

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-96065; File No. SR-CBOE-2022-052)

October 13, 2022

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 3, 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. 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective October 3, 2022.

*Index Combination VIX Orders*

The Exchange first proposes to reduce fees for certain complex Professional 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.<sup>3</sup> 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.<sup>4</sup> 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, Professional Customer (capacity “U”) orders, including Index Combo orders, in VIX options are assessed a \$0.40 per contract fee (yielding fee code BR). The Exchange proposes to waive transaction fees for the Index Combination component (legs) of Professional Customer Index Combo orders in VIX. The Index Combination

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<sup>3</sup> See Cboe Options Rule 5.33, “Index Combo”.

<sup>4</sup> See Cboe Options Rule 5.33(b)(5) (subparagraph (1) of definition of “Index Combo”).

legs will yield fee code “CI”, and any remaining legs will continue to yield the applicable standard Professional Customer complex order fee code for VIX transactions (i.e., fee code BR). The Exchange notes it recently adopted the same fee waiver for Customer orders in VIX, which orders also yield fee code CI.<sup>5</sup> The Exchange proposes to add the reference to Professional Customers in Footnote 43 which currently describes the fee waiver for Customer VIX orders (and which will similarly apply to Professional Customers as proposed). The Exchange proposes to waive fees for Professional Customer Index Combinations to encourage the submission of Index Combo orders which provide Professional Customers with a means to reduce or hedge the risk associated with price movements in the underlying index.

#### *XSP Fees*

The Exchange next proposes to modify fees for Market-Maker orders in XSP. Currently, Market-Maker XSP orders are assessed \$0.045 per contract. The Exchange proposes to waive these fees through December 31, 2022. The Exchange also proposes to remove XSP from the Marketing Fee program, which currently assesses a fee of \$0.25 per contract to Market-Maker XSP contracts resulting from Customer orders.

#### *NANOS Fees and LMM Incentive Programs*

The Exchange first proposes to remove NANOS from the Marketing Fee program, which currently assesses a fee of \$0.09 per contract to Market-Maker NANOS contracts resulting from Customer orders.

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<sup>5</sup> The Exchange inadvertently included a parenthetical symbol at the end of the rates added for CI in the row for Customer complex VIX orders, which the Exchange proposes to delete now.

The Exchange next proposes to amend the current NANOS Lead Market-Maker (“LMM”) Incentive Program (the “Program”). Particularly, the Exchange proposes to amend the NANOS LMM Incentive Program by increasing the rebate under the Program and amending the quote width requirements under the Program. By way of background, the Exchange offers, among other LMM incentive programs, a NANOS LMM Incentive Program which provides a rebate to TPH(s) that are appointed to the Program provided they meet certain quoting standards in NANOS in a month. The Exchange notes that meeting or exceeding the quoting standards in NANOS to receive the rebate (as currently offered and as proposed; described in further detail below) is optional for an LMM appointed to the NANOS LMM Incentive Programs. Indeed, an LMM appointed to the NANOS LMM incentive program is eligible to receive the corresponding rebate if it satisfies the applicable quoting standards (as currently offered and as proposed, described in further detail below), which the Exchange believes encourages an LMM to provide liquidity in NANOS. The Exchange may consider other exceptions to the Program’s quoting standards based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM appointed to the Program meets the quoting standards each month, the Exchange excludes from the calculation in that month the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of series.

An LMM appointed to the NANOS LMM Incentive Program must provide continuous electronic quotes that meet or exceed the quoting standards under the applicable program in at least 99% of each of NANOS series, 90% of the time in a given month in order to receive a rebate 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) for that month. The Exchange now proposes to increase the rebate amount received for meeting the quoting standards in a given month.

Specifically, the Exchange proposes to slightly increase the rebate amount from \$15,000 to \$17,500. The Exchange wishes to further incentivize the LMMs appointed to the NANOS LMM Incentive Program to provide significant liquidity in NANOS options by meeting the quoting standards under the Program in order to receive the proposed increased rebate.

