPXW, respectively.

<sup>5</sup> See Securities Exchange Act Release No.

<sup>6</sup> See Securities Exchange Act Release No. 89768 (September 4, 2020), 85 FR 55869 (September 10, 2020) (SR-CBOE-2020-060).

provides that the SPX and SPXW Execution Surcharges will be waived for SPX/SPXW RFC orders, and that the RFC Execution Surcharge for SPX/SPXW and VIX will apply to all SPX/SPXW and VIX RFC initiating orders, only when the trading floor is inoperable.<sup>7</sup> The proposed rule change removes the SPX/SPXW Execution Surcharge waiver language in connection with RFC orders from footnote 12 and relocates it to footnote 21, which footnote sets forth other exceptions to the SPX and SPXW Execution Surcharges.<sup>8</sup> Particularly, the Exchange proposes to relocate the language as the waiver will now apply at all times (once the RFC order type is implemented on the Exchange), as RFC orders will be available at all times rather than only when the trading floor is inoperable. Additionally, the Exchange believes it is appropriate to include the waiver language in a footnote that already contains other exceptions to the SPX and SPXW Execution Surcharges. Specifically, footnote 25 as proposed provides that all electronic executions in SPX, SPXW and SPESG shall be assessed the SPX, SPXW and SPESG Execution Surcharge, respectively, except that this fee shall not apply to SPX/SPXW Related Future Cross (“RFC”) orders (among the current list of other orders). Likewise, the proposed rule change also removes the language from footnote 12 providing that the RFC Execution Surcharge for SPX/SPXW and VIX RFC initiating orders will apply to

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<sup>7</sup> Footnote 12 also provides that contracts executed as an RFC order during a time when the Exchange operates in a screen-based only environment will not count towards the 1,000 contract thresholds for the SPX/SPXW, VIX and RUT Tier Appointment Fees. The Exchange notes that the proposed rule change does not amend this exclusion applicable during which the trading floor may be inoperable because if the trading floor become inoperable then a TPH would only have the option of using electronic RFC orders, which may cause a TPH to hit the Electronic Tier Appointment surcharge where a TPH may not have hit the threshold before when using the trading floor to execute RFC orders.

<sup>8</sup> The proposed rule change appends footnote 21 to the RFC Execution Surcharge Fee in the “Rate Table - Underlying Symbol List A” section of the Fees Schedule.

all SPX/SPXW and VIC RFC initiating orders, and relocates it to new footnote 25, as the RFC Execution Surcharges will now apply at all times.<sup>9</sup> As a result of the proposed relocation of the RFC execution surcharge language from footnote 12 to footnote 25, the proposed rule change also removes footnote 12 appended to the RFC Execution Surcharge Fee in the “Rate Table - Underlying Symbol List A” section of the Fees Schedule. The Exchange notes that the proposed rule change does not alter the current waiver language or surcharge rates already in place pursuant to footnote 12 for transactions in temporary RFC orders (while the Exchange’s trading floor was inoperable), but merely removes the applicable RFC waiver and execution surcharge language in footnote 12 and relocates it to footnotes 21 and 25, respectively so that the same waiver and surcharge rates may apply to permanent RFC orders trading in the Exchange’s normal hybrid environment.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating,

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<sup>9</sup> The proposed rule change appends footnote 25 to the RFC Execution Surcharge Fee in the “Rate Table - Underlying Symbol List A” section of the Fees Schedule.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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,<sup>12</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change is consistent with the Act, in that, it is reasonable, equitable and not unfairly discriminatory. The proposed rule change is reasonable because it does not alter the SPX/SPXW Execution Surcharge fee waiver and SPX/SPXW and VIX RFC Execution Surcharges currently applicable to RFC orders (while the trading floor may be inoperable), but merely updates the waiver and surcharge language to appropriately reflect its application to the permanent RFC orders recently adopted by the Exchange. The Exchange believes that, generally, the SPX/SPXW Execution Surcharge waiver in place for RFC orders is reasonable and equitable because it will encourage market participants to submit volume executed as RFC orders both electronically and on the trading floor, assisting the Exchange in maintaining a robust hybrid environment. Also, the Exchange believes that, generally, the RFC Execution Surcharges currently in place are reasonable and equitable, as they are generally in line with or lower than other execution surcharges assessed under the Fees Schedule,<sup>13</sup> and are less than the

