

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28

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

File No. * SR 2022 - * 048

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"/> |
|---|--------------------------------------|-------------------------------------|---|---|--|

| | | | | | |
|--------------------------------|---|-------------------------------------|---|--------------------------------------|--|
| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> | Rule | | |
| | | | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| | | | <input checked="" type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) | |
| | | | <input type="checkbox"/> 19b-4(f)(3) | <input type="checkbox"/> 19b-4(f)(6) | |

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
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 update 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 * Corinne Last Name * Klott

Title * Assistant General Counsel

E-mail * cklott@cboe.com

Telephone * (312) 786-7793 Fax

Signature

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

Date 09/20/2022 (Title *)

By Laura G. Dickman VP, Associate General Counsel
(Name *)

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: 2022.09.20
15:16:30 -05'00'

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 EDFS website.

Form 19b-4 Information *

Add Remove View

22-048 (VIX Fees - Sept 2022) 19b4 (

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

22-048 (VIX Fees - Sept 2022) Exhibi

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 *

Add Remove View

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

Add Remove View

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

Add Remove View

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

22-048 (VIX Fees - Sept 2022) Exhibit

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.

1. Text of the Proposed Rule Change

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on September 12, 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 Corinne Klott (312) 786-7793, Cboe Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

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 modify fees for certain Customer and Market-Maker orders executed in Cboe Volatility Index (“VIX”) options.¹

The Exchange first proposes to reduce fees for certain complex Customer VIX transactions. By way of background, an “Index Combo” is a complex order to purchase or sell one or more index option series and the offsetting number of Index Combinations defined by the delta.² An “Index Combination” is a purchase (sale) of an index option call

¹ The Exchange initially filed the proposed fee changes on September 12, 2022 (SR-CBOE-2022-045). On September 20, 2022, the Exchange withdrew that filing and submitted this filing.

² See Cboe Options Rule 5.33, “Index Combo”.

and sale (purchase) of an index option put with the same underlying index, expiration date and strike price.³ Index Combinations can trade on their own or as part of a tied combo strategy (such as part of an Index Combo), where similar to a tied-to-stock option, an option contract is bought or sold in the same package as the two legs making up the Index Combination as the synthetic underlying position as a hedge. Currently, Customer complex orders, including Index Combo orders, in VIX options are assessed the following fees: \$0.05 per contract when the premium price is between \$0.00 and \$0.10; \$0.17 per contract when the premium price is between \$0.11 and \$0.99; \$0.30 per contract when the premium price is between \$1.00-\$1.99; and \$0.45 per contract when the premium price is equal or greater than \$2.00, which orders yield fee codes CZ, DA, DB and DC, respectively.⁴ The Exchange proposes to waive transaction fees for the Index Combination component (legs) of Customer Index Combo orders in VIX. The Index Combination legs will yield proposed new fee code “CI”, and any remaining legs will continue to yield the applicable standard Customer complex order fee codes for VIX transactions as set forth in the Fees Schedule. The Exchange proposes to adopt new Footnote 43 (which is currently Reserved), to describe the fee waiver. The Exchange proposes to waive fees for Customer Index Combinations to encourage the submission of Index Combo orders which provide customers with a means to reduce or hedge the risk associated with price movements in the underlying index.

³ See Cboe Options Rule 5.33(b)(5) (subparagraph (1) of definition of “Index Combo”).

⁴ Transaction fees for all Customer orders executed in VIX during GTH are currently waived through December 31, 2022. See Cboe Options Fees Schedule, Footnote 32.

