

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-CboeEDGX-2022-044 and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**J. Lynn Taylor,**  
Assistant Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-96001; File No. SR-CBOE-2022-049]

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Facility Fees Section in the Fees Schedule in Connection With the Exchange's New Trading Floor**

October 6, 2022.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on September 26, 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 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.

**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 Facility Fees section in the Fees Schedule in connection with the Exchange's new trading floor. 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 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 in connection with the opening of a new trading floor.<sup>4</sup> Until June 6, 2022, the Exchange conducted open outcry trading at 400 S. LaSalle, Chicago, Illinois ("LaSalle trading floor"). On June 6, 2022, the Exchange moved its open outcry trading operations to a new trading floor located at 141 W Jackson Blvd., Chicago, Illinois ("CBOT Building"). As a result of this transition, certain infrastructure and technology on the LaSalle trading floor were rendered obsolete, and the new trading floor in the CBOT Building has

new infrastructure and offers new technology. Accordingly, the Exchange proposes to adopt new, and/or update current, facility fees with respect to the new trading floor, as well as eliminate obsolete facility fees that are only applicable to the Exchange's LaSalle facility and trading floor which is no longer in use as of June 6, 2022.

Booth Fees

Under the current Fees Schedule, the Exchange assesses monthly fees for "standard Booths", which refers to a portion of designated space on the trading floor of the Exchange adjacent to or in particular trading crowds, which may be occupied by a Trading Permit Holder ("TPH"), clerks, runners, or other support staff for operational and other business-related activities. The Exchange assesses a monthly fee of \$195 for standard Booths located along the perimeter of the trading floor, and \$550 for standard Booths located in the OEX, Dow Jones, MNX and VIX trading crowds. The Exchange also assesses monthly fees for "nonstandard Booths", which refers to space on the trading floor of the Exchange that is set off from a trading crowd, which may be rented by a TPH for whatever support, office, back-office, or any other business-related activities for which the TPH may choose to use the space. A TPH that rents non-standard booth space on the floor of the Exchange is subject to a base non-standard booth rental fee of \$1,250 per month in addition to a square footage fee of \$1.70 per square foot per month based on the size of the TPH's non-standard booth. The Exchange proposes to modify and simplify its fees assessed for booth rentals. First, the Exchange proposes to eliminate the distinction between standard and non-standard Booths. The Exchange also proposes to adopt a tiered pricing schedule for Booths based on the number of Booths rented by a TPH. Particularly, the Exchange proposes to adopt the following fees for Booths that are set off from a trading crowd:

| Quantity of booths | Monthly fee |
|--------------------|-------------|
| 1-2 .....          | \$400       |
| 3-6 .....          | 300         |
| 7-10 .....         | 200         |
| 11 or more .....   | 100         |

The proposed tiered pricing provides discounted pricing for additional Booths. For example, if a TPH rented 4 Booths, the TPH would be assessed \$1,400 a month (2 Booths at \$400 and 2 Booths at \$300). The Exchange also proposes to adopt a monthly fee of \$750 per booth for any booth located in a

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Exchange initially filed the proposed fee changes on June 1, 2022 (SR-CBOE-2022-026). On June 10, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-029. On August 5, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-042. The Exchange notes no comment letters were received for any previous filing. On September 26, 2022, the Exchange withdrew that filing and submitted this filing.

trading crowd. The Booth Pass-Through Fee would remain unchanged.<sup>5</sup> The Exchange notes that use of Booths, whether or located away from or in a trading crowd are optional and not necessary in order to conduct open outcry trading on the trading floor. Booth spaces are also uniform and nearly identical in size. The Exchange also notes that at this time, the Exchange has ample space on its new trading floor for booth space.

#### Policy

The Exchange also proposes to update the Exchange's policy ("Policy") regarding the rental and use of booth space on its trading floor by TPH organizations. The Exchange memorialized the Policy and filed it with the Commission in 1994.<sup>6</sup> The Exchange proposes to update the Policy in a few respects. First, the Exchange proposes to change references to "Chicago Board Options Exchange, Incorporated" and "CBOE" to "Cboe Exchange, Inc.," and "Cboe Options", respectively to reflect the Exchange's current legal name which has been updated since the last update to the Policy. The Exchange also proposes to update the rule reference relating to the Appeals process from Chapter "19" to Chapter "15" to reflect recent updates to the Exchange's rulebook.

The Exchange notes the Policy includes a section that sets forth the requirement that all TPH organizations renting Booths execute a "Trading Floor Booth Rental Agreement" (hereinafter, "Agreement") which sets forth the contractual terms, conditions and restrictions governing rental and use of Booths by TPH organizations.<sup>7</sup> A copy of the Agreement was included in the Exchange's 1994 rule filing noted above for the Commission's information.<sup>8</sup> The Agreement specifically sets forth the details of the parties' contractual relationship regarding rental and use of the Booths. Among other provisions, the Agreement includes specific provisions delineating the termination rights of both the TPH organization and the Exchange and sets forth a procedure for adding Booths to and deleting Booths from the Agreement. The Agreement also spells out requirements respecting

the TPH's use of the Booths, such as those governing the installation of equipment, the conduct of business, and access of persons to the Booths.

The Exchange has updated the Agreement (which is now referred to as the Agreement for "standard Booths"). In 2012, the Exchange also created a separate form of the Agreement for non-standard Booths.<sup>9</sup> In connection with the proposal to eliminate non-standard Booths, the Exchange proposes to eliminate use of that agreement. A copy of the standard form of Agreement is included with this filing in Exhibit 3. The Exchange proposes to update this section of the Policy to eliminate references to the non-standard booth agreement. The Exchange also proposes to update the Agreement to (i) change references to "Chicago Board Options Exchange, Incorporated" and "CBOE" to "Cboe Exchange, Inc.," and "Cboe Options", respectively; (ii) update the link to where the Cboe Options Fees Schedule can be found; (iii) eliminate the requirement for Cboe to provide TPH organizations with a copy of TPH Organization's current booth assignments, as it no longer believes such record is necessary or desired by TPHs; and (iv) eliminate Section 13, which prohibits TPH Organizations leasing SPX arbitrage Booths from installing data equipment in such Booths, as the Exchange does not intend to provide such Booths and to the extent it determines to do so in the future does not anticipate maintaining such prohibition. The Exchange will disseminate the updated Policy and forms of the Agreement to TPHs by posting them on the Trading Permit Holder portion of the Cboe website.

