

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94848; File No. SR-CBOE-2022-022)

May 4, 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 Launch of the Curb Trading Hours Session

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 April 25, 2022, 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 in connection with the launch of the Curb Trading Hours Session. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with its plans to launch the Curb Trading Hours (“Curb”) session, effective April 25, 2022.

By way of background, the Exchange currently offers two trading sessions, the Regular Trading Hours session (“RTH”)³ and the Global Trading Hours session (“GTH”)⁴. Beginning Monday, April 25, 2022, the Exchange will operate an additional trading session following RTH called the “Curb Trading Hours” or “Curb” session. The Curb session will provide an extra forty-five-minute electronic only session for trading between 4:15 p.m. and 5:00 p.m. ET for designated classes, which will be added Monday through Friday. Currently, only SPX (including SPXW) and VIX options will be available for trading on the Exchange during the Curb session. FLEX Options with the same underlying index will also be deemed eligible for trading during the Curb session. Transactions effected during the Curb session will have the same trade date as the immediately preceding RTH session (i.e., the day on which the transactions were effected),

³ RTH for transactions in equity options (including options on individual stocks, ETFs, ETNs, and other securities) are the normal business days and hours set forth in the rules of the primary market currently trading the securities underlying the options, except for options on ETFs, ETNs, Index Portfolio Shares, Index Portfolio Receipts, and Trust Issued Receipts the Exchange designates to remain open for trading beyond 4:00 p.m. Eastern Time (ET) but in no case later than 4:15 p.m. ET. RTH for transactions in index options are from 9:30 a.m. to 4:15 p.m. ET, subject to certain exceptions.

⁴ The GTH session currently begins at 8:15 p.m. (previous day) and goes until 9:15 a.m. ET on Monday through Friday.

whereas transactions effected during a GTH session have a different trade date than the immediately preceding RTH session (i.e., the trading day following the RTH session that immediately preceded it).

In connection with the launch of the Curb session, the Exchange proposes to update its Fees Schedule to reflect and incorporate references to the Curb session and make clear which fees, surcharges and programs also apply during Curb. Specifically, the fees (including surcharges)⁵ and programs⁶ applicable during RTH for SPX, SPXW and VIX will apply in the same manner during Curb. To make clear that such fees, surcharges and programs also apply during Curb, the Exchange proposes to adopt and append Footnote 42 to all applicable fees, surcharges and programs.⁷ Footnote 42 would also make clear that Curb is a separate trading session from RTH and GTH for VIX, SPX and SPW and commences at 3:15PM CST and terminates at 4:00PM CST⁸, and is conducted on an all-electronic trading model with no open outcry capability.

The Exchange also proposes to update the notes sections of certain tables in the Fees Schedule to incorporate references to the Curb session. First, the Exchange proposes to make clear in the tables of the Clearing Trading Permit Holder Proprietary Products Sliding Scale and Clearing Trading Permit Holder VIX Sliding Scale that volume in Curb, in addition to GTH and RTH, will all be aggregated for purposes

⁵ See Cboe Options Fees Schedule, Rate Table – Underlying Symbol List A (including all surcharges), Electronic Trading Permit Fees, Trade Processing Services fee and Regulatory Fees.

⁶ See Cboe Options Fees Schedule, SPX/SPXW and SPESG Liquidity Provider Sliding Scale, Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scale, Cboe Options Clearing Trading Permit Holder VIX Sliding Scale, Select Customer Options Reduction (“SCORE”) Program, Customer Large Trade Discount, Large Trade Discount, Trading Permit Holder Transaction Fee Policies and Rebate Programs, and Frequent Trader Program.

⁷ Only applicable RTH fees, surcharges and programs will apply during Curb. For example, since Curb will operate as an all-electronic trading session, no floor related fees such as floor brokerage fees will apply during Curb.

⁸ The Exchange notes that although its rulebook references time in Eastern Time, its Fees Schedule uses Central Standard Time (“CST”).

of calculating the volume thresholds. The Exchange also proposes to add a reference to the Curb session in the Frequent Trader Program making clear that Customers can obtain unique Frequent Trader IDs which can be appended by executing agents to orders submitted to the Exchange during Curb, in addition to RTH and GTH. The Exchange lastly proposes to update the notes section of the Electronic Trading Permit Fees table to make clear that Market-Maker Electronic Access Permits, Electronic Access Permits, and Clearing TPH Permits all entitle the holder to access the Exchange in the respective capacity during Curb, in addition to RTH and GTH.

