

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. Please include File Number SR-NYSEARCA-2020-85 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-NYSEARCA-2020-85. 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, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such 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-NYSEARCA-2020-85 and should be submitted on or before October 30, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90093; File No. SR-CBOE-2020-088]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Update Its Fees Schedule in Connection With the Exchange's Plans To List and Trade Options on the S&P 500 ESG Index ("SPESG")

October 5, 2020.

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 September 23, 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 update its Fees Schedule in connection with the Exchange's plans to list and trade options on the S&P 500 ESG Index ("SPESG"). The text of the proposed rule change is provided in Exhibit 5.

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

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

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

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

1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with its plans to list and trade SPESG, effective September 21, 2020.³

By way of background, the S&P 500 ESG Index is a broad-based, market-capitalization-weighted index that is designed to measure the performance of securities meeting sustainability criteria, while maintaining similar overall industry group weights as the S&P 500. Each constituent of a S&P 500 ESG Index is a constituent of the S&P 500 Index. S&P Dow Jones Indices' ("S&P DJI") assigns constituents to a S&P 500 ESG Index based on S&P DJI ESG Scores and other environmental, social and governance ("ESG") data to select companies, targeting 75% of the market capitalization of each global industry classification standard ("GICS") industry group within the S&P 500. Because of the relation between the S&P 500 ESG Index and the S&P 500, which will likely result in market participants' investment and hedging strategies consisting of options over both, the Exchange will allow the same monthly expirations, settlement and exercise style, Market-Maker appointment weights, as the other options on the S&P 500 ("SPX").⁴ The Exchange now proposes to amend its Fees Schedule to accommodate the planned listing and trading of SPESG. The proposed changes amend the Fees Schedule so that the majority of the existing transactions fees and programs currently applicable to trading in SPX will also apply to trading in SPESG.

The proposed rule change adds SPESG to the list of products in Underlying Symbol List A in footnote 34 of the Fees Schedule, which currently includes SPX (and SPX Weeklys ("SPXW")). Underlying Symbol List A represents a specific set of proprietary products⁵ that are collectively included or excluded from a variety of programs, qualification calculations and transaction fees as a

³ The Exchange initially filed the proposed fee changes on September 18, 2020 (SR-CBOE-2020-087). On September 23, 2020, the Exchange withdrew that filing and submitted this filing.

⁴ See Securities Exchange Release No. 89749 (September 2, 2020), 85 FR 55723 (September 9, 2020) (SR-CBOE-2020-080), which amends certain Exchange Rules in connection with the Exchange's plans to list and trade S&P 500 ESG Index options.

⁵ See Cboe Options Fees Schedule, Footnote 34. Underlying Symbol List A currently includes: OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXW) and VIX.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁴ 17 CFR 200.30-3(a)(12).

result of the considerable resources the Exchange expends developing and maintaining its proprietary, exclusively listed products. Like SPX and the other products currently represented by “Underlying Symbol List A,” SPESG options are not listed on any other exchange. As such, the Exchange proposes to add SPESG to the products that make up Underlying Symbol List A. Therefore, by their inclusion in Underlying Symbol List A, transactions in SPESG are excluded from the Liquidity Provider Sliding Scale⁶ (as proposed and discussed below, SPESG transactions are included in the SPX Liquidity Provider Sliding Scale), Volume Incentive Program (“VIP”),⁷ Break-Up Credits applicable to Customer Agency Orders in AIM and SAM,⁸ the Marketing Fee,⁹ the Clearing Trading Permit Holder Fee Cap (“Fee Cap”),¹⁰ the Clearing Trading Permit Holder Proprietary and/or their Non-Trading Permit Holder Affiliates transaction fees for all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction,¹¹ the AIM Responder Fee,¹² exemption from fees for facilitation orders,¹³ the AIM Contra Execution Fee,¹⁴ the Order Router Subsidy (“ORS”) and Complex Order Router Subsidy (“CORS”) Programs,¹⁵ and the per contract per side surcharge for noncustomer complex order executions that remove liquidity from the COB and auction response in the complex order auction and AIM.¹⁶ Also, by including SPESG in Underlying Symbol List A, the FLEX Surcharge Fee¹⁷ of \$0.10 (capped at \$250 per trade) applies to all FLEX transactions in SPESG, and transactions in SPESG are eligible for reduced rates under the Clearing

Trading Permit Holder Proprietary Products Sliding Scale.¹⁸

The proposed rule change also adopts the following transaction fees and adds SPESG to the description of the existing fees for various orders in SPX, including:

- Non-Customer, Non-Market-Maker, Non-Firm orders in SPX (yielding fee code “BT”) and are assessed a standard fee of \$0.42;
- Customer, Premium orders for less than \$1.00 in SPX (yielding fee code “CS”) and are assessed a standard fee of \$0.36;
- Customer Premium orders for greater than or equal to \$1.00 in SPX (yielding fee code “CT”) and are assessed a standard fee of \$0.45;
- Market-Maker orders in SPX (yielding fee code “MS”) and are assessed a standard fee of \$0.28; and
- Firm orders in Underlying Symbol List A, under which SPX is currently listed and to which the Exchange proposes to add SPESG as discussed above, (yielding fee code “FH”) and are assessed a standard fee of \$0.26.

The proposed rule change also adds SPESG to the existing surcharges assessed on transactions in SPX, including:

- The Execution Surcharge of \$0.21;
- the AIM Response Surcharge Fee of \$0.05;
- the AIM Contra Surcharge Fee of \$0.10; and
- the AIM Agency/Primary Surcharge Fee of \$0.10.

The Exchange does not at this time propose to assess the Index License fee on transactions in SPESG in order to promote and encourage trading of SPESG once listed. The Exchange notes that Index License fees are likewise currently waived for options in other classes in order to continue to promote their trading and growth.¹⁹ Where the proposed rule change adds SPESG to the existing transactions fees and surcharges in place for SPX, as listed above, the proposed change also updates footnotes 12 and 21, appended to such transactions and surcharges, to reflect the inclusion of SPESG. Specifically, footnote 12 provides for pricing changes if the Exchange is operating in an all-electronic environment and, within the footnote, the proposed rule updates: Item (3), to provide that SPX and

SPESG, and SPXW Execution Surcharges will be waived, where applicable, for SPX/SPXW and SPESG orders executed via AIM and for SPX/SPXW Related Future Cross (“RFC”) orders; item (4), to provide that the AIM Agency/Primary Surcharge for SPX/SPXW, SPESG and VIX and RFC Execution Surcharge for SPX/SPXW and VIX will apply to all SPX/SPXW, SPESG and VIX AIM Agency/Primary orders and all SPX/SPXW and VIX RFC initiating orders, respectively, when the Exchange operates in a screen-based only environment and such fee will be invoiced to the executing Trading Permit Holder; and item (9), to provide that the AIM Contra Surcharge and AIM Response Surcharge will apply to all SPX/SPXW and SPESG AIM Contra and AIM Response/Priority Response orders, respectively, when the Exchange operates in a screen-based only environment.²⁰ Additionally, in the event the Exchange operates in a screen-based only environment, AIM may be available for SPX/SPXW and SPESG during Regular Trading Hours. The Exchange notes that RFC orders are limited to SPX/SPXW and VIX, therefore, the proposed rule change to item (4) in footnote 12 makes it clear that RFC Execution Surcharges will continue to apply to SPX/SPXW and VIX while the Execution Surcharges will apply to SPX/SPXW, SPESG and VIX. The proposed rule change updates footnote 21 to include SPESG, where applicable, and provides that all electronic executions in SPX, SPXW and SPESG shall be assessed the SPX, SPXW and SPESG Execution Surcharge, respectively, except that this fee shall not apply to: (i) Orders in SPX or SPXW options in the SPX electronic book for those SPX or SPXW options that are executed during opening rotation on the final settlement date of VIX options and futures which have the expiration that are used in the VIX settlement calculation and (ii) orders executed in SPX, SPXW and SPESG by a floor broker using a PAR terminal. The Exchange notes that SPESG will not be included in the VIX settlement (therefore item (i) within footnote 21 does not apply) and that SPESG

²⁰ The Exchange notes that it the proposed rule change does not add SPESG to item (5), in connection with the SPX/SPXW, VIX and RUT Tier Appointment Fee, because, the Exchange wishes to encourage trading and participation in the new SPESG market and believes that not assessing the appointment fees at this time for those participants that elect to support the new product is a reasonable means by which to do so. The Exchange notes that, at a future date, and as the SPESG market develops, it may look to assess such fees for SPESG.

⁶ See Cboe Options Fees Schedule, Liquidity Provider Sliding Scale table and footnote 10.

⁷ See Cboe Options Fees Schedule, Volume Incentive Program (VIP) table and Footnote 36.

⁸ See Cboe Options Fees Schedule.

