

OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28

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

File No.* SR - 2021 - * 012

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) *



Rule

Pilot



Extension of Time Period
for Commission Action *



Date Expires *

☐ 19b-4(f)(1)

☐ 19b-4(f)(4)

☒ 19b-4(f)(2)

☐ 19b-4(f)(5)

☐ 19b-4(f)(3)

☐ 19b-4(f)(6)

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

Section 806(e)(1) *



Section 806(e)(2) *



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

Section 3C(b)(2) *



Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



Description

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

The Exchange proposes to amend its Fees Schedule.

Contact Information

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

First Name * Rebecca

Last Name * Tenuta

Title * Counsel

E-mail * rtenuta@cboe.com

Telephone * (312) 786-7068

Fax

Signature

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

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

(Title *)

Date 02/22/2021

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 EFFF 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

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

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

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on February 17, 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 to adopt surcharges in connection with the Exchange’s plan to activate the Automated Improvement Mechanism (“AIM”) Auction¹ for S&P 500 Index (“SPX”) and SPX Weekly (“SPXW”) options while the Exchange is operating in its normal hybrid environment, effective February 22, 2021.

By way of background, AIM includes functionality in which a Trading Permit Holder (“TPH”) (an “Initiating TPH”) may electronically submit for execution an order it

¹ The Exchange notes that this includes Complex AIM (“C-AIM”), as set forth in proposed footnote 26.

represents as agent on behalf of a customer,² broker dealer, or any other person or entity (“Agency Order”) against any other order it represents as agent, as well as against principal interest in AIM (an “Initiating Order”), provided it submits the Agency Order for electronic execution into an AIM Auction.³ The Exchange may designate any class of options traded on Cboe Options as eligible for AIM. The Exchange notes that all Users, other than the Initiating TPH, may submit responses to an Auction (“AIM Responses”). AIM Auctions take into account AIM Responses to the applicable Auction as well as contra interest resting on the Cboe Options Book at the conclusion of the Auction (“unrelated orders”), regardless of whether such unrelated orders were already present on the Book when the Agency Order was received by the Exchange or were received after the Exchange commenced the applicable Auction. If contracts remain from one or more unrelated orders at the time the Auction ends, they are considered for participation in the AIM order allocation process.

The Exchange does not currently activate AIM for SPX/SPXW while it operates in its normal hybrid trading environment (i.e., when the trading floor is operable).⁴ The Exchange, however, plans to activate AIM for SPX/SPXW on February 22, 2021 for

² The term “customer” means a Public Customer or a broker-dealer. The term “Public Customer” means a person that is not a broker-dealer. See Rule 1.1.

³ See Rule 5.37 (AIM); and Rule 5.38 (C-AIM).

⁴ In March 2020, the Exchange suspended open outcry trading to help prevent the spread of the novel coronavirus and operated in an all-electronic configuration through June 2020. During this time, the Exchange activated AIM for SPX and SPXW options in an all-electronic environment to provide TPHs with a mechanism to execute crosses electronically, as they could no longer represent those crosses for open outcry execution. Footnote 12 in the Fees Schedule provides specifically that in the event the Exchange operates in a screen-based only environment, AIM may be available for SPX and SPXW during Regular Trading Hours, and the Fees Schedule provides for certain SPX AIM Surcharges that apply only in that case.

