

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-100426; File No. SR-CBOE-2024-027)

June 25, 2024

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 12, 2024, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

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

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

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 June 3, 2024.<sup>3</sup> Specifically, the Exchange proposes to adopt and amend certain fees related to transactions in Mini-SPX Index (“XSP”) options. Specifically, the proposed rule change amends and adopts certain fees for XSP in the Rate Table for All Products Excluding Underlying Symbol List A, as follows:

- Adopts fee code MP, appended to all Market-Maker (capacity “M”) orders in XSP that are executed manually (i.e., open outcry) and assesses a fee of \$0.15 per contract; and amends fee code MC, currently appended to all Market-Maker (capacity “M”) orders in XSP that are contra customer (executed manually and electronically) and assesses a fee of \$0.15 per contract, to apply only to Market-Maker (capacity “M”) orders in XSP that are contra customer and that are executed electronically.
- Amends fee code MX, currently appended to all Market-Maker (capacity “M”) orders in XSP contra to non-customers and assesses a fee of \$0.09 per contract, to apply to all Market-Maker orders in XSP contra to non-customers that add liquidity and that are executed electronically.

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<sup>3</sup> The Exchange initially filed the proposed fee changes on June 3, 2024 (SR-CBOE-2024-024). On June 11, 2024, the Exchange withdrew that filing and submitted SR-CBOE-2024-026. On June 12, 2024, the Exchange withdrew that filing and submitted this proposal.

- Adopts fee code MY, appended to all Market-Maker (capacity “M”) in XSP contra to non-customers that remove liquidity and that are executed electronically and assesses a fee of \$0.14 per contract.
- Amends fee code XF, appended to all Clearing Trading Permit Holders (“TPHs”) (capacity “F”) and Non-Clearing TPH Affiliates (capacity “L”) orders in XSP and assesses a fee of \$0.13, to apply to all Clearing Trading Permit Holders (“TPHs”) (capacity “F”), Non-Clearing TPH Affiliates (capacity “L”), Broker-Dealer (capacity “B”), Joint Back-Office (capacity “J”), Non-TPH Market-Maker (capacity “N”), and Professional (capacity “U”) (collectively, “Non-Market Makers, Non-Customers”) orders in XSP contra to a customer or contra to a non-customer that add liquidity and to assess a fee of \$0.30 per contract.
- Amends fee code XB, appended to all Broker-Dealer (capacity “B”), Joint Back-Office (capacity “J”), Non-TPH Market-Maker (capacity “N”), and Professional (capacity “U”) orders in XSP and assesses a fee of \$0.17 per contract, to apply to all Non-Market Maker, Non-Customer orders in XSP contra to a non-customer that remove liquidity and to assess a fee of \$0.50 per contract.

Adopts fee code XN, appended to all Non-Market Maker, Non-Customer orders in XSP that are executed manually (i.e., open outcry) and assesses a fee of \$0.30 per contract.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>4</sup> Specifically, the

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

Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>5</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that the proposed fees for Market-Maker and Non-Customer, Non-Market Maker orders in XSP are reasonable, equitable and not unfairly discriminatory.

The Exchange believes the proposed changes to the fee structure for Market-Maker orders in XSP are reasonable. The proposed fees, in general, align with current fees for Market-Maker orders in XSP, with minor distinctions based on execution method, capacity of the contra-party, and orders that add liquidity and those that remove liquidity. The Exchange notes that it is not novel to charge different fees based on capacity of contra-party, and that current fees for Market-Maker orders in XSP contain such a distinction. Further, other exchanges offer varying fees based on whether an

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

<sup>6</sup> Id.

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

order adds or removes liquidity.<sup>8</sup>

The Exchange believes it is reasonable to assess lower fees for Market-Maker orders in XSP that are contra to a non-customer and add liquidity, and are executed electronically, as such changes are designed to incentivize an increase in non-customer liquidity-adding volume in XSP on the Exchange. The Exchange believes that incentivizing more non-customer orders in XSP will create more trading opportunities, which, in turn attracts Market-Makers. A resulting increase in Market-Maker activity facilitates tighter spreads, which may lead to additional increase of order flow in XSP from other market participants, further contributing to a deeper, more liquid market to the benefit of all market participants by creating a more robust and well-balanced market ecosystem. Further, the Exchange believes that the changes are reasonable and that the fees, even as amended, will continue to incentivize TPHs to send additional Market-Maker orders to the Exchange.

Additionally, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees, in general, to Market-Makers as compared to other market participants other than Customers because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. Further, these lower fees offered to Market-Makers are intended to incent Market-Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants.

The Exchange also believes the proposed changes to the fee structure for Non-Customer, Non-Market Maker orders in XSP are reasonable. As noted above, it is not novel to charge different fees based on capacity of contra-party, and other exchanges offer varying fees based on whether an order adds or removes liquidity.<sup>9</sup> The Exchange believes assessing higher fees in general for Non-

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<sup>8</sup> See EDGX Options Fees Schedule and BZX Options Fees Schedule.

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Customer, Non-Market Maker orders is reasonable, equitable, and non-discriminatory because, as noted above, the obligations and circumstances between market participants differ. The Exchange believes assessing a higher fee for Non-Customer, Non-Market Maker XSP orders contra a non-customer that remove liquidity and are executed electronically is reasonable because it provides an incentive to maintain non-customer liquidity at the Exchange, thereby promoting price discovery and enhancing order execution opportunities for all TPHs. Similarly, the Exchange believes assessing a lower fee for Non-Customer, Non-Market Maker XSP orders contra to a customer or contra to a non-customer that add liquidity and are executed electronically is reasonable because it provides an incentive to add liquidity at the Exchange, including in customer volume, thereby promoting price discovery and enhancing order execution opportunities for all TPHs. Finally, while the fees proposed apply to an Exchange proprietary product, which are traded exclusively on the Exchange, the Exchange notes that the proposed fees are generally in line with the options trading fees of at least one other exchange.<sup>10</sup>

The Exchange believes that the proposed fees for Market-Maker and Non-Customer, Non-Market Maker orders in XSP are equitable and not unfairly discriminatory because the proposed fees will apply automatically and uniformly to all Market-Maker and Non-Customer, Non-Market Maker orders in XSP, as applicable. The Exchange notes that all fee amounts applicable to Market-Makers will be applied equally to all Market-Makers, i.e. all Market Makers will be assessed the same amount. Similarly, the Exchange notes that the XSP fee amounts for each separate type of other market participant will be assessed equally to all such market participants, i.e. all Non-Customer and Non-Market-Maker orders will be assessed the same amount.

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<sup>10</sup> See BOX Fees Schedule, Section IV(A).

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

The Exchange does not believe that the proposed rule change will 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 XSP fee amounts for each separate type of market participants will be assessed equally to all such market participants. While different fees are assessed to different market participants in some circumstances, the obligations and circumstances between these market participants differ, as discussed above. For example, Market-Makers have quoting obligations that are not applicable to other market participants. Further, the proposed fees structure for XSP is intended to encourage more trading of XSP, which brings liquidity to the Exchange and benefits all market participants.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees assessed apply to an Exchange proprietary product, which are traded exclusively on the Exchange.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f) of Rule 19b-4<sup>12</sup> thereunder. At any time within 60 days of the filing of

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CBOE-2024-027 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-2024-027. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2024-027 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Vanessa A. Countryman,**

*Secretary.*

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<sup>13</sup> 17 CFR 200.30-3(a)(12).