⁹ See Cboe Options Fees Schedule, Marketing Fees table.

¹⁰ See Cboe Options Fees Schedule, Clearing Trading Permit Holder Fee Cap table and footnotes 11 and 22.

¹¹ See Cboe Options Fees Schedule, Footnote 22.

¹² See Cboe Options Fees Schedule, Footnote 20.

¹³ See Cboe Options Fees Schedule, Footnote 11.

¹⁴ See Cboe Options Fees Schedule, Footnote 18.

¹⁵ See Cboe Options Fees Schedule, Order Router Subsidy Program and Complex Order Router Subsidy Program table and Footnotes 29 and 30.

¹⁶ See Cboe Options Fees Schedule, Footnote 35.

¹⁷ See Cboe Options Fees Schedule, Footnote 17.

The Exchange also notes that the proposed rule change updates an existing error within the FLEX Surcharge Fee line by correcting the spelling of “except”.

¹⁸ See Cboe Options Fees Schedule, Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scale table and footnote 11.

¹⁹ See e.g. Securities Exchange Act Release No. 87953 (January 13, 2020), 85 FR 3091 (January 17, 2020) (SR-CBOE-2020-001), which waived permanently the Index License fees for transactions in Sector Index options to continue to encourage their growth and trading.

executed from PAR will be treated the same as SPX/SPXW.

Likewise, the proposed rule change also includes SPESG, along with SPX (and SPXW),²¹ in the Floor Brokerage Fees table, which assesses volume executed in open outcry. The proposed rule change also updates footnote 24, which accompanies the Floor Brokerage Fees table, to reflect the addition of SPESG. Footnote 24 provides for fee changes when the Exchange is operating in a modified state due to COVID-19 and the proposed rule change updates item (2) within the footnote to provide that SPX/SPXW and SPESG Floor

Brokerage Fees will be assessed the rate of \$0.05 per contract for non-crossed orders and \$0.03 per contract for crossed orders. The Exchange notes that the proposed changes to footnotes 12, 21 and 24 do not alter the application of any of the existing fees but merely adds SPESG, where applicable, to reflect its inclusion in the relevant fee tables.

The proposed rule change also adds SPESG to the SPX Liquidity Provider Sliding Scale²² and the Floor Brokerage Fees Discount Scale. The SPX Liquidity Provider Sliding Scale provides incremental incentives for Market-Makers to reach the highest tier level

and provides progressively lower rates if increased volume thresholds in SPX (including SPXW) options are attained during a month and, likewise, the Floor Brokerage Fees Discount Scale provides discounted floor brokerage fees if floor brokers meet certain volume thresholds in SPX (as well as other proprietary products) during a given month. The proposed rule change extends the same opportunities currently provided to Trading Permit Holders for transactions in SPX to transactions in SPESG options in order to encourage trading in such options.

| Premium level | Expiring, 7 days or less | | Near term, 8 days to 60 days | | Mid term, 61 days to 270 days | | Long term, 271 days or greater | |
|---------------------------|--------------------------|------|------------------------------|------|-------------------------------|------|--------------------------------|------|
| | Width | Size | Width | Size | Width | Size | Width | Size |
| \$0.00–\$5.00 | \$0.50 | 10 | \$0.40 | 25 | \$0.60 | 15 | \$1.00 | 10 |
| \$5.01–\$15.00 | 2.00 | 7 | 1.60 | 18 | 2.40 | 11 | 4.00 | 7 |
| 15.01–50.00 | 5.00 | 5 | 4.00 | 13 | 6.00 | 8 | 10.00 | 5 |
| 50.01–100.00 | 10.00 | 3 | 8.00 | 8 | 12.00 | 5 | 20.00 | 3 |
| 100.01–200.00 | 20.00 | 2 | 16.00 | 5 | 24.00 | 3 | 40.00 | 2 |
| Greater than 200.00 | 30.00 | 1 | 24.00 | 3 | 36.00 | 1 | 60.00 | 1 |

The above heightened quoting standards in the table above are substantively identical to the heightened quoting standards for the GTH SPX/SPXW LMM Incentive Program. The Exchange notes that, unlike the SPX/SPXW LMM Incentive Program, an LMM in SPESG may meet the heightened quoting standard in RTH in 60% of the series. Like with the GTH SPX/SPXW Incentive Program, LMMs in SPESG are not obligated to satisfy the heightened quoting standards described in the table above, but instead are eligible to receive the rebate if they satisfy the heightened requirements. The heightened requirements are designed to incentivize LMMs to provide significant liquidity in SPESG during the trading day upon their listing and trading on the Exchange. The Exchange may also consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances.