operation in the Exchange's normal hybrid environment. In connection with the planned activation of AIM for SPX/SPXW while the Exchange functions in its normal hybrid setting, the Exchange proposes to adopt certain surcharges under Rate Table - Underlying Symbol List A of the Fees Schedule. Specifically, the Exchange proposes to adopt an SPX AIM Hybrid Surcharge of \$0.50 per contract for all Broker-Dealer (capacity "B"), Joint Back-Office (capacity "J"), Non-TPH Market-Maker (capacity "N") and Professional (capacity "U") (collectively, "Non-Customers"), and Market-Maker (capacity "M") orders in SPX/SPXW options executed in AIM. The Exchange also proposes to adopt an SPX AIM Hybrid Surcharge of \$0.39 per contract for all Clearing TPHs (capacity "F") and for Non-Clearing TPH Affiliates (capacity "L") (collectively, "Firms") orders in SPX/SPXW options executed in AIM. Finally, the Exchange proposes to adopt an SPX AIM Hybrid Originator Surcharge of \$0.10. Proposed footnote 26 is appended to the proposed surcharges and provides that the SPX AIM Hybrid Surcharges, including the Originator Surcharge, apply only to SPX/SPXW orders executed in AIM and C-AIM⁵ during RTH when the Exchange is operating in a hybrid environment (i.e., the trading floor is operable). The SPX AIM Hybrid Surcharge will apply to all SPX/SPXW AIM Agency/Primary, Contra and Response orders. The SPX AIM Hybrid Originator Surcharge will apply to all SPX/SPXW Agency/Primary orders and such fee will be invoiced to the executing TPH.

Particularly, the Exchange notes that it can determine AIM eligibility on a class-by-class basis⁶ and, as stated above, historically has not designated SPX/SPXW as eligible

⁵ See supra note 1. The Exchange notes that it already activates FLEX AIM for SPX/SPXW and that all currently applicable FLEX transaction fees and surcharges will continue to apply.

⁶ See Rule 5.37(a)(1) and 5.38(a)(1).

for AIM Auctions. As such, the Exchange wants to encourage market participants to continue to execute SPX/SPXW volume in open outcry or against quotes in its electronic Book when AIM is switched on for SPX/SPXW. The Exchange believes the SPX AIM Hybrid Surcharges (including the Originator surcharge) will provide a reasonable cost incentive to market participants to continue to execute SPX/SPXW orders as they do today as well as through AIM when appropriate once activated. More specifically, the SPX AIM Hybrid Surcharges aim to balance incentives between executing via the AIM Auctions and executing via open outcry or the electronic Book, which the Exchange believes will maintain robust hybrid markets and continue to incentivize the provision of liquidity to both its electronic and trading floor environments in order support price discovery and increased execution opportunities. The new functionality for SPX/SPXW will allow market participants to interact with SPX/SPXW order flow in a manner not previously available in a hybrid trading environment.⁷ Therefore, the Exchange believes it is appropriate to assess additional fees to market participants that choose to leverage auction execution opportunities outside of contributing to SPX/SPXW liquidity in open outcry and the on the electronic Book. Indeed, the Exchange currently does so in various places in the Fees Schedule with respect to other classes. For example, the Exchange currently assesses a higher charge for Non-Customer and Firm AIM Responses in all products, except Sector

⁷ Previously only available while the trading floor was inoperable for a period of time during 2020. See supra note 4.

Indexes⁸ and Underlying Symbol List A,⁹ of \$0.50 (Penny classes) and \$1.05 (Non-Penny classes) than the applicable standard transaction rates. The Exchange also notes that when it is operating in a screen-based only environment, it assesses an AIM Agency/Primary Surcharge of \$0.10, which, like the proposed SPX AIM Hybrid Originator Surcharge, applies to all AIM Agency/Primary orders in SPX/SPXW and is invoiced to the executing TPH. Additionally, the Exchange notes that it assesses certain surcharges on proprietary products (i.e., SPX/SPXW, SPESG and VIX)¹⁰ to similarly create a reasonable cost equivalence between the primary execution channels (open outcry and electronic book) for such products and likewise maintain a robust hybrid system.¹¹ Overall, the proposed fees are designed to balance fees at an appropriate level in order to assess SPX/SPXW order flow to the AIM Auctions while also maintaining incentive for participation and the provision of liquidity in SPX/SPXW on the trading floor and in the electronic book when AIM is activated for SPX/SPXW.

