SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94540 ; File No. SR-CBOE-2022-014)

March 29, 2022

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Update its Fees Schedule in Connection with the Exchange's plans to List and Trade Nanos S&P 500 Index Options

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 March 23, 2022, Cboe Exchange, Inc. ("Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("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 in connection with the Exchange's plans to list and trade Nanos S&P 500 ("NANOS") Index options. 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 on the

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with its plans to list and trade Nanos options.[3]

NANOS options are options on the Mini-S&P 500 ("XSP") Index (the value of which is 1/10th the value of the S&P 500 ("SPX") Index) that have an index multiplier of one, and thus a smaller notional value. The Exchange believes that investors will benefit from the availability of NANOS options by making options overlying the larger-valued SPX Index more readily available as an investing tool and at more affordable prices for investors.[4] The Exchange also believes that the investor-base for NANOS options will be a similar investor-base for XSP options, as well as Mini-Russell 2000 ("MRUT") options, which are also proprietary, reduced-value (1/10th) options on a broad-based index. XSP and MRUT options are also designed to provide low-cost means to hedge investors' portfolios in connection with larger-value broad-based indexes (i.e., the RUT and SPX Index) with a smaller outlay of capital. The Exchange now proposes to amend its Fees Schedule to accommodate the planned listing and trading of NANOS options. The Exchange notes that because NANOS, MRUT and XSP are all options on mini-

3 The Exchange initially filed the proposed fee changes on March 14, 2022 (SR-CBOE-2022-010). On March 23, 2022, the Exchange withdrew that filing and submitted this filing.

4 See Securities Exchange Act Release Nos. 90853 (January 5, 2021), 86 FR 2006 (January 11, 2021) (SR-CBOE-2020-117); and 91528 (April 9. 2021), 86 FR 19933 (April 15, 2021) (SR-CBOE-2020-117).

indexes and are intended for a similar investor-base, the majority of the proposed changes amend the Fees Schedule in connection with trading in NANOS options in a manner that is generally consistent with the way in which existing transactions fees and programs currently apply to trading in XSP and MRUT options.

Standard Transaction Rates and Surcharges

First, the Exchange proposes to adopt certain standard transaction fees in connection with NANOS options. Specifically, the proposed rule change adopts certain fees for NANOS options in the Rate Table for All Products Excluding Underlying Symbol A[5], as follows:

- Adopts fee code NO, appended to all Customer (capacity "C") orders in NANOS options and assesses no fee;
- Adopts fee code NN, appended to all non-Customer, non-Market-Maker (i.e., Clearing Trading Permit Holders (capacity "F"), Non-Clearing Trading Permit Holder Affiliates (capacity "L"), Broker-Dealers (capacity "B"), Joint Back-Offices (capacity "J"), Non-Trading Permit Holder Market-Makers (capacity "N"), and Professionals (capacity "U")) orders in NANOS options and assesses a fee of $0.01 per contract; and
- Adopts fee code NM, which is appended to all Market-Maker (capacity "M") orders in NANOS options and assesses a fee of $0.01 per contract.

The Exchange notes that the proposed standard transaction fees in connection with NANOS options are slightly less than the fees assessed for XSP options. As described above, both NANOS options and XSP options overly the Mini-S&P 500 Index; however, NANOS options are lower-priced given their multiplier of one.

5 Underlying Symbol List A includes OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXW), SPESG and VIX. See Cboe Options Fees Schedule, Footnote 34.

