

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83455; File No. SR-C2-2018-014]

### Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Physical Port Fees for C2

June 15, 2018.

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 4, 2018, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available at the Exchange’s website at [www.markets.cboe.com](http://www.markets.cboe.com), at the principal office of the Exchange, 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 Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts 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.<sup>5</sup>

##### Physical Connectivity

A physical port is utilized by a Trading Permit Holder (“TPH”) or non-TPH to connect to the Exchange at the data centers where the Exchange’s servers are located. The Exchange currently assesses fees for Network Access Ports for legacy physical connections to the Exchange. Specifically, TPHs and non-TPHs can currently elect to connect to C2’s trading system via either a 1 gigabit per second (“Gbps”) Network Access Port or a 10 Gbps Network Access Port. The Exchange currently assesses a monthly fee of \$500 per port for 1 Gbps Network Access Ports and a monthly fee of \$1,000 per port for 10 Gbps Network Access Ports. Through June 30, 2018, C2 market participants will continue to have the ability to connect to C2’s trading system via legacy Network Access Ports. The Exchange however, does not wish to assess fees for the legacy ports for the month of June. As such, the Exchange proposes to eliminate the \$500 and \$1,000 per port per month fees, effective June 1, 2018.

On May 14, 2018, the Exchange migrated its technology onto the same trading platform as its affiliates Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe BZX Exchange, Inc. (“Affiliated Exchanges”) (the “migration”). In connection with the migration, effective May 14, 2018, TPHs and non-TPHs could alternatively elect to connect to C2 via new Physical Ports. The new Physical Ports allow TPHs and non-TPHs the ability to connect to the Exchange at the data centers where the Exchange’s servers are located and TPHs and non-TPHs have the option to connect via 1 Gbps or 10 Gbps Physical Ports. The Exchange currently maintains a presence in two third-party data centers: (i) The primary data center where the Exchange’s business is primarily conducted on a daily basis, and (ii) a secondary data center, which is predominantly maintained for business continuity purposes. The Exchange currently assesses a monthly fee of \$2,000 per port for 1 Gbps Physical Ports, and a monthly fee of

\$7,000 per port for 10 Gbps Physical Ports, for Physical Ports that connect to the primary data center. The Exchange proposes to increase the monthly Physical Port fees to \$2,500 per port for 1 Gbps Physical Ports and to \$7,500 per port for 10 Gbps Physical Ports. The Exchange notes the proposed fees enable it to continue to maintain and improve its market technology and services and also notes that the proposed fee changes are in line with the amounts assessed by other exchanges for similar connections. The Exchange also notes that the proposed changes to the Physical Port fees are also being proposed by its Affiliated Exchanges for June 1, 2018 effectiveness.

##### Disaster Recovery Physical Ports

The Exchange also proposes to adopt separate Physical Port fees for connection to its secondary data center, which is predominantly maintained for business continuity purposes (“Disaster Recovery Systems”). Particularly, the Disaster Recovery Systems can be accessed via Physical Ports in Chicago. TPHs and Non-TPHs may maintain Physical Ports in order to be able to connect to the Disaster Recovery Systems in case of a disaster. The Exchange proposes to establish separate pricing for Physical Ports that are used to connect to the Disaster Recovery Systems (“Disaster Recovery Physical Ports”). Specifically, the Exchange proposes to assess a monthly fee of \$2,000 per 1 Gbps Disaster Recovery Physical Port and a monthly fee of \$6,000 per 10 Gbps Disaster Recovery Physical Port. This amount will allow the Exchange to maintain the Disaster Recovery Physical Ports in case they become necessary. The Exchange notes that the Disaster Recovery Physical Ports may also be used to access the Disaster Recovery Systems for the following affiliate exchanges: Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe BYX Exchange, Inc., Cboe Exchange Inc., and Cboe Futures Exchange, LLC. The Exchange proposes to provide that market participants will only be assessed a single fee for any Disaster Recovery Physical Port that also accesses the Disaster Recovery Systems for these exchanges.

##### Logical Connectivity

The Exchange currently assesses \$650 per port for BOE and FIX Logical Ports. Additionally, the Fees Schedule provides that each BOE or FIX Logical Port incur the standard logical port fee when used to enter up to 20,000 orders per trading day per logical port as

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

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

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

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

<sup>5</sup> The Exchange initially filed the proposed changes on June 1, 2018 (SR-C2-2018-013). On June 4, 2018, the Exchange withdrew that filing and submitted this filing.

measured on average in a single month and that each incremental usage of up to 20,000 per day per logical port will incur an additional logical port fee of \$650 per month. The Exchange proposes to increase the number of average daily orders used to determine incremental usage from 20,000 orders per trading day per logical port to 70,000 orders per day per logical port. The Exchange believes that the pricing implications of going beyond 70,000 orders, instead of 20,000 orders, per trading day per Logical Port still encourage users to mitigate message traffic as necessary.

#### Cboe Data Services—Port Fees

The Exchange lastly proposes to amend the “Port Fee” under the Cboe Data Services (“CDS”) fees section. Currently, the Port Fee is payable by any Customer that receives data through a direct connection to CDS (“direct connection”) or through a connection to CDS provided by an extranet service provider (“extranet connection”). The Port Fee applies to receipt of any C2 Options data feed but is only assessed once per data port. The Exchange proposes to amend the monthly CDS Port Fee to provide that it is payable “per source” used to receive data, instead of “per data port”. The Exchange also proposes to increase the fee from \$500 per data port/month to \$1,000 per data source/month.