The Exchange next proposes to reduce fees for certain Market-Maker orders in VIX options that execute against qualifying complex orders. Currently, Market-Maker orders in VIX options are assessed \$0.05 per contract when the premium price is between \$0.00 and \$0.99 (which orders yield fee code MV) and \$0.23 per contract when the premium price is equal to or above \$1.00 (which orders yield fee code MW). The Exchange proposes to reduce the transaction fee for certain Market-Maker VIX orders when the premium is equal to or above \$1.00 from \$0.23 to \$0.05 per contract. Particularly, the Exchange proposes to assess \$0.05 per contract for Market-Maker VIX orders where the order (i) is executed by the Market-Maker in open outcry, (ii) against a complex order that has 3 or more legs, and (iii) the total executed order quantity of the contra order is greater than or equal to 5,000 contracts.⁵ A Market-Maker must be representing themselves on the trading floor in order to qualify for the reduced fee. Solicited orders where the Market-Maker is represented by a Floor Broker are not eligible. In connection with this change the Exchange proposes to adopt new fee code “MI” which will apply to such transactions⁶ and proposes to describe the proposed criteria in new Footnote 43. The Exchange believes the proposed reduced fee will encourage Market-Makers to participate in additional open-outcry orders in VIX and in particular to quote tighter spreads with greater size.

⁵ The 5,000 contracts may be summed across multiple legs of the contra order. As an example, if a contra complex order has 4 legs, and each execute for 1,250 contracts against 4 different Floor Market-Makers, each Market-Maker will be assessed \$0.05 per contract for their respective order of 1,250 contracts.

⁶ The Exchange notes that fee code “MI” will also apply to qualifying transactions where the VIX Premium is less than \$1.00 (which currently yield Fee Code MV), because the proposed rate (i.e., \$0.05) is the same as the rate currently assessed to all Market-Maker VIX orders where the premium is less than \$1.00.

The Exchange notes that currently, any post-trade edits to floor trades that change the symbol, price, size, or floor trader on any leg of the trade will result in single leg fee codes being assigned by the billing system to each leg of the trade. Additionally, the Exchange notes that orders which contain more than the maximum number of legs supported by the Cboe System (currently 16) must be submitted as multiple orders. In some instances the submitted child orders on their own may not appear to the System as qualifying for fee code CI or MI, as applicable, and therefore instead would receive the standard applicable fee code notwithstanding otherwise qualifying for the fee waiver or reduced fee as part of the original order. For example, if the contra order on a child order executes at a quantity less than 5,000 contracts, the System would not recognize that order as qualifying for the reduced fee and the Market-Maker order trading against it would not receive fee code MI (nor the corresponding reduced fee). Accordingly, the Exchange proposes to also clarify in Footnote 43 that supporting documentation (e.g., documentation that includes the original trade detail) must be submitted to the Exchange within 3 business days of the transaction in order to receive the proposed fee waiver or reduced fee on qualifying orders for which (i) a post-trade edit to an order executed in open outcry was made that changed the symbol, price, size, and/or floor trader acronym on any leg of the transaction; and/or (ii) the original order contained more than the maximum number of legs supported by the Cboe System and was consequently submitted as multiple orders, where the applicable child order by itself does not meet the qualifications for the fee waiver or reduced fee. The proposal ensures TPHs have the means to receive the proposed fee waiver or reduced fee notwithstanding certain System limitations that may impact billing.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4),⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)⁹ 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change to waive transaction fees for the Index Combination legs of a Customer Index Combo order executed in VIX options is reasonable, equitable and not unfairly discriminatory as Customers would not be subject to fees for contracts that are executed as part of an Index Combination and the proposed change would apply to all Customers uniformly. The Exchange believes the proposal is reasonably designed to encourage Customer order flow in VIX options. The Exchange wishes to promote the growth of VIX and believes that incentivizing increased Customer

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

Index Combo order flow in VIX options would attract additional liquidity to the Exchange. The Exchange believes increased Customer order flow facilitates increased trading opportunities and attracts Market-Maker activity, which facilitates tighter spreads and may ultimately signal an additional corresponding increase in order flow from other market participants, contributing overall towards a robust and well-balanced market ecosystem. The Exchange notes that it similarly waives fees for other types of Customer orders in the Fees Schedule.¹⁰

