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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96672; File No. SR-CBOE-2023-001]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update the Cboe Data Services, LLC Fee Schedule

January 17, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 3, 2023, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to update the Cboe Data Services, LLC Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in 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 the Cboe Data Services, LLC ("CDS") Fee Schedule, effective January 3, 2023. The Exchange proposes to modify its fees relating to the distribution of the BBO data feed.<sup>3</sup> Particularly, the Exchange proposes to modify the BBO Data Fee and Display Only User Fee, eliminate a fee waiver for takers of BBO Data, and adopt a BBO Enterprise Fee. The Exchange also proposes to rename the "BBO data feed" to "Cboe Options Top Data Feed" (or "Cboe Options Top Data"), and use the proposed name herein, in order to align with the naming convention used by the Exchange's affiliated options exchanges for similar data products.<sup>4</sup>

The Exchange first proposes to modify the current monthly Data Fee for Cboe

Options Top Data. Currently, the Exchange assesses a "Data Fee", payable by a Customer, of \$9,000 per month for internal use and external redistribution of the Cboe Options Top Data Feed.<sup>5</sup> The Data Fee entitles a Customer to provide the Cboe Options Top Data to an unlimited number of internal users and Devices<sup>6</sup> within the Customer. A Customer receiving the Cboe Options Top Data Feed from another Customer or directly from the Exchange is assessed the Data Fee by the Exchange pursuant to its own market data agreement with CDS and is entitled to use the Data internally and/or distribute it externally. All Customers have the same rights to utilize the data internally and/or distribute it externally as long as the Customer has entered into a written agreement with CDS for the data and pays the Data Fee. The Exchange now proposes to adopt separate fees for internal and external distribution (and codify the definitions of Internal and External Distributors in the CDS Fee Schedule).<sup>7</sup> Specifically, the Exchange proposes to maintain the current monthly fee of \$9,000 for internal distribution but adopt a reduced fee of \$5,000 per month for external distribution.

The Exchange next proposes to modify its current User Fees. The Exchange currently charges a "User Fee", payable by a Customer, of \$50 per month per Device or user ID for use of the data in the Cboe Options Top Data Feed by "Display Only Service"<sup>8</sup> users. The current User fee is payable only for "external" Display Only Service users

<sup>5</sup> A "Customer" is any person, company or other entity that, pursuant to a market data agreement with CDS, is entitled to receive data, either directly from CDS or through an authorized redistributor (*i.e.*, a Customer or an extranet service provider), whether that data is distributed externally or used internally. A third-party vendor of an Approved Third-Party Device, as defined in the CDS Fee Schedule, is not a Customer unless it has a market data agreement in place with CDS. A Floor Broker User, as defined in the CDS Fee Schedule, is not a Customer unless it has a market data agreement in place with CDS.

<sup>6</sup> A "Device" means any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form.

<sup>7</sup> An Internal Distributor of an Exchange market data product is a Distributor that receives the Exchange market data product and then distributes that data to one or more Users within the Distributor's own entity. An External Distributor of an Exchange market data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.

<sup>8</sup> Display Only Service allows a natural person end-user to view and manipulate data using the Customer's computerized service, but not to save, copy, export or transfer the data or any results of the manipulation to any other computer hardware, software or media, except for printing it to paper or other non-magnetic media.

<sup>19</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> The BBO Data Feed is a real-time data feed that includes the following information: (i) outstanding quotes and standing orders at the best available price level on each side of the market; (ii) executed trades time, size, and price; (iii) totals of customer versus non-customer contracts at the best bid and offer ("BBO"); (iv) all-or-none contingency orders priced better than or equal to the BBO; (v) expected opening price and expected opening size; (vi) end-of-day summaries by product, including open, high, low, and closing price during the trading session; (vii) recap messages any time there is a change in the open, high, low or last sale price of a listed option; (viii) COB information; and (ix) product IDs and codes for all listed options contracts. The quote and last sale data contained in the BBO data feed is identical to the data sent to the Options Price Reporting Authority ("OPRA") for redistribution to the public. This data feed is made available by the Exchange's affiliate CDS.

<sup>4</sup> See Cboe BZX Options Fee Schedule and Cboe EDGX Options Fee Schedule.

