

reflected in NSCC's Rules and therefore publicly available to NSCC's Members and prospective members for application to their own portfolios. Specifically, the proposed rule text would reflect the two sets of changes in the proposal. First, the proposed rule text would define the types of securities that would constitute "Illiquid Securities" as three particular categories of securities, as described in Section I.C(i), (ii), and (iii). By reviewing the definitions of an Illiquid Security, NSCC's members should be able to understand the types of factors that would cause a security to be considered an Illiquid Security, all of which are ascertainable, such as its trading history (including whether it is traded on an exchange or not and, if so, on which exchange), its market capitalization, and the type of security (*i.e.*, whether it is an ADR). The specific parameters of the illiquidity ratio test would also be reflected in NSCC's Rules, thereby enabling a Member to determine whether a security that is an ADR or has a micro-capitalization of less than \$300 million would be an Illiquid Security.

Second, the proposed rule text would provide that NSCC would apply a haircut to Illiquid Securities to determine the appropriate volatility component, with Illiquid Securities grouped by price level to determine the appropriate haircut to apply to a particular security. The proposed rule text would further specify that the haircut percentage would be the highest of the three percentages as provided in Section I.D(i), and would be determined at least annually. Additionally, if a Member had questions with respect to a particular security, it could use the various client-facing tools described above to determine whether a security would be considered an Illiquid Security. Taken together, the Commission believes that the proposal, which would be reflected in NSCC's Rules, in conjunction with the various client-facing tools, provides sufficient information to Members to understand the operation of the haircut-based volatility charges and how such charges would apply to particular transactions. The Commission further believes that NSCC provided sufficient information to Members to identify and evaluate the risks and other material costs they would incur due to securities with illiquid characteristics under the proposal.

For these reasons, the Commission disagrees with the comments stating that the proposal lacks details and does not explain how the haircut-based volatility charge will be calculated, and that the proposal does not allow

Members to predict the impact on their activities. The Commission acknowledges that, as some commenters have noted, the proposal does not provide or specify the actual models or calculations that NSCC would use to determine the appropriate haircut or what constitutes an Illiquid Security. However, when adopting the CCA Standards,<sup>140</sup> the Commission declined to adopt a commenter's view that a covered clearing agency should be required to provide, at least quarterly, its methodology for determining initial margin requirements at a level of detail adequate to enable participants to replicate the covered clearing agency's calculations, or, in the alternative, that the covered clearing agency should be required to provide a computational method with the ability to determine the initial margin associated with changes to each respective participant's portfolio or hypothetical portfolio, participant defaults and other relevant information. The Commission stated that "[m]andating disclosure of this frequency and granularity would be inconsistent with the principles-based approach the Commission is taking in Rule 17Ad-22(e)."<sup>141</sup> Consistent with that approach, the Commission does not believe that Rule 17Ad-22(e)(23)(ii) would require NSCC to disclose its actual margin methodology, so long as NSCC has provided sufficient information for its Members to understand the potential costs and risks associated with participating in NSCC for clearing Illiquid Securities.

For the reasons discussed above, the Commission believes that the proposals in the Proposed Rule Change would enable NSCC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable Members to identify and evaluate the risks, fees, and other material costs they incur as NSCC's Members, consistent with Rule 17Ad-22(e)(23)(ii).<sup>142</sup>

### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>143</sup> and the rules and regulations promulgated thereunder.

<sup>140</sup> 17 CFR 240.17Ad-22(e).

<sup>141</sup> See CCA Standards Adopting Release, *supra* note 64, 81 FR at 70845.

<sup>142</sup> 17 CFR 240.17Ad-22(e)(23)(ii).

<sup>143</sup> 15 U.S.C. 78q-1.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>144</sup> that proposed rule change SR-NSCC-2020-003, be, and hereby is, *approved*.<sup>145</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>146</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-26401 Filed 11-30-20; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90504; File No. SR-CBOE-2020-111]

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

November 24, 2020.

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 November 16, 2020, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, 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 amend 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.

<sup>144</sup> 15 U.S.C. 78s(b)(2).

<sup>145</sup> In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). See also Section II.B.

<sup>146</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.

## 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 adopt a new COVID-19 Test Fee in connection with the COVID-19 pandemic. By way of background, on March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of COVID-19<sup>3</sup> and was operating in an all-electronic configuration until June 15, 2020. On June 15, 2020, the Exchange reopened its trading floor, 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. In order to further protect the safety and welfare of individuals accessing the trading floor during the COVID-19 pandemic, the Exchange has determined to implement on-site COVID-19 testing for all trading floor personnel, beginning November 16, 2020. The Exchange has contracted with an independent health care provider who will conduct the tests, which the Exchange anticipates will be conducted twice weekly. The Exchange proposes to adopt a pass-through fee of \$150 per test for each TPH or associated person of a TPH<sup>4</sup> that is tested. The proposed COVID-19 Test Fee allows the Exchange to offset the costs incurred with on-site testing. The Exchange also notes that since the reopening of the

trading floor, the Exchange has, and continues to, incur other COVID-19 related costs that it has not passed through in connection with protecting the health and safety of TPHs and exchange personnel, including costs related to daily-deep cleaning. The Exchange represents that the proposed fee is a pass-through of the costs to the Exchange and that the Exchange will not generate any revenue in excess of those costs.

