last minute shareholder redemptions by SPACs that are close to the minimum requirement. The Exchange also has not addressed the risk that, by waiting for SPACs to demonstrate compliance with the minimum number of holders requirements until after the closing of the business combination, non-compliant companies could be listed on the Exchange despite not meeting initial listing standards, and have their securities continue to trade until the delisting process has been completed. As a result, a SPAC could complete a business combination and very soon thereafter be subject to delisting proceedings, and during such time its securities may trade with a number of holders that is substantially less than the required minimum. The Exchange has not addressed the impact this could have on SPAC shareholders and other market participants, or explained why subjecting them to these risks is consistent with the protection of investors and the public interest, and the other requirements of Section 6(b)(5) of the Act.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [21] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[22]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[23]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 11, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 25, 2021. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

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.* Please include File Number SR–NASDAQ–2020–062 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–NASDAQ–2020–062. 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–NASDAQ–2020–062 and should be submitted by January 11, 2021. Rebuttal comments should be submitted by January 25, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28066 Filed 12–18–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90676; File No. SR–CBOE–2020–114]

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

December 15, 2020.

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 December 1, 2020, 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 and II 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.

[21] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[22] *See id.*

[23] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[24] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 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 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 certain routing fees in connection with routed Customer orders in ETF and equity options, effective December 1, 2020.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to competitive pricing, the Exchange, like other options exchanges, offers rebates and assesses fees for certain order types executed on or routed through the Exchange. The Exchange notes too that other options exchanges currently approximate routing fees in a similar manner as the Exchange's current approach to assessing approximate routing fees, as discussed below.[4]

The Exchange assesses fees in connection with orders routed away to various exchanges. Currently, under the Routing Fees table of the Fee Schedule, fee codes RD, RE, RF, RG, RH and RI are appended to certain Customer orders in ETF and Equity options, as follows:

- Fee code RD is appended to Customer orders in ETF/Equity options[5] for greater than or equal to 100 contracts routed to NYSE American (''AMEX''), BOX Options Exchange (''BOX''), Nasdaq BX Options (''BX''), Cboe EDGX Exchange, Inc. (''EDGX''), ISE Mercury, LLC (''MERC''), MIAX Options Exchange (''MIAX'') or Nasdaq PHLX LLC (''PHLX''), and assesses a charge of $0.33 per contract;
- fee code RE is appended to Customer orders in ETF/Equity options for less than 100 contracts routed to AMEX, BOX, BX, EDGX, MERC, MIAX or PHLX, and assesses a charge of $0.15 per contract;
- fee code RF is appended to Customer orders in ETF/Equity, Penny options for greater than or equal to 100 contracts routed to NYSE Arca, Inc (''ARCA''), Cboe BZX Exchange, Inc. (''BZX''), Cboe C2 Exchange, Inc. (''C2''), Nasdaq ISE (''ISE''), ISE Gemini, LLC (''GMNI''), MIAX Emerald Exchange (''EMLD''), MIAX Pearl Exchange (''PERL'') or Nasdaq Options Market LLC (''NOMX), and assesses a charge of $0.83 per contract;
- fee code RG is appended to Customer orders in ETF/Equity, Non-Penny options for greater than or equal to 100 contracts routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL or NOMX, and assesses a charge of $1.18 per contract;
- fee code RH is appended to Customer orders in ETF/Equity, Penny options for less than 100 contracts routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL or NOMX, and assesses a charge of $0.65 per contract; and
- fee code RI is appended to Customer order in ETF/Equity, Non-Penny options for less than 100 contracts routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL or NOMX, and assesses a charge of $1.00 per contract.