(Devices or user IDs of Display Only Service users who are not employees or natural person independent contractors of the Customer, the Customer's affiliates, or an authorized service facilitator).<sup>9</sup> The Exchange proposes to eliminate the current User fee (and corresponding description (other than the definition of "Device") in the Fee Schedule) and in its place adopt Professional and Non-Professional User fees for Cboe Options Top Data. Particularly, the Exchange proposes to charge Internal Distributors and External Distributors that redistribute Cboe Options Top Data different fees for their Professional Users<sup>10</sup> and Non-Professional Users<sup>11</sup> (and codify the definitions in the CDS Fee Schedule). The Exchange proposes to assess a monthly fee for Professional Users of \$15.50 per User and a monthly fee of \$0.30 per Non-Professional User.<sup>12</sup> The Exchange also proposes to clarify in the CDS Fee Schedule that User fees for Professional Users are payable for both "internal" Professional Users (Devices or user IDs of employees of a Customer) and "external" Professional Users (Devices or user IDs of Professional Users who receive the Data from a Customer and are not employed by the Customer), as well as make clear that Non-Professional Users must be external since a person who uses the Data for a

commercial purpose cannot be a Non-Professional User.

Next, the Exchange proposes to eliminate a fee waiver for Customers of Cboe Options Top Data. In particular, the CDS Fee Schedule currently provides that the monthly data fee of \$9,000 per month for the Book Depth Data Feed<sup>13</sup> is waived for Cboe Options Top Data Customers. The Exchange proposes to eliminate the fee waiver for Book Depth Data for External Distributors of Cboe Options Top (*i.e.*, the monthly \$9,000 data fee for Book Depth Data will only continue to be waived for Internal Distributors of Cboe Options Top Data).

The Exchange lastly proposes to establish a \$300,000 per month Enterprise Fee that will permit a recipient firm who receives Cboe Options Top Data from a Distributor to receive the data for an unlimited number of Professional and Non-Professional Users. The Enterprise Fee is an alternative to User fees and will permit a recipient firm who receives Cboe Options Top Data from a Distributor to pay a flat fee to receive the data for an unlimited number of Professional and Non-Professional Users, which the Exchange proposes to make clear in the CDS Fee Schedule. The Enterprise Fee may provide a recipient an opportunity to reduce their fees. For example, if a recipient firm has 20,000 Professional Users who each receive EDGX Options Top at \$15.50 per month (as proposed), then that recipient firm will pay \$310,000 per month in Professional Users fees. If the recipient firm instead were to purchase the proposed Enterprise license, the recipient firm would alternatively pay a flat fee of \$300,000 for an unlimited number of Professional and Non-Professional Users. A recipient firm must pay a separate Enterprise Fee for each Distributor that controls the display of Cboe Options Top if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. Rather, every six months, the recipient firm must provide the Exchange with a count of the total number of authorized users (both Professional and Non-Professional Users) of Cboe Options Top Data. The

Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of subscribers to benefit from purchase of the license need not do so.

## 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>14</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>15</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 section 6(b)(4) of the Act,<sup>16</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share.<sup>17</sup> The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options

<sup>9</sup> Customers who distribute Cboe Options Top Data to external users via a Display Only service must report to CDS the number of authorized external devices that receive Cboe Options Top data from the Customer during a calendar month within 15 days after such month in the manner and format specified by CDS from time to time to determine applicable fees.

<sup>10</sup> A "Professional User" is any natural person recipient of Data who is not a Non-Professional User.

<sup>11</sup> A "Non-Professional User" is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States. Professional User.

<sup>12</sup> Distributors that receive Cboe Options Top Data will be required to count every Professional User and Non-Professional User to which they provide the data feed.

<sup>13</sup> The Book Depth Data Feed is a real-time, low latency data feed that includes all data contained in the Cboe Options Top Data Feed (as described above) plus outstanding quotes and standing orders for an additional four price levels on each side of the market, with aggregate size ("Book Depth"). The data in the Book Depth Data Feed is refreshed periodically during the trading session.

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (December 27, 2022), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

exchanges also offers similar top-of-book data.<sup>18</sup> Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the Cboe Options Top Feed. Further, the quote and last sale data contained in the Cboe Options Data Feed is identical to the data sent to OPRA for redistribution to the public, including data relating to the Exchange's proprietary and exclusively listed products.<sup>19</sup> Accordingly, market participants can substitute Cboe Options Top Data with feeds from other exchanges and/or through OPRA. Exchange top-of-book data is therefore widely available today from a number of different sources.

