

and market participants on the lowest and highest price outside of the disclosed price range at which the Direct Listing Auction can occur consistent with the protection of investors and the public interest under Section 6(b)(5) of the Exchange Act.

#### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>117</sup> that the proposed rule change (SR–NYSE–2022–14), as modified by Amendment No. 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>118</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96510; File No. SR–CBOE–2022–061]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fees Schedule To Adopt Global Trading Hours XSP Lead Market-Makers Incentive Programs

December 15, 2022.

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 December 12, 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, 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 its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The Exchange proposes to amend its Fees Schedule to adopt Global Trading Hours (“GTH”) XSP Lead Market-

Makers (“LMMs”) Incentive Programs (collectively, the “Programs”), effective December 12, 2022. The Exchange anticipates listing XSP options for trading during the GTH session, effective trade date December 12, 2022. In connection with the proposed launch of XSP options during GTH, the Exchange proposes to adopt financial programs for LMMs appointed to the Programs during GTH. Particularly, the Exchange proposes to adopt (i) a “GTH1 XSP LMM Incentive Program” (“GTH1 Program”) under which LMMs appointed to the proposed program would have to provide continuous electronic quotes during GTH from 7:15 p.m. CST to 2:00 a.m. CST (“GTH1”) that meet or exceed the proposed quoting standards under the program (as described in further detail below) and (ii) a “GTH2 XSP LMM Incentive Program” (“GTH2 Program”) under which LMMs appointed to the proposed program would have to provide continuous electronic quotes during GTH from 2:00 a.m. CST to 9:15 a.m. [sic] CST (“GTH2”). The Exchange similarly maintains separate LMM Incentive Programs for the GTH1 and GTH2 trading sessions in the two other products that are currently listed during GTH.<sup>3</sup>

As proposed, the GTH1 Program provides that if the LMM appointed to the Program provides continuous electronic quotes during GTH1 that meet or exceed the proposed heightened quoting standards (below) in at least 85% of the series 90% of the time in a given month, the LMM will receive (i) a payment for that month in the amount of \$10,000 and (ii) a credit of \$0.03 per contract applied to all XSP contracts executed in a Market-Maker capacity which provide liquidity in the Simple Book during Regular Trading Hours (“RTH”) (or pro-rated amounts if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month).<sup>4</sup>

Premium level	Expiring		Near term		Mid term		Long term	
	7 days or less		8 days to 60 days		61 days to 270 days		271 days to 500 days	
	Width	Size	Width	Size	Width	Size	Width	Size

#### VIX Value at Prior Close <20

\$0.01–\$1.00 .....	\$0.04	10	\$0.05	10	\$0.07	5	\$0.15	5
\$1.01–\$5.00 .....	0.06	10	0.09	10	0.12	5	0.20	5
\$5.01–\$8.00 .....	0.10	10	0.16	10	0.25	5	0.40	5
\$8.01–\$12.00 .....	0.40	5	0.70	5	1.00	5	1.25	5
\$12.01–\$20.00 .....	0.80	5	1.20	5	1.60	5	2.00	5

<sup>117</sup> *Id.*

<sup>118</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> See Cboe Options Fees Schedule, GTH1 VIX/VIXW LMM Incentive Program, GTH2 VIX/VIXW LMM Incentive Program, GTH1 SPX/SPXW LMM Incentive Program and GTH2 SPX/SPXW LMM Incentive Program.

<sup>4</sup> For the month of December 2022, the Exchange proposes to pro-rate the incentives and apply the heightened quoting standard from trade date December 12 to December 30, in light of the mid-month launch of XSP options during the GTH session.

Premium level	Expiring		Near term		Mid term		Long term	
	7 days or less		8 days to 60 days		61 days to 270 days		271 days to 500 days	
	Width	Size	Width	Size	Width	Size	Width	Size
>20.00 .....	1.60	5	2.00	5	2.40	5	3.20	5
<b>VIX Value at Prior Close from 20–30</b>								
\$0.01–\$1.00 .....	0.06	10	0.07	10	0.09	5	0.17	5
\$1.01–\$5.00 .....	0.09	10	0.11	10	0.14	5	0.22	5
\$5.01–\$8.00 .....	0.14	10	0.18	10	0.30	5	0.45	5
\$8.01–\$12.00 .....	0.60	5	0.80	5	1.10	5	1.35	5
\$12.01–\$20.00 .....	1.00	5	1.30	5	1.80	5	2.20	5
>20.00 .....	2.00	5	2.40	5	2.80	5	3.60	5
<b>VIX Value at Prior Close &gt;30</b>								
\$0.01–\$1.00 .....	0.07	10	0.09	10	0.11	5	0.20	5
\$1.01–\$5.00 .....	0.10	10	0.14	10	0.18	5	0.27	5
\$5.01–\$8.00 .....	0.14	10	0.20	10	0.35	5	0.50	5
\$8.01–\$12.00 .....	0.60	5	0.90	5	1.20	5	1.50	5
\$12.01–\$20.00 .....	1.20	5	1.50	5	2.00	5	2.40	5
>20.00 .....	2.40	5	2.80	5	3.20	5	4.00	5