(b) Statutory Basis

⁸ Sector Index underlying symbols: IXB, SIXC, IXE, IXI, IXM, IXR, IXRE, IXT, IXU, IXV AND IXY. Corresponding option symbols: SIXB, SIXC, SIXE, SIXI, SIXM, SIXR, SIXRE, SIXT, SIXU, SIXV AND SIXY.

⁹ Underlying Symbol List A: OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXW), SPESG and VIX.

¹⁰ See Cboe Options Fees Schedule, “Rate Table - Underlying Symbol List A”, which assesses an Execution Surcharge of \$0.21 for all non-Market-Maker orders in SPX and SPESG and \$0.13 for all non-Market-Maker orders in SPXW, and assesses a Customer Priority Surcharge of \$0.20 for all Customer maker orders in VIX.

¹¹ See e.g., Securities and Exchange Release Nos. 71295 (January 14, 2014), 79 FR 3443 (January 21, 2014) (SR-CBOE-2013-129); and 88426 (March 19, 2020), 85 FR 16978 (March 25, 2020) (SR-CBOE-2020-021).

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.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ 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,¹⁴ 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.

Particularly, the Exchange believes the proposed rule change to adopt AIM Hybrid Surcharges (including an Originator Surcharge) is reasonable because the proposed surcharges are reasonably designed to ensure that there is appropriate cost incentive to market participants to continue to execute through the Exchange’s primary execution channels for SPX/SPXW once AIM is activated for SPX/SPXW. The Exchange believes that the proposed SPX AIM Hybrid Surcharges reasonably balance cost incentives between

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

executing via the AIM Auctions and executing via open outcry or against quotes in the electronic Book, which is in the interest of the Exchange as it must both maintain robust hybrid markets, incentivizing liquidity to both its electronic and trading floor environments in order support price discovery and increased execution opportunities. The planned activation of this functionality for SPX/SPXW will allow market participants to interact with SPX/SPXW order flow in a manner not previously available,¹⁵ and, as a result, the Exchange believes it is reasonable to assess additional fees for market participants that choose to leverage auction execution opportunities outside of contributing to SPX/SPXW liquidity in open outcry and the on the electronic Book.

The Exchange also believes that the proposed fees in connection with SPX AIM orders are reasonable as they do not represent a significant departure from the fees currently offered under the Fees Schedule. The Exchange believes that the proposed SPX AIM Hybrid Surcharges of \$0.50 per contract for all Non-Customer and Market-Maker and \$0.39 per contract for all Firm orders executed in AIM (Agency/Primary, Contra and Response) are reasonable because these surcharges are, respectively, comparable to or less than the \$0.50 and \$1.05 rates per contract, which are generally higher than the applicable standard transaction rates, currently assessed for certain AIM orders submitted in all products (with certain exceptions). The Exchange believes that the proposed SPX AIM Hybrid Originator Surcharge is reasonable as it is equivalent to the AIM Agency/Primary Surcharge of \$0.10 that is assessed when the Exchange is operating in an screen-based only environment and likewise applies to all AIM Agency/Primary orders in SPX/SPXW and is

¹⁵ Previously only available while the trading floor was inoperable for a period of time during 2020. See supra note 4.

invoiced to the executing TPH. The Exchange again notes that it assesses certain surcharges on proprietary products (i.e., SPX/SPXW, SPESG and VIX)¹⁶ in order to similarly create a reasonable cost equivalence between its primary execution channels (open outcry and electronic book) for such products as the Exchange seeks to maintain a robust hybrid system.¹⁷ Overall, the Exchange believes the proposed fees are reasonably designed to balance fees at an appropriate level in order to assess SPX/SPXW order flow to AIM Auctions while also maintaining incentive for participation in SPX/SPXW on the trading floor and in the electronic book, thereby supporting incentive for continued liquidity in SPX/SPXW through the Exchange's primary execution channels while AIM is activated for SPX/SPXW, to the benefit of all market participants.

