

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 37

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

File No. * SR 2021 - * 076

Amendment No. (req. for Amendments *)

Filing by Cboe Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

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

E-mail * rtenuta@cboe.com

Telephone * (312) 786-7068 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Cboe Exchange, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 12/30/2021

(Title *)

By Laura G. Dickman

(Name *)

VP, Associate General Counsel

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

Laura Dickman Date: 2021.12.30 12:52:11 -06'00'

Required fields are shown with yellow backgrounds and astericks.

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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21-076 (C1 Fees - January) 19b-4 (12		

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add	Remove	View
21-076 (C1 Fees - January) Exhibit 1.		

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 Advanced 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 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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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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21-076 (C1 Fees - January) Exhibit 5 (

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 December 30, 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 certain surcharges, a trading floor-related fee and its Global Trading Hours (“GTH”) Cboe Volatility Index (“VIX”) options/VIX weekly (“VIXW”) options and S&P 500 Index (“SPX”) options/SPX weekly (“SPXW”) LMM Incentive Programs, effective January 2, 2022.

First, the Exchange proposes to amend the Execution Surcharge fee in Rate Table - Underlying Symbol List A of the Fees Schedule applicable to non-Market-Maker orders¹

¹ Non-Market-Makers include Customers (capacity “C”), Clearing Trading Permit Holders (capacity “F”), Non-Clearing Trading Permit Holder Affiliates (capacity “L”), Broker-Dealers (capacity “B”), Joint Back-Offices (capacity “J”), Non-

executed electronically in SPXW options. Currently, a surcharge fee of \$0.13 per contract is assessed for non-Market-Maker orders executed electronically in SPXW. The proposed rule change slightly increases this surcharge fee from \$0.13 per contract to \$0.14 per contract. The Exchange notes that the proposed SPXW Execution Surcharge fee is still less than the Execution Surcharge fee assessed for SPX and SPESG transactions.²

Next, the Exchange proposes to marginally increase the Index License Surcharge fees currently applicable to orders executed in SPX (including SPXW) options in Rate Table – Underlying Symbol List A and to orders executed in MSCI Emerging Markets Index (“MXEF”) options and MSCI EAFE Index (“MXEA”) options (collectively, “MSCI options”) in Rate Table - All Products Excluding Underlying Symbol List A. Specifically, the Exchange currently assesses an Index License Surcharge fee of \$0.17 per contract for non-Customer orders executed in SPX/SPXW and an Index License Surcharge fee of \$0.10 per contract for non-Customer orders executed in MSCI options. The proposed rule change increases the Index License Surcharge fee applicable to orders executed in SPX/SPXW from \$0.17 per contract to \$0.18 per contract and the Index License Surcharge fee applicable to orders executed in MSCI options from \$0.10 per contract to \$0.12 per contract. The Exchange notes that the Index License Surcharge fees in place for SPX/SPXW and MSCI options are designed to recoup some of the costs associated with

Trading Permit Holder Market-Makers (capacity “N”), and Professionals (capacity “U”). Capacity “M” applies to Market-Makers.

² See Cboe Options Fees Schedule, Rate Table—Underlying Symbol List A, Execution Surcharge, SPX (not including SPXW) and SPESG, which assesses a surcharge fee of \$0.21 per contract for non-Market-Maker orders in SPX and SPESG.

the licenses for these indexes.³ The Exchange has recently renewed its license arrangements for its SPX and MSCI index licenses and, as a result, the proposed rule change amends the Index License Surcharge fees for SPX/SPXW and MSCI options in order to continue to offset some of the costs associated with the licenses for these indexes.

Next, the Exchange proposes to amend a badge type in the Access Badges table of the Fees Schedule. Currently, a \$70.00 fee is assessed for Clerk badges to access the Exchange's trading floor. The Exchange proposes to extend this badge fee to clerks and other Trading Permit Hold ("TPH") employees in order to cover TPH employees that also receive an access badge to the Exchange's trading floor (e.g., TPH technical support personnel). The Exchange notes that badge access is optional and other TPH employees may continue to be admitted to the trading floor if signed in by authorized TPH personnel.

Finally, the Exchange proposes to amend the rebates provided under its GTH1 and GTH2 VIX/VIXW LMM Incentive Programs and amend certain quote width categories under its GTH2 SPX/SPXW LMM Incentive Program. In particular, the Exchange offers, among other LMM incentive programs, a GTH1 VIX/VIXW LMM Incentive Program that applies during GTH from 7:15 P.M. CST to 2:00 A.M. CST ("GTH1") and a GTH2 VIX/VIXW LMM Incentive Program and GTH2 SPX/SPXW LMM Incentive Program that apply during GTH from 2:00 A.M. CST to 8:15 A.M. CST ("GTH2"). The Exchange notes that these LMM incentive programs in the Fees Schedule provide a rebate to TPHs with LMM appointments to the respective incentive program that meet certain quoting standards in VIX/VIXW and SPX/SPXW, as applicable, in a month. The Exchange notes

³ See Securities Exchange Release Nos. 74854 (April 30, 2015), 80 FR 26124 (May 6, 2015) (SR-CBOE-2015-041); and 74422 (March 4, 2015), 80 FR 12680 (March 10, 2015) (SR-CBOE-2015-020).

that meeting or exceeding the quoting standards in VIX/VIXW or SPX/SPXW to receive the applicable rebates (as currently offered and as proposed; described in further detail below) is optional for an LMM appointed to one of the GTH VIX/VIXW and SPX/SPXW LMM Incentive Programs. Rather, an LMM appointed to an incentive program is eligible to receive the corresponding rebate if it satisfies the applicable quoting standards (as currently offered and as proposed, described in further detail below), which the Exchange believes encourages an LMM to provide liquidity in the applicable program's products during GTH. The Exchange may consider other exceptions to the programs' quoting standards based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM appointed to a GTH VIX/VIXW or GTH2 SPX/SPXW incentive program meets the applicable program's quoting standards each month, the Exchange excludes from the calculation in that month the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of series.

