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

File No. * SR 2022 - * 004

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) *

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Section 19(b)(3)(A) *

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Section 19(b)(3)(B) *

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Pilot

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Extension of Time Period for
Commission Action *

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Date Expires *

Rule

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19b-4(f)(1)

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19b-4(f)(4)

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19b-4(f)(2)

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19b-4(f)(5)

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19b-4(f)(3)

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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

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Description

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

The Exchange proposes to amend its Fees Schedule.

Contact Information

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

First Name *

Rebecca

Last Name *

Tenuta

Title *

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

Date

02/01/2022

(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: 2022.02.01
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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 EDFS website.

Form 19b-4 Information *

Add Remove View

22-004 (Cboe Fees - February 2022) *

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

22-004 (Cboe Fees - February 2022) *

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

Add Remove View

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

Add Remove View

22-004 (Cboe Fees - February 2022) E

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 January 31, 2022.

(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 update the Index License Surcharge fee for transactions in Dow Jones Industrial Average Index (“DJX”) options and to make certain clarifying and corrective changes in the Fees Schedule, effective February 1, 2022.

The Exchange proposes to increase the Index License Surcharge fee currently applicable to orders executed in DJX options in Rate Table – Underlying Symbol List A. The Exchange currently assesses an Index License Surcharge fee of \$0.10 per contract for non-Customer orders executed in DJX options. The proposed rule change increases the Index License Surcharge fee applicable to orders executed in DJX options from \$0.10 per

contract to \$0.12 per contract. The Exchange notes that the Index License Surcharge fee in place for DJX options is designed to recoup some of the costs associated with the licenses for this index.¹ The Exchange has recently renewed its license arrangements for its DJX index license and, as a result, the proposed rule change amends the Index License Surcharge fee for DJX options in order to continue to offset some of the costs associated with the license for the index in light of the renewal of the license.

The proposed rule change also makes certain clarifying and corrective changes to the Fees Schedule. The proposed rule change removes language in the Floor Broker Trading Surcharge table related to the requirement that a Floor Broker Trading Permit Holder submit the SPX Tier Appointment Fee Exclusion for Multi-Class Broad-Based Index Spread Transactions Form within three business days of execution of the applicable spread transaction(s) in order to receive the SPX Surcharge waiver for Floor Broker Trading Permit Holders who only execute SPX (including SPXW) options transactions as part of multi-class broad-based index spread transactions. Manual submission of such form by Floor Broker Trading Permit Holders is no longer necessary as the Exchange has automated the process for documenting such transactions for Floor Broker Trading Permit Holders.

The proposed rule change makes a clarifying change regarding Market-Maker Floor Permit Holders that execute contracts in SPX/SPXW in the Market-Maker Tier Appointment Fees table. Specifically, the proposed rule change adds that the SPX Surcharge will not be assessed to a Market-Maker Floor Permit Holder who only executes

¹ See Securities Exchange Release No. 52851 (November 29, 2005), 70 FR 72480 (December 5, 2005) (SR-CBOE-2005-84).

SPX (including SPXW) options transactions as part of multi-class broad-based index spread transactions. In 2019, the Exchange restructured its Fees Schedule in connection with a technology migration. The SPX Surcharge waiver provision in connection with Market-Maker Floor Permit Holders existed in the Fees Schedule prior to its 2019 restructuring; however, the Exchange inadvertently did not include this waiver provision in the restructured Fees Schedule. The Exchange notes that the same waiver provision related to Floor Broker Trading Permit Holders (as described above) was correctly carried over into the restructured Fees Schedule upon the technology migration. As such, the proposed rule change corrects this inadvertent omission and clarifies that the waiver continues to apply to Market-Maker Floor Permit Holders today.

The proposed rule change lastly amends footnote 5, which is appended to the Floor Brokerage Fees table. Currently, footnote 5 provides that floor brokerage fees are charged to the executing broker. To be eligible for the discounted “crossed” rate, the executing broker acronym and executing firm number must be the same on both the buy and sell side of an order. The Exchange proposes to update footnote 5 to provide that in order to be eligible for the crossed rate, both the executing broker acronym and Executing Firm ID (“EFID”) must be the same on both the buy and sell side of an order. Particularly, upon the 2019 technology migration, the Exchange adopted (and codified in its Rulebook) EFIDs, which the System uses to identify the TPH and the clearing number for the execution of orders and quotes submitted to the System with that EFID. Indeed, since the 2019 technology migration, the Exchange’s billing system looks for the same executing broker acronym and EFID to be on both the buy and sell side of an order, in determining whether an order qualifies for the

“crossed” rate. Accordingly, the proposed rule change now updates the reference to “executing firm number” in footnote 5 to reflect “EFID”.