Moreover, the Cboe Options Top Data Feed is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. As described above, market participants have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, all broker-dealers involved in order routing must take consolidated data from OPRA, and proprietary data feeds cannot be used to meet that particular requirement. As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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

<sup>18</sup> See *e.g.*, NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and C2 Options Exchange Fees Schedule, Cboe Data Services, LLC Fees.

<sup>19</sup> The Exchange notes that CDS makes available to "Customers" the BBO data and last sale data that is included in the Cboe Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

broader forms that are most important to investors and listed companies."<sup>20</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of Cboe Options Top Data.

The Exchange believes the proposed External Distribution fee is reasonable as it would represent a decreased fee for External Distributors for top-of-book data that has proven valuable for investors. By providing lower cost access to U.S. options market data, Cboe Options Top benefits a wide range of investors that participate in the national market system and makes it more broadly available. The Exchange believes the proposed fees for external distribution of Cboe Options Top will also continue to be allocated fairly and equitably among subscribers, and are not unfairly discriminatory, as the proposed fees will apply equally to all data recipients that choose to subscribe to Cboe Options Top and distribute that data to external subscribers. As proposed, all External Distributors of Cboe Options Top will be subject to the same external distribution fee, regardless of the type of business that they operate, or the use they plan to make of the data feed. Thus, all External Distributors would have access to Cboe Options Top on the same equitable and non-discriminatory terms.

The Exchange believes that it is also fair and equitable, and not unfairly discriminatory to charge different fees for internal and external distribution of the Cboe Options Top. Although the proposed distribution fee charged to External Distributors will be lower than the existing distribution fee charged to Internal Distributors, External Distributors are subject to Non-Professional user fees to which Internal Distributors are not subject, in addition to Professional User fees (or alternatively the proposed Enterprise Fee). Furthermore, the proposal is designed to incentivize External Distributors to subscribe to Cboe Options Top Data.

The Exchange believes the proposed changes to adopt new Professional and Non-Professional User fees are

<sup>20</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

reasonable as the User fees continue to be lower than User fees assessed by other exchanges for similar data.<sup>21</sup> Moreover, External Distributors will now be subject to lower fees as the Exchange proposes to significantly reduce the monthly User fees from \$50 per External User to \$15.50 per Professional User or \$0.30 per Non-Professional User. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees that are paid by both Internal and External Distributors has long been used by other exchanges, including the Exchange, for their proprietary data products, and by the OPRA plan in order to reduce the price of data to retail investors and make it more broadly available.<sup>22</sup> The Exchange also believes offering Cboe Options Top Data to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

The Exchange also believes eliminating the fee waiver of the data fee for Book Depth Data Feed for External Distributors of Cboe Options Top is equitable and reasonable because it has been available, without change, since adopted in January 1, 2015 and the Exchange no longer feels it necessary to incentivize further

<sup>21</sup> See *e.g.*, Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees), which provides for a fee of \$40 per month to professional users and \$1.00 per month to non-professional users of Top of PHLX Options (TOPO) Data. See also NYSE American Options Proprietary Market Data Fees schedule, which provides for a fee of \$50 per month to professional users and \$1.00 per month to non-professional users of American Options Top Data.

<sup>22</sup> See, *e.g.*, Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR-NYSE-2008-131) (establishing the \$15 Non-Professional User Fee (Per User) for NYSE OpenBook); See, *e.g.*, Securities Exchange Act Release No. 67589 (August 2, 2012), 77 FR 47459 (August 8, 2012) (revising OPRA's definition of the term "Nonprofessional"); and See Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR-CBOE-2013-087) (establishing Professional and Non-Professional User fees for Cboe Options COB Data Feed).

redistribution of Book Depth Data Feed via the current fee waiver.<sup>23</sup> Moreover, the Book Depth Data Feed is purely optional. Only those Customers that deem the product to be of sufficient overall value and usefulness would purchase it. Additionally, the Exchange is not required to provide any such waiver to any Distributors of Cboe Options Top Data. The Exchange believes the proposed change is equitable and not unfairly discriminatory as it will apply uniformly to External Distributors.