The Exchange proposes to exclude NANOS orders from the AIM Contra Fee by amending footnote 18 (appended to the AIM Contra Fee) to provide that the AIM Contra Execution Fee applies to all orders (excluding facilitation orders, per footnote 11) in all products, except MRUT, NANOS, XSP, Sector Indexes and Underlying Symbol List A, executed in the Automated Improvement Mechanism ("AIM"), Solicitation Auction Mechanism ("SAM"), FLEX AIM and FLEX SAM auctions, that were initially entered as the contra party to an Agency/Primary Order. Applicable standard transaction fees will apply to AIM, SAM, FLEX AIM and FLEX SAM executions in MRUT, NANOS, XSP, Sector Indexes and Underlying Symbol List A. The Exchange also proposes to exclude Market-Maker and non-Customer, non-Market-Maker complex orders in NANOS from the Complex Surcharge by amending footnote 35 (appended to the Complex Surcharge) to provide that the Complex Surcharge applies per contract per side surcharge for noncustomer complex order executions that remove liquidity from the COB and auction responses in the Complex Order Auction ("COA") and AIM in all classes except MRUT, NANOS, XSP, Sector Indexes and Underlying Symbol List A. The proposed exclusion from the AIM Contra Fee (and, instead, the application of the proposed standard transaction fees) and Complex Surcharge in connection with transactions in NANOS will provide consistency with the fees and exclusions currently applicable to transactions in similar reduced-value XSP and MRUT options.

<u>Fees Programs</u>

The proposed rule change excludes NANOS volume from the Liquidity Provider Sliding Scale, which offers credits on Market-Maker orders where a Market-Maker achieves certain volume thresholds based on total national Market-Maker volume in all underlying symbols, excluding Underlying Symbol List A, MRUT and XSP, during the calendar month. Specifically, the proposed rule change updates the Liquidity Provider Sliding Scale table to provide that volume thresholds are based on total national Market-Maker volume in all underlying symbols excluding Underlying Symbol List A, MRUT, NANOS and XSP during the calendar month, and that it applies in all underlying symbols excluding Underlying Symbol List A, MRUT, NANOS and XSP. The proposed rule change also updates footnote 10 (appended to the Liquidity Provider Sliding Scale) to provide that the Liquidity Provider Sliding Scale applies to Liquidity Provider (Cboe Options Market-Maker, DPM and LMM) transaction fees in all products except (1) Underlying Symbol List A (34), MRUT, NANOS and XSP, and (2) volume executed in open outcry.[6]

The proposed rule change updates the Volume Incentive Program ("VIP") table to exclude NANOS volume from the VIP, which currently offers a per contract credit for certain percentage threshold levels of monthly Customer volume in all underlying symbols, excluding Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF and XSP. The proposed rule change also amends footnote 36 (appended to the VIP table) to reflect the proposed exclusion of NANOS from the VIP by providing (in relevant part) that: the Exchange shall credit each Trading Permit Holder the per contract amount resulting from each public customer ("C" capacity code) order transmitted by that Trading Permit Holder which is executed electronically on the Exchange in all underlying symbols excluding Underlying Symbol List A,

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6 The proposed rule change also updates footnote 6, which is appended to the Liquidity Provider Sliding Scale Program, the VIP, and the ORS/CORS Programs to reflect the exclusion of MRUT options from these programs in the same manner as the options classes currently excluded from these programs. Specifically, amended footnote 6 provides that in the event of a Cboe Options System outage or other interruption of electronic trading on Cboe Options that lasts longer than 60 minutes, the Exchange will adjust the national volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, MRUT, MXEA, MXEF, NANOS, DJX and XSP for the entire trading day.

Sector Indexes, DJX, MRUT, MXEA, MXEF, NANOS, XSP, QCC trades, public customer to public customer electronic complex order executions, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 5.67, provided the Trading Permit Holder meets certain percentage thresholds in a month as described in the Volume Incentive Program (VIP) table; the percentage thresholds are calculated based on the percentage of national customer volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, MRUT, MXEA, MXEF, NANOS, DJX and XSP entered and executed over the course of the month; and in the event of a Cboe Options System outage or other interruption of electronic trading on Cboe Options, the Exchange will adjust the national customer volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, MRUT, MXEA, MXEF, NANOS, DJX and XSP for the entire trading day.

The proposed rule change excludes NANOS from the list of products eligible to receive Break-Up Credits in orders executed in AIM, SAM, FLEX AIM, and FLEX SAM, by amending the Break-Up Credits table to exclude NANOS along with the products currently excluded — Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF and XSP.