As proposed, the GTH2 Program will provide that if an LMM appointed to the Program provides continuous electronic quotes during GTH2 that meet or exceed the proposed heightened quoting standards set forth above (the same as GTH1) in at least 85% of the series 90% of the time in a given month, the LMM will receive a payment for that month in the amount of \$20,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month).<sup>5</sup>

Meeting or exceeding the heightened quoting standards in XSP, as proposed, to receive the proposed compensation payment(s) is optional for any LMM appointed to either program. The Exchange may consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM met the heightened quoting standard each month, the Exchange will exclude from the calculation in that month the business day in which the LMM missed meeting or exceeding the heightened quoting standard in the highest number of series. The heightened quoting requirements offered by the Programs are designed to incentivize LMMs appointed to the Program to provide significant liquidity in XSP options during the GTH session upon their listing and trading on the Exchange during GTH, which, in turn, would provide greater trading opportunities, added market transparency and

enhanced price discovery for all market participants in XSP.

In connection with the launch of XSP during GTH, the Exchange also proposes to update Footnote 37 which footnote provides a description of GTH and lists the applicable products available for trading during GTH (currently only VIX and SPX/SPX). Particularly, the Exchange proposes to add a reference to XSP in Footnote 37 to reflect its availability for trading during GTH. The Exchange notes that on December 12, 2022, it also anticipates launching XSP during the Curb Trading Hours session, which session commences at 3:15PM CT and terminates at 4:00PM CT. Footnote 42 of the Fees Schedule similarly describes the Curb Trading Hours session and lists the available products for trading (currently also only VIX and SPX/SPXW) and the Exchange therefore proposes to update the footnote to add a reference to XSP. The exchange notes that all fees currently applicable to XSP during the RTH session will continue to apply to XSP during the GTH and Curb Trading Hours sessions.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>7</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)<sup>8</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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed XSP GTH LMM Incentive Programs are reasonable, equitable and not unfairly discriminatory. Particularly, the proposed Programs are reasonable financial incentive programs because the proposed heightened quoting standards and rebate amounts for meeting the heightened quoting standards in XSP series during GTH1 and GTH2, respectively are reasonably designed to incentivize LMMs appointed to the Programs to meet the proposed heightened quoting standards during GTH for XSP, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants, particularly in a newly listed and traded product during the GTH session on the Exchange.

The Exchange believes that the proposed heightened quoting standards are reasonable because they are similar to the detail and format (VIX Index value indicator, corresponding premiums, quote widths, and sizes) of the quoting standards currently in place

<sup>5</sup> For the month of December 2022, the Exchange proposes to pro-rate the incentives and apply the heightened quoting standard from trade date December 12 to December 30, in light of the mid-month launch of XSP options during the GTH session.

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

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

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

for LMM Incentive Programs for other proprietary Exchange products during GTH.<sup>9</sup> The Exchange also believes that proposed heightened quoting requirements are reasonably tailored to reflect market characteristics of XSP. For example, the Exchange believes the generally smaller premium levels, widths and quote sizes appropriately reflect the lower-priced and smaller nationalized sized XSP product (XSP options are 1/10th the size of SPX options). Indeed, the Exchange believes the proposed finer premiums, smaller quote widths and smaller sizes (comparatively) in the proposed heightened quoting standards for the XSP GTH LMM Incentive Programs reasonably reflect what the Exchanges believes are typical market characteristics in XSP options, given their smaller notional value.

The Exchange further believes the proposed heighten quoting requirements are also reasonably tailored to reflect then-current market conditions and market characteristics, as the proposed quoting standards that are applicable depend on the VIX Index value at the prior market close (*i.e.*, at the close of the preceding RTH session). Spreads in SPX-based options, including XSP, generally widen when the market experiences higher volatility (*i.e.*, the VIX Index level is higher in value). Therefore, to encourage LMMs to meet the proposed quoting standards regardless of market volatility, the proposed rule change adopts generally wider widths where the market may be experiencing higher volatility (*i.e.*, when the value of the VIX Index in the proposed VIX value categories becomes relatively higher compared to the closing index value from the preceding trading session). The Exchange notes that the quoting standards currently in place under the GTH1 and GTH2 VIX/VIXW and SPX/SPXW LMM Incentive Programs are tailored in a similar manner.