#### Line to Cboe Floor Network

On the LaSalle trading floor, TPHs used various lines and telecommunications ("telco") circuits to connect to the trading floor. Independent wiring had to be used for each line or telco circuit, which means firms may have needed to relocate their lines or telco circuits if they moved into, or relocated to, a new trading space or Booth. These telco circuits are also on a per device basis. The new trading floor utilizes a single floor network (*i.e.*, "Cboe Floor Network") for TPHs' devices consisting of both wired jacks and wireless network access located at kiosks, in trading pits, and in Booths throughout the new trading floor. As such, unlike the LaSalle trading floor infrastructure, TPHs do not need to

order lines from the Exchange to specific locations on the floor. Rather, a TPH only needs to order one Ethernet port ("Line") (or a pair for redundancy) to connect to the Cboe Floor Network and will be able to connect their devices to the Exchange's network anywhere on the trading floor through wired jack ports or the wireless network.

Additionally, firms no longer need to provide network equipment to support dedicated lines to the floor, as on the new trading floor the Exchange provides the network switches and local area network (LAN) lines for all firms.

The Exchange believes the new trading floor will provide TPHs more flexibility to move and relocate as needed, as compared to the LaSalle trading floor. If a TPH wished to relocate trading spaces or trading booths on the LaSalle trading floor, it could have triggered installation, relocation and removal of various lines and circuits, which subsequently triggered various installation, relocation and removal fees.<sup>10</sup> For example, on the LaSalle trading floor, if a Market-Maker needed to move to a new trading space, it may have needed to relocate the lines or circuits from its current space to the new space and would be subject to relocation fees such as \$129 relocation fee to relocate any Exchangephones and \$200 relocation fee for relocation of any Market-Maker Handheld Terminal.<sup>11</sup> As another example, if a TPH needed to relocate to a new Booth, it may have been subject to a relocation fee of \$625 for relocating lines from the trading floor to local carriers or the Communications Center.<sup>12</sup> Since all network access is wireless or plug and play at any location on the new trading floor, the new infrastructure eliminates the need for installation of multiple lines, as well as relocation and removal of connectivity lines to devices and also renders the following Lines fees (including fees relating to installation, relocation and removal) obsolete: Intra-Floor, Voice Circuits, Appearances, Data Circuits at Local Carrier, and Data Circuits at In-House Frame. The Exchange therefore proposes to instead adopt a monthly fee of \$350 per Line and notes it does not expect TPHs to purchase more than one Line and one redundant Line. The Exchange also proposes to adopt a one-time \$500

<sup>5</sup> Pursuant to the Booth Pass-Through Fee, TPHs bear responsibility for all costs associated with any modifications and alterations to any trading floor Booths leased by the TPH (or TPH organization) and must reimburse the Exchange for all costs incurred in connection therewith.

<sup>6</sup> See Securities Exchange Act Release No. 33972 (April 28, 1994), 59 FR 23242 (May 5, 1994).

<sup>7</sup> The Agreement is non-negotiable and its terms are the same for every TPH organization.

<sup>8</sup> See Securities Exchange Act Release No. 33972 (April 28, 1994), 59 FR 23242 (May 5, 1994).

<sup>9</sup> See Securities Exchange Act Release No. 66727 (April 9, 2012), 77 FR 21134 (April 3, 2012) (SR-CBOE-2012-025).

<sup>10</sup> See Cboe Options Fees Schedule, Lines Table.

<sup>11</sup> See Cboe Options Fees Schedule, Communications Table, Exchangephone and Miscellaneous Table, Market-Maker Handheld Terminal Tethering Services.

<sup>12</sup> See Cboe Options Fees Schedule, Lines Table, Lines Direct from Local Carrier to Trading Floor and Lines Between Communication Center and Trading Floor.

installation fee for the installation of the line to the Cboe Floor Network, which is a pass-through fee of what the Exchange is assessed by the building within which the new trading floor resides (*i.e.*, the CBOT Building). The proposed \$500 installation fee would include installation of a redundant line at no additional cost and allows the Exchange to recoup the costs it incurs from third-party vendors for the installation of the Lines.

#### Co-Location and Meet-Me-Room

For a monthly fee, the Exchange historically has provided TPHs (and third-party vendors, collectively “firms”) with cabinet space in its building for placement of network and server hardware. Particularly, TPHs are charged a monthly fee of \$50 per “U” of shelf space<sup>13</sup> and Sponsored Users<sup>14</sup> are assessed a monthly fee of \$100 per “U”. Fees are charged in increments of 4 “U” (*i.e.*, a minimum of \$200 per 4 “U” is charged or, for Sponsored Users, a minimum of \$400 per 4 “U” is charged). A firm also receives power, cooling, security and assistance with installation and connection of the equipment to the Exchange’s servers, at no additional charge.

The Exchange will continue to provide firms cabinet space in the new facility (“Meet-me-Room”) for placement of network and server hardware at the same rate of \$50 per “U”, billed in increments of 4 “U”. The Exchange proposes however to eliminate the separate rate for Co-Location of Equipment Fee for Sponsored Users, as the Exchange does not currently have any Sponsored Users, nor has it had any Sponsored users in several years. As such, the Exchange no longer believes its necessary to maintain a separate rate for Sponsored Users.<sup>15</sup> The Exchange also proposes to relocate the “Co-Location” section in the Fees Schedule to immediately follow the “Lines” section in the Fees Schedule, as it believes such fees are more appropriately grouped together and will make the Fees Schedule easier to read and follow. The Exchange also believes it will make the Fees Schedule easier to read and follow if it reflects the rate of the minimum increment charged, instead of a broken-out rate that can

<sup>13</sup> The term “U” is used to indicate an equipment unit 1.75” high with a maximum power of 125 watts per U space. Per the Fees Schedule, Co-Location fees are charged in increments of 4 “U” (7 inches).