The Exchange also proposes to exclude Firm (i.e., Clearing Trading Permit Holders (capacity "F") and Non-Clearing Trading Permit Holder Affiliates (capacity "L")) transactions in NANOS from the Clearing TPH Fee Cap. Specifically, it amends footnote 22 (appended to the Clearing TPH Fee Cap table) to provide that all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction, transaction fees for Clearing TPH Proprietary and/or their Non-TPH Affiliates in all products except MRUT, NANOS, XSP, Sector Indexes and Underlying Symbol List A (which includes SPX), in the aggregate, are capped at $65,000 per month per Clearing TPH. It additionally updates footnote 11 (which is also appended to the Clearing TPH Fee Cap table) to provide that the Clearing TPH Fee Cap in all products except MRUT, NANOS, XSP, Underlying Symbol List A and Sector Indexes (the "Fee Cap"), among other programs, apply to (i) Clearing TPH proprietary orders ("F" capacity code), and (ii) orders of Non-TPH Affiliates of a Clearing TPH.

The Exchange proposes to exclude NANOS from eligibility for the Order Router Subsidy ("ORS") and Complex Order Router Subsidy ("CORS") Programs, in which Participating TPHs or Participating Non-Cboe TPHs may receive a payment from the Exchange for every executed contract routed to the Exchange through their system in certain classes. Specifically, the proposed rule change updates the ORS/CORS Program tables to provide that ORS/CORS participants whose total aggregate non-customer ORS and CORS volume is greater than 0.25% of the total national volume (excluding volume in options classes included in Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF, NANOS or XSP) will receive an additional payment for all executed contracts exceeding that threshold during a calendar month, and updates footnote 30 (appended to the ORS/CORS Program tables) to accordingly provide that Cboe Options does not make payments under the program with respect to executed contracts in options classes included in Underlying Symbols List A, Sector Indexes, DJX, MRUT, MXEA, MXEF, NANOS or XSP.

The Exchange proposes to exclude NANOS from the Floor Broker Sliding Scale Rebate Program. The Floor Broker Sliding Scale Rebate Program offers rebates for Firm Facilitated and non-Firm Facilitated orders that correspond to certain volume tiers and is designed to incentivize order flow in multiply-listed options to the Exchange's trading floor. As such, the Floor Broker Sliding Scale Rebate Program excludes options that are not multiply-listed, which would include

NANOS. As proposed, the Floor Broker Sliding Scale Rebate Program applies to all products except for Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF, NANOS and XSP.

The Exchange notes that excluding NANOS transactions from the above-described programs is consistent with the manner in which XSP and MRUT transactions are also excluded each of these programs today.

Additionally, the Exchange proposes to include NANOS in the Marketing Fee Program. The Exchange notes that XSP is also currently included in the Marketing Fee Program. The Marketing Fee is assessed on transactions of Market-Makers, resulting from customer orders at the per contract rate provided above on all classes of equity options, options on ETFs, options on ETNs and index options, except that the marketing fee shall not apply to Sector Indexes, DJX, MRUT, MXEA, MXEF or Underlying Symbol List A. A Designated Primary Market-Maker ("DPM"), a "Preferred Market-Maker ("PMM"), or a Lead Market-Maker ("LMM") (collectively "Preferenced Market-Maker") are given access to the marketing fee funds generated from a Preferenced order. The funds collected via this Marketing Fee are then put into pools controlled by the Preferenced Market-Maker. The Preferenced Market-Maker controlling a certain pool of funds can then determine the order flow provider(s) to which the funds should be directed in order to encourage such order flow provider(s) to send orders to the Exchange. The Exchange proposes to add NANOS to the Marketing Fee table to be assessed a $0.09 collection per contract, which is less than the current collection fee of $0.25 for XSP. The Exchange notes that, like XSP, NANOS will not be eligible for the SCORe Program—a discount program for Retail, Non-FLEX Customer ("C" origin code) volume in SPX (including SPXW), VIX, RUT, MXEA and MXEF ("Qualifying Classes") available to any TPH Originating Clearing Firm or non-TPH Originating Clearing Firm that sign up for the program—but instead eligible for the Marketing Fee Program. Because not all Firms are registered for the SCORe Program, the Exchange believes that providing NANOS, like XSP, as eligible for the Marketing Fee Program (which automatically applies to all classes unless otherwise explicitly excluded) as opposed to the SCORe Program potentially generates more customer order flow in NANOS by allowing Preferenced Market-Makers to amass a pool of funds from NANOS transactions with which to use to incentivize any customer order flow provider to submit Customer orders in NANOS to the Exchange.