An LMM appointed to one of the GTH VIX/VIXW LMM Incentive Programs must provide continuous electronic quotes during GTH1 or GTH2, as applicable, that meet or exceed the quoting standards under the applicable program in at least 99% of each of the VIX and VIXW series, 90% of the time in a given month in order to receive a rebate for that month in the amount of \$15,000 for VIX and \$10,000 for VIXW (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month. The Exchange now proposes to increase each rebate amount received under the GTH1 and GTH2 VIX/VIXW LMM Incentive Programs for meeting the applicable quoting standards in a given month in VIX and VIXW, by

slightly increasing the rebate amount for VIX from \$15,000 to \$20,000 and in VIXW, by slightly increasing the rebate amount from \$10,000 to \$15,000. The Exchange notes that no changes are being made to the quoting standards under the GTH1 or GTH2 VIX/VIXW LMM Incentive Programs. The Exchange wishes to further incentivize the LMMs appointed to the GTH VIX/VIXW LMM Incentive Programs to provide significant liquidity in VIX/VIXW options during all of GTH by meeting the applicable quoting standards currently under each program in order to receive the proposed increased rebates.

An LMM appointed to the GTH2 SPX/SPXW LMM Incentive Program must provide continuous electronic quotes during GTH2 that meet or exceed the quoting standards, provided below, in at least 85% of each of the SPX and SPXW series, 90% of the time in a given month in order to receive a rebate for that month in the amount of \$15,000 for SPX and \$35,000 for SPXW (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month.

VIX Value at Prior Close < 20								
Premium Level	Expiring		Near Term		Mid Term		Long Term	
	7 days or less		8 days to 60 days		61 days to 270 days		271 days to 500 days	
	Width	Size	Width	Size	Width	Size	Width	Size
\$0.00 - \$5.00	\$0.35	25	\$0.40	15	\$0.60	5	\$1.20	5
\$5.01 - \$15.00	\$0.60	20	\$0.60	20	\$1.50	10	\$2.00	5
\$15.01 - \$50.00	\$1.20	15	\$2.00	15	\$2.00	10	\$4.00	5
\$50.01 - \$100.00	\$6.00	10	\$4.00	10	\$3.00	10	\$5.00	5
\$100.01-\$200.00	\$15.00	1	\$5.00	5	\$4.00	5	\$6.00	5
Greater than \$200.00	\$20.00	1	\$8.00	1	\$12.00	1	\$50.00	1
VIX Value at Prior Close from 20 – 30								
\$0.00 - \$5.00	\$0.60	15	\$0.80	10	\$0.75	5	\$2.00	5
\$5.01 - \$15.00	\$1.00	15	\$1.00	15	\$2.20	5	\$3.00	5
\$15.01 - \$50.00	\$2.50	10	\$3.50	10	\$3.0	5	\$5.00	5
\$50.01 - \$100.00	\$10.00	10	\$7.00	10	\$3.50	5	\$7.00	5
\$100.01 - \$200.00	\$18.00	1	\$8.00	5	\$6.00	5	\$10.00	5
Greater than \$200.00	\$25.00	1	\$12.00	1	\$2.00	1	\$60.00	1
VIX Value at Prior Close > 30								

\$0.00 - \$5.00	\$0.90	10	\$1.00	10	\$1.00	5	\$3.00	5
\$5.01 - \$15.00	\$2.50	10	\$2.50	10	\$3.00	5	\$4.00	5
\$15.01 - \$50.00	\$4.00	10	\$5.00	10	\$5.00	5	\$8.00	5
\$50.01 - \$100.00	\$12.00	5	\$10.00	5	\$4.50	3	\$10.00	1
\$100.01 - \$200.00	\$20.00	1	\$12.00	5	\$15.00	1	\$18.00	1
Greater than \$200.00	\$30.00	1	\$25.00	1	\$30.00	1	\$70.00	1

The Exchange proposes to marginally widen certain quotes widths applicable when the VIX Index value at the prior close is less than 20 for SPX/SPXW options expiring in 7 days or less as follows: widen the quote width that corresponds to the \$5.01 to \$15.00 premium level from \$0.60 to \$0.80; widen the quote width that corresponds to a premium level of \$15.01 to \$50.00 from \$1.20 to \$1.80; and widen the quote width that corresponds to the premium level of \$50.01 to \$100.00 from \$6.00 to \$7.50. The Exchange notes that, generally, demand for and participation in SPX/SPXW options decreases as time to expiration decreases and, as a result, it becomes more difficult for LMMs to quote within specified widths and sizes for SPX/SPXW options that expire in 7 days or less. As such, the proposed rule change is designed to slightly ease the quoting requirements under the expiration category of 7 days or less (when the VIX Index value is less than 20 at the prior close) by marginally widen certain quote widths in order to better enable and encourage LMMs to satisfy the quoting standards to receive the current monthly rebate applicable to SPX and/or SPXW.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁴ Specifically,

⁴ 15 U.S.C. 78f(b).

the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ 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 amending the Execution Surcharge fee applicable to non-Market-Maker electronic orders in SPXW is reasonable as such fee is still lower than the Execution Surcharge fee applicable to non-Market-Maker orders transacted in SPX and SPESG.⁷ Additionally, the proposed increase helps to ensure that there is reasonable cost equivalence between the primary execution channels for SPXW. More specifically, the SPXW Surcharge fee was adopted to minimize the cost differentials between manual and electronic executions, which is in the interest of the Exchange as it must both maintain robust electronic systems as well as provide for economic opportunity for floor brokers to continue to conduct business, as they serve an important function in achieving price

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(4).

⁷ See supra note 2.

discovery and customer executions.⁸ The Exchange believes the proposed change is also equitable and not unfairly discriminatory as it will continue to apply uniformly to all non-Market-Maker orders executed electronically in SPXW.