Further, the Exchange believes that it is equitable and not unfairly discriminatory to waive fees for certain Customer complex orders because, as described above, Customer liquidity benefits all market participants by providing more execution opportunities, in turn, attracting Market Maker order flow, which ultimately enhances market quality on the Exchange to the benefit of all market participants. Additionally, the Exchange believes the proposed change is in line with other fee programs that are designed to incentivize the sending of complex orders, including Index Combo orders, to the Exchange. For example, the Exchange provides higher rebates under the Volume Incentive Program for complex orders as compared to simple orders.¹¹ The Exchange also assesses lower fees for complex Customer orders in VIX as compared to simple orders in VIX.¹²

¹⁰ See Cboe Options Fees Schedule, footnote 8, which waives the transaction fee for customer orders in ETF and ETN options executed in open outcry or in AIM or as a QCC or as a FLEX Options transaction, and footnote 9, which waives transaction fees for customer orders that provide or remove liquidity that are 99 contracts or less in ETF and ETN options.

¹¹ See Cboe Options Fees Schedule, Volume Incentive Program.

¹² See Cboe Options Fees Schedule, Rate Table – Underlying Symbol List A.

The Exchange next believes the proposed change to reduce certain VIX transaction fees for Market-Makers is reasonable as Market-Makers will be paying lower fees for such transactions. The Exchange notes the proposed changes are designed to encourage the sending of additional large complex VIX orders in open-outcry. Indeed, the Exchange believes the proposed reduced fee will encourage Market-Makers to participate in additional open-outcry orders in VIX and in particular quote tighter spreads with greater size, which may signal additional corresponding increase in order flow from other market participants, ultimately incentivizing more overall order flow and improving liquidity levels and price transparency on the Exchange to the benefit of all market participants.

The Exchange believes the proposed fee change is equitable and not unfairly discriminatory because it applies to all Market-Makers uniformly. The Exchange believes that it is equitable and not unfairly discriminatory to propose lower transaction rates for Market-Makers because the Exchange recognizes that these market participants can provide key and distinct sources of liquidity. Additionally, as noted above, an increase in general market-making activity may provide more trading opportunities, in turn, signaling additional corresponding increase in order flow from other market participants, and, as a result, contributing towards a robust, well-balanced market ecosystem. The Exchange notes too that Market-Makers take on a number of obligations that other market participants do not have. For example, unlike other market participants, Market-Makers take on quoting obligations and other market making requirements.

The Exchange also believes the proposed rule change is equitable and not unfairly discriminatory because, as proposed, the proposed fee reduction applies to all qualifying VIX orders executed by Market-Makers on the trading floor equally and because the

Exchange believes that facilitating VIX orders submitted by Market-Makers via open outcry encourages and supports increased liquidity and execution opportunities in open outcry, which functions as an important price-improvement mechanism for customers. Indeed, the Exchange notes that all market participants stand to benefit from any increase in volume transacted on the trading floor, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

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

The Exchange believes the proposed amendments to its Fee Schedule will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fee changes for Customers and Market-Makers will be assessed automatically and uniformly to each similarly situated market participant (i.e., all qualifying Customer VIX transactions will receive the proposed fee waiver and all qualifying Market-Maker VIX transactions will be assessed the proposed reduced fee amount). The Exchange notes that there is a history in the options markets of providing preferential treatment to Customers and Market-Makers. Also, as discussed in the statutory basis, the Exchange believes Customer order flow may facilitate increased trading opportunities and attract Market-Maker activity, which can contribute towards a robust and well-balanced market ecosystem. Market-Makers provide key and distinct sources of liquidity, and an increase in general market-making activity may facilitate tighter spreads, which tends to signal additional corresponding increases in order flow from

other market participants, ultimately incentivizing more overall order flow and improving liquidity levels and price transparency on the Exchange to the benefit of all market participants. Further as discussed, Market-Makers take on a number of obligations that other market participants do not, such as quoting obligations and other market-making requirements. The Exchange also notes that the proposed fee changes are designed to attract additional VIX 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 change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes apply only to a product exclusively listed on the Exchange. Additionally, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on (which list products that compete with VIX options) 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 17% of the market share of executed volume of options trades.¹³ Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products,

¹³ See Cboe Global Markets, U.S. Options Market Volume Summary by Month (September 7, 2022), available at http://markets.cboe.com/us/options/market_share/.