NANOS LMM Program

Finally, the Exchange proposes to adopt a financial program in connection with NANOS options for LMMs appointed to the program. As proposed, the NANOS LMM Incentive Program provides that if the LMM appointed to the NANOS LMM Incentive Program provides continuous electronic quotes during Regular Trading Hours that meet or exceed the proposed heightened quoting standards (below) in at least 99% of the series 90% of the time in a given month, the LMM will receive a payment for that month in the amount of $15,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month).[7]

VIX Value at Prior Close < 20		
Premium Level	**Width**	**Size**

[7] For the month of March 2022, the Exchange proposes to apply the heightened quoting standard from March 14 to March 31, in light of the mid-month launch of NANOS options and proposal to adopt the heighted quoting standards. The appointed LMM will be eligible for the full financial payment for March 2022 if the LMM meets the heightened quoting standard from March 14 to March 31. The Exchange notes that other LMM Incentive Programs in the Fees Schedule have previously adopted the same mid-month application upon adopting or modifying the program mid-month. See e.g., Securities Exchange Act Release No. 87590 (November 22, 2019), 84 FR 65859 (November 29, 2019) (SR-CBOE-2019-109).

$0.00 - $2.00	$0.28	1000
$2.01 - $5.00	$0.32	1000
$5.01 - $15.00	$0.35	500
Greater than $15.00	$0.50	300
VIX Value at Prior Close from 20 - 30		
$0.00 - $2.00	$0.30	1000
$2.01 - $5.00	$0.35	500
$5.01 - $15.00	$0.40	500
Greater than $15.00	$0.55	300
VIX Value at Prior Close from > 30		
$0.00 - $2.00	$0.35	500
$2.01 - $5.00	$0.40	500
$5.01 - $15.00	$0.45	300
Greater than $15.00	$0.60	200

The Exchange notes the different sets of quoting standards are applicable depending on the VIX Index value at the (i.e., at the close of the preceding RTH session). Meeting or exceeding the heightened quoting standards in NANOS, as proposed, to receive the proposed compensation payment is optional for an LMM appointed to the Program. The Exchange may consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM met the heightened quoting standard each month, the Exchange will exclude from the calculation in that month the business day in which the LMM missed meeting or exceeding the heightened quoting standard in the highest number of series. The heightened quoting requirements offered by the NANOS LMM Incentive Program are designed to incentivize LMMs appointed to the Program to provide significant liquidity in NANOS options during the trading day upon their listing and trading on the Exchange, which, in turn, would provide greater trading opportunities, added market transparency and enhanced price discovery for all market participants in NANOS.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] 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)[10] 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.

Standard Transaction Rates and Surcharges

The Exchange believes that the proposed amendments to the Fees Schedule in connection with standard transaction rates and surcharges for NANOS transactions are reasonable, equitable and not unfairly discriminatory. Specifically, the Exchange believes that it is reasonable to assess fees for Customer, Market-Maker, and non-Market-Maker, non-Customer orders in NANOS that are slightly less than those fees for transactions in XSP options (both of which overly the Mini-S&P 500 Index) because NANOS options have a smaller notional value given their multiplier of

8 15 U.S.C. 78f.

9 15 U.S.C. 78f(b)(4).