The Exchange believes that it is reasonable to increase the amount of the Index License Surcharge fees for orders in SPX/SPXW and MSCI options as the proposed increases are consistent with the purpose of such surcharge fees as they are intended to continue to help recoup some of the costs associated with the license for such products in light of recently renewed license arrangements between the Exchange and the applicable index providers. The proposed Index License Surcharge fees are also equitable and not unfairly discriminatory because the surcharge fees will continue to be assessed uniformly for all non-Customer orders in SPX/SPXW and MSCI options, as applicable.

The Exchange believes the proposed rule change to extend the access badge fee to other TPH employees, in addition to clerks, is reasonable as it is designed to cover TPH employees that also receive an access badge to the Exchange's trading floor (e.g., TPH technical support personnel). The Exchange again notes that badge access is optional and other TPH employees may continue to be admitted to the trading floor if signed in by TPH personnel with badge access. The extension of the access badge fee to other TPH employees is equitable and not unfairly discriminatory because it will apply uniformly to all TPH employees that opt to receive an access badge.

Regarding the GTH VIX/VIXW LMM Incentive Programs and the GTH2 SPX/SPXW LMM Incentive Program, generally, the Exchange believes it is reasonable,

⁸ See Securities Exchange Act Release No. 71295 (January 14, 2014) 79 FR 3443 (January 21, 2014) (SR-CBOE-2013-129).

equitable and not unfairly discriminatory to continue to offer these financial incentives, including as amended, to LMMs appointed to the programs, because it benefits all market participants trading in the corresponding products during GTH. These incentive programs encourage the LMMs appointed to such programs to satisfy the applicable quoting standards, which may increase liquidity and provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade VIX/VIXW and SPX/SPXW options, as applicable, which can lead to increased volume, providing for robust markets. The Exchange ultimately offers the LMM Incentive Programs, as amended, to sufficiently incentivize LMMs appointed to each incentive program to provide key liquidity and active markets in the corresponding program products during the corresponding trading sessions. The Exchange believes that these incentive programs, as amended, will continue to encourage increased quoting to add liquidity in each of the corresponding program products, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month to satisfy that heightened quoting standards (e.g., having to purchase additional logical connectivity).

In particular, the Exchange believes that the proposed increases to the rebates applicable to VIX and VIXW provided under the GTH VIX/VIXW LMM Incentive programs are reasonably designed to continue to incentivize an appointed LMM to meet the applicable quoting standards for VIX/VIXW options during GTH, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants. The Exchange further believes that the proposed rule change to amend the rebate amount received for VIX (\$20,000)

and VIXW options (\$15,000) is reasonable because it is comparable to and within the range of the rebates offered by other LMM Incentive Programs. For example, the GTH SPX/SPXW LMM Programs currently offers \$15,000 for SPX and \$35,000 SPXW options in which the applicable quoting standards are met in a given month. The Exchange believes the proposed rebates applicable to the GTH VIX/VIXW LMM Incentive Programs are equitable and not unfairly discriminatory because they will continue to apply equally to any TPH that is appointed as an LMM to the GTH1 and GTH2 VIX/VIXW LMM Incentive Programs.

The Exchange believes that it is reasonable to slightly ease the quoting requirements under the GTH2 SPX/SPXW LMM Incentive Program by marginally widen certain quote widths for SPX/SPXW options that expire in 7 days or less, wherein it becomes more difficult for LMMs to quote within specified widths, in order to better enable and encourage LMMs to satisfy the quoting standards to receive the current monthly rebate applicable to SPX and/or SPXW. As such, the Exchange believes the slightly wider quote widths are reasonably designed to facilitate LMMs appointed to the GTH2 SPX/SPXW LMM Incentive Program in meeting the heightened quoting standards (in order to receive the current rebate offered under the program) by increasing their quoting activity and posting tighter spreads and more aggressive quotes in SPX/SPXW options during GTH2. An increase in quoting activity and tighter quotes tends to signal additional corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that the proposed widths are reasonable because they remain generally aligned

with the current heightened quoting standards in the program, as the proposed widths are only marginally larger than the current widths. The Exchange believes that the proposed increase in certain quote widths under the GTH2 SPX/SPXW LMM Incentive Program is equitable and not unfairly discriminatory because such quote widths will continue to apply equally to any and all TPHs with LMM appointments to the GTH2 SPX/SPXW LMM Incentive Program that seek to meet the program's heightened quoting standards in order to receive the current rebates offered under the program.

Additionally, the Exchange notes if an LMM appointed to the GTH VIX/VIXW LMM Incentive Programs or the GTH2 SPX/SPXW LMM Incentive Program does not satisfy the corresponding quoting standards for any given month, then it simply will not receive the rebate(s) offered by the respective program for that month.

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 changes in connection with surcharge fees will impose any burden on intramarket competition because each applies uniformly to all similarly situated TPHs in a uniform manner (i.e., to all non-Market-Maker electronic executions in SPXW and to all non-Customer executions in SPX/SPXW or MSCI options). Additionally, the access badge fee will apply uniformly to all other TPH employees in the same manner as it applies to all clerk badges today. The Exchange again notes that badge access is optional and other TPH employees may continue to be admitted to the trading floor if signed in by TPH personnel with badge access. Additionally, the proposed changes to existing GTH VIX/VIXW and

SPX/SPXW LMM Incentive Programs will apply to all LMMs appointed to the applicable program classes (i.e., VIX/VIXW and SPX/SPXW) in a uniform manner. To the extent these LMMs appointed to an incentive program receive a benefit that other market participants do not, as stated, these LMMs in their role as Mark-Makers on the Exchange have different obligations and are held to different standards. For example, Market-Makers play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month that it needs to satisfy that heightened quoting standards (e.g., having to purchase additional logical connectivity). The Exchange also notes that the incentive programs are designed to attract additional order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed amendments to the surcharges and the LMM Incentive Programs, apply only to Exchange proprietary products, which are traded

exclusively on Cboe Options. Additionally, the Exchange notes that at least one other options exchange assesses a badge fee for employees of on-floor registrants.⁹

Additionally, the Exchange notes that it operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 15% of the market share.¹⁰ Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹¹ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated

⁹ See BOX FEE Schedule, Section VIII C, Trading Floor Participant Fees, which assesses a \$100 badge fee for “all other registered on-floor persons employed by or associated with a Floor Market Maker or Floor Broker”.