The Exchange believes that the proposed SPX AIM Hybrid Surcharges (including the Originator Surcharge) are equitable and not unfairly discriminatory because the proposed SPX AIM Hybrid Surcharges will apply equally to all similarly situated TPHs that submit orders in SPX/SPXW into AIM. That is, the proposed fees will apply equally to all Non-Customer and Market-Maker orders in SPX/SPXW executed in AIM, to all Firm orders in SPX/SPXW executed in AIM, and to all executing TPHs that submit AIM Agency/Primary orders in SPX/SPXW. The Exchange believes that it is equitable and not unfairly discriminatory to provide lower SPX AIM Hybrid rates for Firms because the Exchange believes that Firm participation in the markets is essential to a robust hybrid market ecosystem as Firms facilitate the execution of customer orders, as well as provide clearing services, both electronically and in open outcry. The Exchange recognizes Firms as an important source of liquidity when they

¹⁶ See supra note 10.

¹⁷ See supra note 11.

facilitate their own customers' trading activity, which enhances transparency and price discovery to the benefit of all market participants, and, as a result, currently assesses a lower rate to Firms in various places under the Fees Schedule, including for transactions in SPX/SPXW.¹⁸

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 the proposed SPX AIM Hybrid Surcharges (including the Originator Surcharge) will impose any burden on intramarket competition because they will apply equally to all similarly situated TPHs that submit orders in SPX/SPXW into AIM. That is, the proposed fees will apply equally to all Non-Customer and Market-Maker orders in SPX/SPXW submitted to AIM, to all Firm orders in SPX/SPXW submitted to AIM, and to all executing TPHs that submit AIM Agency/Primary orders in SPX/SPXW. The Exchange does not believe that providing lower SPX AIM Hybrid rates for Firms will impose any significant burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange recognizes that Firm participation in the markets is essential to a robust hybrid market ecosystem as Firms facilitate the execution of customer orders, as well as provide clearing services, both in open outcry and electronically. As a result, the Exchange currently assesses a lower rate to Firms

¹⁸ See e.g., Cboe Options Fees Schedule, "Rate Table - Underlying Symbol List A", which generally assesses lower rates for Firm transactions in SPX/SPXW (\$0.26 per contract) than for Market-Makers (\$0.28) or Non-Customers (\$0.42) in SPX/SPXW.

in various places under the Fees Schedule, including for transactions in SPX/SPXW.¹⁹ The Exchange believes that Firms can be an important source of liquidity when they facilitate their own customers' trading activity, which enhances transparency and price discovery to the benefit of all market participants. The Exchange again notes that the proposed SPX AIM Hybrid Surcharge comparable to or less than rates currently assessed for certain AIM orders submitted in all products (with certain exceptions) and the proposed SPX AIM Hybrid Originator Surcharge is equivalent to the existing AIM Agency/Primary Surcharge which likewise applies to AIM Agency/Primary orders in SPX/SPXW (when the Exchange is operating in an screen-based only environment).

The Exchange does not believe that the proposed rule change in connection with SPX AIM Hybrid Surcharges will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed surcharges apply only to an Exchange proprietary product, which is traded exclusively on Cboe Options, and for orders executed in an auction on the Exchange.

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.

¹⁹ See id.

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 Act²⁰ and Rule 19b-4(f)(2)²¹ thereunder.

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

(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.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(2).

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-2021-012]

[Insert date]

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

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

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

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

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its Fees Schedule to adopt surcharges in connection with the Exchange's plan to activate the Automated Improvement Mechanism ("AIM") Auction³ for S&P 500 Index ("SPX") and SPX Weekly ("SPXW") options while the Exchange is operating in its normal hybrid environment, effective February 22, 2021.