#### 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>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</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>7</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 believes the proposed COVID-19 Test Fee is reasonable as the amount of the proposed fee is the same amount that is assessed to the Exchange by the independent health care provider that will be administering the tests. As noted above, the revenue generated from the proposed fee will not be more than the cost to the Exchange for administering the tests. The Exchange also notes that to date, it has absorbed all the costs incurred in connection with the safety and health protocols it has taken to ensure the safety and welfare of individuals access the trading floor, including daily deep-cleaning of its facilities. The Exchange believes administering COVID-19 tests will help further protect the safety and welfare of individuals accessing its trading floor.

The Exchange believes the proposed fee is equitable and not unfairly discriminatory because such fee will be assessed to any TPH or associated person of a TPH that is tested and accesses the trading floor. The Exchange also notes that implementing on-site COVID-19 testing would benefit all persons accessing the trading floor as it is an additional precautionary measure intended to limit their exposure to COVID-19 and better ensure their safety and welfare.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes the proposed fee is not intended to address any competitive issue, but rather to recoup costs associated with COVID-19 testing in order to help protect the safety and welfare of individuals access the trading floor. 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 because the proposed changes apply equally to all similarly situated market participants. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only affect trading on the Exchange in limited circumstances.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and paragraph (f) of Rule 19b-4<sup>9</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

<sup>3</sup> On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic and to slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses.

<sup>4</sup> For example, a TPH may have personnel other than Nominees on the floor that need to access the trading floor. Such persons will also be subject to testing requirements and will be assessed the proposed fee.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f).

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-2020-111 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2020-111. 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. All submissions should refer to File Number SR-CBOE-2020-111 and should be submitted on or before December 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-26403 Filed 11-30-20; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90510]

### Order Granting Conditional Exemptive Relief, Pursuant to Section 36 of the Securities Exchange Act of 1934 ("Exchange Act") With Respect to Futures Contracts on the SPIKES™ Index

November 24, 2020.

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Exemptive order.

**SUMMARY:** The Minneapolis Grain Exchange, Inc. (or any successor thereto) ("MGEX") has expressed an interest in listing and trading contracts for sale for future delivery on the SPIKES™ Index ("SPIKES") (such futures contracts (and any options thereon) hereinafter referred to as the "Product"). After careful consideration, the Securities and Exchange Commission ("SEC" or "Commission") believes that the Product has the potential to offer competition with the only comparable incumbent volatility product in the market, and is therefore conditionally exempting the Product from the definition of "security future" for all purposes other than as follows: First, the anti-fraud and anti-manipulation provisions under the Exchange Act will continue to apply; second, MGEX will continue to be subject to the requirement to register with the Commission as a national securities exchange (which may be done pursuant to a notice filing) and comply with related amendment and supplemental filing requirements; and third, MGEX will continue to be required, in its capacity as a national securities exchange, to make available to the Commission (or its representatives) books and records relating to transactions in the Product, upon request, and to make itself available to inspection and examination by the Commission (or its representatives), upon request. However, because registration as a notice-registered national securities exchange is intended only as a means to facilitate the Commission's ability to exercise its

books and records and examination authority over the Product, MGEX will be exempt from compliance with all other requirements applicable to national securities exchanges. Taken together, these actions will allow the Product to trade as a futures contract on MGEX, a designated contract market ("DCM") and derivatives clearing organization ("DCO") that is subject to the jurisdiction of the Commodity Futures Trading Commission ("CFTC"), consistent with the terms and conditions set forth below.

**DATES:** This exemptive order is effective as of December 1, 2020.

#### **FOR FURTHER INFORMATION CONTACT:**

Carol McGee, Assistant Director, or Andrew Bernstein, Senior Special Counsel, at (202) 551-5870, Office of Derivatives Policy, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-8010.

## I. Introduction

### *A. Overview of the SPIKES Index*

On October 12, 2018, the Commission issued an order granting approval of a proposed rule change to allow the Miami International Securities Exchange LLC ("MIAX") to list and trade options on SPIKES.<sup>1</sup> Although that order permits MIAX to treat SPIKES as a broad-based index, as defined under MIAX's rules, solely for purposes of determining the position limits, exercise limits, and margin requirements that apply to each options trade, the Commission stated explicitly that it was not determining whether SPIKES is a "narrow-based security index," as defined in Section 3(a)(55)(B) of the Exchange Act.<sup>2</sup>

SPIKES measures the expected 30-day volatility of the SPDR® S&P 500® ETF Trust ("SPY"), and is calculated using a variance swap methodology that includes live prices of existing exchange-traded options on the SPY to calculate volatility. Specifically, the SPIKES formula relies on the prices of standard monthly SPY options that expire on the third Friday of each calendar month.<sup>3</sup> The formula uses

<sup>1</sup> See Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES™ Index, Exchange Act Release No. 84417 (Oct. 12, 2018), 83 FR 52865 (Oct. 18, 2018) (SR-MIAX-2018-14) ("SPIKES Options Approval Order").

<sup>2</sup> See SPIKES Options Approval Order, 82 FR at 52867 n. 36.

<sup>3</sup> See The SPIKES Volatility Index: Methodology Guide (available at: [https://www.miaxoptions.com/sites/default/files/spikes-files/SPIKES\\_Methodology\\_Guide.pdf](https://www.miaxoptions.com/sites/default/files/spikes-files/SPIKES_Methodology_Guide.pdf)) ("SPIKES Methodology").