(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.² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³ 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,⁴ 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 that it is reasonable to increase the amount of the Index License Surcharge fee for orders in DJX options as the proposed increase is consistent with the purpose of such surcharge fee—it is intended to continue to help recoup some of the

² 15 U.S.C. 78f(b).

³ 15 U.S.C. 78f(b)(5).

⁴ 15 U.S.C. 78f(b)(4).

costs associated with the license for DJX index products in light of recently renewed license arrangements between the Exchange and the DJX index provider. The proposed Index License Surcharge fee is also equitable and not unfairly discriminatory because the surcharge fee will continue to be assessed uniformly for all non-Customer orders in DJX options.

The Exchange believes the proposed rule changes (1) to remove language related to the requirement that a Floor Broker Trading Permit Holder manually submit the SPX Tier Appointment Fee Exclusion for Multi-Class Broad-Based Index Spread Transactions Form (as the process is now automated), (2) to correct an inadvertent omission regarding the SPX Surcharge waiver for Market-Maker Floor Permit Holders that execute multi-class broad-based index spread transactions in SPX/SPXW and (3) to reflect an Exchange-defined term in footnote 5, are reasonable, equitable and not unfairly discriminatory because they do not change any of the fees or rebates assessed by the Exchange, but rather are clarifying changes intended to more accurately reflect the Exchange's current billing processes, thereby increasing transparency in the Fees Schedule and alleviating any potential investor confusion.

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

The Exchange does not believe that the proposed rule changes will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change in connection with the DJX Index License Surcharge fee will impose any burden on intramarket competition because it applies uniformly to all similarly situated TPHs in a uniform manner (i.e., to all non-Customer executions in DJX options). The

Exchange does not believe that the proposed change in connection with the DJX Index License Surcharge fee will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed amendment to the DJX Index License Surcharge fee applies only to an Exchange proprietary product, which is traded exclusively on Cboe Options and Cboe-affiliated options exchanges. In addition to this, the Exchange does not believe that the proposed rule changes to remove language related to an obsolete requirement, to correct an inadvertent omission, and to reflect a defined term will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes merely provide clarifications in the Fees Schedule that are designed to more accurately reflect current billing processes, thereby increasing transparency in the Fees Schedule and reducing potential confusion without having any impact on competition.

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.⁵ 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.

⁵ See Cboe Global Markets U.S. Options Market Volume Summary, Month-to-Date (January 26, 2022), available at https://www.cboe.com/us/options/market_statistics/.

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.”⁶ 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’. . . .”⁷ 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.

⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

⁷ *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)).

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 Act⁸ and Rule 19b-4(f)(2)⁹ 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.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

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-2022-004]

[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 update the Index License Surcharge fee for transactions in Dow Jones Industrial Average Index ("DJX") options and to make certain clarifying and corrective changes in the Fees Schedule, effective February 1, 2022.

The Exchange proposes to increase the Index License Surcharge fee currently applicable to orders executed in DJX options in Rate Table – Underlying Symbol List A. The Exchange currently assesses an Index License Surcharge fee of \$0.10 per contract for non-Customer orders executed in DJX options. The proposed rule change increases the Index License Surcharge fee applicable to orders executed in DJX options from \$0.10 per contract to \$0.12 per contract. The Exchange notes that the Index License Surcharge fee in place for DJX options is designed to recoup some of the costs associated with the licenses for this index.³ The Exchange has recently renewed its license arrangements for its DJX index license and, as a result, the proposed rule change amends the Index License Surcharge fee for DJX options in order to continue to offset some of the costs associated with the license for the index in light of the renewal of the license.

³ See Securities Exchange Release No. 52851 (November 29, 2005), 70 FR 72480 (December 5, 2005) (SR-CBOE-2005-84).

The proposed rule change also makes certain clarifying and corrective changes to the Fees Schedule. The proposed rule change removes language in the Floor Broker Trading Surcharge table related to the requirement that a Floor Broker Trading Permit Holder submit the SPX Tier Appointment Fee Exclusion for Multi-Class Broad-Based Index Spread Transactions Form within three business days of execution of the applicable spread transaction(s) in order to receive the SPX Surcharge waiver for Floor Broker Trading Permit Holders who only execute SPX (including SPXW) options transactions as part of multi-class broad-based index spread transactions. Manual submission of such form by Floor Broker Trading Permit Holders is no longer necessary as the Exchange has automated the process for documenting such transactions for Floor Broker Trading Permit Holders.