By way of background, AIM includes functionality in which a Trading Permit Holder ("TPH") (an "Initiating TPH") may electronically submit for execution an order it represents as agent on behalf of a customer,⁴ broker dealer, or any other person or entity ("Agency Order") against any other order it represents as agent, as well as against principal interest in AIM (an "Initiating Order"), provided it submits the Agency Order for electronic execution into an AIM Auction.⁵ The Exchange may designate any class of options traded on Cboe Options as eligible for AIM. The Exchange notes that all Users, other than the Initiating TPH, may submit responses to an Auction ("AIM Responses"). AIM Auctions take into account AIM Responses to the applicable Auction as well as

³ The Exchange notes that this includes Complex AIM ("C-AIM"), as set forth in proposed footnote 26.

⁴ The term "customer" means a Public Customer or a broker-dealer. The term "Public Customer" means a person that is not a broker-dealer. See Rule 1.1.

⁵ See Rule 5.37 (AIM); and Rule 5.38 (C-AIM).

contra interest resting on the Cboe Options Book at the conclusion of the Auction (“unrelated orders”), regardless of whether such unrelated orders were already present on the Book when the Agency Order was received by the Exchange or were received after the Exchange commenced the applicable Auction. If contracts remain from one or more unrelated orders at the time the Auction ends, they are considered for participation in the AIM order allocation process.

The Exchange does not currently activate AIM for SPX/SPXW while it operates in its normal hybrid trading environment (i.e., when the trading floor is operable).⁶ The Exchange, however, plans to activate AIM for SPX/SPXW on February 22, 2021 for operation in the Exchange’s normal hybrid environment. In connection with the planned activation of AIM for SPX/SPXW while the Exchange functions in its normal hybrid setting, the Exchange proposes to adopt certain surcharges under Rate Table - Underlying Symbol List A of the Fees Schedule. Specifically, the Exchange proposes to adopt an SPX AIM Hybrid Surcharge of \$0.50 per contract for all Broker-Dealer (capacity “B”), Joint Back-Office (capacity “J”), Non-TPH Market-Maker (capacity “N”) and Professional (capacity “U”) (collectively, “Non-Customers”), and Market-Maker (capacity “M”) orders in SPX/SPXW options executed in AIM. The Exchange also proposes to adopt an SPX AIM Hybrid Surcharge of \$0.39 per contract for all Clearing

⁶ In March 2020, the Exchange suspended open outcry trading to help prevent the spread of the novel coronavirus and operated in an all-electronic configuration through June 2020. During this time, the Exchange activated AIM for SPX and SPXW options in an all-electronic environment to provide TPHs with a mechanism to execute crosses electronically, as they could no longer represent those crosses for open outcry execution. Footnote 12 in the Fees Schedule provides specifically that in the event the Exchange operates in a screen-based only environment, AIM may be available for SPX and SPXW during Regular Trading Hours, and the Fees Schedule provides for certain SPX AIM Surcharges that apply only in that case.

TPHs (capacity “F”) and for Non-Clearing TPH Affiliates (capacity “L”) (collectively, “Firms”) orders in SPX/SPXW options executed in AIM. Finally, the Exchange proposes to adopt an SPX AIM Hybrid Originator Surcharge of \$0.10. Proposed footnote 26 is appended to the proposed surcharges and provides that the SPX AIM Hybrid Surcharges, including the Originator Surcharge, apply only to SPX/SPXW orders executed in AIM and C-AIM⁷ during RTH when the Exchange is operating in a hybrid environment (i.e., the trading floor is operable). The SPX AIM Hybrid Surcharge will apply to all SPX/SPXW AIM Agency/Primary, Contra and Response orders. The SPX AIM Hybrid Originator Surcharge will apply to all SPX/SPXW Agency/Primary orders and such fee will be invoiced to the executing TPH.