<sup>14</sup> See Cboe Options Rule 3.60.

<sup>15</sup> To the extent the Exchange has Sponsored Users in the future, such participants will be assessed the same rate as all other firms (*i.e.*, \$50 per “U”, billed in minimum increments of 4 “U”).

never be assessed. As noted above, the Fees Schedule currently sets forth the monthly rate per “U” (*i.e.*, “\$50 per “U”), even though it states it only charges in increments of 4 “U” (*i.e.*, fee is really \$200 per 4 “U”). The Exchange will continue to charge in increments of 4 “U” in the new facility and therefore proposes to update the fee language in the relocated line item to reflect the rate for the minimum increment of 4 “U”. Despite this language change, the Exchange reiterates it is not changing the amount assessed for the Co-Location of Equipment Fee. Within the new Meet-me-Room however, the Exchange is proposing to limit firms to 8 “U” in order to ensure all firms can be accommodated in the Meet-me-Room.

The Exchange next proposes to adopt monthly and installation fees for cross connects, including telecommunication (*i.e.*, telco) and Cboe Floor Network cross connects,<sup>16</sup> within the Meet-Me-Room. Particularly, each cross connect will be subject to a \$25 per month per cross connect fee, which is a pass-through fee of what the Exchange is assessed by the CBOT Building for each cross connect. Additionally, firms will be subject to a one-time \$500 installation fee for each cross connection, which is also a pass-through fee of what the Exchange is assessed by the CBOT Building. The Exchange notes that at the LaSalle trading floor, the Exchange assessed third-party vendors a \$50 per month fee for “Data Circuits from Local Carrier to Equipment Shelf” which offers similar cross-connectivity from Local Carriers (telco providers) to a firm’s equipment shelf in the current meet-me-room. The Exchange no longer uses data circuits from Local Carriers to equipment on the shelf and proposes to therefore eliminate this fee (currently under the Vendor Services section) from the Fee Schedule.

The Exchange next proposes to adopt a fee relating to accessing the Meet-me-Room. Particularly, in order for a firm to access the Meet-me-Room (*e.g.*, if they need technical support), they must request access. The Exchange notes that because the Meet-me-Room now resides in a building not owned by the Exchange, the Exchange is assessed a fee by a third-party (CBOT Building) for providing firms access to the Meet-me-Room. The Exchange notes that the CBOT Building requires individuals accessing the Meet-me-Room to be accompanied by CBOT Building

<sup>16</sup> The Exchange offers fiber cross connect. The cross connects may run between a firm’s hardware to a third-party telecommunications service or the Cboe Floor Network switches that will service the trading floor.

representatives and therefore assesses a fee associated with the visit. Exchange staff personnel are also present for each visit. The Exchange therefore proposes to adopt a fee to recoup fees it is billed by the CBOT Building for providing this access (“Cboe Datacenter Services”). Specifically, the Exchange proposes to assess a fee of \$100 per half-hour (with a 1 hour minimum required). The Exchange notes that it waived this fee for the month of June 2022.<sup>17</sup> Particularly, the Exchange believed that firms may have had a greater need during the first month of operations on the new trading floor to visit the Meet-me-Room. The waiver therefore allowed firms to respond to any potential issues that may have arisen in the Meet-me-Room during the first month at no additional cost. The Exchange anticipates that firm requests for this type of access will be infrequent going forward. The Exchange also notes that it similarly assessed fees for various third-party technical support or vendor services on the LaSalle trading floor.<sup>18</sup> However, these services are no longer available in the new trading floor and the Exchange therefore proposes to eliminate the following corresponding fees: Technical Support Outside Normal Hours, IPC (vendor) Time & Material, IPC (vendor) Time & Material Overtime, After Hours Technician Service, Market-Maker Handheld Tethering Services, and Market-Maker Handheld Tethering Services For Indexes.

#### Trading Floor Device Fees

The Exchange currently lists various fees under the Trading Floor Terminal Rentals section of the Facility Fees table.<sup>19</sup> For example, TPHs are currently assessed \$125 per month for “PAR Workstations” to help offset hardware costs incurred by the Exchange in making PAR workstations available to TPHs. A PAR (Public Automated Routing System) Workstation is an Exchange-provided order management tool for use on the Exchange’s trading floor by TPHs and PAR Officials to manually handle orders pursuant to the Rules and facilitate open outcry trading. Access to PAR is only available on Exchange-provided tablets (currently Surface Tablets) and the current

<sup>17</sup> See Securities Exchange Act Release No. 95155 (June 24, 2022), 87 FR 39145 (June 30, 2022) (SR-CBOE-2022-029).

<sup>18</sup> See Cboe Options Fees Schedule, Vendor Services, Technical Support Outside Normal Hours, and Miscellaneous, IPC (vendor) Time & Material, IPC (vendor) Time & Material Overtime, After Hours Technician Service, Market-Maker Handheld Tethering Services, and Market-Maker Handheld Tethering Services For Indexes.