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.”¹⁴ 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’....”¹⁵ Accordingly, the Exchange does not believe its proposed changes to the incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁵ *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)).

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁶ and Rule 19b-4(f)(2) thereunder,¹⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-Members, which renders the proposed rule change effective upon filing.

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.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

Exhibit 5: Text of Proposed Rule Change.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CBOE-2022-048]

[Insert date]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Update 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 update 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its Fees Schedule to modify fees for certain Customer and Market-Maker orders executed in Cboe Volatility Index (“VIX”) options.³

The Exchange first proposes to reduce fees for certain complex Customer VIX transactions. By way of background, an “Index Combo” is a complex order to purchase or sell one or more index option series and the offsetting number of Index Combinations defined by the delta.⁴ An “Index Combination” is a purchase (sale) of an index option call and sale (purchase) of an index option put with the same underlying index, expiration date and strike price.⁵ Index Combinations can trade on their own or as part of a tied combo strategy (such as part of an Index Combo), where similar to a tied-to-stock option, an option

³ The Exchange initially filed the proposed fee changes on September 12, 2022 (SR-CBOE-2022-045). On September 20, 2022, the Exchange withdrew that filing and submitted this filing.

⁴ See Cboe Options Rule 5.33, “Index Combo”.

⁵ See Cboe Options Rule 5.33(b)(5) (subparagraph (1) of definition of “Index Combo”).

contact is bought or sold in the same package as the two legs making up the Index Combination as the synthetic underlying position as a hedge. Currently, Customer complex orders, including Index Combo orders, in VIX options are assessed the following fees: \$0.05 per contract when the premium price is between \$0.00 and \$0.10; \$0.17 per contract when the premium price is between \$0.11 and \$0.99; \$0.30 per contract when the premium price is between \$1.00-\$1.99; and \$0.45 per contract when the premium price is equal or greater than \$2.00, which orders yield fee codes CZ, DA, DB and DC, respectively.⁶ The Exchange proposes to waive transaction fees for the Index Combination component (legs) of Customer Index Combo orders in VIX. The Index Combination legs will yield proposed new fee code “CI”, and any remaining legs will continue to yield the applicable standard Customer complex order fee codes for VIX transactions as set forth in the Fees Schedule. The Exchange proposes to adopt new Footnote 43 (which is currently Reserved), to describe the fee waiver. The Exchange proposes to waive fees for Customer Index Combinations to encourage the submission of Index Combo orders which provide customers with a means to reduce or hedge the risk associated with price movements in the underlying index.

The Exchange next proposes to reduce fees for certain Market-Maker orders in VIX options that execute against qualifying complex orders. Currently, Market-Maker orders in VIX options are assessed \$0.05 per contract when the premium price is between \$0.00 and \$0.99 (which orders yield fee code MV) and \$0.23 per contract when the premium price is

⁶ Transaction fees for all Customer orders executed in VIX during GTH are currently waived through December 31, 2022. See Cboe Options Fees Schedule, Footnote 32.

equal to or above \$1.00 (which orders yield fee code MW). The Exchange proposes to reduce the transaction fee for certain Market-Maker VIX orders when the premium is equal to or above \$1.00 from \$0.23 to \$0.05 per contract. Particularly, the Exchange proposes to assess \$0.05 per contract for Market-Maker VIX orders where the order (i) is executed by the Market-Maker in open outcry, (ii) against a complex order that has 3 or more legs, and (iii) the total executed order quantity of the contra order is greater than or equal to 5,000 contracts.⁷ A Market-Maker must be representing themselves on the trading floor in order to qualify for the reduced fee. Solicited orders where the Market-Maker is represented by a Floor Broker are not eligible. In connection with this change the Exchange proposes to adopt new fee code “MI” which will apply to such transactions⁸ and proposes to describe the proposed criteria in new Footnote 43. The Exchange believes the proposed reduced fee will encourage Market-Makers to participate in additional open-outcry orders in VIX and in particular to quote tighter spreads with greater size.