The Exchange also proposes to marginally tighten the quotes widths as follows:

<b>VIX Value at Prior Close &lt; 20</b>		
<b>Premium Level</b>	<b>Current Width</b>	<b>Proposed Width</b>
\$0.00 - \$2.00	\$0.28	\$0.08
\$2.01 - \$5.00	\$0.32	\$0.10
\$5.01 - \$15.00	\$0.35	\$0.18
Greater than \$15.00	\$0.50	\$0.31
<b>VIX Value at Prior Close from 20 – 30</b>		
\$0.00 - \$2.00	\$0.30	\$0.09
\$2.01 - \$5.00	\$0.35	\$0.10
\$5.01 - \$15.00	\$0.40	\$0.24
Greater than \$15.00	\$0.55	\$0.31
<b>VIX Value at Prior Close from &gt; 30</b>		
\$0.00 - \$2.00	\$0.35	\$0.16
\$2.01 - \$5.00	\$0.40	\$0.17
\$5.01 - \$15.00	\$0.45	\$0.31
Greater than \$15.00	\$0.60	\$0.38

Lastly, the Exchange proposes to offer a NANOS Volume Incentive Pool under the NANOS LMM Incentive Program, like that offered under the SPESG LMM Incentive Program. Specifically, the proposed rule change to the program provides that, in addition to the above rebate (i.e., the proposed \$17,500 per month rebate), if the appointed LMM meets or exceeds the above heightened quoting standards in a given month, the LMM

will receive the Monthly ADV Payment amount that corresponds to the level of ADV provided by the LMM in NANOS for that month per the NANOS Volume Incentive Pool program below.

<b>NANOS ADV</b>	<b>Monthly ADV Payment</b>
0 – 1,999 contracts	\$0.00
2,000 – 4,999 contracts	\$5,000
5,000 – 24,999 contracts	\$8,000
25,000 – 49,999 contracts	\$10,000
50,000 – 99,999 contracts	\$12,000
Greater than 10,000 contracts	\$15,000

The proposed NANOS Volume Incentive Pool offered by the NANOS LMM Incentive Program is designed to incentivize LMMs to further increase the provision of liquidity in NANOS options. Increased liquidity in NANOS options would, in turn, 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,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>7</sup> 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)<sup>8</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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 Professional Customer Index Combo order executed in VIX options is reasonable, equitable and not unfairly discriminatory as Professional 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 Professional Customers uniformly. The Exchange believes the proposal is reasonably designed to encourage Professional Customer order flow in VIX options. The Exchange wishes to promote the growth of VIX and believes that incentivizing increased Professional Customer Index Combo order flow in VIX options would attract additional liquidity to the Exchange. The Exchange believes increased Professional 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 Index Combination legs of an Index Combo for Customer orders executed in VIX options.<sup>9</sup>

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<sup>9</sup> See Cboe Options Fees Schedule, Rate Table – Underlying Symbol List A.

Further, the Exchange believes that it is equitable and not unfairly discriminatory to waive fees for certain Professional Customer complex orders because Professional 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.<sup>10</sup> The Exchange also assesses lower fees for complex Customer orders in VIX as compared to simple orders in VIX.<sup>11</sup>

The Exchange next believes the proposed change to temporarily waive XSP transaction fees for Market-Makers and remove XSP from the Marketing Fee program is reasonable as Market-Makers will not have to pay fees for such transactions. The Exchange notes the proposed changes are designed to encourage the sending of additional XSP orders to the Exchange. Indeed, the Exchange believes the proposed reduced feed will encourage Market-Makers to submit additional orders in XSP 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.

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<sup>10</sup> See Cboe Options Fees Schedule, Volume Incentive Program.

<sup>11</sup> See Cboe Options Fees Schedule, Rate Table – Underlying Symbol List A.



