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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-86588; File No. SR-CBOE-2019-039]**

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

August 7, 2019

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 August 1, 2019, 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

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

<sup>2</sup> 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 to (i) amend the Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scales Program (Proprietary Product Sliding Scales") and (ii) amend the Marketing Fee program, effective August 1, 2019.

Proprietary Sliding Scales

The Proprietary Products Sliding Scales table provides that Clearing Trading Permit Holder Proprietary transaction fees for Clearing Trading Permit Holders (origin code "F") and for Non-Clearing Trading Permit Holder Affiliates ("Non-TPH Affiliates") (origin code "L") (collectively, Clearing TPHs") in Underlying Symbol List A<sup>3</sup> will be reduced provided a Clearing TPH reaches certain average daily volume ("ADV") thresholds identified in Table A (the "Firm Sliding Scale") and Table B (the "VIX Sliding Scale"). More specifically, Table A, the Firm Sliding Scale, provides for reduced Clearing TPH transaction fees in Underlying Symbol List A options, provided a Clearing TPH reaches certain ADV thresholds in all underlying symbols excluding Underlying Symbol List A on the Exchange in a month. Table B, the VIX Sliding Scale, provides for reduced Clearing TPH transaction fees in VIX, provided a Clearing TPH reaches certain VIX options volume thresholds during a month. For each Clearing

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<sup>3</sup> See Cboe Options Footnote 34. Underlying Symbol List A currently includes OEX, XEO, RUT, RLG, RLV, RUI, AWDE, FTEM, FXTM, UKXM, SPX (includes SPXw), VIX, VOLATILITY INDEXES and binary options.

TPH, the Exchange assesses the better of a) the Firm Sliding Scale as applied to all Underlying Symbol List A products or b) the Firm Sliding Scale as applied to all Underlying Symbol List A except VIX, plus the discounted transaction fees as calculated under the VIX Sliding Scale. More specifically, for calculating a Clearing TPH's total proprietary product transaction fees, the Exchange currently uses the following methodology: if using the VIX Sliding Scale plus the Firm Sliding Scale (minus VIX options volume) results in lower total Clearing TPH proprietary transaction fees than just using the Firm Sliding Scale, the Exchange will apply the VIX Sliding Scale plus the Firm Sliding Scale (deducting the VIX options volume from the Firm Sliding Scale). If using the VIX Sliding Scale plus the Firm Sliding Scale (minus VIX options volume) results in higher total Clearing TPH proprietary transaction fees than just using the Firm Sliding Scale, the Exchange will apply only the Firm Sliding Scale.

In order to simplify and streamline the Proprietary Sliding Scales program, the Exchange proposes to make the Firm Sliding Scale and VIX Sliding Scales separate and independent programs. That is, the Exchange proposes to no longer assess the lesser amount of the transaction fees calculated using only the Firm Sliding Scale as applied to all Underlying Symbol List A products or b) the Firm Sliding Scale as applied to all Underlying Symbol List A except VIX, plus the discounted transaction fees as calculated under the VIX Sliding Scale. Rather, all Underlying Symbol List A options, excluding VIX, will be subject to the "Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scale" (formerly Table A) and all VIX volume will always be subject to the "Cboe Options Clearing Trading Permit Holder VIX Sliding Scale" (formerly Table B). The current methodology was originally adopted to provide a Clearing TPH with the most beneficial fee arrangement (the lowest fees) without double-counting VIX options volume. The Exchange notes however, the more beneficial fee

arrangement for Clearing TPHs has historically and consistently been to apply the rates under the Firm Sliding Scale to all Underlying Symbol List A products excluding VIX and apply the rates under the VIX Sliding Scale to all VIX volume (which provides for the same end result as is being proposed by separating the program). For example, this result has been true for all Clearing TPHs to date this year 2019. As such, the Exchange believes the proposal to separate the sliding scale programs does not significantly or substantively impact Clearing TPHs.

#### Marketing Fee Program

The Exchange next proposes to amend its Marketing Fee program. By way of background the Marketing Fee is assessed on certain transactions of Market-Makers resulting from (i) customer orders from payment accepting firms, or (ii) customer orders that have designated a DPM under Cboe Options Rule 8.80, a "Preferred Market- Maker" under Cboe Options Rule 8.13 or a "Lead Market-Maker" under Cboe Options Rule 8.15 (collectively "Preferred Market- Maker"). The funds collected via this Marketing Fee are then put into pools controlled by the Preferred Market-Maker. The Preferred 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 simplify and amend the Marketing Fee program to provide that the Marketing Fee will be assessed on all transactions of Market-Makers resulting from any Customer order (instead of only Customer orders from (i) payment accepting firms or (ii) that have designated a Preferred Market-Maker). The Exchange notes that currently, order flow providers are given the option of "opting in" to the Marketing Fee Program to be eligible to

receive marketing fees (i.e., become a payment accepting firm).<sup>4</sup> The Exchange notes that over time however, the vast majority of firms have become payment accepting firms and there are only a handful of order flow providers that are not payment accepting firms. The Exchange also notes that currently the vast majority of customer orders designate a Preferred Market-Maker. Accordingly, the vast majority of Market-Maker orders that result from a Customer order are already subject to the Marketing Fee. While the Exchange has no way of predicting with certainty how the rule change will impact Trading Permit Holders, the Exchange anticipates the impact of the proposed change to be de minimis for all TPHs. Moreover, the Exchange believes the proposed change will also provide for more streamlined administration of the Marketing Fee program and uniform application of the Marketing Fee. Lastly, the proposed amendment to the Marketing Fee program will further harmonize the program with the corresponding Marketing Fee program of its affiliate exchange, Cboe EDGX Exchange, Inc., (“Cboe EDGX”) and is also in line with how other exchanges apply their respective marketing fee programs (i.e., marketing fees apply to all Market-Maker transactions resulting from any Customer order).<sup>5</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(4), in particular, as it

