2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On March 10, 2021, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7]

Section 19(b)(2) of the Act[8] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on December 11, 2020. June 9, 2021 is 180 days from that date, and August 8, 2021 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the comment letters. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates August 8, 2021 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NASDAQ–2020–081), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–12245 Filed 6–10–21; 8:45 am]

BILLING CODE 8011–01–P

designated March 11, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 91286, 86 FR 14484 (March 16, 2021).

[8] 15 U.S.C. 78s(b)(2).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92121; File No. SR–CBOE–2021–037]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule To Adopt a New Floor Broker Incentive Program and To Make a Clarifying Change to the Definition of Facilitation Orders

June 7, 2021.

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 1, 2021, 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 to adopt a new Floor Broker incentive program and to make a clarifying change to the definition of facilitation orders. 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 a new Floor Broker incentive program and to make a clarifying change to the definition of facilitation orders in footnote 11 of the Fees Schedule, effective June 1, 2021.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange offers specific rates and rebates in its Fees Schedule, like that of other options exchanges' fees schedules, which the Exchange believes provide incentive to Trading Permit Holders (''TPHs'') to increase order flow of certain qualifying orders.

Also, in response to the competitive environment, the Exchange offers various tiered incentive programs which provide TPHs opportunities to qualify for higher rebates or reduced rates where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for TPHs to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria. For example, the Exchange currently offers, among other tiered volume programs, a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets U.S. Options Market Volume Summary, Month-to-Date (May 24, 2021), available at *https://markets.cboe.com/us/options/market_statistics/*.

Liquidity Provider Sliding Scale that offers credits on Market-Maker orders where a Market-Maker achieves certain volume thresholds based on total national Market-Maker volume in all underlying symbols, except products in Underlying Symbol List A[4] and XSP, during the calendar month.

The Exchange now proposes to adopt a new volume-based incentive program for its Floor Brokers. Specifically, the proposed Floor Broker Sliding Scale Rebate Program (or, the ''Program'') offers four tiers that provide rebates on a sliding scale[5] for qualifying orders where a TPH meets certain liquidity thresholds. As proposed, the Program applies to all products except for Underlying Symbol List A,[6] Sector Indexes,[7] DJX, MRUT, MXEA, MXEF and XSP (''multiply-listed options''). The Program offers two categories of rebates that correspond to each of the proposed tiers; one that applies to Firm Facilitated orders (*i.e.,* orders that yield fee code FF)[8] and another that applies to all other non-Firm Facilitated orders (*i.e.,* orders that do not yield fee code FF). The proposed rebates will apply only to Non-Customer,[9] Non-Strategy, Floor Broker orders. The Exchange notes that the definition of facilitation orders is provided in footnote 11 of the Fees Schedule (as described in further detail below) and, therefore, the proposed rule change appends footnote 11 to the ''Firm Facilitated Rebate'' column in the Floor Broker Incentive Program table. Further, Strategy Orders are defined in footnote 13 of the Fees Schedule and, therefore, the proposed rule change also appends footnote 13 to the ''Criteria'' column in the Floor Broker Incentive Program table.[10] A TPH will receive the applicable rebates on its qualifying orders if it meets the corresponding tier criteria, measured over a month. The tiers' criteria are also based on the amount of a TPH's Non-Customer, Non-Strategy, Floor Broker volume over a baseline month (''Step-Up Volume''). The specific Floor Broker Sliding Scale Rebate Program tiers and corresponding rebates, as proposed, are as follows:

- Tier 1 provides a rebate of $0.01 per contract for all qualifying (*i.e.,* Non-Customer, Non-Strategy, Floor Broker orders in all products except Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF and XSP) Firm Facilitated orders, and a rebate of $0.03 per contract for all qualifying non-Firm Facilitated orders, where a TPH has a Step-Up Volume in Non-Customer, Non-Strategy, Floor Broker Volume (in applicable products) from April 2021 that is greater than zero contracts;
- Tier 2 provides a rebate of $0.01 per contract for all qualifying Firm Facilitated orders, and a rebate of $0.04 per contract for all qualifying non-Firm Facilitated orders, where a TPH has a Step-Up Volume in Non-Customer, Non-Strategy, Floor Broker Volume (in applicable products) from April 2021 that is greater than or equal to 100,000 contracts;
- Tier 3 provides a rebate of $0.01 per contract for all qualifying Firm Facilitated orders, and a rebate of $0.05 per contract for all qualifying non-Firm Facilitated orders, where a TPH has a Step-Up Volume in Non-Customer, Non-Strategy, Floor Broker Volume (in applicable products) from April 2021 that is greater than or equal to 250,000 contracts; and
- Tier 4 provides a rebate of $0.015 per contract for all qualifying Firm Facilitated orders, and a rebate of $0.06 per contract for all qualifying non-Firm Facilitated orders, where a TPH has a Step-Up Volume in Non-Customer, Non-Strategy, Floor Broker Volume (in applicable products) from April 2021 that is greater than or equal to 500,000 contracts.

The proposed rule change also makes clear in the proposed Program table that the Exchange will aggregate a TPH's volume with the volume of its affiliates (''affiliate'' defined as having at least 75% common ownership between the two entities as reflected on each entity's Form BD, Schedule A) for the purposes of calculating Step-Up Volume each month.[11] The proposed Program is designed to encourage Floor Brokers to increase their order flow in all multiply-listed equity and ETP options to the Exchange's trading floor to meet the proposed tier criteria in order to receive the proposed corresponding rebate for their qualifying orders. The Exchange believes that incentivizing increased liquidity to its trading floor allows the Exchange to maintain a robust hybrid trading environment that serves to support price discovery and increased execution opportunities in open outcry, to the benefit of all market participants.

The proposed rule change also makes a clarifying amendment to footnote 11 of the Fees Schedule, which provides, in relevant part, for the definition of facilitation orders for the purposes of the Fees Schedule. Specifically, footnote 11 currently provides that ''facilitation orders'' for this purpose are[12] defined as any order in which a Clearing Trading Permit Holder (''F'' capacity code)[13] or Non-Trading Permit Holder Affiliate (''L'' capacity code) is contra to any other origin code, provided the same

[4] *See* Cboe Options Fees Schedule, Footnote 34, which provides that Underlying Symbol List A includes OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXW), SPESG and VIX.

[5] The rebate offered under each tier is only applied to the qualifying volume within that tier. In addition, the Exchange calculates the average rebate for each type of rebate (Firm Facilitated and Non-Firm Facilitated) based on the TPH's total qualifying volume across all four tiers plus its qualifying baseline volume (which corresponds to a rebate of $0.00). Each respective average rebate is applied to the percentage of qualifying volume that corresponds specifically to the type of order (Firm Facilitated or Non-Firm Facilitated) volume and added together, which results in a final average rebate. The final average rebate is then applied to the TPH's total qualifying executions. This is consistent with the manner in which the Exchange calculates rebates for other sliding scale programs offered under the Fees Schedule.

[6] *See id.*

[7] *See* Cboe Options Fees Schedule, Footnote 47, which provides that Sector Index underlying symbols include IXB, SIXC, IXE, IXI, IXM, IXR, IXRE, IXT, IXU, IXV AND IXY, and corresponding option symbols include SIXB, SIXC, SIXE, SIXI, SIXM, SIXR, SIXRE, SIXT, SIXU, SIXV AND SIXY.

[8] Orders that yield fee code FF are not assessed a charge. *See* Cboe U.S. Options Fee Schedules, Fees and Associated Fee Codes, available at: *https://markets.cboe.com/us/options/membership/fee_schedule/cboe/.*

[9] Non-Customers include all capacities except for ''C'' (Customer), specifically: ''M'' capacity (Market-Maker); ''N'' capacity (Non-TPH Market-Maker); ''F'' capacity (Clearing TPH); ''L'' capacity (Non-Clearing TPH Affiliates); ''J'' capacity (Joint Back-Office); ''U'' capacity (Professional); and ''B'' capacity (Broker-Dealer).

