

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97895; File No. SR-CBOE-2023-032]

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

July 13, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 30, 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 amendments to the Fees Schedule for the Cboe Silexx platform. 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 fees for the Cboe Silexx platform (“Cboe Silexx”), effective July 3, 2023. By way of background, 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. From the Silexx platform (*i.e.*, the collective front-end and back-end platform), a Silexx user has the capability to send option orders to U.S. options exchanges, send stock orders to U.S. stock exchanges (and other trading centers), input parameters to control the size, timing, and other variables of their trades, and also includes access to real-time options and stock market data, as well as access to certain historical data. The Silexx platform is designed so that a user may enter orders into the platform to send to an executing broker (including Trading Permit Holders (“TPHs”)) of its choice with connectivity to the platform, which broker will then send the orders to Cboe Options (if the broker is a TPH) or other U.S. exchanges (and trading centers) in accordance with the user’s instructions.

In 2020, the Exchange made a new version of the Silexx platform available, Cboe Silexx, which supports the trading of non-FLEX Options³ and allows authorized Users with direct access to the Exchange.⁴ The Silexx front-end and back-end platforms are a software application that is installed locally on a user’s desktop. Silexx grants users licenses to use the platform, and a firm or individual does not need to be a TPH to license the platform. Use of any version of the Silexx platform is completely optional.

The Exchange has established a tiered fee structure for Cboe Silexx, based on Login IDs and set forth in the Silexx Fees Schedule.⁵ Currently, there is a monthly fee of \$399 per Login ID for the

first 8 Login IDs (*i.e.*, Logins IDs 1–8), a fee of \$299 per each additional Login ID for the next 8 Login IDs (*i.e.*, Login IDs 9–16), and a fee of \$199 per each additional Login ID thereafter (*i.e.*, 17+ Login IDs).

The Exchange proposes to amend the quantity of Login IDs for each monthly fee tier and to update the Silexx Fees Schedule to reflect the new quantities. Particularly, the Exchange proposes to adopt a monthly fee of \$399 per Login ID for the first 16 Login IDs (*i.e.*, Login IDs 1–16), a fee of \$299 per each additional Login ID for the next 16 Login IDs (*i.e.*, Login IDs 16–32), and a fee of \$199 per each additional Login ID thereafter (*i.e.*, 33+ Login IDs). The fee will continue to be waived for the first month for any new individual user; the waiver will apply to the month the Login ID is first purchased.⁶

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that its proposed changes to the quantities of

³ In 2019, the Exchange made available an additional version of the Silexx platform, Silexx FLEX, which supports the trading of FLEX Options and allows authorized Users with direct access to the Exchange. See Securities Exchange Act Release No. 87028 (September 19, 2019) 84 FR 50529 (September 25, 2019) (SR-CBOE-2019-061).

⁴ See Securities Exchange Act Release No. 88741 (April 24, 2020) 85 FR 24045 (April 30, 2020) (SR-CBOE-2020-040).

⁵ See Securities Exchange Act Release No. 89830 (September 11, 2020) 85 FR 58093 (September 17, 2020) (SR-CBOE-2020-085).

⁶ For example, if an individual User subscribes to a Cboe Silexx Login ID on July 15th, the Login ID fee would be waived for the month of July only.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Login IDs applicable to each monthly fee tier are reasonable and appropriate, because even as amended, the fee structure remain competitive with similar products available throughout the market, including other available platform versions on Silexx and a similar front-end order entry system offered by Nasdaq ISE (*i.e.*, ISE's PrecISE terminals).¹⁰ The Exchange understands that the proposed pricing structure is also competitive with, and in some instances even lower than, similar unregulated products (for which there is no requirement for fees related to those products to be public). Additionally, use of Cboe Silexx is discretionary and not compulsory, as users can choose to route orders, including to Cboe Options, without the use of the platform. The Exchange makes the platform available as a convenience to market participants, who will continue to have the option to use any order entry and management system available in the marketplace to send orders to the Exchange and other exchanges; the platform is merely an alternative offered by the Exchange. The Exchange believes the proposed fees amendments are equitable and not unfairly discriminatory because they apply to all market participants uniformly.

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 proposed change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it relates to an optional platform. The proposed fee amendments will apply to similarly situated participants uniformly, as described in detail above. As discussed, the use of the platform continues to be completely voluntary and market participants will continue to have the flexibility to use any entry and management tool that is proprietary or from third-party vendors, and/or market participants may choose any executing brokers to enter their orders. The Cboe Silexx platform is not an exclusive means of trading, and if market participants believe that other

products, vendors, front-end builds, etc. available in the marketplace are more beneficial than the Cboe Silexx platform, they may simply use those products instead. Use of the functionality is completely voluntary.

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 change applies only to Cboe Options. Additionally, Cboe Silexx is similar to types of products that are widely available throughout the industry, including from some exchanges, at similar prices. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

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 Act¹¹ and paragraph (f) of Rule 19b-4¹² 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 (<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2023-032 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-2023-032. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2023-032 and should be submitted on or before August 9, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,
Deputy Secretary.

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¹⁰ See Silexx Fees Schedule, which assesses between \$200-\$600 per month for the remaining Silexx platforms, other than FLEX which is assessed no fee. See also Nasdaq ISE's Pricing Schedule, Section 7, which provides for a PrecISE Trade Terminal monthly fee of \$350 per user for each of the 1st 10 users and \$100 per month for each additional user.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

¹³ 17 CFR 200.30-3(a)(12).