<sup>19</sup> The Exchange proposes to rename this section “Trading Floor Device Fees”.

monthly fee covers both the Exchange-provided tablet and PAR access. In connection with the transition to the new trading floor, the Exchange proposes to modify the way it assesses fees for use of PAR<sup>20</sup> and also adopt fees for non-Exchange provided tablets that connect to the Exchange’s network. Particularly, the Exchange proposes to adopt a separate monthly Exchange Tablet fee of \$140 for any tablet provided by the Exchange and a separate monthly fee of \$45 to access PAR. TPHs will continue to utilize PAR on the new trading floor, which will continue to only be available on Exchange-provided tablets. Exchange tablets used for PAR may also be used for access to Silexx.<sup>21</sup>

The Exchange also proposes to adopt a separate Exchange Tablet fee as TPHs will have the option of using Exchange-provided tablets for Cloud9, which is the new telecommunication system the Exchange offers on the new trading floor.<sup>22</sup> The Exchange notes that TPHs have the option of using their own tablet to access Cloud9 in lieu of using an Exchange-provided tablet. Such tablets would be subject to the “TPH-Owned Device Authentication Fee” described more fully below.

On the new trading floor, TPHs will be able to use a variety of devices such as tablets, laptops, Market-Maker

handheld devices, printers, and phone systems. TPHs will be able to connect these devices to the Exchange’s network anywhere on the trading floor through wired jack ports or the wireless network on the trading floor, as long as they are onboarded to the Cboe Network Authentication System. The Exchange proposes to assess a fee for TPH-owned devices that connect to the Exchange’s network on the new trading floor (“TPH-Owned Device Authentication Fee”). Particularly, the Exchange proposes to assess a fee of \$100 per authenticated connection (*i.e.*, when a device connects to the wired jack and/or wireless network on the trading floor).<sup>23</sup> The proposed fee will be based on the maximum number of concurrent authenticated connections made during market hours during the calendar month. As discussed above, the Exchange believes the new trading floor provides TPHs more flexibility to move and relocate any of their devices by eliminating the need for installation, relocation and removal of connectivity lines to devices. Consequently, corresponding monthly, installation, relocation and removal fees will also be eliminated on the new trading floor.

Replacement Fees

The Exchange currently assesses fees related for certain hardware that needs

to be replaced because of loss or because of non-normal wear and tear. Particularly, the Exchange assesses the following replacement fees:

|                                            |               |
|--------------------------------------------|---------------|
| Replacement Tablet .....                   | \$1,300 each. |
| Replacement Stylus Pen .....               | \$100 each.   |
| Replacement Chargers .....                 | \$75 each.    |
| Replacement Adapters and Protective Cases. | \$50 each.    |

The Exchange proposes to maintain these replacement fees on the new trading floor. However, the Exchange proposes to increase the fee to replace a table from \$1,300 per tablet to \$1,400 per tablet to reflect increased costs to the Exchange. The Exchange also proposes to adopt a new replacement fee for lost Access Badges at the rate of \$100 per badge in order to encourage TPHs to hold onto their badges and not misplace them.

Obsolete Fees

The Exchange next proposes to eliminate fees assessed for technology and infrastructure and related services that will be rendered obsolete upon the transition to the new trading floor. Particularly, the Exchange proposes to eliminate the following fees that have not otherwise been discussed above:

| Description                                                               | Fee                                                  |
|---------------------------------------------------------------------------|------------------------------------------------------|
| Arbitrage Phone Positions .....                                           | \$550/month.                                         |
| HP Laser Printer Paper .....                                              | \$5.00 per packet of 500 sheets.                     |
| Zebra Printer Papers .....                                                | \$19.50 per roll.                                    |
| Zebra Printer Ink .....                                                   | \$19.50 per roll.                                    |
| Forms Storage .....                                                       | \$11.                                                |
| Exchangefone .....                                                        | \$935/installation; \$129/relocation; \$100/removal. |
| Exchangefone—Maintenance .....                                            | \$57/month.                                          |
| Exchangefone—With Recorded Coupler Between Booths .....                   | \$126/relocation.                                    |
| Exchangefone—Within Booth .....                                           | \$25/relocation.                                     |
| Single Line—Maintenance .....                                             | \$11.50/month.                                       |
| Phone Rentals—Monthly Fee .....                                           | \$110/month.                                         |
| Phone Rentals—Replacement Repairs .....                                   | cost.                                                |
| Lines—Intra Floor .....                                                   | \$57.75/per month.                                   |
| Lines—Voice Circuits .....                                                | \$16/month; \$52.50/installation; \$36.75/removal.   |
| New Circuits—First .....                                                  | \$120/installation; \$50/removal.                    |
| New Circuits—@Additional .....                                            | \$18/installation; \$18/removal.                     |
| Existing Line Appearance—First .....                                      | \$50/installation; \$25/removal.                     |
| Existing Line Appearance—A Additional .....                               | \$18/installation; \$18/removal.                     |
| Data Circuits (DC) at Local Carrier (entrance) .....                      | \$16/month; \$52.50/installation; \$36.75 removal.   |
| DC @In-House Frame—Lines between Local Carrier and Comms Center .....     | \$12.75/month; \$550/installation.                   |
| DC @In-House Frame—Lines Between Comms Center and Trading Floor .....     | \$12.75/month; \$725/installation; \$625/relocation. |
| DC @In-House Frame—Lines Direct from Local Carrier to Trading Floor ..... | \$12.75/month; \$725/installation; \$625/relocation. |
| Shelf for Equipment .....                                                 | \$100/month.                                         |
| Lines from Equipment to Floor .....                                       | \$50/month.                                          |

<sup>20</sup>The Exchange proposes to replace the reference to “PAR Workstation” to “PAR Access”. Particularly, the current version of PAR is no longer a physical touch screen terminal (*i.e.*, workstation) but an order management tool that can be accessed on a tablet such as a Surface.

<sup>21</sup>Silexx is a User-optional order entry and management trading platform. The Silexx platform consists of a “front-end” order entry and management trading platform (also referred to as

the “Silexx terminal”) for listed stocks and options that supports both simple and complex orders, and a “back-end” platform which provides a connection to the infrastructure network. The Silexx front-end and back-end platforms are a software application that is installed locally on a user’s laptop.