¹⁰ See Cboe Global Markets U.S. Options Market Volume Summary, Month-to-Date (December 17, 2021), available at https://www.cboe.com/us/options/market_statistics/.

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹² Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

Item 6. Extension of Time Period for Commission Action

Not applicable.

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

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(2)¹⁴ 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

¹² NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

“Commission”). At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

(c) Not applicable.

(d) Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. Proposed rule text.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CBOE-2021-076]

[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 in connection with certain surcharges, a trading floor-related fee and its Global Trading Hours (“GTH”) Cboe Volatility Index (“VIX”) options/VIX weekly (“VIXW”) options and S&P 500 Index (“SPX”) options/SPX weekly (“SPXW”) LMM Incentive Programs, effective January 2, 2022.

First, the Exchange proposes to amend the Execution Surcharge fee in Rate Table - Underlying Symbol List A of the Fees Schedule applicable to non-Market-Maker orders³ executed electronically in SPXW options. Currently, a surcharge fee of \$0.13 per contract is assessed for non-Market-Maker orders executed electronically in SPXW. The proposed rule change slightly increases this surcharge fee from \$0.13 per contract to \$0.14 per contract. The Exchange notes that the proposed SPXW Execution Surcharge fee is still less than the Execution Surcharge fee assessed for SPX and SPESG transactions.⁴

³ Non-Market-Makers include Customers (capacity “C”), Clearing Trading Permit Holders (capacity “F”), Non-Clearing Trading Permit Holder Affiliates (capacity “L”), Broker-Dealers (capacity “B”), Joint Back-Offices (capacity “J”), Non-Trading Permit Holder Market-Makers (capacity “N”), and Professionals (capacity “U”). Capacity “M” applies to Market-Makers.

⁴ See Cboe Options Fees Schedule, Rate Table—Underlying Symbol List A, Execution Surcharge, SPX (not including SPXW) and SPESG, which assesses a surcharge fee of \$0.21 per contract for non-Market-Maker orders in SPX and

Next, the Exchange proposes to marginally increase the Index License Surcharge fees currently applicable to orders executed in SPX (including SPXW) options in Rate Table – Underlying Symbol List A and to orders executed in MSCI Emerging Markets Index (“MXEF”) options and MSCI EAFE Index (“MXEA”) options (collectively, “MSCI options”) in Rate Table - All Products Excluding Underlying Symbol List A. Specifically, the Exchange currently assesses an Index License Surcharge fee of \$0.17 per contract for non-Customer orders executed in SPX/SPXW and an Index License Surcharge fee of \$0.10 per contract for non-Customer orders executed in MSCI options. The proposed rule change increases the Index License Surcharge fee applicable to orders executed in SPX/SPXW from \$0.17 per contract to \$0.18 per contract and the Index License Surcharge fee applicable to orders executed in MSCI options from \$0.10 per contract to \$0.12 per contract. The Exchange notes that the Index License Surcharge fees in place for SPX/SPXW and MSCI options are designed to recoup some of the costs associated with the licenses for these indexes.⁵ The Exchange has recently renewed its license arrangements for its SPX and MSCI index licenses and, as a result, the proposed rule change amends the Index License Surcharge fees for SPX/SPXW and MSCI options in order to continue to offset some of the costs associated with the licenses for these indexes.

Next, the Exchange proposes to amend a badge type in the Access Badges table of the Fees Schedule. Currently, a \$70.00 fee is assessed for Clerk badges to access the Exchange’s trading floor. The Exchange proposes to extend this badge fee to clerks and

SPESG.

⁵ See Securities Exchange Release Nos. 74854 (April 30, 2015), 80 FR 26124 (May 6, 2015) (SR-CBOE-2015-041); and 74422 (March 4, 2015), 80 FR 12680 (March 10, 2015) (SR-CBOE-2015-020).

other Trading Permit Hold (“TPH”) employees in order to cover TPH employees that also receive an access badge to the Exchange’s trading floor (e.g., TPH technical support personnel). The Exchange notes that badge access is optional and other TPH employees may continue to be admitted to the trading floor if signed in by authorized TPH personnel.

Finally, the Exchange proposes to amend the rebates provided under its GTH1 and GTH2 VIX/VIXW LMM Incentive Programs and amend certain quote width categories under its GTH2 SPX/SPXW LMM Incentive Program. In particular, the Exchange offers, among other LMM incentive programs, a GTH1 VIX/VIXW LMM Incentive Program that applies during GTH from 7:15 P.M. CST to 2:00 A.M. CST (“GTH1”) and a GTH2 VIX/VIXW LMM Incentive Program and GTH2 SPX/SPXW LMM Incentive Program that apply during GTH from 2:00 A.M. CST to 8:15 A.M. CST (“GTH2”). The Exchange notes that these LMM incentive programs in the Fees Schedule provide a rebate to TPHs with LMM appointments to the respective incentive program that meet certain quoting standards in VIX/VIXW and SPX/SPXW, as applicable, in a month. The Exchange notes that meeting or exceeding the quoting standards in VIX/VIXW or SPX/SPXW to receive the applicable rebates (as currently offered and as proposed; described in further detail below) is optional for an LMM appointed to one of the GTH VIX/VIXW and SPX/SPXW LMM Incentive Programs. Rather, an LMM appointed to an incentive program is eligible to receive the corresponding rebate if it satisfies the applicable quoting standards (as currently offered and as proposed, described in further detail below), which the Exchange believes encourages an LMM to provide liquidity in the applicable program’s products during GTH. The Exchange may consider

other exceptions to the programs' quoting standards based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM appointed to a GTH VIX/VIXW or GTH2 SPX/SPXW incentive program meets the applicable program's quoting standards each month, the Exchange excludes from the calculation in that month the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of series.