The Exchange also proposes to make clarifying updates to the Fees Schedule as it relates to fees assessed during GTH. First, the Exchange proposes to update Footnote 37 of the Fees Schedule, which currently provides that GTH is a separate trading session from RTH for VIX, SPX and SPW and also that GTH commences at 7:15 PM CST and terminates at 8:15AM CST and is conducted on an all-electronic trading model with no open outcry capability. Specifically, the Exchange proposes to update Footnote 37 to clarify that GTH is a separate trading session from both RTH and Curb trading sessions. The Exchange also proposes to modify the way Footnote 37 is appended to various fees, surcharges and programs. Currently anywhere that Footnote 37 is appended, the Exchange also states “(Also applies to GTH)” immediately preceding the appended Footnote 37 reference. The Exchange proposes to eliminate this language in order to streamline the Fees Schedule and make it easier to read. The Exchange does not believe this language is necessary or needed to understand when a fee, surcharge or program applies during GTH since the Exchange will still maintain all appended references to Footnote 37 itself. However, to alleviate any potential confusion, the Exchange also proposes to add the language “[a]pplies during Global Trading Hours (“GTH”)” to the Footnote 37 Description.

The Exchange next proposes to append Footnote 37 to the SPX/SPXW and SPESG Liquidity Provider Sliding Scale, SCORE Program, and Frequent Trader Program tables as it was inadvertently not added to the headers of those tables previously, notwithstanding its application during GTH as well as RTH. Lastly, the Exchange proposes to update the header relating to AIM

Agency/Primary and AIM Contra fees included in the Rate Table – Underlying Symbol List A. Particularly, the header currently provides that such fees apply to “VIX Only” and in “SPX (incl[uding] SPXW in GTH Only”. The Exchange notes that previously AIM was only activated for SPX and SPXW during GTH (and not RTH). The Exchange notes however, that currently SPX and SPXW are currently eligible to participate in AIM during either session, and will also be eligible to participate in AIM during Curb. As such, the Exchange proposes to eliminate this reference and provide instead that the rates (which currently are the same as non-AIM rates) apply to VIX and SPX (including SPXW), as well as append Footnotes 37 and 42 to clarify the applicability to each trading session.

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 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

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f.(b)(5).

investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because all applicable fees, surcharges and programs that apply to SPX, SPWX and VIX during RTH will also apply during Curb, which although is a separate trading session from RTH, merely provides an additional 45 minutes of trading in these products during which transactions effected will have the same trade date as the immediately preceding RTH session. The Exchange believes proposed Footnote 42 will add clarity and transparency to the Fees Schedule by providing details around the Curb session as well as making clear that the fees, surcharges, and programs listed in the Fees Schedule apply to Curb just as they apply to RTH. The proposed updates related to Footnote 37 are also meant to streamline the Fees Schedule, make it easier to read and alleviate potential confusion as to the applicability of certain fees and programs.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because current fees, surcharges and programs currently applicable during RTH for SPX, SPXW and VIX will apply in the same manner during Curb. Also, the fee amounts for each separate type of market participant will continue to be assessed equally for each product to all such market participants (i.e. all Broker-Dealer orders will be assessed the same amount, all Joint Back-Office orders will be assessed the same amount, etc.). The Exchange lastly notes that the newly adopted Curb session will apply equally to all market participants, in that, all market participants may choose to trade during Curb.

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 changes apply uniformly to all market participants that choose to participate in the new Curb session. As discussed, all fees, surcharges and programs applicable during RTH will also apply in the same manner during the Curb session.

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 products 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 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 16% of the market share of executed volume of options trades.¹² 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

¹² See Cboe Global Markets, U.S. Options Market Volume Summary by Month (April 21, 2022), available at http://markets.cboe.com/us/options/market_share/.

that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹³ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁴ Accordingly, the Exchange does not believe its proposed 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.

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

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

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2022-022 on the subject line.

Paper Comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2022-022. 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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

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. 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-2022-022 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).