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<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> See Cboe Options Fees Schedule, “Rate Table - Underlying Symbol List A”, which assesses a VIX Customer Priority Surcharge of \$0.20 per contract, and AIM Surcharge fees (while the trading floor is operating in an all-electronic environment) ranging between \$0.04 and \$0.10 per contract depending on the

SPX/SPXW Execution Surcharges (\$0.21 and \$0.13, respectively) that will ultimately be waived for RFC transactions. Finally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because the SPX/SPXW Execution Surcharge waiver and the RFC Execution Surcharge will continue to apply in the same uniform manner for the same transactions, both electronically and in open outcry, for all TPHs that submit RFC orders to the Exchange.

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.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the SPX/SPXW Execution Surcharge waiver and the RFC Execution Surcharges will continue to apply to all TPHs that submit RFC orders to the Exchange as it does today, and will uniformly apply to RFC orders executed electronically and in open outcry. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the transaction fee waiver will continue to apply to RFC orders available only for Exchange proprietary products, SPX/SPXW and VIX.

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type of AIM order and options class (i.e., SPX, SPXW, SPESG or VIX).

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and paragraph (f) of Rule 19b-4<sup>15</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

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

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

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2021-008 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-2021-008. 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-2021-008 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

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Rate Table - Underlying Symbol List A (34) (Also applies to GTH)(37)		Options Transaction Fees (1)(3)(4)(7)(13)(15)(33)(39)(12)						
Capacity	Products	Capacity Code	Transaction Fee Per Contract by Premium Price				VIX Only (12)	
			\$0.00 - \$0.10	\$0.11 - \$0.99	\$1.00 - \$1.99	\$2.00+	SPX (incl SPXW) in GTH Only	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		{CR} \$0.18					
	RLG, RLV, RUI and UKXM		{WR} \$0.00					
	SPX (incl SPXW) and SPESG		{CS} \$0.36	{CT} \$0.45			See Rates to Left	
	VIX (simple orders)		{CV} \$0.10	{CW} \$0.25	{CX} \$0.40	{CY} \$0.45	See Rates to Left	
Clearing Trading Permit Holder Proprietary (11)(12)(16)	SPX (incl SPXW) and SPESG (41)(12) Underlying Symbol List A (34)	F L	{FH} \$0.26 - 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)	SPX (incl SPXW) and SPESG (41)(12)	M	{MS} \$0.28 - See SPX Liquidity Provider Sliding Scale/ {SC} \$0.00					
	RUT		{MT} \$0.30					
	OEX and XEO		{MR} \$0.20					
	RLG, RLV, RUI, UKXM		{WR} \$0.00					
Joint Back-Office (45) Non-Trading Permit Holder Market Maker (16)(45) Professional (45)	OEX, XEO and VIX	B N U J	{MV} \$0.05				{MW} \$0.23	
	SPX (incl SPXW) and SPESG		{BR} \$0.40				{BT} \$0.42	
Surcharge Fee (14) (Also applies to GTH)(37)	Index License (41)(12)	F J L M B N U	RUT				\$0.45	
			SPX (incl SPXW) (41)(12)				\$0.17/ {SC} \$0.00	
FLEX Surcharge Fee (17)	Underlying Symbol List A (34) (except RLG, RLV, RUI, and UKXM)	C F J L M B N U	OEX, XEO, and VIX				\$0.10 (\$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.)	
			RLG, RLV, RUI, and UKXM				\$0.00	
			Underlying Symbol List A (34) (except RLG, RLV, RUI, and UKXM)				\$0.10 (capped at \$250 per trade)	
Exotic Surcharge (42)		C					\$0.00	
							\$0.25	