An LMM appointed to one of the GTH VIX/VIXW LMM Incentive Programs must provide continuous electronic quotes during GTH1 or GTH2, as applicable, that meet or exceed the quoting standards under the applicable program in at least 99% of each of the VIX and VIXW series, 90% of the time in a given month in order to receive a rebate for that month in the amount of \$15,000 for VIX and \$10,000 for VIXW (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month. The Exchange now proposes to increase each rebate amount received under the GTH1 and GTH2 VIX/VIXW LMM Incentive Programs for meeting the applicable quoting standards in a given month in VIX and VIXW, by slightly increasing the rebate amount for VIX from \$15,000 to \$20,000 and in VIXW, by slightly increasing the rebate amount from \$10,000 to \$15,000. The Exchange notes that no changes are being made to the quoting standards under the GTH1 or GTH2 VIX/VIXW LMM Incentive Programs. The Exchange wishes to further incentivize the LMMs appointed to the GTH VIX/VIXW LMM Incentive Programs to provide significant liquidity in VIX/VIXW options during all of GTH by meeting the applicable quoting standards currently under each program in order to receive the proposed increased rebates.

An LMM appointed to the GTH2 SPX/SPXW LMM Incentive Program must provide continuous electronic quotes during GTH2 that meet or exceed the quoting standards, provided below, in at least 85% of each of the SPX and SPXW series, 90% of the time in a given month in order to receive a rebate for that month in the amount of \$15,000 for SPX and \$35,000 for SPXW (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month.

VIX Value at Prior Close < 20								
Premium Level	Expiring		Near Term		Mid Term		Long Term	
	7 days or less		8 days to 60 days		61 days to 270 days		271 days to 500 days	
	Width	Size	Width	Size	Width	Size	Width	Size
\$0.00 - \$5.00	\$0.35	25	\$0.40	15	\$0.60	5	\$1.20	5
\$5.01 - \$15.00	\$0.60	20	\$0.60	20	\$1.50	10	\$2.00	5
\$15.01 - \$50.00	\$1.20	15	\$2.00	15	\$2.00	10	\$4.00	5
\$50.01 - \$100.00	\$6.00	10	\$4.00	10	\$3.00	10	\$5.00	5
\$100.01 - \$200.00	\$15.00	1	\$5.00	5	\$4.00	5	\$6.00	5
Greater than \$200.00	\$20.00	1	\$8.00	1	\$12.00	1	\$50.00	1
VIX Value at Prior Close from 20 – 30								
\$0.00 - \$5.00	\$0.60	15	\$0.80	10	\$0.75	5	\$2.00	5
\$5.01 - \$15.00	\$1.00	15	\$1.00	15	\$2.20	5	\$3.00	5
\$15.01 - \$50.00	\$2.50	10	\$3.50	10	\$3.0	5	\$5.00	5
\$50.01 - \$100.00	\$10.00	10	\$7.00	10	\$3.50	5	\$7.00	5
\$100.01 - \$200.00	\$18.00	1	\$8.00	5	\$6.00	5	\$10.00	5
Greater than \$200.00	\$25.00	1	\$12.00	1	\$2.00	1	\$60.00	1
VIX Value at Prior Close > 30								
\$0.00 - \$5.00	\$0.90	10	\$1.00	10	\$1.00	5	\$3.00	5
\$5.01 - \$15.00	\$2.50	10	\$2.50	10	\$3.00	5	\$4.00	5
\$15.01 - \$50.00	\$4.00	10	\$5.00	10	\$5.00	5	\$8.00	5
\$50.01 - \$100.00	\$12.00	5	\$10.00	5	\$4.50	3	\$10.00	1
\$100.01 - \$200.00	\$20.00	1	\$12.00	5	\$15.00	1	\$18.00	1
Greater than \$200.00	\$30.00	1	\$25.00	1	\$30.00	1	\$70.00	1

The Exchange proposes to marginally widen certain quotes widths applicable when the VIX Index value at the prior close is less than 20 for SPX/SPXW options expiring in 7 days or less as follows: widen the quote width that corresponds to the \$5.01 to \$15.00 premium level from \$0.60 to \$0.80; widen the quote width that corresponds to

a premium level of \$15.01 to \$50.00 from \$1.20 to \$1.80; and widen the quote width that corresponds to the premium level of \$50.01 to \$100.00 from \$6.00 to \$7.50. The Exchange notes that, generally, demand for and participation in SPX/SPXW options decreases as time to expiration decreases and, as a result, it becomes more difficult for LMMs to quote within specified widths and sizes for SPX/SPXW options that expire in 7 days or less. As such, the proposed rule change is designed to slightly ease the quoting requirements under the expiration category of 7 days or less (when the VIX Index value is less than 20 at the prior close) by marginally widen certain quote widths in order to better enable and encourage LMMs to satisfy the quoting standards to receive the current monthly rebate applicable to SPX and/or 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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

Section 6(b)(4) of the Act,⁸ 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 amending the Execution Surcharge fee applicable to non-Market-Maker electronic orders in SPXW is reasonable as such fee is still lower than the Execution Surcharge fee applicable to non-Market-Maker orders transacted in SPX and SPESG.⁹ Additionally, the proposed increase helps to ensure that there is reasonable cost equivalence between the primary execution channels for SPXW. More specifically, the SPXW Surcharge fee was adopted to minimize the cost differentials between manual and electronic executions, which is in the interest of the Exchange as it must both maintain robust electronic systems as well as provide for economic opportunity for floor brokers to continue to conduct business, as they serve an important function in achieving price discovery and customer executions.¹⁰ The Exchange believes the proposed change is also equitable and not unfairly discriminatory as it will continue to apply uniformly to all non-Market-Maker orders executed electronically in SPXW.

The Exchange believes that it is reasonable to increase the amount of the Index License Surcharge fees for orders in SPX/SPXW and MSCI options as the proposed increases are consistent with the purpose of such surcharge fees as they are intended to continue to help recoup some of the costs associated with the license for such products in light of recently renewed license arrangements between the Exchange and the applicable

⁸ 15 U.S.C. 78f(b)(4).

⁹ See supra note 4.