<sup>22</sup>Cloud9 is the voice communication solution for the new trading floor. Cloud9 is a VoIP cloud-based service offering a traditional turret, the Cloud Hub. The Cloud Hub will be provided by Cboe and will

need to connect to a laptop or device provided either by the TPH or by Cboe. TPHs may not use the same Exchange Tablet for both PAR and Cloud9.

<sup>23</sup>For example, a TPH that connects to Cloud9 using its own laptop would be assessed \$100 per month for that connection. If that same TPH chooses to connect an additional laptop and a printer to the network, that TPH will be assessed a total of \$300 per month (*i.e.*, \$100 for each of the tablet used for Cloud9, the laptop and the printer).

| Description                                           | Fee                                                                  |
|-------------------------------------------------------|----------------------------------------------------------------------|
| Handsets .....                                        | \$79/installation.                                                   |
| Headset Jack .....                                    | \$131/installation; \$58 relocation; \$28/removal.                   |
| Recorder Coupler .....                                | \$150 new/\$50 existing installation; \$25/relocation; \$25/removal. |
| Thomson/Other (Basic Service) .....                   | \$425/month.                                                         |
| Satellite TV .....                                    | \$50/month.                                                          |
| Cboe Options Trading Floor Terminal .....             | \$250/month; \$175/installation; \$225 relocation; \$125/removal.    |
| Trading Floor Printer Maintenance <sup>24</sup> ..... | \$75/month.                                                          |

The Exchange also proposes to eliminate all PULSe Workstation fees as PULSe was decommissioned in January 2021, but the Exchange inadvertently did not delete references to PULSe-related fees at that time.

**Temporary Fees**

In June 2020, the Exchange adopted Footnote 24 of the Fees Schedule to govern pricing changes that would apply for the duration of time the Exchange trading floor was being operated in a modified manner in

connection with the COVID-19 pandemic. By way of background, the Exchange closed its trading floor on March 16, 2020 due to the COVID-19 pandemic and reopened its trading floor on June 15, 2020, but with a modified configuration of trading crowds in order to implement social distancing and other measures consistent with local and state health and safety guidelines to help protect the safety and welfare of individuals accessing the trading floor. As a result, the Exchange relocated and

modified the physical area of certain trading crowds and also determined and reduced how many floor participants may access the trading floor. In connection with these changes, the Exchange proposed a number of modified billing changes that would remain in place for the duration of the time the Exchange operated in a modified manner. Particularly, the following fees are modified when the Exchange is operating in a modified state due to the COVID-19 pandemic:

|                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Trading Permits .....                                 | Floor trading permit fees are not to be assessed on the total number of floor trading permits a TPH organization holds, and instead are based on the floor trading permits used by nominees of the TPH each day during the month using the following formula: (i) the number of floor trading permits that have a nominee assigned to it in the Customer Web Portal system ("Portal") in a given month, multiplied by the number of trading days that the floor is open and that a nominee is assigned to each respective trading permit in that month, divided by (ii) the total number of trading days in a month. The Exchange rounds up to determine the total number of trading permits assessed the fees set forth in the Floor Trading Permit Sliding Scales. |
| SPX Tier Appointment Fee .....                        | The monthly fee for the SPX/SPXW Floor Market-Maker Tier Appointment Fee will be increased to \$5,000 per Trading Permit from \$3,000 per Trading Permit.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Inactive Nominee Status (Parking Space).              | \$300 Parking Space Fees is not applied.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Inactive Nominee Status Change (Trading Permit Swap). | \$100 Trading Permit Swap Fee is not applied.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| SPX/SPXW and SPESG Floor Brokerage Fees.              | SPX/SPXW and SPESG Floor Brokerage Fees are be assessed the rate of \$0.05 per contract for non-crossed orders and \$0.03 per contract for crossed order instead of \$0.04 and \$0.02, respectively.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Facility Fees .....                                   | Monthly fees are waived for the following facilities fees: arbitrage phone positions and satellite tv. If a TPH is unable to utilize designated facility services while the trading floor is operating in a modified state, corresponding fees, including for standard and non-standard booth rentals, Exchangefone maintenance, single line maintenance, intra floor lines, voice circuits, data circuits at local carrier (entrance), and data circuits at in-house frame, are waived.                                                                                                                                                                                                                                                                             |

The Exchange notes that while the LaSalle trading floor utilized social distancing and reconfigured trading crowds through its closure (and therefore was considered to be operating in a modified manner), it does not believe it was necessary to implement such safety measures on the new trading floor at the time of transition given recent developments relating to the COVID-19 pandemic. As such, upon moving to the new trading floor on June 6, 2022, the Exchange no longer operates in a modified manner and Footnote 24 does not apply. Accordingly, (1) Floor Trading Permit

fees will be assessed based on the total number of floor trading permits a TPH holds each month; (2) Parking Space and Trading Swap fees will no longer be waived; (3) the SPX Floor Tier Appointment Fee will be assessed \$3,000 (instead of \$5,000)<sup>25</sup> and (iv) SPX/SPXW and SPESG Floor Brokerage fees will be assessed \$0.04 per contract for non-crossed orders (instead of \$0.05 per contract) and \$0.02 per contract for crossed orders (instead of \$0.03 per contract). As noted above, arbitrage phone positions, satellite tv, Exchangefone maintenance, single line maintenance, intra floor lines, voice

circuits, data circuits at local carrier (entrance), and data circuits at in-house frame are eliminated as of June 1, 2022 so the Exchange proposes to also eliminate references to such fees from Footnote 24.

**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>26</sup> Specifically, the Exchange believes the proposed rule

<sup>24</sup> The Exchange proposes to eliminate a corresponding reference in Footnote 50 to Trading Floor Printer Maintenance in light of the proposal to eliminate this fee.

<sup>25</sup> The Exchange intends to contemporaneously submit a separate rule filing to modify the fee for the SPX Floor Tier Appointment Fee.