Execution Surcharge (21)(12)(41) (Also applies to GTH)(37)	SPX (not incl SPXW) and SPESG (15)	C F J L B N U	\$0.21					
	SPXW (electronic only)		\$0.13					
Customer Priority Surcharge (31) (Also applies to GTH)(37)	VIX (Maker non-turner)	C	\$0.00					\$0.20
AIM Response Surcharge Fee (12)(41)	SPX (incl SPXW) and SPESG	C F J L M B N U	\$0.05					
AIM Contra Surcharge Fee (12)(41)	SPX (incl SPXW) and SPESG	C F J L M B N U	\$0.10					
AIM Agency/Primary Surcharge Fee (12)(41)	SPX (incl SPXW) and SPESG	C F J L M B N U	\$0.10					
	VIX	C F J L M B N U	\$0.04					
RFC Execution Surcharge Fee [(12)(41)(21)(25)]	SPX (incl SPXW)	C F J L M B N U	\$0.05					
	VIX	C F J L M B N U	\$0.04					

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Footnotes:	
Footnote Number	Description
1 - 11	No change.
12	In the event the Cboe Options trading floor becomes inoperable and the Exchange operates in a screen-based only environment, the Exchange will apply the following pricing changes for the duration of time the Exchange operates in a screen-based only environment: (1) holders of a Market-Maker Floor Permit will be entitled to act as an electronic Market-Maker and holders of a Floor Broker Permit will be entitled to access the Exchange electronically to submit orders to the Exchange, provided that any Floor Broker TPH that did not have an Electronic Access Permit ("EAP") prior to the closure of the trading floor will be charged for one EAP per TPH organization and any floor Market-Maker that did not have a Market Maker EAP will be charged for one Market Maker EAP per TPH organization; (2) if the trading floor reopens mid-month, floor Trading Permit fees for that month will be prorated based on the remaining trading days in the calendar month; (3) the SPX and SPESG, and SPXW Execution Surcharges will be waived, where applicable, for SPX/SPXW and SPESG orders executed via AIM [and for SPX/SPXW Related Future Cross ("RFC") orders]; (4) the AIM Agency/Primary Surcharge for SPX/SPXW, SPESG and VIX [and RFC Execution Surcharge for SPX/SPXW and VIX] will apply to all SPX/SPXW, SPESG and VIX AIM Agency/Primary orders [and all SPX/SPXW and VIX RFC initiating orders, respectively,] when the Exchange operates in a screen-based only environment and such fee will be invoiced to the executing Trading Permit Holder; (5) SPX/SPXW, RUT, and VIX contracts executed via AIM, and contracts executed as a RFC order, during a time when the Exchange operates in a screen-based only environment will not count towards the 1,000 contract thresholds for the SPX/SPXW, VIX and RUT Tier Appointment Fees; (6) for purposes of Routing Fees, Cboe Options will not pass through or otherwise charge customer orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from a registered Floor Broker through an Exchange-sponsored terminal; (7) all designated facility fees, including the Trading Floor Printer Maintenance Fee, will not be charged when the Exchange operates in a screen-based only environment, however such fees will be pro-rated based on the remaining trading days in the calendar month if the trading floor reopens mid-month; (8) the Inactive Nominee Status (Parking Space) and Inactive Nominee Status Change (Trading Permit Swap) fees will not apply when the Exchange operates in a screen-based only environment, provided that if the trading floor re-opens mid-month the Parking Space fee will be prorated based on the remaining trading days in the calendar month; and (9) the AIM Contra Surcharge and AIM Response Surcharge will apply to all SPX/SPXW and SPESG AIM Contra and AIM Response/Priority Response orders, respectively, when the Exchange operates in a screen-based only environment. Additionally, in the event the Exchange operates in a screen-based only environment, AIM may be available for SPX/SPXW and SPESG during Regular Trading Hours.
13 - 20	No change.
21	All electronic executions in SPX, SPXW and SPESG shall be assessed the SPX, SPXW and SPESG Execution Surcharge, respectively, except that this fee shall not apply to: (i) orders in SPX or SPXW options in the SPX electronic book for those SPX or SPXW options that are executed during opening rotation on the final settlement date of VIX options and futures which have the expiration that are used in the VIX settlement calculation, [and] (ii) orders executed in SPX, SPXW and SPESG by a floor broker using a PAR terminal <u>and (iii) SPX/SPXW Related Future Cross ("RFC") orders</u> . See also footnote 15.
22-24	No change.
[RESERVED]25	The RFC Execution Surcharge for SPX/SPXW and VIX will apply to all SPX/SPXW and VIX RFC initiating orders.
RESERVED - 50	No change.

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