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.²³ Specifically,

the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,²⁴ 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable and equitable to add SPESG to Underlying Symbol List A, thus including SPESG transactions in, or excluding transactions from, certain programs, qualification calculations and transactions fees currently applicable to SPX (along with other proprietary products in Underlying Symbol List A), and to assess the same transaction and surcharge fees, as well as incentive scale tables (i.e. Clearing Trading Permit Holder Proprietary Products, SPX Liquidity Provider and Floor Brokerage Discount sliding scales), for SPESG that currently apply to SPX options, because of the relation between the S&P 500 ESG Index and the S&P 500 Index, wherein each constituent of a S&P 500 ESG Index is a constituent of the S&P 500

Index. The Exchange notes that the proposed rule change does not alter any of the existing program rates or transaction fees, but instead, proposes to assess those rates and fees for transactions in SPESG options in the same way the Exchange currently assesses them for transactions in SPX options. The Exchange also believes that it is reasonable and equitable not to assess the Index License fee on transactions in SPESG because SPESG is a new product and the Exchange wishes to promote and encourage trading of SPESG once listed. The Exchange notes the Index License fees are likewise currently waived for options in other classes in order to continue to promote their trading and growth.²⁶

In addition to this, the Exchange believes that it is reasonable to extend the existing opportunities under the SPX Liquidity Provider Sliding Scale and the Floor Brokerage Fees Discount Scale to Market-Makers and/or floor brokers, respectively, for SPESG so they may have opportunities to receive a discount by achieving various levels of volume in SPESG. The Exchange believes the programs are reasonably designed to encourage such participants to increase their submission of liquidity in SPESG, both electronically and in open outcry. This increase in the

²¹ The proposed rule change also updates “SPX Index Options” to instead read “SPX/SPXW” to provide additional clarity within the Floor Brokerage Fees table.

²² The proposed rule change also updates the title of the table to “SPX/SPXW and SPESG Liquidity Provider Sliding Scale” to provide additional clarity regarding the products eligible under the table.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4).

²⁵ *Id.*

²⁶ See *supra* note 17.

Exchange's hybrid liquidity pool may bring greater trading activity, execution opportunities, pricing transparency and discovery to the SPESG market, both electronically and on the trading floor, to the benefit of all market participants. Similarly, the Exchange believes it is reasonable to extend the existing opportunity under the Clearing Trading Permit Holder Proprietary Products Sliding Scale (by nature of the proposed addition of SPESG to Underlying Symbol List A) for Clearing Trading Permit Holders to receive reduced fees in their transactions in SPESG, because it applies to all other Underlying Symbol List A products, including SPX and because it is reasonably designed to incentivize Clearing Trading Permit Holders to increase their overall volume, which may increase liquidity, in turn may provide greater trading activity, execution opportunities, pricing transparency and discovery for those options markets, thereby benefitting all market participants.

The Exchange believes that the proposed RTH SPESG LMM Incentive Program is reasonable and equitable because the amended heightened quoting standards and rebate amount for meeting the heightened quoting standards in SPESG series are reasonably designed to incentivize an appointed LMM to meet the RTH quoting standards for SPESG, 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 on the Exchange during the trading day. The Exchange believes that the proposed heightened quoting standards in SPESG are reasonable in that they are substantially identical to the heightened quoting standards currently in place for GTH SPX/SPXW LMMs. While the proposed percentage of the series (60% of SPESG series) that an LMM must meet the proposed heightened quoting requirements is less than the percentage of the series that an LMM must meet the heightened quoting requirements in SPX and/or SPXW (85% of each series) is reasonable given the new market ecosystem for SPESG as compared to that of SPX/SPXW. The established SPX/SPXW market contains deep pools of liquidity and is highly active, which, in turn, assists LMMs in SPX/SPXW to more easily offset risk and hedge, as needed. Because the SPESG market is still new and not yet as robust as that of SPX/SPXW, it may pose more difficulty for LMMs in SPESG to offset risk and hedge, thus