#### Clean-Up

The Exchange lastly proposes to correct an inadvertent error with respect to a reference to a C2 Rule in the Fees Schedule. Particularly, the Exchange notes that under the Regulatory Options Fee section of the Fees Schedule, a reference to C2 Rule 6.36 is made. The Exchange notes that such rule was recently replaced with C2 Rule 6.15. The Exchange proposes to update that reference and notes that no substantive changes are being made by this clean-up update.

#### 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>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Permit

Holders and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

#### Physical Connectivity

The Exchange believes it’s reasonable, equitable and not unfairly discriminatory to not assess Network Access Port fees for the month of June as market participants will no longer pay fees for these ports. TPHs and non-TPHs will continue to pay the Physical Port fees for Physical Port connections. The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies uniformly to market participants.

The Exchange believes increasing the fees for the Physical Ports is reasonable because the proposed fees enable the Exchange to continue to maintain and improve its market technology. The Exchange also notes that the proposal represents an equitable allocation of reasonable dues, fees and other charges as its fees for physical connectivity are reasonably constrained by competitive alternatives. If a particular exchange charges excessive fees for connectivity, affected TPHs and non-TPHs may opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange’s data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. The Exchange also notes that the proposed amounts are in line with the costs of physical connectivity at other Exchanges.<sup>9</sup> The Exchange believes the proposed Physical Port fees are equitable and not unfairly discriminatory because it applies to all market participants.

Similarly, the Exchange believes the proposed fees for the Disaster Recovery Physical Ports are reasonable as it will

allow the Exchange to maintain the Disaster Recovery Physical Ports in case they become necessary. The Exchange also believes the proposed fees are reasonable as they remain competitive with those charged by other venues.<sup>10</sup> The Exchange believes the proposed rule change is equitable and non-discriminatory because it applies to all market participants equally.

#### Logical Connectivity

The Exchange believes the proposed increase to the maximum average orders per day per logical port for BOE and FIX Logical Port usage provides market participants adequate capacity and ability to submit orders, while still encouraging users to mitigate message traffic as necessary, which removes impediments to and perfects the mechanism of a free open market and a national market system, and, in general, protects investors and the public interest. The proposed change is also equitable and not unfairly discriminatory because it applies uniformly to all market participants.

#### Cboe Data Services—Port Fees

The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory because it applies uniformly to all market participants. The Exchange believes assessing the fee per data source, instead of per port, is reasonable because it may allow for market participants to maintain more ports at a lower cost and applies uniformly to all market participants. The Exchange believes the proposed increase is reasonable because, as noted above, market participants will likely still pay lower fees as a result of charging per data source and not per data port.

#### Miscellaneous Changes

The Exchange believes the proposed rule change to correct an inadvertent rule reference error alleviates potential confusion. The alleviation of confusion removes impediments to and perfects the mechanism of a free and open market and a national market system.

#### 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

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

<sup>9</sup> See e.g., NYSE Arca Equities Fees and Charges, NYSE Arca Marketplace: Other Fees and Charges, Connectivity Fees. See also, Nasdaq Phlx LLC Pricing Schedule, Section XI, Direct Connectivity to Phlx.

<sup>10</sup> See e.g., NYSE Arca Equities Fees and Charges, NYSE Arca Marketplace: Other Fees and Charges, Connectivity Fees. See also, Nasdaq Phlx LLC Pricing Schedule, Section XI, Direct Connectivity to Phlx.

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

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

proposed change represents a significant departure from pricing offered by the Exchange's affiliates. Additionally, TPHs may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of TPHs or competing venues to maintain their competitive standing in the financial markets. The Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all TPHs and non-TPHs equally.

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

The Exchange has neither solicited nor received written 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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2018-014 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-C2-2018-014. 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 (<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-C2-2018-014 and should be submitted on or before July 12, 2018.

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

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-83452; File No. SR-NYSEArca&2017-139]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF Under NYSE Arca Rule 8.200-E, Commentary .02**

June 15, 2018.

On December 4, 2017, NYSE Arca, Inc. ("NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF under NYSE Arca Rule 8.200-E, Commentary .02. The proposed rule change was published for comment in the **Federal Register** on December 26, 2017.<sup>3</sup> On January 30, 2018, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On March 23, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> The Commission has received 11 comments on the proposed rule change.<sup>8</sup>

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

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

<sup>3</sup> See Securities Exchange Act Release No. 82350 (Dec. 19, 2017), 82 FR 61100 (Dec. 26, 2017).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 82602 (Jan. 30, 2018), 83 FR 4941 (Feb. 2, 2018).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 82939 (Mar. 23, 2018), 83 FR 13537 (Mar. 29, 2018). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest." See *id.* at 13538 (citing 15 U.S.C. 78f(b)(5)).

<sup>8</sup> See Letters from Abe Kohen, AK Financial Engineering Consultants, LLC (Dec. 27, 2017); Anita Desai (Apr. 6, 2018); Ed Kaleda (Apr. 6, 2018); Scott Moberg (Apr. 6, 2018); Adam Malkin (Apr. 8, 2018); Gisan Mohammed (Apr. 11, 2018); Shruvan Kumar (Apr. 11, 2018); Louise Fitzgerald (Apr. 19, 2018);

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

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

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