The proposed rule change makes a clarifying change regarding Market-Maker Floor Permit Holders that execute contracts in SPX/SPXW in the Market-Maker Tier Appointment Fees table. Specifically, the proposed rule change adds that the SPX Surcharge will not be assessed to a Market-Maker Floor Permit Holder who only executes SPX (including SPXW) options transactions as part of multi-class broad-based index spread transactions. In 2019, the Exchange restructured its Fees Schedule in connection with a technology migration. The SPX Surcharge waiver provision in connection with Market-Maker Floor Permit Holders existed in the Fees Schedule prior to its 2019 restructuring; however, the Exchange inadvertently did not include this waiver provision in the restructured Fees Schedule. The Exchange notes that the same waiver provision related to Floor Broker Trading Permit Holders (as described above) was correctly carried over into the restructured Fees Schedule upon the technology migration.

As such, the proposed rule change corrects this inadvertent omission and clarifies that the waiver continues to apply to Market-Maker Floor Permit Holders today.

The proposed rule change lastly amends footnote 5, which is appended to the Floor Brokerage Fees table. Currently, footnote 5 provides that floor brokerage fees are charged to the executing broker. To be eligible for the discounted “crossed” rate, the executing broker acronym and executing firm number must be the same on both the buy and sell side of an order. The Exchange proposes to update footnote 5 to provide that in order to be eligible for the crossed rate, both the executing broker acronym and Executing Firm ID (“EFID”) must be the same on both the buy and sell side of an order. Particularly, upon the 2019 technology migration, the Exchange adopted (and codified in its Rulebook) EFIDs, which the System uses to identify the TPH and the clearing number for the execution of orders and quotes submitted to the System with that EFID. Indeed, since the 2019 technology migration, the Exchange’s billing system looks for the same executing broker acronym and EFID to be on both the buy and sell side of an order, in determining whether an order qualifies for the “crossed” rate. Accordingly, the proposed rule change now updates the reference to “executing firm number” in footnote 5 to reflect “EFID”.

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.⁴ Specifically, the Exchange believes the proposed rule change is consistent with the

⁴ 15 U.S.C. 78f(b).

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 that it is reasonable to increase the amount of the Index License Surcharge fee for orders in DJX options as the proposed increase is consistent with the purpose of such surcharge fee—it is intended to continue to help recoup some of the costs associated with the license for DJX index products in light of recently renewed license arrangements between the Exchange and the DJX index provider. The proposed Index License Surcharge fee is also equitable and not unfairly discriminatory because the surcharge fee will continue to be assessed uniformly for all non-Customer orders in DJX options.

The Exchange believes the proposed rule changes (1) to remove language related to the requirement that a Floor Broker Trading Permit Holder manually submit the SPX Tier Appointment Fee Exclusion for Multi-Class Broad-Based Index Spread Transactions Form (as the process is now automated), (2) to correct an inadvertent omission regarding

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(4).

the SPX Surcharge waiver for Market-Maker Floor Permit Holders that execute multi-class broad-based index spread transactions in SPX/SPXW and (3) to reflect an Exchange-defined term in footnote 5, are reasonable, equitable and not unfairly discriminatory because they do not change any of the fees or rebates assessed by the Exchange, but rather are clarifying changes intended to more accurately reflect the Exchange's current billing processes, thereby increasing transparency in the Fees Schedule and alleviating any potential investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change in connection with the DJX Index License Surcharge fee will impose any burden on intramarket competition because it applies uniformly to all similarly situated TPHs in a uniform manner (i.e., to all non-Customer executions in DJX options). The Exchange does not believe that the proposed change in connection with the DJX Index License Surcharge fee will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed amendment to the DJX Index License Surcharge fee applies only to an Exchange proprietary product, which is traded exclusively on Cboe Options and Cboe-affiliated options exchanges. In addition to this, the Exchange does not believe that the proposed rule changes to remove language related to an obsolete requirement, to correct an inadvertent omission, and to reflect a defined term will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes merely provide clarifications in

the Fees Schedule that are designed to more accurately reflect current billing processes, thereby increasing transparency in the Fees Schedule and reducing potential confusion without having any impact on competition.