more difficulty in achieving the heightened quoting requirement. Therefore, the Exchange believes the proposed percentage of the series is reasonably commensurate with the potentially higher risk, and challenge in achieving the heightened quoting requirements, LMMs would have to take on in the new SPESG market. Moreover, the Exchange believes that the proposed monthly rebate pool of \$50,000 split between LMMs that meet the heightened quoting standards in SPESG in a month, as proposed, is reasonable and equitable as it falls within a comparable realm of rebates offered for other, similar LMM incentive programs for similar products,²⁷ and such similar LMM incentive programs have prior had similar compensation pools in place.²⁸ If, for example, two LMMs were to meet the proposed heightened quoting requirements, they would each receive \$25,000, which is comparable to the \$20,000 available to SPX/SPXW LMMs that meet the heightened quoting requirements in both series pursuant to the GTH SPX/SPXW LMM Incentive Program. In addition to this, the Exchange believes that it is reasonable to offer \$50,000 as the entirety of the compensation pool, as it is designed to encourage substantial liquidity during RTH in a newly listed and traded product by providing a large enough pool for which multiple LMMs may compete, and receive meaningful incentive in a pro-rata share. While the Exchange has no way of predicting with certainty how the proposed rule change would impact LMM trading activity, it anticipates that at least two LMMs will be able to reasonably compete for and reach the heightened quoting requirements. The Exchange further notes that, if one LMM were to achieve the heightened quoting requirements in a month, it believes that \$50,000 is a reasonable incentive given the risks and level of difficulty posed by the newly developing SPESG market as described above.

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees for certain market participants transacting in SPESG because the current Clearing Trading Permit Holder Proprietary Products, SPX and SPESG (as proposed) Sliding, and Floor Brokerage Fees

²⁷ See Cboe Options Fees Schedule, GTH SPX/SPXW LMM Incentive Program, which provides a monthly rebate in the amount of \$10,000 per each series (for an opportunity to receive \$20,000 in total) for reaching the heightened quoting requirements.

²⁸ See Securities Exchange Release No. 87265 (October 9, 2019), 84 FR 87265 (October 16, 2019) (SR-CBOE-2019-083).

Discount scales already provide the same for such transactions in SPX. Moreover, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees for Clearing Trading Permit Holders transacting in SPESG because it will apply to all Clearing Trading Permit Holders uniformly, as it currently does for transactions in all proprietary products within Underlying Symbol List A. The Exchange also believes offering discounts to Clearing Trading Permit Holders is equitable and not unfairly discriminatory because Clearing Trading Permit Holders must take on certain obligations and responsibilities, such as clearing and membership with the Options Clearing Corporation, as well as significant regulatory burdens and financial obligations, that other market participants are not required to undertake. Similarly, assessing lower fees for Market-Makers in SPESG pursuant to the SPX/SPXW and SPESG (as proposed) Liquidity Provider Sliding Scale, as compared to other market participants, is equitable and not unfairly discriminatory because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. The Exchange notes that it provides Market-Maker-specific incentives in a number of places within the Fees Schedule.²⁹ Further, these lower fees offered to Market-Makers are intended to incentivize Market-Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. Additionally, the proposed fee for Market-Makers applies equally to all Market-Makers, meaning that all Market-Makers in SPESG are subject to the SPX/SPXW and SPESG Liquidity Provider Sliding Scale. Likewise, the Exchange believes providing discounts for Floor Brokers' transactions in SPESG is equitable and not unfairly discriminatory because it applies equally to all Floor Brokers, which function to bring necessary liquidity to the Exchange's trading floor thus maintaining a robust hybrid market on the Exchange to the benefit of all market participants.

Finally, the Exchange believes it is equitable and not unfairly discriminatory to offer the financial incentive to SPESG LMMs pursuant to the proposed RTH SPESG LMM Incentive Program, because it will

²⁹ See e.g., Cboe Options Fees Schedule, Liquidity Provider Sliding Scale table, GTH VIX/VIXW LMM Incentive Program, and GTH SPX/SPXW Incentive Program.

benefit all market participants trading SPESG during RTH by encouraging the LMMs to satisfy the heightened quoting standard, which incentivizes continuous increased liquidity and thereby may provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that its LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade SPESG, which can lead to increased volume, providing for robust markets. The Exchange ultimately wishes to sufficiently incentivize LMMs to provide liquid and active markets in the newly listed and traded SPESG during the trading day to encourage liquidity, thereby protecting investors and the public interest. The Exchange also notes that an LMM may have added costs each month that it needs to undertake in order to satisfy that heightened quoting standard (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 in VIX/VIXW and SPX/SPXW, and the proposed program will equally apply to any TPH that is appointed as a SPESG LMM. Additionally, if an LMM does not satisfy the heightened quoting standard in SPESG for any given month, then it simply will not receive the offered payment for that month.