10 15 U.S.C. 78f.(b)(5).

one. Moreover, the Exchange believes it is reasonable to exclude NANOS from the Complex Surcharge and AIM Contra Fee (and to apply the standard transaction fees for NANOS orders in lieu of the AIM Contra Fee) because these proposed surcharge exclusions will provide consistency between the fees assessed for orders in MRUT and XSP, which, like NANOS, are reduced-value index options designed to offer investors lower cost options to obtain the potential benefits of options on a broad-based index option and intended for a similar investor-base. Therefore, the Exchange believes it is appropriate to amend the Fees Schedule in a manner that generally situates fees assessed for orders in NANOS options with those assessed for orders in XSP and MRUT options.

The Exchange believes the proposed standard transaction rates and exclusion from certain surcharges are equitable and not unfairly discriminatory because they will apply automatically and uniformly to all capacities as applicable (i.e., Customer, Market-Maker and non-Market-Maker, non-Customer), in NANOS options. The Exchange also notes that, regarding the proposed standard transaction rate of no charge for Customer transactions in NANOS options, there is a history in the options markets of providing preferential treatment to customers and customer order flow attracts additional liquidity to the Exchange, providing market participants with more trading opportunities and signaling an increase in Market-Maker activity, which facilitates tighter spreads. This may cause an additional corresponding increase in order flow from other market participants, contributing overall towards a robust and well-balanced market ecosystem, particularly in a newly listed and traded product.

Fees Programs

The Exchange believes that the proposed updates to the Fees Schedule in connection with the application of certain fees programs to transactions in NANOS options are reasonable, equitable and not unfairly discriminatory. Particularly, the Exchange believes it is reasonable to exclude transactions in NANOS options from the Liquidity Provider Sliding Scale, the VIP, the Break-Up Credits table, the Clearing TPH Fee cap, the ORS/CORS, and the Floor Broker Sliding Scale Rebate programs in the same manner in which transactions in XSP and MRUT options are currently excluded from the same programs today as the Exchange believes it is appropriate to update these fees programs in a manner that generally situates transactions in NANOS with transactions in XSP and MRUT, as all three index options are designed to offer investors lower cost options to obtain the potential benefits of options on a broad-based index options and are intended for a similar investor base. The Exchange believes that excluding NANOS transactions from certain fees programs is equitable and not unfairly discriminatory because the programs will equally not apply to, or exclude in the same manner, all market participants' orders in NANOS options. The Exchange notes that the proposed rule change does not alter any of the existing program rates or volume calculations, but instead, merely proposes not to include transactions in NANOS in those programs and volume calculations in the same way that transactions in XSP and MRUT options are not currently included.

Additionally, the Exchange believes that including NANOS in the Marketing Fee Program is reasonably designed to attract additional NANOS order flow to the Exchange, which would increase liquidity and benefit all market participants. More specifically, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to incentivize customer order flow providers to submit customer order flow in NANOS via the Marketing Fee because customer order flow benefits all market participants as it attracts liquidity to the Exchange by providing more trading opportunities. This, in turn, attracts Market-Makers, signaling additional corresponding increase in order flow from other market participants, and, as a result, contributing towards a robust, well-balanced market ecosystem to the benefit of investors. The Exchange believes that assessing a collection fee of $0.09 per contract for NANOS orders in the Marketing Fee Program is reasonable because it is less than the collection fee assessed for other classes, including XSP, which have a higher notional value than NANOS. The Exchange additionally believes that providing NANOS, like XSP, as eligible for the Marketing Fee Program (which automatically applies) as opposed to the SCORe Program potentially generates more customer order flow in NANOS, which ultimately benefits investors, by providing an incentive to all customer order flow providers to submit customer orders in NANOS to the Exchange. The Exchange believes it is reasonable to include NANOs in the Marketing Fee Program along with XSP, as both NANOS and XSP options are options on the same underlying index—the Mini-S&P 500 Index. The Exchange lastly believes the proposed marketing fee for NANOS is equitable and not unfairly discriminatory because it will apply equally to all applicable transactions in NANOS, in that all Market-Maker orders in NANOS resulting from customer orders will be uniformly assessed under, and otherwise a part of, the Marketing Fee Program.