Particularly, the Exchange notes that it can determine AIM eligibility on a class-by-class basis⁸ and, as stated above, historically has not designated SPX/SPXW as eligible for AIM Auctions. As such, the Exchange wants to encourage market participants to continue to execute SPX/SPXW volume in open outcry or against quotes in its electronic Book when AIM is switched on for SPX/SPXW. The Exchange believes the SPX AIM Hybrid Surcharges (including the Originator surcharge) will provide a reasonable cost incentive to market participants to continue to execute SPX/SPXW orders as they do today as well as through AIM when appropriate once activated. More specifically, the SPX AIM Hybrid Surcharges aim to balance incentives between executing via the AIM Auctions and executing via open outcry or the electronic Book, which the Exchange believes will maintain robust hybrid markets and continue to

⁷ See supra note 3. The Exchange notes that it already activates FLEX AIM for SPX/SPXW and that all currently applicable FLEX transaction fees and surcharges will continue to apply.

⁸ See Rule 5.37(a)(1) and 5.38(a)(1).

incentivize the provision of liquidity to both its electronic and trading floor environments in order support price discovery and increased execution opportunities. The new functionality for SPX/SPXW will allow market participants to interact with SPX/SPXW order flow in a manner not previously available in a hybrid trading environment.⁹ Therefore, the Exchange believes it is appropriate to assess additional fees to market participants that choose to leverage auction execution opportunities outside of contributing to SPX/SPXW liquidity in open outcry and the on the electronic Book. Indeed, the Exchange currently does so in various places in the Fees Schedule with respect to other classes. For example, the Exchange currently assesses a higher charge for Non-Customer and Firm AIM Responses in all products, except Sector Indexes¹⁰ and Underlying Symbol List A,¹¹ of \$0.50 (Penny classes) and \$1.05 (Non-Penny classes) than the applicable standard transaction rates. The Exchange also notes that when it is operating in a screen-based only environment, it assesses an AIM Agency/Primary Surcharge of \$0.10, which, like the proposed SPX AIM Hybrid Originator Surcharge, applies to all AIM Agency/Primary orders in SPX/SPXW and is invoiced to the executing TPH. Additionally, the Exchange notes that it assesses certain surcharges on proprietary products (i.e., SPX/SPXW, SPESG and VIX)¹² to similarly create a

⁹ Previously only available while the trading floor was inoperable for a period of time during 2020. See supra note 6.

¹⁰ Sector Index underlying symbols: IXB, SIXC, IXE, IXI, IXM, IXR, IXRE, IXT, IXU, IXV AND IXY. Corresponding option symbols: SIXB, SIXC, SIXE, SIXI, SIXM, SIXR, SIXRE, SIXT, SIXU, SIXV AND SIXY.

¹¹ Underlying Symbol List A: OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXW), SPESG and VIX.

¹² See Cboe Options Fees Schedule, “Rate Table - Underlying Symbol List A”, which assesses an Execution Surcharge of \$0.21 for all non-Market-Maker orders in SPX and SPESG and \$0.13 for all non-Market-Maker orders in SPXW, and

reasonable cost equivalence between the primary execution channels (open outcry and electronic book) for such products and likewise maintain a robust hybrid system.¹³ Overall, the proposed fees are designed to balance fees at an appropriate level in order to assess SPX/SPXW order flow to the AIM Auctions while also maintaining incentive for participation and the provision of liquidity in SPX/SPXW on the trading floor and in the electronic book when AIM is activated for SPX/SPXW.

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.¹⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁵ 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

assesses a Customer Priority Surcharge of \$0.20 for all Customer maker orders in VIX.

¹³ See e.g., Securities and Exchange Release Nos. 71295 (January 14, 2014), 79 FR 3443 (January 21, 2014) (SR-CBOE-2013-129); and 88426 (March 19, 2020), 85 FR 16978 (March 25, 2020) (SR-CBOE-2020-021).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

Section 6(b)(4) of the Act,¹⁶ 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.