<sup>26</sup> 15 U.S.C. 78f(b).

change is consistent with the Section 6(b)(5)<sup>27</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>28</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the proposed changes are prompted by the Exchange's recent transition from its previous trading floor, which it had occupied since the 1980s, to a brand new, modern and upgraded trading floor facility. The Exchange believes customers continue to find value in open outcry trading and rely on the floor for price discovery and the deep liquidity provided by floor Market-Makers and Floor Brokers. The Exchange believes the build out of a new modern trading floor is therefore consistent with its commitment to open outcry trading and focus on providing the best possible trading experience for its customers. Indeed, the new trading floor provides a state-of-the-art environment and technology and more efficient use of physical space, which the Exchange believes better reflects and supports the current trading environment. The Exchange also believes the new infrastructure provides a cost-effective, streamlined, and modernized approach to floor connectivity. For example, the new trading floor has more than 330 individual kiosks, equipped with top-of-the-line technology, that enable floor participants to plug in and use their devices with greater ease and flexibility. It also provides floor Market-Makers and Floor Brokers with more space and increased capacity to support additional floor-based traders on the trading floor. Moreover, the new trading floor is conveniently located across the street from the LaSalle trading floor, resulting in minimal disruption to TPH floor participants, many of whom have office space nearby, including in the CBOT Building. The Exchange believes the CBOT Building, which was also home to the Exchange's original trading floor in

the 1970s and early 1980s, is also able to support robust trading floor infrastructure as it currently hosts several banks, trading firms and even trading floors (*i.e.*, trading floors for the Chicago Mercantile Exchange and BOX Options Market).

As described above, the recent transition rendered much of the Exchange's previous trading floor technology and infrastructure obsolete, as it has been replaced by new infrastructure in a new building (no longer owned by the Exchange). As such, the proposed modifications to corresponding facility fees are not only necessary, but the Exchange believes reasonable, equitable and not unfairly discriminatory as discussed in further detail below. The Exchange also believes the proposed rule change results in a streamlined and simplified trading floor and facility fee structure.

#### Booth Fees

The Exchange believes the proposed Booth Fees are reasonable as they are not a significant departure from fees that were assessed for Booths on the LaSalle trading floor (and in some instances are even lower than currently assessed). Additionally, the Booths on the new trading floor are slightly larger than the standard Booths that were available on the LaSalle trading floor. The proposed fees are also in line with similar fees charged currently and historically at other exchanges with a physical trading floor.<sup>29</sup> The Exchange believes that the proposed booth space fee is equitable and not unfairly discriminatory because it applies uniformly to trading floor participants who choose to rent Booths (and all booths are uniform and nearly identical in size). Moreover, the use of Booths, whether located away from or in a trading crowd, are optional and not necessary in order to conduct open outcry trading on the trading floor.

The Exchange believes the proposed rule changes to the Booth Policy and Agreement make non-substantive changes that merely clarify the Policy and Agreement, make it more accurate, and alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. The Exchange believes that notwithstanding

<sup>29</sup> In 2011, Nasdaq PHLX charged a flat \$300 per month fee for Trading/Administrative Booth paid by floor brokers and clearing firms. See Securities Exchange Act Release No. 34-66086 (January 3, 2012), 77 FR 1111 (January 9, 2012) (SR-Phlx-2011-181). NYSE America currently assesses \$40 per linear foot per month for all booth space utilized by such Floor Broker.

any of the proposed changes, the Booth Policy and Agreement continues to ensure that trading floor Booths are leased to TPH organizations on equal and non-discriminatory terms.

#### Line to Cboe Floor Network

The Exchange believes the proposed Line to Cboe Floor Network fee is reasonable as TPHs will not be subject to the current lines and circuit fees set forth in the Fees Schedule, including for relocation and removal, that are assessed on the LaSalle trading floor for similar connectivity to the trading floor network. Additionally, unlike the current floor which requires independent wiring be used for each line or circuit and on a per device basis, the new trading floor will allow TPHs to maintain one Line (or 2 for redundancy purposes). Accordingly, the new trading floor will provide TPHs more flexibility to move and relocate as needed and with greater ease and be able to do so without incurring additional relocation and removal fees. Moreover, firms will no longer need to provide their own network equipment to support dedicated lines to the floor as the Exchange will be providing the network switches and local area network (LAN) lines for all firms on the new trading floor. The Exchange notes that on the LaSalle trading floor, TPHs had to supply their own pair of network switches, which the Exchange estimates cost approximately \$5,000 for each switch (*i.e.*, \$10,000 total), in addition to ongoing costs incurred for vendor support and staff personnel time. Under the proposal, TPHs are no longer subject to these costs, as the Exchange provides both the network switches and ongoing support. The Exchange also notes other exchanges assess a variety of facility fees relating to connectivity and equipment in order to maintain their trading floor facilities.<sup>30</sup>

The Exchange believes the proposed installation fee is also reasonable as the Exchange is passing through costs it incurs from a third party (*i.e.*, the CBOT Building) with respect to the installation of such Lines. The Exchange believes this fee reasonably represents the

<sup>30</sup> For example, Nasdaq PHLX assesses a Floor Facility Fee of \$330 per month for such purpose. See Securities Exchange Act Release No 69672 (June 5, 2013), 78 FR 33873 (May 30, 2013) (SR-PHLX-2013-58). Nasdaq PHLX also assesses a variety of options trading floor fees including for equipment services and relocation requests. See Nasdaq PHLX Options 7 Pricing Schedule, Section 9. Other Member Fees, A. Option Trading Floor Fees. See also NYSE America Options Fees Schedule, Section IV, Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees and NYSE Price List, Equipment Fees.

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> *Id.*

materials and labor costs of installation which, as discussed above, is assessed by a building that has experience in similar installations as it hosts many other participants in the financial industry, including trading firms and other exchanges' trading floors. The proposed fee also includes a redundant Line at no additional cost. The Exchange believes the proposed monthly and installation Line fees are equitable and not unfairly discriminatory as they will apply uniformly to all trading floor participants.