The proposed Enterprise Fee for Cboe Options Top Feed is equitable and reasonable as the proposed fee could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of Cboe Options Top Data, then it may continue using the per User structure and benefit from the proposed per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute Cboe Options Top Data, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count authorized users every six months, which is a significant reduction in administrative burden. Finally, as described above the Enterprise Fee is entirely optional. A firm that does not have a sufficient number of subscribers to benefit from purchase of the license need not do so.

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

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their

customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges and through OPRA. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing exchanges. Further, the Exchange's proposal to eliminate the waiver of Book Depth Data data fee for External Distributors of Cboe Options Top Data involves no change to the existing fees, but simply eliminates a waiver. Other exchanges are free to adopt a similar waiver if they choose. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as market data customers look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed fees and eliminated waiver would apply to all similarly situated recipient firms of Cboe Options Top on an equal and non-discriminatory basis. The Exchange believes the reduced fees for External Distributors and not Internal Distributors of Cboe Options Top is appropriate given External Distributors are subject to the proposed Non-Professional user fees to which Internal Distributors are not subject, in addition to the proposed Professional User fees. The Exchange believes the differentiated fees for Professional and Non-Professional Users of Cboe options Top is appropriate given Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Non-Professional Users too can receive significant financial benefits through their participation in the markets, however the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange therefore believes that the proposed fee neither favors nor penalizes one or more categories of market participants in a manner that would impose an undue burden on competition.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to Cboe Options Top

Data, or any of the Exchange's data feeds, as described above. Also as described above, there are numerous substitute products offered by other national securities exchanges, as well as OPRA. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>24</sup> and paragraph (f) of Rule 19b-4<sup>25</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2023-001 on the subject line.

<sup>23</sup> See Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR-CBOE-2013-087).

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 240.19b-4(f).

*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-2023-001. 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-2023-001 and should be submitted on or before February 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-96683; File No. SR-NYSECHX-2023-01]

**Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates**

January 17, 2023.

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 January 3, 2023, the NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Schedule of Fees and Rebates (the "Fee Schedule") with respect to certain regulatory fees related to the Central Registration Depository ("CRD" or "CRD system"), which are collected by the Financial Industry Regulatory Authority, Inc. ("FINRA"). The Exchange proposes to implement the fee change on January 3, 2023. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

<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.

*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 the Fee Schedule with respect to certain regulatory fees collected by FINRA for use of CRD.<sup>4</sup> The Exchange proposes to implement the fee changes effective January 3, 2023.

FINRA collects and retains certain regulatory fees via CRD for the registration of associated persons of Exchange Participants that are not FINRA members ("Non-FINRA Participants").<sup>5</sup> CRD fees are user-based, and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA Participant.

FINRA recently amended two of the fees assessed for use of the CRD system.<sup>6</sup> Accordingly, the Exchange proposes to amend the Fee Schedule to mirror the fees assessed by FINRA, which will be implemented concurrently with the amended FINRA fee as of January 2023.<sup>7</sup> Specifically, the Exchange proposes to amend the Fee Schedule to modify the fee charged to Non-FINRA Participants for additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings

<sup>4</sup> CRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card, and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment, and disciplinary histories of registered associated persons of broker-dealers.

<sup>5</sup> The Exchange originally adopted fees for use of the CRD system in 2008 and amended those fees in 2013 and 2022. See Securities Exchange Act Release No. 57587 (March 31, 2008), 73 FR 18598 (April 4, 2008) (SR-CHX-2007-21); Securities Exchange Act Release No. 68647 (January 14, 2013), 78 FR 4506 (January 22, 2013) (SR-CHX-2013-01); Securities Exchange Act Release No. 93907 (January 5, 2022), 87 FR 1468 (January 11, 2022) (SR-NYSECHX-2021-18). While the Exchange lists these fees in its Fee Schedule, it does not collect or retain these fees.

<sup>6</sup> See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR-FINRA-2020-032).

<sup>7</sup> The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA Participants when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE Chicago-only Participants. Non-FINRA Participants have been charged CRD system fees since 2008. See note 5, *supra*. Participants that are also FINRA members are charged CRD system fees according to Section 4 of Schedule A to the FINRA By-Laws.

<sup>26</sup> 17 CFR 200.30-3(a)(12).