The Exchange proposes to remove fee codes RE, RG and RH and amend fee codes RD, RF and RI by removing the 100-contract size limit from each and updating the fees assessed to $0.25 per contract, $0.75 per contract and $1.25 per contract, respectively. The Exchange believes that eliminating fee codes RE, RG and RH and the 100-contract contingency currently applicable to orders that yield fee codes RD, RF and RI will simplify and streamline the System's billing process for routed Customer orders in ETF and equity options. By removing the size contingency, orders to which RE, RG and RH are currently applicable may then be absorbed into orders to which RD, RF and RI are currently applicable and the routing fees for Customer orders in ETF and equity options may be billed as one of three fee codes, instead of six. For example, fee code RG would, prior to this proposal, be appended to Customer orders in ETF/Equity Non-Penny options for 100 contracts or more routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL or NOMX. However, without the size contingency, RI will now be appended to all Customer orders in ETF/Equity Non-Penny options routed to the same away exchanges. Regarding the proposed rate changes for the remaining Customer ETF/Equity routing fee codes (RD, RF and RI), the Exchange notes that its current approach to routing fees is to set forth in a simple manner certain sub-categories of fees that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as a flat $0.15 assessment that covers costs to the Exchange for routing (*i.e.,* clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, ''Routing Costs''). The Exchange then monitors

[3] *See* Cboe Global Markets U.S. Options Monthly Market Volume Summary (November 23, 2020), available at *https://markets.cboe.com/us/options/market_statistics/.*

[4] *See e.g.,* NYSE Arca Options Fees and Charges, ''Routing Fees'', which provides routing fees of ''$0.11 per contract on orders routed and executed on another exchange, plus (i) any transaction fees assessed by the away exchange (calculated on an order-by-order basis since different away exchanges charge different amounts) or (ii) if the actual transaction fees assessed by the away exchange(s) cannot be determined prior to the execution, the highest per contract charge assessed by the away exchange(s) for the relevant option class and type of market participant (*e.g.,* Customer, Firm, Broker/Dealer, Professional Customer or Market Maker).''

[5] The Exchange also updates fee codes RD and RF to make clear that ''equity'' options are included in the description. The System currently applies the applicable routing fee codes (RD, RE, RF, RG and RH) to both ETF and equity options.

the fees charged as compared to the costs of its routing services and adjusts its routing fees and/or sub-categories to ensure that the Exchange's fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. As a result, the Exchange believes the proposed amended rates for RD, RF and RI are adjusted to reflect an appropriate, current approximation of the routing costs to the applicable sub-category group of away exchanges for ETF/Equity options of any order size, and these routing fee codes will absorb the orders to which RE, RG and RH are currently appended. The Exchange notes that routing through the Exchange is optional and that TPHs will continue to be able to choose where to route their Customer orders in ETF and equity options.

The Exchange also proposes to update routing fee codes RD and RF in the Routing Fees table of the Fees Schedule connection with routed Customer orders in SPY options to Nasdaq PHLX LLC (''PHLX''). As described above, routing fee code RD is appended to Customer orders in ETF/Equity options routed to AMEX, BOX, BX, EDGX, MERC, MIAX or PHLX and assesses a charge of $0.25 per contract (as proposed), and routing fee code RF is appended to Customer orders in ETF options in Penny classes routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX or PHLX and assesses a charge of $0.75 per contract (as proposed). Currently, PHLX assesses a charge of $0.42 per contract for Customer orders in SPY options that remove liquidity.[6] As described above, the Exchange currently assesses a routing fee of $0.33 per contract for Customer orders routed to PHLX which yield fee code RP. This structure does not currently take into account, and approximately cover, the $0.42 per contract fee assessed by PHLX for Customer orders in SPY options. Therefore, in order to assess fees more in line with the Exchange's current approach to routing fees, that is, in a manner that approximates the cost of routing Customer orders in SPY options to PHLX, along with other away options exchanges, based on the general cost of transaction fees assessed by the sub-category of away options exchanges for such orders (as well as the Exchange's routing costs), the Exchange proposes to exclude Customer orders is SPY options routed to PHLX from orders that yield fee code RD and are assessed a charge of $0.25 per contract (as proposed) and, instead, add Customer orders routed to PHLX in SPY options only to orders that yield fee code RF[7] and are assessed a charge of $0.75 per contract (as proposed).