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. Specifically, the Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it uniformly includes transactions in SPESG in, or excludes transactions in SPESG from, certain programs, qualification calculations and transactions fees, as well as uniformly assesses transaction and surcharge fees, for all qualifying Trading Permit Holders' transactions in SPESG, as it currently does for related SPX options. Moreover, 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, while different fees and rebates are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances. For

example, Clearing TPHs have clearing obligations that other market participants do not have. Market-Makers have quoting obligations that other market participants do not have. Further, the Exchange current fees and rebates are intended to encourage market participants to bring increased volume to the Exchange, to the benefit of all market participants. The Exchange also does not believe that the proposed LMM incentive program for SPESG would impose any burden on intramarket competition because it applies to all LMMs appointed to SPESG in a uniform manner, in the same way similar programs apply to LMMs in VIX/VIXW and SPX/SPXW today. To the extent these LMMs receive a benefit that other market participants do not, as stated, LMMs have different obligations and are held to different standards. For example, LMMs play a crucial role in providing active and liquid markets in their appointed products, especially in the newly developing SPESG market, 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.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees assessed and discount apply to an Exchange proprietary product, SPESG, which will be listed and traded exclusively on the Exchange on September 21, 2020.

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 Act³⁰ and paragraph (f) of Rule 19b-4³¹ 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. Please include File Number SR-CBOE-2020-088 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-2020-088. 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-2020-088 and should be submitted on or before October 30, 2020.

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 17 CFR 240.19b-4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90091; File No. SR-NYSE-2020-77]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt New Rule 8.601 (Active Proxy Portfolio Shares) and Rule 8.900 (Managed Portfolio Shares), Amend the Preamble to Rule 8P, and Amend Section 302.00 of the Listed Company Manual

October 5, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 22, 2020, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“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 (1) adopt new Rule 8.601, (2) adopt new Rule 8.900, (3) amend the preamble to Rule 8P, and (4) amend Listed Company Manual Section 302.00. The proposed rule change is available on the Exchange’s website at 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.

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

1. Purpose

The Exchange proposes to adopt new Rules 8.601 and 8.900 to list Active Proxy Portfolio Shares and Managed Portfolio Shares, respectively, on the Exchange. These proposed rules are based on the NYSE Arca, Inc. (“NYSE Arca”) rules of the same number, with non-substantive changes. The Exchange also proposes to amend the preamble to Rule 8P to permit the listing of Active Proxy Portfolio Shares and Managed Portfolio Shares on the Exchange. The Exchange also proposes to amend Section 302.00 of the Listed Company Manual to include Active Proxy Portfolio Shares and Managed Portfolio Shares listed pursuant to proposed Rules 8.601 and 8.900 among the securities for which the annual shareholders’ meeting requirement does not apply.

Proposed Rule 8.601

The Exchange proposes to add new Rule 8.601 to permit the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company. Proposed Rule 8.601 is based on NYSE Arca Rule 8.601-E without any substantive differences.

Proposed Listing Rules

Proposed Rule 8.601(a) provides that the Exchange would consider for trading, whether by listing or pursuant to UTP, Active Proxy Portfolio Shares that meet the criteria of Rule 8.601.

Proposed Rule 8.601(b) provides that Rule 8.601 would be applicable only to Active Proxy Portfolio Shares and that, except to the extent inconsistent with Rule 8.601, or unless the context otherwise requires, the rules and procedures of the Exchange’s Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 8.601(b) provides further that Active Proxy Portfolio Shares would be included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Rule 8.601(c)(1) defines the “Active Proxy Portfolio Share” as a security that (a) is issued by an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Proposed Rule 8.601(c)(2) defines the term “Actual Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.

Proposed Rule 8.601(c)(3) defines the term “Proxy Portfolio” as a specified portfolio of securities, other financial instruments, and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 (the “1940 Act”) applicable to such series. The website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable:

- (i) Ticker symbol;
- (ii) CUSIP or other identifier;
- (iii) Description of holding;
- (iv) Quantity of each security or other asset held; and
- (v) Percentage weighting of the holding in the portfolio.⁴

⁴ The information required in proposed Rule 8.601(c)(3) for the Proxy Portfolio is the same as that required in SEC Rule 6c-11(c)(1)(i)(A) through (E) under the 1940 Act for exchange-traded funds operating in compliance with Rule 6c-11. See Release Nos. 33-10695; IC-33646; File No. S7-15-18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the “Rule 6c-11 Release”). The Exchange believes it is appropriate

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.