The Exchange notes that currently, any post-trade edits to floor trades that change the symbol, price, size, or floor trader on any leg of the trade will result in single leg fee codes being assigned by the billing system to each leg of the trade. Additionally, the Exchange notes that orders which contain more than the maximum number of legs supported by the Cboe System (currently 16) must be submitted as multiple orders. In some

⁷ The 5,000 contracts may be summed across multiple legs of the contra order. As an example, if a contra complex order has 4 legs, and each execute for 1,250 contracts against 4 different Floor Market-Makers, each Market-Maker will be assessed \$0.05 per contract for their respective order of 1,250 contracts.

⁸ The Exchange notes that fee code “MI” will also apply to qualifying transactions where the VIX Premium is less than \$1.00 (which currently yield Fee Code MV), because the proposed rate (i.e., \$0.05) is the same as the rate currently assessed to all Market-Maker VIX orders where the premium is less than \$1.00.

instances the submitted child orders on their own may not appear to the System as qualifying for fee code CI or MI, as applicable, and therefore instead would receive the standard applicable fee code notwithstanding otherwise qualifying for the fee waiver or reduced fee as part of the original order. For example, if the contra order on a child order executes at a quantity less than 5,000 contracts, the System would not recognize that order as qualifying for the reduced fee and the Market-Maker order trading against it would not receive fee code MI (nor the corresponding reduced fee). Accordingly, the Exchange proposes to also clarify in Footnote 43 that supporting documentation (e.g., documentation that includes the original trade detail) must be submitted to the Exchange within 3 business days of the transaction in order to receive the proposed fee waiver or reduced fee on qualifying orders for which (i) a post-trade edit to an order executed in open outcry was made that changed the symbol, price, size, and/or floor trader acronym on any leg of the transaction; and/or (ii) the original order contained more than the maximum number of legs supported by the Cboe System and was consequently submitted as multiple orders, where the applicable child order by itself does not meet the qualifications for the fee waiver or reduced fee. The proposal ensures TPHs have the means to receive the proposed fee waiver or reduced fee notwithstanding certain System limitations that may impact billing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4),¹⁰ in particular, as it is designed to provide for the equitable allocation of reasonable

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)¹¹ 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change to waive transaction fees for the Index Combination legs of a Customer Index Combo order executed in VIX options is reasonable, equitable and not unfairly discriminatory as Customers would not be subject to fees for contracts that are executed as part of an Index Combination and the proposed change would apply to all Customers uniformly. The Exchange believes the proposal is reasonably designed to encourage Customer order flow in VIX options. The Exchange wishes to promote the growth of VIX and believes that incentivizing increased Customer Index Combo order flow in VIX options would attract additional liquidity to the Exchange. The Exchange believes increased Customer order flow facilitates increased trading opportunities and attracts Market-Maker activity, which facilitates tighter spreads and may ultimately signal an additional corresponding increase in order flow from other market

¹¹ 15 U.S.C. 78f(b)(5).

participants, contributing overall towards a robust and well-balanced market ecosystem. The Exchange notes that it similarly waives fees for other types of Customer orders in the Fees Schedule.¹²

Further, the Exchange believes that it is equitable and not unfairly discriminatory to waive fees for certain Customer complex orders because, as described above, Customer liquidity benefits all market participants by providing more execution opportunities, in turn, attracting Market Maker order flow, which ultimately enhances market quality on the Exchange to the benefit of all market participants. Additionally, the Exchange believes the proposed change is in line with other fee programs that are designed to incentivize the sending of complex orders, including Index Combo orders, to the Exchange. For example, the Exchange provides higher rebates under the Volume Incentive Program for complex orders as compared to simple orders.¹³ The Exchange also assesses lower fees for complex Customer orders in VIX as compared to simple orders in VIX.¹⁴