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.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] 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 Section 6(b)(4) of the Act,[10] 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 rule change to remove fee codes RE, RG and RH and remove the size contingency for fee codes RD, RF and RI is reasonable in that it is reasonably designed to simplify and streamline the System's billing process for routed Customer orders in ETF and equity options. By removing the size contingency, orders to which fee codes RE, RG and RH are currently applicable may then be absorbed into the orders to which fee codes RD, RF and RI are applicable and the routing fees for Customer orders in ETF and equity options may be billed as one of three fee codes, instead of six. The Exchange also believes that it is reasonable to amend the rates that correspond to fee codes RD, RF and RI because the proposed rates are aligned with the Exchange's current approach to approximating the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as the Exchange's Routing Cost. The Exchange believes the proposed amended rates for orders that yield fee codes RD, RF and RI are adjusted to reasonably reflect an appropriate, current approximation of the routing costs for ETF/Equity options of any order size to the sub-category group of away exchanges, and these routing fee codes will absorb the orders to which fee codes RE, RG and RH are currently appended. For example, routed Customer orders in ETF/Equity Non-Penny options that yield fee code RG (greater than or equal to 100 contracts) are currently assessed a routing fee of $1.18 per contract, while routed Customer orders in ETF/Equity Non-Penny options that yield fee code RH (less than 100 contracts) are currently assessed a routing fee of $1.00. However, upon the removal of fee code RG, those routed Customer orders in ETF/Equity Non-Penny options will yield fee code RH, which will assess a proposed fee of $1.25, which the Exchange believes is appropriately adjusted to reflect the current approximate cost of routing Customer orders in ETF/Equity Non-Penny options of all sizes to the same sub-category group of away exchanges. The Exchange notes that routing through the Exchange is optional and that TPHs will continue to be able to choose where to route their Customer orders in ETF and equity options in the same sub-category group of away exchanges as they currently may choose to route. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because TPHs' routed Customer orders in ETF/Equity options will continue to be automatically and uniformly assessed the applicable routing charges.

The Exchange believes the proposed rule change to amend fee codes RD and RF to account for PHLX's current assessment of fees for Customer orders in SPY options is reasonable because it is reasonably designed to assess routing fees in line with the Exchange's current approach to routing fees. That is, the proposed rule change is intended to include Customer orders in SPY options routed to PHLX in the most appropriate sub-category of fees that approximates the cost of routing to a group of away options exchanges (including PHLX) based on the cost of transaction fees assessed by each venue as well as Routing Costs to the Exchange. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all TPHs' Customer orders in SPY routed to PHLX will automatically yield fee code RQ

[6] *See* Nasdaq Phlx Options 7 Pricing Schedule, Section 3 ''Rebates and Fees for Adding and Removing Liquidity in SPY'', Part A.

[7] The Exchange notes that SPY options are part of the Penny Program.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

and uniformly be assessed the corresponding fee.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change to remove certain routing fee codes and to update other routing fee codes accordingly to apply instead, will impose any burden on intramarket competition because all TPHs' routed Customer orders in ETF/Equity options will continue to be able to route to the same sub-category group of away exchanges and will automatically and uniformly be assessed the applicable routing fees. Likewise, all TPH's Customer orders in SPY options routed to PHLX will automatically yield fee code RF and uniformly be assessed the corresponding fee.

The Exchange does not believe that the proposed rule changes in connection with routing fees will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as previously discussed, the Exchange operates in a highly competitive market. The Exchange notes that other options exchanges approximate routing costs in a similar manner as the Exchange's current approach.[11] Also, the Exchange notes that, in addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and director 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 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 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 [15] and paragraph (f) of Rule 19b–4 [16] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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*. Please include File Number SR–CBOE–2020–114 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–2020–114. 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; 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–2020–114 and should be submitted on or before January 11, 2021.

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

J. Matthew DeLesDernier,

Assistant Secretary.

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[11] *See supra* note 4.

[12] *See* supra note 3.

[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)).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

[17] 17 CFR 200.30–3(a)(12).