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<sup>4</sup> The Exchange has had no role with respect to the negotiations between Preferred Market-Makers and payment accepting firms. Rather, the Exchange merely collects and administers the payment of the fee collected on those transactions for which the Preferred Market-Maker has advised the Exchange that it has negotiated with a payment accepting firm to pay for the firm’s order flow.

<sup>5</sup> See e.g., Cboe EDGX Options Exchange Fee Schedule, Marketing Fees, which provides the marketing fees are charged to all Market Makers who are counterparties to a trade with a Customer. See also Nasdaq ISE, Options 7 Pricing Schedule, Section 6(E), Marketing Fee and NYSE American Options Fee Schedule, Section IA, Options Transaction Fees and Credits, Marketing Charges Per Contract for Electronic Transactions.

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) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable and equitable to separate the Proprietary Sliding Scales Program (i.e., Table A, Firm Sliding Scale and Table B, VIX Sliding Scale), because Clearing TPHs are still eligible to receive discounted transaction fees for their Underlying Symbol List A volume. Additionally, as discussed above, under the current “best of” calculation, the most beneficial fee arrangement (the lowest fees) for Clearing TPHs has consistently and historically been to apply the rates under the Firm Sliding Scale on all Underlying Symbol List A products excluding VIX and apply the rates under the VIX Sliding Scale on all VIX volume, which is exactly how the programs will function separately as proposed. As such, the Exchange believes the proposal to separate the sliding scale programs does not significantly or substantively affect Clearing TPHs. Moreover, the proposed rule change streamlines and simplifies the Proprietary Sliding Scales program.

The Exchange also believes that notwithstanding the proposed rule change, the Firm Sliding Scale and VIX Sliding Scale will continue to incentivize option volume. Additionally,

the Exchange notes that lower fees for executing more contracts is equitable and not unfairly discriminatory because it provides market participants with an incentive to execute more contracts on the Exchange. This brings greater liquidity and trading opportunity, which benefits all market participants. The Exchange believes that the proposed change is not unfairly discriminatory because it will apply to all Clearing TPHs uniformly. The Exchange also believes offering lower fees under the Proprietary Sliding Scale to Clearing TPHs and not other market participants is equitable and not unfairly discriminatory because Clearing TPHs must take on certain obligations and responsibilities, such as clearing and membership with the Options Clearing Corporation, as well as significant regulatory burdens and financial obligations, that other market participants are not required to undertake.

The Exchange believes the proposed rule change to apply the Marketing Fee to all Market-Maker transactions that result from Customer orders (instead of Customer orders that are from payment accepting firms or designate a Preferred Market-Maker) is reasonable because the Marketing Fee amount is not changing. Rather, the proposed rule change results in the Marketing Fee being applied uniformly on all Market-Maker transactions where the counterparty is a Customer. As discussed above, the Exchange believes the proposed change will not have a significant impact, as the vast majority of Market-Maker-to-Customer transactions are already subject to the Marketing Fee as (i) only a few order flow providers are not already payment accepting firms and (ii) the majority of orders designate a Preferred Market-Maker. The Exchange also note that the Marketing Fee program is designed to attract additional order flow to the Exchange, which would increase liquidity and benefit all market participants. Lastly, the proposed rule change enables a more streamlined administration of the Marketing Fee program

and is in line with how other exchanges, including the Exchange's affiliate, administer their respective Marking Fee programs.<sup>6</sup>

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. Specifically, the Exchange does not believe that the proposed change will impose any burden on intramarket competitions that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change to the Proprietary Sliding Scales program and Marketing Fee Program, will be applied equally to Clearing TPHs and Market-Makers, respectively.

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 change relating to the Proprietary Sliding Scales program only affects Exchange proprietary products, which are traded exclusively on the Exchange. Additionally, the proposed change to the Marketing Fee program, mirrors how other exchanges, including Cboe EDGX, apply their respective marketing fees. The Exchange notes that neither proposed rule change it intended as a competitive pricing change, but rather as a change to streamline and simplify both programs.

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.

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<sup>6</sup> See e.g., Cboe EDGX Options Exchange Fee Schedule, Marketing Fees, which provides the marketing fees are charged to all Market Makers who are counterparties to a trade with a Customer. See also Nasdaq ISE, Options 7 Pricing Schedule, Section 6(E), Marketing Fee and NYSE American Options Fee Schedule, Section IA, Options Transaction Fees and Credits, Marketing Charges Per Contract for Electronic Transactions.

### 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>7</sup> and paragraph (f) of Rule 19b-4<sup>8</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-2019-039 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>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2019-039. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-039 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>9</sup>

**Jill M. Peterson,**  
*Assistant Secretary.*

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<sup>9</sup> 17 CFR 200.30-3(a)(12).

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