The Exchange next believes the proposed change to reduce certain VIX transaction fees for Market-Makers is reasonable as Market-Makers will be paying lower fees for such transactions. The Exchange notes the proposed changes are designed to encourage the sending of additional large complex VIX orders in open-outcry. Indeed, the Exchange believes the proposed reduced fee will encourage Market-Makers to participate in

¹² See Cboe Options Fees Schedule, footnote 8, which waives the transaction fee for customer orders in ETF and ETN options executed in open outcry or in AIM or as a QCC or as a FLEX Options transaction, and footnote 9, which waives transaction fees for customer orders that provide or remove liquidity that are 99 contracts or less in ETF and ETN options.

¹³ See Cboe Options Fees Schedule, Volume Incentive Program.

¹⁴ See Cboe Options Fees Schedule, Rate Table – Underlying Symbol List A.

additional open-outcry orders in VIX and in particular quote tighter spreads with greater size, which may signal additional corresponding increase in order flow from other market participants, ultimately incentivizing more overall order flow and improving liquidity levels and price transparency on the Exchange to the benefit of all market participants.

The Exchange believes the proposed fee change is equitable and not unfairly discriminatory because it applies to all Market-Makers uniformly. The Exchange believes that it is equitable and not unfairly discriminatory to propose lower transaction rates for Market-Makers because the Exchange recognizes that these market participants can provide key and distinct sources of liquidity. Additionally, as noted above, an increase in general market-making activity may provide more trading opportunities, in turn, signaling additional corresponding increase in order flow from other market participants, and, as a result, contributing towards a robust, well-balanced market ecosystem. The Exchange notes too that Market-Makers take on a number of obligations that other market participants do not have. For example, unlike other market participants, Market-Makers take on quoting obligations and other market making requirements.

The Exchange also believes the proposed rule change is equitable and not unfairly discriminatory because, as proposed, the proposed fee reduction applies to all qualifying VIX orders executed by Market-Makers on the trading floor equally and because the Exchange believes that facilitating VIX orders submitted by Market-Makers via open outcry encourages and supports increased liquidity and execution opportunities in open outcry, which functions as an important price-improvement mechanism for customers. Indeed, the Exchange notes that all market participants stand to benefit from any increase in volume transacted on the trading floor, which promotes market depth, facilitates tighter

spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

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

The Exchange believes the proposed amendments to its Fee Schedule will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fee changes for Customers and Market-Makers will be assessed automatically and uniformly to each similarly situated market participant (i.e., all qualifying Customer VIX transactions will receive the proposed fee waiver and all qualifying Market-Maker VIX transactions will be assessed the proposed reduced fee amount). The Exchange notes that there is a history in the options markets of providing preferential treatment to Customers and Market-Makers. Also, as discussed in the statutory basis, the Exchange believes Customer order flow may facilitate increased trading opportunities and attract Market-Maker activity, which can contribute towards a robust and well-balanced market ecosystem. Market-Makers provide key and distinct sources of liquidity, and an increase in general market-making activity may facilitate tighter spreads, which tends to signal additional corresponding increases in order flow from other market participants, ultimately incentivizing more overall order flow and improving liquidity levels and price transparency on the Exchange to the benefit of all market participants. Further as discussed, Market-Makers take on a number of obligations that other market participants do not, such as quoting obligations and other market-making requirements. The Exchange also notes that the proposed fee changes are designed to

attract additional VIX 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 change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes apply only to a product exclusively listed on the Exchange. Additionally, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on (which list products that compete with VIX options) 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 17% of the market share of executed volume of options trades.¹⁵ Therefore, no exchange possesses significant pricing power in the execution of option order flow. 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

¹⁵ See Cboe Global Markets, U.S. Options Market Volume Summary by Month (September 7, 2022), available at http://markets.cboe.com/us/options/market_share/.

investors and listed companies.”¹⁶ 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’....”¹⁷ Accordingly, the Exchange does not believe its proposed changes to the incentive programs impose 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 has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁷ *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)).