#### Co-Location and Meet-Me-Room

The Exchange believes it is reasonable to cap all TPHs and non-TPHs to 8 "U" because the Exchange no longer owns the premises in which the Meet-me-Room resides and there is finite amount of space. The proposed cap however applies to all TPHs and non-TPHs uniformly. Additionally, the Exchange believes 8 "U" should be sufficient amount of space for any TPH or non-TPH and that with such cap in place there is sufficient space to accommodate all TPHs or non-TPHs who request co-location service. The Exchange believes it's reasonable, equitable and not unfairly discriminatory to eliminate the Co-Location of Equipment Fee for Sponsored Users as it has not had any Sponsored Users in several years. If the Exchange were to approve a Sponsored User, such participant would merely be subject to the remaining (and lower) Co-Location of Equipment Fee (*i.e.*, \$200 per 4 "U"). The Exchange believes the proposed relocation and language updates to the current Co-Location fee are reasonable as the Exchange is not proposing to change the amount assessed but is merely updating and simplifying the Fees Schedule and making it easier to read.

The Exchange believes the proposed \$25 per cross-connect monthly fee is reasonable as it is a modest fee that is a pass-through of the fee the Exchange is assessed by a third-party (*i.e.*, the CBOT Building) to maintain such cross connect. Additionally, the Exchange notes third-party vendors such as telecommunication providers will no longer be subject to the \$50 per month fee for "Data Circuits from Local Carrier to Equipment Shelf". Additionally, the Exchange believes the proposed amount is in line (and lower than) the amount assessed by another exchange for similar cross connects.<sup>31</sup> The proposed cross

connect installation fee is also reasonable as it is intended to recoup the fees incurred by the Exchange by third-party vendors for establishing the cross connects. The Exchange believes the installation fee assessed by the CBOT Building is also reasonable as it is in line with installation fees assessed by other data centers and exchanges for installation of cross-connections.<sup>32</sup>

The Exchange believes the proposed Cboe Datacenter Services fee is reasonable as it recoups the costs the Exchange is assessed by the CBOT Building (as the owner of the building) when firms needs to access to the Meet-me-Room for purposes such as on-site support. The Exchange notes that it is aware that other data center facilities similarly require security escorts for Meet-me-Room access and assess fees for such access. Additionally, the Exchange waived the fee for the month of June 2022, so that visits to the Meet-me-Room to address any onboarding questions or issues that arose during the first month in the new facility were free of charge. Moreover, as noted above, the Exchange does not anticipate that access to the Meet-me-Room will be needed on a frequent basis.

The Exchange believes the proposed cross connect and Cboe Datacenter Services fees are also equitable and not unfairly discriminatory as they will apply uniformly to all market participants that request these services, respectively.

#### Trading Floor Devices

The Exchange believes the proposed changes related to the PAR fee are reasonable as the combined proposed fees for using PAR (*i.e.*, Exchange Tablet fee and PAR Access fee) are only modestly higher than the fee TPHs are currently assessed for use of PAR. The Exchange notes that although TPHs that use PAR will be subject to a modestly higher fee, the PAR Workstation fee has remained unchanged for over eleven years, notwithstanding technology changes and improvements over the last decade, including for example, the ability to also access Silexx from the same tablet on which PAR is accessed.<sup>33</sup> Moreover, the Exchange notes the proposed fee is still lower than fees assessed at other exchanges for trading floor terminals. For example, NYSE American assesses \$450 per device per month for Floor Broker Handheld and an additional \$215 per month per Exchange sponsored Floor Broker order

entry system.<sup>34</sup> Moreover, the Exchange notes that the Exchange provides technical support services for these tablets, eliminating the need for TPHs to purchase protection plans themselves for their device. The Exchange also incurs other costs associated with the tablets that it does not otherwise separately pass through, such as fees incurred for replacement of batteries and other parts. The Exchange will also replace a tablet at no additional cost if a tablet is damaged from normal wear and tear. Further, the Exchange replaces tablets at no additional cost approximately every 3 years. The Exchange believes the proposed Exchange Tablet fee is also reasonable as TPHs may, but do not have to, use an Exchange Tablet to access Cloud9. Indeed, they may use their own TPH-owned device for purposes of accessing Cloud9 and be subject to the alternative, and lower, TPH-Owned Device Authentication Fee.

The Exchange believes the proposed PAR Access fee is equitable and not unfairly discriminatory as it applies to all TPHs using PAR. Moreover, the proposed changes enable the Exchange to offer Exchange-provided tablets for a separate monthly fee to TPHs that wish to use them for Cloud9, which is the Exchange's new telecommunications system that it will offer on the new trading floor. Currently, TPHs are subject to various communication fees including monthly fees, installation fees, relocation fees and removal fees which will no longer be assessed by the Exchange as the Exchange's current communications offerings will be rendered obsolete upon the transition to the new trading floor.<sup>35</sup>

The Exchange believes the proposed TPH-Owned Device Authentication Fee is reasonable as the proposed fee is lower than the proposed fee assessed for Exchange Tablets which may alternatively be used if a TPH is looking to access Silexx or Cloud9. Additionally, the Exchange believes it's reasonable to assess TPHs a monthly fee for access to its network. Particularly, the Exchange expends resources to monitor and maintain the network, and importantly, ensure its secure and resilient. The Exchange also offers assistance during the onboarding process for the devices and expends resources monitoring and troubleshooting networking issues. The Exchange notes that as the number of

<sup>31</sup> See Nasdaq PHLX Options 7 Pricing Schedule, Section 9. Other Member Fees, A. Option Trading Floor Fees, Cabinet-to-Cabinet Connectivity and Cabinet-to-Cabinet MPOE Connectivity, which are both subject to a \$50 per month fee.

<sup>32</sup> See, *e.g.*, NYSE American Options Fees Schedule, Section V(B).

<sup>33</sup> See Securities Exchange Act Release No. 63701 (January 11, 2011), 76 FR 2934 (January 18, 2011) (SR-CBOE-2010-116).