¹⁰ See Securities Exchange Act Release No. 71295 (January 14, 2014) 79 FR 3443 (January 21, 2014) (SR-CBOE-2013-129).

index providers. The proposed Index License Surcharge fees are also equitable and not unfairly discriminatory because the surcharge fees will continue to be assessed uniformly for all non-Customer orders in SPX/SPXW and MSCI options, as applicable.

The Exchange believes the proposed rule change to extend the access badge fee to other TPH employees, in addition to clerks, is reasonable as it is designed to cover TPH employees that also receive an access badge to the Exchange's trading floor (e.g., TPH technical support personnel). The Exchange again notes that badge access is optional and other TPH employees may continue to be admitted to the trading floor if signed in by TPH personnel with badge access. The extension of the access badge fee to other TPH employees is equitable and not unfairly discriminatory because it will apply uniformly to all TPH employees that opt to receive an access badge.

Regarding the GTH VIX/VIXW LMM Incentive Programs and the GTH2 SPX/SPXW LMM Incentive Program, generally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to continue to offer these financial incentives, including as amended, to LMMs appointed to the programs, because it benefits all market participants trading in the corresponding products during GTH. These incentive programs encourage the LMMs appointed to such programs to satisfy the applicable quoting standards, which may increase liquidity and provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade VIX/VIXW and SPX/SPXW options, as applicable, which can lead to increased volume, providing for robust markets. The Exchange ultimately offers the LMM Incentive Programs, as amended, to sufficiently incentivize LMMs appointed to each incentive program to provide key liquidity and active

markets in the corresponding program products during the corresponding trading sessions. The Exchange believes that these incentive programs, as amended, will continue to encourage increased quoting to add liquidity in each of the corresponding program products, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month to satisfy that heightened quoting standards (e.g., having to purchase additional logical connectivity).

In particular, the Exchange believes that the proposed increases to the rebates applicable to VIX and VIXW provided under the GTH VIX/VIXW LMM Incentive programs are reasonably designed to continue to incentivize an appointed LMM to meet the applicable quoting standards for VIX/VIXW options during GTH, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants. The Exchange further believes that the proposed rule change to amend the rebate amount received for VIX (\$20,000) and VIXW options (\$15,000) is reasonable because it is comparable to and within the range of the rebates offered by other LMM Incentive Programs. For example, the GTH SPX/SPXW LMM Programs currently offers \$15,000 for SPX and \$35,000 SPXW options in which the applicable quoting standards are met in a given month. The Exchange believes the proposed rebates applicable to the GTH VIX/VIXW LMM Incentive Programs are equitable and not unfairly discriminatory because they will continue to apply equally to any LMM that is appointed as an LMM to the GTH1 and GTH2 VIX/VIXW LMM Incentive Programs.

The Exchange believes that it is reasonable to slightly ease the quoting requirements under the GTH2 SPX/SPXW LMM Incentive Program by marginally widen

certain quote widths for SPX/SPXW options that expire in 7 days or less, wherein it becomes more difficult for LMMs to quote within specified widths, in order to better enable and encourage LMMs to satisfy the quoting standards to receive the current monthly rebate applicable to SPX and/or SPXW. As such, the Exchange believes the slightly wider quote widths are reasonably designed to facilitate LMMs appointed to the GTH2 SPX/SPXW LMM Incentive Program in meeting the heightened quoting standards (in order to receive the current rebate offered under the program) by increasing their quoting activity and posting tighter spreads and more aggressive quotes in SPX/SPXW options during GTH2. An increase in quoting activity and tighter quotes tends to signal additional corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that the proposed widths are reasonable because they remain generally aligned with the current heightened quoting standards in the program, as the proposed widths are only marginally larger than the current widths. The Exchange believes that the proposed increase in certain quote widths under the GTH2 SPX/SPXW LMM Incentive Program is equitable and not unfairly discriminatory because such quote widths will continue to apply equally to any and all TPHs with LMM appointments to the GTH2 SPX/SPXW LMM Incentive Program that seek to meet the program's heightened quoting standards in order to receive the current rebates offered under the program.

Additionally, the Exchange notes if an LMM appointed to the GTH VIX/VIXW LMM Incentive Programs or the GTH2 SPX/SPXW LMM Incentive Program does not satisfy the corresponding quoting standards for any given month, then it simply will not receive the rebate(s) offered by the respective program for that month.

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 changes in connection with surcharge fees will impose any burden on intramarket competition because each applies uniformly to all similarly situated TPHs in a uniform manner (i.e., to all non-Market-Maker electronic executions in SPXW and to all non-Customer executions in SPX/SPXW or MSCI options). Additionally, the access badge fee will apply uniformly to all other TPH employees in the same manner as it applies to all clerk badges today. The Exchange again notes that badge access is optional and other TPH employees may continue to be admitted to the trading floor if signed in by TPH personnel with badge access. Additionally, the proposed changes to existing GTH VIX/VIXW and SPX/SPXW LMM Incentive Programs will apply to all LMMs appointed to the applicable program classes (i.e., VIX/VIXW and SPX/SPXW) in a uniform manner. To the extent these LMMs appointed to an incentive program receive a benefit that other market participants do not, as stated, these LMMs in their role as Market-Makers on the Exchange have different obligations and are held to different standards. For example, Market-Makers play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that

other participants do not have. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month that it needs to satisfy that heightened quoting standards (e.g., having to purchase additional logical connectivity). The Exchange also notes that the incentive programs are designed to attract additional order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed amendments to the surcharges and the LMM Incentive Programs, apply only to Exchange proprietary products, which are traded exclusively on Cboe Options. Additionally, the Exchange notes that at least one other options exchange assesses a badge fee for employees of on-floor registrants.¹¹

Additionally, the Exchange notes that it operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 15% of the market share.¹² Therefore, no exchange possesses significant pricing power in the execution of option order flow.

¹¹ See BOX FEE Schedule, Section VIII C, Trading Floor Participant Fees, which assesses a \$100 badge fee for “all other registered on-floor persons employed by or associated with a Floor Market Maker or Floor Broker”.