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.⁷ 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.”⁸ 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

⁷ See Cboe Global Markets U.S. Options Market Volume Summary, Month-to-Date (January 26, 2022), available at https://www.cboe.com/us/options/market_statistics/.

⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

‘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’. . . .”⁹ 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.

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 Act¹⁰ and paragraph (f) of Rule 19b-4¹¹ 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

⁹ 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)).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f).

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-2022-004 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-2022-004. 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-2022-004 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.¹²

Secretary

¹² 17 CFR 200.30-3(a)(12).

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)										
Clearing Trading Permit Holder Proprietary (11)(16)	MRUT	F L	{CP} \$0.30						{NB} \$0.50 {NC} \$1.05		
	XSP		{FM} \$0.02								
	Equity, ETF, and ETN Options and All Other Index Products		{XF} \$0.06								
	Sector Indexes (47)		{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								
	Facilitation (11)		{FI} \$0.25								
Cboe Options Market-Maker/DPM/LMM (10)	MRUT	M	{FF} \$0.00		{FI} \$0.25				{YB} \$0.07		
	XSP		{MM} \$0.03								
	Equity, ETF, and ETN Options, Sector Indexes (47) and All Other Index Products		{MX} \$0.045								
			{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						{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		0.1[0]2								
	Sector Indexes		\$0.00 (47)								
	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)								

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Market-Maker Tier Appointment Fees (41)(12)			
Symbol	Criteria	Monthly Fees (per unit)	Notes
SPX	MM Floor Permit executes any contracts in SPX/SPXW (24)	\$3,000 per MM Floor Permit	The SPX Surcharge will not be assessed to a Market-Maker Floor Permit Holder who only executes SPX (including SPXW) options transactions as part of multi-class broad-based index spread transactions.
	Market-Maker EAP executes at least 1,000 contracts in SPX/SPXW	\$3,000 per TPH	The Market-Maker EAP SPX Tier Appointment fee will be assessed to any Market-Maker EAP that executes at least 1,000 contracts in SPX/SPXW, excluding contracts executed during opening rotation on the final settlement date of VIX options and futures which have the expiration that is used in the VIX settlement calculation.
VIX	MM Floor Permit executes at least 1,000 contracts in VIX	\$2,000 per MM Floor Permit	
	Market-Maker EAP executes at least 1,000 contracts in VIX	\$2,000 per TPH	
RUT	MM Floor Permit executes at least 1,000 contracts in RUT	\$1,000 per MM Floor Permit	
	Market-Maker EAP executes at least 1,000 contracts in RUT	\$1,000 per TPH	
Floor Broker Trading Surcharge (41)			
Symbol	Criteria	Monthly Fees (per unit)	Notes
SPX	FB Trading Permit Holder executes >20,000 contracts in SPX/SPXW	\$3,000 per TPH	If and to the extent that a Trading Permit Holder or TPH organization has more than one Floor Broker Trading Permit that is utilized to execute SPX options transactions, the SPX executions of that Trading Permit Holder or TPH organization shall be aggregated for purposes of determining this additional monthly fee and the Trading Permit Holder or TPH organization shall be charged a single \$3,000 fee for the combined SPX executions through those Floor Broker Trading permits if the executions exceed 20,000 contracts per month. The SPX Surcharge will not be assessed to a Floor Broker Trading Permit Holder who (i) only executes SPX (including SPXW) options transactions as part of multi-class broad-based index spread transactions[, and (ii) submits the SPX Tier Appointment Fee Exclusion for Multi-Class Broad-Based Index Spread Transactions Form within three business days of execution of the applicable spread transaction(s)].
VIX	FB Trading Permit Holder executes >20,000 contracts in VIX	\$2,000 per TPH	If and to the extent that a Trading Permit Holder or TPH organization has more than one Floor Broker Trading Permit that is utilized to execute VIX options transactions, the VIX executions of that Trading Permit Holder or TPH organization shall be aggregated for purposes of determining this additional monthly fee and the Trading Permit Holder or TPH organization shall be charged a single \$2,000 fee for the combined VIX executions through those Floor Broker Trading Permits if the executions exceed 20,000 contracts per month.

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Footnotes:	
Footnote Number	Description
1 - 4	No change.
5	Floor brokerage fees are charged to the executing broker. To be eligible for the discounted “crossed” rate, the executing broker acronym and [executing firm number]EFID must be the same on both the buy and sell side of an order.
6 - 50	No change.