<sup>34</sup> See also NYSE America Options Fees Schedule, Section IV, Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees.

<sup>35</sup> See Cboe Options Fee Schedule, Communications Fees.

devices connected to the network increases, demand of Exchange time and resources may therefore also increase. As such, the Exchange also believes the proposed fee may encourage firms to be efficient with the number of devices it chooses to connect to the network. Moreover, the Exchange believes the new trading floor provides TPHs more flexibility to move and relocate any of their devices by eliminating the need for installation, relocation and removal of connectivity lines to devices and consequently, corresponding monthly, installation, relocation and removal fees. The proposed fee also applies to all TPHs accessing the Cboe floor Network from their own device.

#### Replacement Items

The Exchange believes the proposed change to increase the tablet replacement fee is reasonable as the proposed amount better reflects the approximate cost to the Exchange to provide a replacement tablet to TPHs. Additionally, the Exchange believes adopting a \$100 fee for replaced access badges is reasonable as the Exchange believes it will incentivize TPHs to keep track of their access badges and reduce the need for the Exchange to expend resources to print additional replacement badges. The Exchange believes these changes are also reasonable, equitable and not unfairly discriminatory because TPHs that lose these items or damage these items from non-normal wear or tear should be responsible for the cost of replacement. The Exchange believes the proposed fees will encourage TPHs to take proper care and track of these items. Additionally, the Exchange notes that it will not charge TPHs to replace defective items (that were not the result of non-normal wear and tear).

#### Obsolete Fees

The Exchange believes eliminating the facility fees discussed above is reasonable as such corresponding services and architecture will be rendered obsolete upon transitioning to the new trading floor. Additionally, the Exchange believes the proposed new fee structure as compared to the fees being eliminated provides for a more streamlined and simplified approach to facility fees. The Exchange believes the proposed elimination of these fees is equitable and not unfairly discriminatory as it will apply uniformly to all TPHs. The proposal to eliminate references to these fees in Footnote 12, 24 and 50 also maintains clarity in the Fees Schedule and avoids potential confusion.

#### Footnote 24

As discussed above, as of June 6, 2022, the Exchange no longer operates in a modified state due to the COVID-19 pandemic as the Exchange no longer maintains a modified configuration of trading crowds to implement social distancing nor does it reduce or limit how many floor participants may access the trading floor. Accordingly, because the Exchange is not considered to be operating in a modified configuration as of June 6, 2022, Footnote 24 is no longer applicable and the modified billing practices will revert back to original billing.

In sum and in addition to all the reasons discussed above, the Exchange believes its proposed fees are reasonable in light of the numerous benefits the new trading floor provides its floor participants. The Exchange believes the new trading floor provides for state-of-the-art infrastructure, enhanced technology capabilities, and a flexible, open and dynamic environment to facilitate more seamless and efficient interaction between traders. The Exchange also notes that it considered a number of factors in determining the location of the new trading floor including cost to the Exchange and its TPHs, as well as the convenience of location for the trading floor community and Exchange staff. Another critical consideration was whether the new building would have the necessary infrastructure and ability to support a sophisticated and state-of-the art trading floor. As the CBOT Building already hosts several trading firms and two other exchange trading floors, the Exchange felt confident the CBOT Building would be able to accommodate the Exchange's technology and infrastructure needs for its floor. The Exchange therefore believes the amounts of the fees assessed by the CBOT Building that it proposes to pass-through are reasonable. The proposed fees are also in line with fees assessed by other data centers and exchanges for similar technology and services. For example, as noted above, the \$25 cross connect fee is lower than the fees assessed by other exchanges for similar cross connections.

The Exchange also notes that is has not sought to pass through other costs incurred in connection with the new trading floor, including design, construction and other on-going maintenance costs. Moreover, the Exchange has not modified many of its facilities fees in several years. The Exchange therefore believes the proposed fees are reasonable because they allow the Exchange to recoup fees

associated with the costs of operating a modern and cutting-edge trading floor and offset and keep pace with increasing technology costs.

#### *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 changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes would be applied in the same manner to all similarly situated participants and as such, would not impose a disparate burden on competition among the same classes of market participants. As described in further detail above, the proposed fees are also applicable only to market participants that choose to avail themselves to the corresponding facility services. For example, only firms that choose to rent Booths (which are optional and not required for open-outcry trading) will be subject to the proposed Booth Fees. Similarly, only firms that choose to purchase Exchange-provided tablets are subject to the tablet fee, and firms may otherwise choose to purchase and provide their own tablets.

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 fees relating to the Exchange's floor facility. Further, as described in detail above, the Exchange believes its proposed facilities fees are in line with facility fees assessed at other exchanges that maintain physical trading floors. 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 (four of which also maintain physical trading floors), 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>36</sup> Therefore, no exchange possesses significant

<sup>36</sup> See Cboe Global Markets, U.S. Options Market Volume Summary by Month (September 26, 2022), available at [http://markets.cboe.com/us/options/market\\_share/](http://markets.cboe.com/us/options/market_share/).



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.”<sup>37</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>38</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 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 is effective upon filing pursuant to Section 19(b)(3)(A)<sup>39</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>40</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 shall institute proceedings under Section 19(b)(2)(B)<sup>41</sup> of the Act 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-CBOE-2022-049 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-2022-049. 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-CBOE-2022-049, and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 2022-22180 Filed 10-12-22; 8:45 am]

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-95990; File No. SR-FINRA-2022-028]

#### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 0150 (Application of Rules to Exempted Securities Except Municipal Securities)**

October 6, 2022.

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> notice is hereby given that on September 29, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by 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**

FINRA is proposing to amend paragraph (c) of FINRA Rule 0150 (Application of Rules to Exempted Securities Except Municipal Securities) to clarify the application of specified

<sup>37</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>38</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)).

<sup>39</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>40</sup> 17 CFR 240.19b-4(f)(2).

<sup>41</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>42</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).