Particularly, the Exchange believes the proposed rule change to adopt AIM Hybrid Surcharges (including an Originator Surcharge) is reasonable because the proposed surcharges are reasonably designed to ensure that there is appropriate cost incentive to market participants to continue to execute through the Exchange's primary execution channels for SPX/SPXW once AIM is activated for SPX/SPXW. The Exchange believes that the proposed SPX AIM Hybrid Surcharges reasonably balance cost incentives between executing via the AIM Auctions and executing via open outcry or against quotes in the electronic Book, which is in the interest of the Exchange as it must both maintain robust hybrid markets, incentivizing liquidity to both its electronic and trading floor environments in order support price discovery and increased execution opportunities. The planned activation of this functionality for SPX/SPXW will allow market participants to interact with SPX/SPXW order flow in a manner not previously available,¹⁷ and, as a result, the Exchange believes it is reasonable to assess additional fees for market participants that choose to leverage auction execution opportunities outside of contributing to SPX/SPXW liquidity in open outcry and the on the electronic Book.

The Exchange also believes that the proposed fees in connection with SPX AIM orders are reasonable as they do not represent a significant departure from the fees

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ Previously only available while the trading floor was inoperable for a period of time during 2020. See supra note 6.

currently offered under the Fees Schedule. The Exchange believes that the proposed SPX AIM Hybrid Surcharges of \$0.50 per contract for all Non-Customer and Market-Maker and \$0.39 per contract for all Firm orders executed in AIM (Agency/Primary, Contra and Response) are reasonable because these surcharges are, respectively, comparable to or less than the \$0.50 and \$1.05 rates per contract, which are generally higher than the applicable standard transaction rates, currently assessed for certain AIM orders submitted in all products (with certain exceptions). The Exchange believes that the proposed SPX AIM Hybrid Originator Surcharge is reasonable as it is equivalent to the AIM Agency/Primary Surcharge of \$0.10 that is assessed when the Exchange is operating in an screen-based only environment and likewise applies to all AIM Agency/Primary orders in SPX/SPXW and is invoiced to the executing TPH. The Exchange again notes that it assesses certain surcharges on proprietary products (i.e., SPX/SPXW, SPESG and VIX)¹⁸ in order to similarly create a reasonable cost equivalence between its primary execution channels (open outcry and electronic book) for such products as the Exchange seeks to maintain a robust hybrid system.¹⁹ Overall, the Exchange believes the proposed fees are reasonably designed to balance fees at an appropriate level in order to assess SPX/SPXW order flow to AIM Auctions while also maintaining incentive for participation in SPX/SPXW on the trading floor and in the electronic book, thereby supporting incentive for continued liquidity in SPX/SPXW through the Exchange's primary execution channels while AIM is activated for SPX/SPXW, to the benefit of all market participants.

¹⁸ See supra note 12.

¹⁹ See supra note 13.

The Exchange believes that the proposed SPX AIM Hybrid Surcharges (including the Originator Surcharge) are equitable and not unfairly discriminatory because the proposed SPX AIM Hybrid Surcharges will apply equally to all similarly situated TPHs that submit orders in SPX/SPXW into AIM. That is, the proposed fees will apply equally to all Non-Customer and Market-Maker orders in SPX/SPXW executed in AIM, to all Firm orders in SPX/SPXW executed in AIM, and to all executing TPHs that submit AIM Agency/Primary orders in SPX/SPXW. The Exchange believes that it is equitable and not unfairly discriminatory to provide lower SPX AIM Hybrid rates for Firms because the Exchange believes that Firm participation in the markets is essential to a robust hybrid market ecosystem as Firms facilitate the execution of customer orders, as well as provide clearing services, both electronically and in open outcry. The Exchange recognizes Firms as an important source of liquidity when they facilitate their own customers' trading activity, which enhances transparency and price discovery to the benefit of all market participants, and, as a result, currently assesses a lower rate to Firms in various places under the Fees Schedule, including for transactions in SPX/SPXW.²⁰

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 the proposed SPX AIM Hybrid Surcharges (including the Originator Surcharge) will impose any burden on intramarket competition