NANOS LMM Program

The Exchange believes the proposed NANOS LMM Incentive Program is reasonable, equitable and not unfairly discriminatory. Particularly, the proposed NANOS LMM Incentive Program is a reasonable financial incentive program because the proposed heightened quoting standards and rebate amount for meeting the heightened quoting standards in NANOS series are reasonably designed to incentivize an LMM appointed to the Program to meet the proposed heightened quoting standards during RTH for NANOS, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants, particularly in a newly listed and traded product on the Exchange during the trading day.

The Exchange believes that the proposed heightened quoting standards are reasonable because they are similar to the detail and format (VIX Index value indicator, where applicable, corresponding premiums, quote widths, and sizes) of the quoting standards currently in place for LMM Incentive Programs for other proprietary Exchange products.[11] The Exchange also believes that proposed heightened quoting requirements are reasonably tailored to reflect market characteristics of NANOS. The Exchange believes the generally smaller premium levels and widths appropriately reflect the lower-priced NANOS product. The Exchange also notes that the larger quote size requirements reflect NANOS smaller multiplier, but are comparatively "smaller" in notional size than the quote size requirements of LMM Incentive Programs for other proprietary Exchange products. For example, a NANOS order for a size of 1000 only equates to an SPX order for a size of one, as NANOS options are 1/1000 the size of SPX options (XSP options are 1/10th the size of SPX options and, given a multiplier of one, NANOS are 1/100th the size of XSP options). The Exchange believes the proposed finer premiums, smaller quote widths and smaller sizes (comparatively) in the proposed heightened quoting standards for the NANOS LMM Incentive Program reasonably reflect what the Exchanges believes will be typical market characteristics in NANOS options, given their multiplier of one, their smaller notional value and general anticipated retail base, thus smaller, retail-sized orders. The Exchange also notes that the proposed heightened quoting requirements do not provide for various expiration categories

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11 See Cboe Options Fees Schedule, "MRUT LMM Incentive Program", "MSCI LMM Incentive Program", "GTH1 VIX/VIXW LMM Incentive Program", "GTH2 VIX/VIXW LMM Incentive Program", "GTH1 SPX/SPXW LMM Incentive Program", "GTH2 SPX/SPXW LMM Incentive Program", and "RTH SPESG LMM Incentive Program".

which the Exchange believes is reasonable because it will make the proposed heightened quoting requirements relatively easier for appointed LMMs to meet at the onset of the listing and trading of NANOS, thereby incentivizing additional liquidity in a new product. The Exchange notes it may update the heightened quoting requirements in the future to accommodate expiry categories.

The Exchange further believes the proposed heighten quoting requirements are also reasonably tailored to reflect then-current market conditions and market characteristics, as the proposed quoting standards that are applicable depend on the VIX Index value at the prior market close (i.e., at the close of the preceding RTH session). Spreads in SPX-based options generally widen when the market experiences higher volatility (i.e., the VIX Index level is higher in value). Therefore, to encourage LMMs to meet the proposed quoting standards regardless of market volatility, the proposed rule change adopts generally wider widths and smaller quote sizes where the market may be experiencing higher volatility (i.e., when the value of the VIX Index in the proposed VIX value categories becomes relatively higher compared to the closing index value from the preceding trading session). The Exchange notes that the quoting standards currently in place under the GTH1 and GTH2 VIX/VIXW and SPX/SPXW LMM Incentive Programs are tailored in a similar manner. Moreover, the Exchange believes that the proposed $15,000 monthly rebate for an appointed LMM that meets the proposed heightened quoting standards in NANOS in a month is reasonable and equitable as it equal or comparable to the rebates offered for other LMM Incentive Programs for other proprietary products.[12] For example, the GTH1 and GTH2 LMM Incentive Programs for SPX/SPXW and for VIX/VIXW offer $15,000 per month for SPX and VIXW, respectively, in which an appointed LMM meets the given quoting standards.