¹² See Cboe Global Markets U.S. Options Market Volume Summary, Month-to-Date (December 17, 2021), available at https://www.cboe.com/us/options/market_statistics/.

Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹³ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁴ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁴ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and paragraph (f) of Rule 19b-4¹⁶ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2021-076 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

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-2021-076. 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-2021-076 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

¹⁷ 17 CFR 200.30-3(a)(12).

Secretary

Rate Table - All Products Excluding Underlying Symbol List A (34)			Transaction Fee Per Contract									
Capacity	Products	Capacity Code	Manual		Electronic		AIM Agency/Primary (19)	AIM Contra (18)	AIM Response (20)			
			Penny Classes	Non-Penny Classes	Penny Classes	Non-Penny Classes			Penny Classes	Non-Penny Classes		
Customer (2)(8)(9)	Equity Options	C	{CK} \$0.00				{CK} \$0.00					
	ETF and ETN Options		{CK} \$0.00	{CE} \$0.00 if adding liquidity {CA} \$0.18 if original order size is ≥100 contracts and removing liquidity {CD} \$0.00 if original order size is <100 contracts and removing liquidity								
	MRUT		{CQ} \$0.02									
	XSP		{CC} \$0.04 ≥10 contracts / {XC} \$0.00 <10 contracts									
	MXEA		{CM} \$0.25									{YB} \$0.07
	MXEF		{CN} \$0.25									
	All Other Index Products		{CB} \$0.18									
Sector Indexes (47)	F L	{CP} \$0.30				{YB} \$0.07	{NB} \$0.50	{NC} \$1.05				
MRUT		{FM} \$0.02										
XSP		{XF} \$0.06										
Equity, ETF, and ETN Options and All Other Index Products		{FA} \$0.20 - See Clearing Trading Permit Holder Fee Cap	{FB} \$0.43	{FC} \$0.70	{FD} \$0.20 - See Clearing Trading Permit Holder Fee Cap							
Sector Indexes (47)	{FI} \$0.25											
Facilitation (11)	{FF} \$0.00		{FI} \$0.25									
Cboe Options Market-Maker/DPM/LMM (10)	MRUT	M	{MM} \$0.03				{YB} \$0.07					
	XSP		{MX} \$0.045									
	Equity, ETF, and ETN Options, Sector Indexes (47) and All Other Index Products		{MB} \$0.35	{MA} \$0.23 - See Liquidity Provider Sliding Scale and Liquidity Provider Sliding Scale Adjustment Table								
Broker-Dealer (16)	MRUT	B N U J	{BM} \$0.04				{YB} \$0.07	{NB} \$0.50	{NC} \$1.05			
	XSP		{XB} \$0.08									
	Equity, ETF, and ETN Options and All Other Index Products		{BA} \$0.25 {WA} \$0.12 "U" Capacity Code Only	{BB} \$0.47	{BC} \$0.75	{BD} \$0.20						
Professional /Joint Back-Office	Sector Indexes (47)		{BE} \$0.40									
Complex Surcharge (35)	Equity, ETF, and ETN Options and All Other Index Products	F J L M B N U	\$0.12									
Surcharge Fee (14) Index License	MXEA and MXEF		\$0.12									
	DJX		\$0.10									
	[DJX, MXEA and MXEF and] Sector Indexes		[\$0.10 ()\$0.00 [for Sector Indexes] (47)(I)]									
	MRUT		\$0.02									
FLEX Surcharge Fee (17) - DJX, MRUT, MXEA, MXEF, NDX, NDXP and XSP Only		C F J L M B N U	\$0.10 (capped at \$250 per trade)									
Exotic Surcharge		C	\$0.25 (\$0.03 for XSP and MRUT Only)									

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				See Rates to Left		
	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) (32)		{CV} \$0.10	{CW} \$0.25	{CX} \$0.40	{CY} \$0.45			See Rates to Left
	VIX (complex orders) (32)		{CZ} \$0.05	{DA} \$0.17	{DB} \$0.30	{DC} \$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						
	VIX (45)		{MV} \$0.05	{MW} \$0.23		See Rates to Left			
Joint Back-Office	OEX, XEO and VIX	B N U J	{BR} \$0.40						
	SPX (incl SPXW) and SPESG (41)		{BT} \$0.42						
	RUT		{BS} \$0.25 Manual and AIM/ {BK} \$0.65 non-AIM Electronic						
Non-Trading Permit Holder Market Maker (16)(45) Professional (45)	RLG, RLV, RUI and UKXM		{WR} \$0.00						

Surcharge Fee (14) (Also applies to GTH)(37)	Index License (41)(12)	RUT	F J L M B N U	\$0.45
		SPX (incl SPXW) (41)(12)		\$0.1[7]8/ {5C} \$0.00
		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.)
FLEX Surcharge Fee (17)		RLG, RLV, RUI, and UKXM	C F J L M B N U	\$0.00
		Underlying Symbol List A (34) (except RLG, RLV, RUI, and UKXM)		\$0.10 (capped at \$250 per trade)
LEAPS Surcharge Fee	SPX		F J L M B N U	3 years to < 4 years to expiration - \$1.00 4 years to < 5 years to expiration - \$1.50 5 years to < 6 years to expiration - \$2.00 6+ years to expiration - \$2.50
				RLG, RLV, RUI, and UKXM
Exotic Surcharge (42)			C	\$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)		0.1[3]4	
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	
SPX AIM Hybrid Surcharge (26)	SPX (incl SPXW)	J M B N U	\$0.50	
		FL	\$0.39	
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	

Access Badges		Fee
Badge Type	Floor Manager (12)	\$130
	Clerks and other TPH Employees (12)	\$70

GTH1 VIX Heightened Quoting Standards						
Capacity	Capacity Code	Premium Level	VIX Value at Prior Close < 18			
			Expiring		Near Term	
			Less than 15 days		15 days to 60 days	
			Width	Size	Width	Size
No change.						