[10] Footnote 13, in relevant part, provides that: a ''merger strategy'' is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock; a ''short stock interest strategy'' is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class; a ''reversal strategy'' is established by combining a short security position with a short put and a long call position that shares the same strike and expiration; a ''conversion strategy'' is established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration; and a ''jelly roll strategy'' is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position.

[11] The proposed rule change also appends: Footnote 39 to the Program, which provides that each Trading Permit Holder is responsible for notifying the Exchange of all of its affiliates and is required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate in a form and manner to be determined by the Exchange. An ''affiliate'' is defined as having at least 75% common ownership between two entities as reflected on each entity's Form BD, Schedule A; and footnote 41 to the Program, which provides, in relevant part, that Position Compression Cross (''PCC'') transactions will not count towards any volume thresholds.

[12] The proposed rule change corrects an inadvertent grammar error by changing ''to be'' to ''are''.

[13] The proposed rule change updates the format of this parenthetical to be consistent with similar parentheticals throughout footnote 11.

executing broker and clearing firm are on both sides of the transaction for open outcry. The Exchange notes that TPHs are permitted to make post-trade updates to their transactions, which may include changes to the executing or contra broker, the executing or contra clearing firm, and capacity. Such post-trade updates may potentially alter whether an order qualifies as a facilitation order for the purposes of the Fees Schedule. As such, the proposed rule change updates the definition of facilitation order to clarify that the executing broker and clearing firm must be the same on both sides of the trade following any post-trade changes made on the trade date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[14] in general, and furthers the requirements of Section 6(b)(4),[15] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. As stated above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed fee changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange's trading floor, which the Exchange believes would enhance market quality to the benefit of all TPHs. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[16] including the Exchange,[17] and are reasonable, equitable and non-discriminatory because they are open to all TPHs on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including incentive programs that offer rebates or rates that apply based upon TPHs achieving certain volume thresholds.

In particular, the Exchange believes that the proposed Floor Broker Sliding Scale Rebate Program is reasonable and equitable because it is designed to incentivize increased order flow in multiply-listed options to the Exchange's trading floor. The Exchange believes that it is reasonable to apply the proposed Program to Non-Customer order flow as the Exchange recognizes that market participants that submit Non-Customer order flow provide different, yet key, liquidity to the Exchange's trading floor. For instance, Market-Maker activity, including Non-TPH Market-Makers (''M'' and ''N'' capacities), facilitates tighter spreads and signals additional corresponding increase in order flow from other market participants. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities. Clearing TPHs (''F'' capacity), Non-Clearing TPH Affiliates (''L'' capacity), Broker-Dealers (''B'' capacity), and Joint Back-Offices (''J'' capacity) can be an important source of liquidity as they specifically facilitate the execution of customer orders, which, in turn, adds transparency, promotes price discovery and serves to attract other participants, thus providing continuous liquidity to the Exchange. Also, Professionals (''U'' capacity) generally provide a greater competitive stream of order flow (by definition, more than 390 orders in listed options per day on average during a calendar month), thus, providing increased competitive execution and improved pricing opportunities for all market participants. The Exchange further believes that applying the proposed Program to Non-Strategy, multiply-listed order flow is reasonable as it is designed to compete with other option exchanges' for floor broker non-strategy order flow as other options exchanges' have fee schedules in place that offer similar incentives to their floor brokers that submit non-strategy orders for execution in open outcry.[18]

The Exchange believes that the proposed rebate amounts are reasonable as they are comparable to the rebates or reduced rates offered under similar volume-based incentive programs offered in the Fees Schedule.[19] For example, the Liquidity Provider Sliding Scale provides a reduced fee of between $0.17 to $0.03 per contract for Market-Maker orders (which are assessed a standard rate of $0.23 per contract) where a Market-Maker meets certain volume thresholds, a reduction of which the Exchange believes is comparable to the proposed rebates that range from $0.01 to $0.06. The Exchange also believes that it is reasonable to offer higher rebates for Non-Firm Facilitated order flow than for Firm Facilitated order flow (*i.e.,* where the same executing broker and clearing firm are on both sides of the transaction) because it wishes to further incentivize order flow that attracts contra-side interest from a wider variety of market participants, which may further contribute towards a robust, well-balance market ecosystem. Further, Firm Facilitated orders (*i.e.,* orders yielding fee code FF) are not currently charged any fees, as compared to Non-Firm Facilitated orders, which are assessed fees. The Exchange also notes that excluding Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF and XSP from the proposed program (thus, incentivizing increased order flow in multiply-listed options), as well as aggregating a TPH's volume with the volume of its affiliates for the purposes of calculating Step-Up Volume each month, is consistent with the manner in which other incentive programs under the Fees Schedule exclude the same products[20] and/or aggregate volume and credits.[21] Additionally, the Exchange notes that Floor Brokers already have an