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 believes that the proposed increase to the rebate under the NANOS LMM Incentive Program is reasonably designed to continue to incentivize an appointed LMM to meet the applicable quoting standards for NANOS options, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants. The Exchange further believes that the proposed rule change is reasonable because it is comparable to and within the range of the rebates offered by other LMM Incentive Programs. For example, the GTH2 VIX LMM Programs currently offers a rebate of \$20,000 if the quoting standards are met in a given month. The Exchange believes the proposed rebate applicable to the NANOS LMM Incentive Program is equitable and not unfairly discriminatory because it will continue to apply equally to any TPH that is appointed as an LMM to the Program.

The Exchange believes that it is reasonable to amend the quoting requirements under the Program by marginally tightening the quote widths in order to encourage LMMs to increase their quoting activity and post tighter spreads and more aggressive quotes in NANOS options in order to meet the heightened quoting standards and receive the proposed increased rebate. An increase in quoting activity and tighter quotes tends to signal additional corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency, and improving investor protection. The Exchange also believes that the proposed widths are reasonable because they remain generally aligned with the current heightened quoting standards in the program, as the proposed widths are only marginally reduced in order to incentivize an increase in quoting activity and the provision of tighter markets. The Exchange believes that the proposed reduced quote widths under the Program are equitable and not unfairly discriminatory because such quote widths will continue to apply equally to any and all TPHs with LMM appointments to the NANOS LMM Incentive Program. Additionally, the Exchange notes if an LMM appointed to the Program does not satisfy the quoting standards for any given month, then it simply will not receive the rebate offered by the Program for that month. The Exchange believes the proposed changes to the quoting requires are equitable and not unfairly discriminatory because it will continue to apply equally to any TPH that is appointed as an LMM to the Program.

The Exchange believes that the proposed rule change to adopt a NANOS Volume Incentive Pool as part of the NANOS LMM Incentive Program is reasonably designed to

continue to encourage LMMs appointed to the incentive program to provide significant liquidity in NANOS options. The Exchange notes that the SPESG LMM Incentive Program also offers a volume incentive pool structured in a substantially similar manner. The Exchange believes the proposed NANOS Volume Incentive Program is equitable and not unfairly discriminatory because it will apply equally to any TPH that is appointed as an LMM to the Program.

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

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 will be assessed automatically and uniformly to each similarly situated market participant (e.g., all qualifying Professional Customer VIX transactions will receive the proposed fee waiver and all Market-Makers will be subject to the XSP fee waiver and no longer be subject to the Marketing Fee for XSP and NANOs orders). Similarly, the proposed changes to the NANOS LMM Incentive Program and adoption of the NANOS Volume Incentive Pool will apply uniformly to any LMM appointment to the programs. The Exchange notes that there is a history in the options markets of providing preferential treatment to these market participants. As discussed in the statutory basis, the Exchange believes Professional 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. Similarly, to the extent LMMs appointed to the NANOS LMM Incentive Program receive a benefit that other market participants do not, as stated, these LMMs in their role as Market-Makers on the Exchange have different obligations and are held to different standards.

An LMM appointed to an incentive program may also 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 proposed fee changes are designed to attract additional order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

The Exchange does not believe that the proposed rule 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 18% of the market share of executed volume of options trades.<sup>12</sup> 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

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<sup>12</sup> See Cboe Global Markets, U.S. Options Market Volume Summary by Month (September 30, 2022), available at [http://markets.cboe.com/us/options/market\\_share/](http://markets.cboe.com/us/options/market_share/).

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.”<sup>13</sup> 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’ ....”<sup>14</sup> 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.

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

<sup>14</sup> *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 Act<sup>15</sup> and paragraph (f) of Rule 19b-4<sup>16</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2022-052 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.

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2022-052. 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-2022-052 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.<sup>17</sup>

J. Matthew DeLesDernier  
Deputy Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).