For VIX and VIXW if the appointed LMM provides continuous electronic quotes during Global Trading Hours from 7:15PM CST to 2:00AM CST ("GTH1") that meet or exceed the above basic quoting standards in at least 99% of each of the VIX and VIXW series, 90% of the time in a given month, the LMM will receive a rebate for that month in the amount of \$15]20,000 for VIX and \$10]5,000 for VIXW (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month. Additionally, if the appointed LMM provides continuous electronic quotes during Global Trading Hours that meet or exceed the above VIX heightened quoting standards in at least 99% of the VIX series, 90% of the time in a given month, the LMM will receive a rebate for that month of \$0.02 per VIX/VIXW contract executed in its Market-Maker capacity during Regular Trading Hours. The Exchange may consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM met the basic quoting standards and the heightened quoting standards each month, the Exchange will exclude from the calculation for each set of quoting standards the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of series that month.

GTH2 VIX/VIXW LMM Incentive Program

GTH2 VIXW Basic Quoting Standards						
Capacity	Capacity Code	Premium Level	VIX Value at Prior Close < 18			
			Less than 21 days to expiration		21 days or greater to expiration	
			Less than 15 days		15 days to 60 days	
			Width	Size	Width	Size
No change.						

GTH2 VIX Basic Quoting Standards										
Capacity	Capacity Code	Premium Level	VIX Value at Prior Close < 18							
			Expiring		Near Term		Mid Term		Long Term	
			Less than 15 days		15 days to 60 days		61 days to 180 days		181 days or Greater	
			Width	Size	Width	Size	Width	Size	Width	Size
			Width	Size	Width	Size	Width	Size	Width	Size
No change.										

Cboe Exchange, Inc.
Fees Schedule - [December] January 2, 2021[1] 2

GTH2 VIX Heightened Quoting Standards

Capacity	Capacity Code	Premium Level	VIX Value at Prior Close < 18			
			Expiring		Near Term	
			Less than 15 days		15 days to 60 days	
			Width	Size	Width	Size

No change.

For VIX and VIXW if the appointed LMM provides continuous electronic quotes during Global Trading Hours from 2:00AM CST to 8:15AM CST ("GTH2") that meet or exceed the above basic quoting standards in at least 99% of each of the VIX and VIXW series, 90% of the time in a given month, the LMM will receive a rebate for that month in the amount of \$[15]20,000 for VIX and \$1[0]5,000 for VIXW (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month. Additionally, if the appointed LMM provides continuous electronic quotes during Global Trading Hours that meet or exceed the above VIX heightened quoting standards in at least 99% of the VIX series, 90% of the time in a given month, the LMM will receive a rebate for that month of \$0.02 per VIX/VIXW contract executed in its Market-Maker capacity during Regular Trading Hours. The Exchange may consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM met the basic quoting standards and the heightened quoting standards each month, the Exchange will exclude from the calculation for each set of quoting standards the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of series that month.

GTH2 SPX/SPXW LMM Incentive Program

Capacity	Capacity Code	Premium Level	VIX Value at Prior Close < 20									
			Expiring		Near Term		Mid Term		Long Term			
			7 days or less		8 days to 60 days		61 days to 270 days		271 to 500 days			
			Width	Size	Width	Size	Width	Size	Width	Size		
LMM	M	\$0.00 - \$5.00	\$0.35	25	\$0.40	15	\$0.60	5	\$1.20	5		
		\$5.01 - \$15.00	\$0.60	20	\$0.60	20	\$1.50	10	\$2.00	5		
		\$15.01 - \$50.00	\$1.20	15	\$2.00	15	\$2.00	10	\$4.00	5		
		\$50.01 - \$100.00	\$6.00	10	\$4.00	10	\$3.00	10	\$5.00	5		
		\$100.01 - \$200.00	\$15.00	1	\$5.00	5	\$4.00	5	\$6.00	5		
		Greater than \$200.00	\$20.00	1	\$8.00	1	\$12.00	1	\$50.00	1		
		VIX Value at Prior Close from 20 - 30										
		\$0.00 - \$5.00	\$0.60	15	\$0.80	10	\$0.75	5	\$2.00	5		
		\$5.01 - \$15.00	\$1.00	15	\$1.00	15	\$2.20	5	\$3.00	5		
		\$15.01 - \$50.00	\$2.50	10	\$3.50	10	\$3.00	5	\$5.00	5		
		\$50.01 - \$100.00	\$10.00	10	\$7.00	10	\$3.50	5	\$7.00	5		
		\$100.01 - \$200.00	\$18.00	1	\$8.00	5	\$6.00	5	\$10.00	5		
		Greater than \$200.00	\$25.00	1	\$12.00	1	\$20.00	1	\$60.00	1		
		VIX Value at Prior Close > 30										
		\$0.00 - \$5.00	\$0.90	10	\$1.00	10	\$1.00	5	\$3.00	5		
		\$5.01 - \$15.00	\$2.50	10	\$2.50	10	\$3.00	5	\$4.00	5		
		\$15.01 - \$50.00	\$4.00	10	\$5.00	10	\$5.00	5	\$8.00	5		
		\$50.01 - \$100.00	\$12.00	5	\$10.00	5	\$4.50	3	\$10.00	1		
		\$100.01 - \$200.00	\$20.00	1	\$12.00	5	\$15.00	1	\$18.00	1		
		Greater than \$200.00	\$30.00	1	\$25.00	1	\$30.00	1	\$70.00	1		

For SPX and SPXW if the appointed LMM provides continuous electronic quotes during Global Trading Hours from 2:00AM CST to 8:15AM CST ("GTH2") that meet or exceed the above heightened quoting standards in at least 85% of each of the SPX and SPXW series 90% of the time in a given month, the LMM will receive a rebate for that month in the amount of \$15,000 for SPX and \$35,000 for SPXW (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month. The Exchange may consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM met the heightened quoting standard each month, the Exchange will exclude from the calculation in that month the business day in which the LMM missed meeting or exceeding the heightened quoting standard in the highest number of series.