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12 See id.

Finally, the Exchange believes it is equitable and not unfairly discriminatory to offer the financial incentive to LMMs appointed to the NANOS LMM Incentive Program, because it will benefit all market participants trading in NANOS during RTH by encouraging the appointed LMMs to satisfy the heightened quoting standards, which incentivizes continuous increased liquidity and thereby may provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade NANOS, which can lead to increased volume, providing for robust markets. The Exchange ultimately proposes to offer the NANOS LMM Incentive Program to sufficiently incentivize the appointed LMMs to provide key liquidity and active markets in the newly listed and traded NANOS options during the trading day to encourage liquidity, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to the Program may undertake added costs each month to satisfy that heightened quoting standards (e.g., having to purchase additional logical connectivity). The Exchange believes the proposed program is equitable and not unfairly discriminatory because similar programs currently exist for LMMs appointed to programs in other proprietary products,[13] and the proposed program will equally apply to any TPH that is appointed as an LMM to the NANOS LMM Incentive Program. Additionally, if an appointed LMM does not satisfy the heightened quoting standard in NANOS for any given month, then it simply will not receive the offered payment for that month.

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

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13 See supra note 11.

intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed NANOS transaction fees for the separate types of market participants will be assessed automatically and uniformly to all such market participants, i.e., all qualifying Customer orders in NANOS will be assessed the same amount, all Market-Maker orders in NANOS will be assessed the same amount, and all non-Customer, non-Market-Maker orders in NANOS will be assessed the same amount. The Exchange again notes that there is a history in the options markets of providing preferential treatment to customers and, as described above, customer order flow tends to attract key liquidity from other market participants. Further, the proposed rule change will uniformly exclude all transactions in NANOS from certain programs and fees/surcharges (i.e., the AIM Contra Fee and Complex Surcharge), as it currently does for XSP and MRUT options, and as it does for many of the Exchange's other proprietary products. In addition to this, the proposed rule change to include NANOS in the Marketing Fee Program will apply equally to all applicable transactions in NANOS, in that, all Market-Maker orders in NANOS resulting from customer orders will be uniformly assessed under, and otherwise a part of, the Marketing Fee Program (as almost all other classes on the Exchange are). The Exchange again notes that XSP, which is also on option on the Mini-SPX Index, is currently included in the Marketing Fee Program. Overall, the proposed rule change is designed to increase incentive for customer order flow providers to submit customer order flow in a newly listed and traded product, which, as indicated above, contributes to a more robust market ecosystem to the benefit of all market participants.

The Exchange also does not believe that the proposed LMM Incentive Program for NANOS options would impose any burden on intramarket competition because it applies to all LMMs appointed to the NANOS LMM Incentive Program in a uniform manner, in the same way similar programs apply to appointed LMMs in other proprietary products today. To the extent appointed LMMs receive a benefit that other market participants do not, these LMMs in their role as Market-Makers on the Exchange have different obligations and are held to different standards. For example, Market-Makers play a crucial role in providing active and liquid markets in their appointed products, especially in the newly developing NANOS market, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month to satisfy that heightened quoting standards (e.g., having to purchase additional logical connectivity). The Exchange also notes that the NANOS LMM Incentive Program, like the other LMM Incentive Programs, is designed to attract additional order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

The Exchange does not believe that the proposed rule 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 and director 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 16% of the market share of executed volume of options trades.[14] 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 investors and listed companies."[15] 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'….".[16] 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.

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14 See Cboe Global Markets, U.S. Options Market Volume Summary by Month (March 14, 2022), available at http://markets.cboe.com/us/options/market_share/.

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

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

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

The Exchange 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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and paragraph (f) of Rule 19b-4[18] 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-2022-014 on the subject line.

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17 15 U.S.C. 78s(b)(3)(A).

18 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-2022-014. 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, DC 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2022-014, 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.[19]

J. Matthew DeLesDernier
Assistant Secretary

[19] 17 CFR 200.30-3(a)(12).