The Exchange also believes that the proposed incentive payments for appointed LMMs that meet the proposed heightened quoting standards in XSP in a month is reasonable and equitable as they are comparable to the rebates offered for other LMM Incentive Programs for other proprietary products. For example, the GTH1 and GTH2 LMM Incentive Programs for SPX/SPXW and for VIX/VIXW offer compensation payments between \$15,000 and \$35,000 per month, in which an appointed LMM

meets the given quoting standards.<sup>10</sup> The GTH1 and GTH2 VIX/VIXW LMM Incentive Programs also provides an additional per contract credit for Market-Maker VIX/VIXW orders executed in RTH.<sup>11</sup> Additionally, the Exchange believes the proposed incentives are reasonably designed to continue to incentivize appointed LMMs to meet the proposed quoting standards for XSP, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants.

Finally, the Exchange believes it is equitable and not unfairly discriminatory to offer the financial incentive to LMMs appointed to the XSP GTH LMM Incentive Programs because it will benefit all market participants trading in XSP during GTH by encouraging the appointed LMMs to satisfy the heightened quoting standards, which incentivizes continuous increased liquidity and thereby may provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade XSP, which can lead to increased volume, providing for robust markets. The Exchange ultimately proposes to offer the XSP GTH LMM Incentive Programs to sufficiently incentivize the appointed LMMs to provide key liquidity and active markets in XSP options which will be newly listed and traded during the GTH session to encourage liquidity, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to the Programs may undertake added costs each month to satisfy that heightened quoting standards (*e.g.*, having to purchase additional logical connectivity). The Exchange believes the proposed program is equitable and not unfairly discriminatory because similar programs currently exist for LMMs appointed to programs in other proprietary products,<sup>12</sup> and the proposed program will equally apply to any TPH that is appointed as an LMM to the GTH1 or GTH2 LMM Incentive Programs. Additionally, if an appointed LMM does not satisfy the heightened quoting standard in XSP for any given month, then it simply will not receive the offered payments for that month.

Lastly, the Exchange believes updating Footnotes 37 and 42 of the Fees Schedule provides clarity in the fees schedule as to the products available during the GTH and Curb Trading Hours sessions, alleviating 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution and price improvement opportunities for all TPHs. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>13</sup>

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the proposed GTH1 XSP and GTH2 XSP LMM Incentive Programs will apply to all LMMs appointed to each program in a uniform manner. To the extent the LMMs appointed to one of the proposed programs receive a benefit that other market participants do not, as stated, these LMMs in their role as Market-Makers on the Exchange have different obligations and are held to different standards. For example, Market-Makers play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have. An LMM appointed to a program may undertake added costs each month that it needs to satisfy the quoting standards (*e.g.*, having to purchase additional logical

<sup>9</sup> See Cboe Options Fees Schedule, "GTH1 VIX/VIXW LMM Incentive Program", "GTH2 VIX/VIXW LMM Incentive Program", "GTH1 SPX/SPXW LMM Incentive Program", and "GTH2 SPX/SPXW LMM Incentive Program".

<sup>10</sup> See *id.*

<sup>11</sup> See Cboe Options Fees Schedule, "GTH2 VIX/VIXW LMM Incentive Program".

<sup>12</sup> See *supra* note 11.

<sup>13</sup> Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

connectivity). The programs are ultimately designed to attract additional order flow in XSP options to the Exchange during GTH, wherein greater liquidity will benefit all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity during new trading hours. The Exchange also does not believe that the proposed changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act because the proposed programs are applicable to transactions in a product exclusively listed on the Exchange. Additionally, the Exchange notes that it operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 18% of the market share.<sup>14</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem fee levels at those other venues to be more favorable. 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>15</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>16</sup> Accordingly, the Exchange does not believe its proposed fee change imposes 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 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>17</sup> and paragraph (f) of Rule 19b-4<sup>18</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-2022-061 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-2022-061. 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-2022-061 and should be submitted on or before January 11, 2023.

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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<sup>14</sup> See Cboe Global Markets U.S. Options Market Volume Summary, Month-to-Date (December 9, 2022), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

<sup>15</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>16</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (DC 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>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f).

<sup>19</sup> 17 CFR 200.30-3(a)(12).