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] *See* NYSE Arca Options Fee Schedule, FB Professional Customer Manual Program, which provides a credit of $013 per contract to floor brokers that increase their monthly ADV (in certain capacities) by a certain percentage over a baseline, and excludes strategy executions from the program; *and* NYSE American Options Fee Schedule, E.1, [sic] Floor Broker Fixed Cost Prepayment Incentive Program (the ''FB Prepay Program''), which offers participating floor brokers annual rebates for achieving growth in manual volume by a certain percentage as measured against certain benchmarks, and does not apply to volume executed as part of Strategy Execution Fee Cap (that is, strategy orders).

[17] *See* Cboe Options Fees Schedule, Liquidity Provider Sliding Scale, Liquidity Provider Sliding Scale Adjustment Table, Volume Incentive Program, and Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scale, each of which provides for a scale of rebates or reduced fees applicable to certain orders for various types of TPHs that meet certain volume thresholds under each.

[18] *See supra* note 15 [sic]; *and* BOX Options Fee Schedule, Section II.C, Qualified Open Outcry (''QOO'') Order Rebate, which offers a rebate for floor broker orders $0.075 or $0.05 per contract (depending on the capacity) and does not apply to Strategy QOO Orders.

[19] *See supra* note 16.

[20] *See e.g.,* Cboe Options Fees Schedule, Liquidity Provider Sliding Scale, Break-Up Credits table, Order Routing Subsidy Program, and Complex Order Routing Subsidy Program.

[21] *See e.g.,* Cboe Options Fees Schedule, Volume Incentive Program (VIP), Affiliate Volume Plan, QCC Rate Table, and Market-Maker EAP Appointments Sliding Scale.

opportunity to receive discounts on their fees for certain proprietary products under the Floor Brokerage Fees Discount Scale.[22]

In addition to this, the Exchange believes that the proposed update to the definition of facilitation orders in footnote 11 of the Fees Schedule is reasonable because it is designed to ensure and make clear that post-trade edits to orders will be considered in determining whether an order qualifies as a facilitation order and is appended fee code FF and the appropriate corresponding fees or fee waiver. The Exchange believes that it is appropriate to determine, for the purposes of the Fees Schedule, whether a transaction is considered a facilitation order following any same day post-trade updates made to the transaction because such post-trade edits may potentially alter whether the same executing broker and clearing firm are on both sides of a transaction, which is required in order for a transaction to qualify as a facilitation order. The proposed rule change is reasonable as it does not alter the definition of a facilitation order but merely clarifies the point at which the System will evaluate whether a transaction qualifies as such.

The Exchange believes that the proposed Floor Broker Sliding Scale Rebate Program represents an equitable allocation of fees and is not unfairly discriminatory because the Program, as proposed, will apply uniformly to all qualifying TPHs, in that all TPHs that submit the requisite order flow (*i.e.,* Non-Customer, Non-Strategy, Floor Broker Volume in multiply-listed options) have the opportunity to compete for and achieve the proposed tiers. The proposed rebates will apply automatically and uniformly to all TPHs that achieve the proposed corresponding criteria. The Exchange believes that the application of the proposed Program to TPHs that submit Non-Customer order flow is equitable and not unfairly discriminatory because such market participants provide unique and important liquidity to the Exchange's trading floor. Such order flow, as described above, may result in overall tighter spreads, attracting order flow from other market participants, more execution opportunities at improved prices, and/or deeper levels of liquidity, which may ultimately improve price transparency, provide continuous trading opportunities and enhance market quality on the Exchange, to the benefit of all market participants. The Exchange also notes that the Fees Schedule currently provides for many other incentive opportunities and rebate or reduced fee opportunities for Customer orders.[23]