²⁰ See e.g., Cboe Options Fees Schedule, "Rate Table - Underlying Symbol List A", which generally assesses lower rates for Firm transactions in SPX/SPXW (\$0.26 per contract) than for Market-Makers (\$0.28) or Non-Customers (\$0.42) in SPX/SPXW.

because they will apply equally to all similarly situated TPHs that submit orders in SPX/SPXW into AIM. That is, the proposed fees will apply equally to all Non-Customer and Market-Maker orders in SPX/SPXW submitted to AIM, to all Firm orders in SPX/SPXW submitted to AIM, and to all executing TPHs that submit AIM Agency/Primary orders in SPX/SPXW. The Exchange does not believe that providing lower SPX AIM Hybrid rates for Firms will impose any significant burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange recognizes that Firm participation in the markets is essential to a robust hybrid market ecosystem as Firms facilitate the execution of customer orders, as well as provide clearing services, both in open outcry and electronically. As a result, the Exchange currently assesses a lower rate to Firms in various places under the Fees Schedule, including for transactions in SPX/SPXW.²¹ The Exchange believes that Firms can be an important source of liquidity when they facilitate their own customers' trading activity, which enhances transparency and price discovery to the benefit of all market participants. The Exchange again notes that the proposed SPX AIM Hybrid Surcharge comparable to or less than rates currently assessed for certain AIM orders submitted in all products (with certain exceptions) and the proposed SPX AIM Hybrid Originator Surcharge is equivalent to the existing AIM Agency/Primary Surcharge which likewise applies to AIM Agency/Primary orders in SPX/SPXW (when the Exchange is operating in an screen-based only environment).

The Exchange does not believe that the proposed rule change in connection with SPX AIM Hybrid Surcharges will impose any burden on intermarket competition that is

²¹ See id.

not necessary or appropriate in furtherance of the purposes of the Act because the propose surcharges apply only to an Exchange proprietary product, which is traded exclusively on Cboe Options, and for orders executed in an auction on the Exchange.

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 Act²² and paragraph (f) of Rule 19b-4²³ 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:

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

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-2021-012 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-2021-012. 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-2021-012 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.²⁴

Secretary

²⁴ 17 CFR 200.30-3(a)(12).



Rate Table - Underlying Symbol List A (34) [Also applies to GTH](37)

Options Transaction Fees (1)(3)(4)(7)(13)(15)(33)(39)(12)

Execution Surcharge (21) <u>(12)</u> (41) <u>[Also applies to GTH](37)</u>	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) <u>[Also applies to GTH](37)</u>	VIX (Maker non-turner)	C	\$0.00	\$0.20
AIM Response Surcharge Fee <u>(12)</u> (41)	SPX (incl SPXW) and SPESG	C F J L M B N U	\$0.05	
AIM Contra Surcharge Fee <u>(12)</u> (41)	SPX (incl SPXW) and SPESG	C F J L M B N U	\$0.10	
AIM Agency/Primary Surcharge Fee <u>(12)</u> (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	
SPX AIM Hybrid Surcharge (26)	SPX (incl SPXW)	J M B N U	<u>\$0.50</u>	
		F L	<u>\$0.39</u>	
SPX AIM Hybrid Originator Surcharge (26)	SPX (incl SPXW)	C F J L M B N U	\$0.10	
RFC Execution Surcharge Fee (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	

Footnotes:

Footnote Number	Description
1-25	No change.
<u>[RESERVED]26</u>	The SPX AIM Hybrid Surcharges, including the Originator Surcharge, apply only to SPX/SPXW orders executed in AIM and C-AIM during RTH when the Exchange is operating in a hybrid environment (i.e., the trading floor is operable). The SPX AIM Hybrid Surcharge will apply to all SPX/SPXW AIM Agency/Primary, Contra and Response orders. The SPX AIM Hybrid Originator Surcharge will apply to all SPX/SPXW Agency/Primary orders and such fee will be invoiced to the executing Trading Permit Holder.
27-50	No change.