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 Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ 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-2022-048 on the subject line.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 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-2022-048. 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-2022-048 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.²⁰

Secretary

²⁰ 17 CFR 200.30-3(a)(12).

| Rate Table - Underlying Symbol List A (34) (37) (42) | | Options Transaction Fees (1)(3)(4)(7)(13)(15)(33)(39)(12) | | | | | | |
|--|---|---|--|-------------------------|-------------------------|-------------------------|---|-----------------|
| Capacity | Products | Capacity Code | Transaction Fee Per Contract by Premium Price | | | | VIX and SPX (incl SPXW) Only (12)(37)(42) | |
| | | | \$0.00 - \$0.10 | \$0.11 - \$0.99 | \$1.00 - \$1.99 | \$2.00+ | AIM Agency/Primary (19) | AIM Contra (18) |
| Customer (2) | OEEX and XEO | C | | | | | {CO} \$0.35 | |
| | RUT | | | | | | {CR} \$0.18 | |
| | RLG, RLV, RUI and UKXM | | | | | | {WR} \$0.00 | |
| | SPX (incl SPXW) and SPESG | | | | | | {CS} \$0.36 | {CT} \$0.45 |
| | VIX (simple orders) (32) | | | | | | {CV} \$0.10 | {CW} \$0.25 |
| | VIX (complex orders) (32)(43) | | | | | | {CX} \$0.40 | {CY} \$0.45 |
| | | | {CZ} \$0.05/{CI} \$0.00 | {DA} \$0.17/{CI} \$0.00 | {DB} \$0.30/{CI} \$0.00 | {DC} \$0.45/{CI} \$0.00 | 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 | | | | | |
| | OEEX and XEO | | {MR} \$0.20 | | | | | |
| | RLG, RLV, RUI, UKXM | | {WR} \$0.00 | | | | | |
| | VIX (45)(43) | | {MV} \$0.05/ {MI} \$0.05 | | | | {MW} \$0.23/ {MI} \$0.05 | |
| Joint Back-Office (45) Non-Trading Permit Holder Market Maker (16)(45) Professional (45) | OEEX, 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 | | | | | |
| Surcharge Fee (14) (Also applies to GTH)(37)(42) Index License (41)(12) | RLG, RLV, RUI and UKXM | F J L M B N U | {WR} \$0.00 | | | | | |
| | RUT | | \$0.45 | | | | | |
| | SPX (incl SPXW) (41)(12) | | \$0.18/ {SC} \$0.00 | | | | | |
| | OEEX, 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)(42) | 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) | | | | | |
| | RLG, RLV, RUI, and UKXM | | \$0.00 | | | | | |

| Footnotes: | |
|-----------------|---|
| Footnote Number | Description |
| [RESERVED] 43 | <p>*****</p> <p>The Exchange will waive fees for the Index Combination component of a Customer Index Combo order in VIX options. Market-Maker transaction fees in VIX transactions where VIX Premium is ≥ \$1.00 will be reduced from \$0.23 per contract to \$0.05 per contract if the Market-Maker order is executed by the Market-Maker in open outcry against a complex order that has 3 or more legs and the total executed order quantity of the contra order is greater than or equal to 5,000 contracts. Solicited orders where the Market-Maker is represented by a Floor Broker are not eligible for the reduced fee. Supporting documentation must be submitted to the Exchange within 3 business days of the transaction in order to receive the foregoing fee waiver or reduced fee on qualifying orders for which (i) a post-trade edit to an order executed in open outcry was made that changed the symbol, price, size, and/or floor trader acronym on any leg of the transaction; and/or (ii) the original order contained more than the maximum number of legs supported by the Cboe System and was consequently submitted as multiple orders, where the applicable child order by itself does not meet the qualifications for the fee waiver or reduced fee.</p> <p>*****</p> |