In addition to this, while the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular TPH qualifying for the proposed tiers, the Exchange believes that at least five TPHs will reasonably be able to compete for and achieve the proposed criteria across the four proposed tiers by submitting the requisite volume. The Exchange notes, however, that the proposed tiers are open to any TPH that submits the requisite order flow to satisfy the tiers' criteria. The Exchange also does not believe the proposed tiers will adversely impact any TPH's pricing or ability to qualify for other fee programs. Rather, should a TPH not meet the criteria in any of the proposed tiers, the TPH will merely not receive the corresponding rebate.

Finally, the Exchange believes that the proposed update to the definition of a facilitation order in footnote 11 of the Fees Schedule is equitable and not unfairly discriminatory because it will continue to apply the fee code FF (Facilitation Firm) automatically and uniformly to all orders that qualify as facilitation orders. The proposed update just clarifies that a transaction will be evaluated as to whether it qualifies as a facilitation order for the purposes of the Fees Schedule after any same day, post-trade edits are made to that transaction. The Exchange believes that considering potential post-trade edits made on the same trade date will more appropriately capture whether a transaction has the same executing broker and clear firm on both sides of the trade.

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 the floor of 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." [24]

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 Floor Broker Sliding Scale Rebate Program will apply equally to all similarly situated TPHs that submit the requisite order flow. That is, the proposed fees will apply equally to all Non-Customer, Non-Strategy, Floor Broker orders in multiply-listed options. The Exchange does not believe that the application of the proposed Program to Non-Customer orders will impose any significant burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange recognizes that Non-Customer participation in the markets is essential to a robust hybrid market ecosystem as each contributes unique and important liquidity to the Exchange's trading floor, as described above. Such Non-Customer order flow may result in overall tighter spreads, attracting order flow from other market participants, more execution opportunities at improved prices, and/or deeper levels of liquidity, which may ultimately improve price transparency, provide continuous trading opportunities and enhance market quality on the Exchange, to the benefit of all market participants. The Exchange again notes that the Fees Schedule currently provides for many other incentive opportunities and rebate or reduced fee opportunities for Customer orders.[25] The Exchange also does not believe that the update to the definition of facilitation orders will impose any significant burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will continue to apply the fee code FF (Facilitation Firm) automatically and uniformly to all orders that qualify as facilitation orders. As stated above, the proposed update merely clarifies that a transaction will be evaluated as to whether it qualifies as a facilitation order following any same day, post-

[22] *See* Cboe Options Fees Schedule, Floor Brokerage Fees Discount Scale.

[23] *See generally* Cboe Options Fee Schedule, which generally assesses lower transaction fees for Customer orders as compared to other capacities; *see also* Cboe Options Fee Schedule, Customer Large Trade Discount, Break-Up Credits table, Select Customer Options Reduction ("SCORe") Program, and QCC Rate Table.

[24] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[25] *See supra* note 21.

trade edits, which will more appropriately capture whether a transaction has the same executing broker and clear firm on both sides of the trade.

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, as noted above, competing options exchanges have similar incentive programs and discount opportunities in place in connection with floor broker order flow.[26] The Exchange notes that the proposed update in connection with facilitation orders is not competitive in nature and merely clarifies a step in the billing process for qualifying facilitation orders. Additionally, and as previously discussed, the Exchange 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, many of which offer substantially similar price improvement auctions. Based on publicly available information, no single options exchange has more than 16% of the market share.[27] 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.'' [28] 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'. . . .''.[29] 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 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 [30] and paragraph (f) of Rule 19b–4 [31] 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–2021–037 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–2021–037. 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–2021–037 and should be submitted on or before July 2, 2021.

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

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–12248 Filed 6–10–21; 8:45 am]

BILLING CODE 8011–01–P

[26] *See supra* notes 15 [sic] and 17.

[27] *See supra* note 3.

[28] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[29] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR-NYSEArca–2006–21)).

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f).

[32] 17 CFR 200.30–3(a)(12).