

enhance competition among market participants, to the benefit of investors and the marketplace. Similarly, the Exchange believes that the proposed initial and continued listing standards are designed to promote disclosure and transparency with respect to the use of Custom Baskets consistent with an issuer's exemptive relief. Specifically, the Exchange believes that requiring as an initial listing condition that an issuer and any person acting on behalf of the series of Active Proxy Portfolio Shares comply with Regulation Fair Disclosure under the Securities Exchange Act of 1934, including with respect to any Custom Basket, would further the full and fair disclosure objectives of Regulation Fair Disclosure to the benefit of the investing public and all market participants. Further, the Exchange believes that requiring as a continued listing condition that, with respect to each Custom Basket utilized by a series of Active Proxy Portfolio Shares, each business day, before the opening of trading in the Core Trading Session (as defined in Rule 7.34–E(a)), an investment company make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash, also furthers the goals of transparency and full and fair disclosure, to the benefit of investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change, by permitting use of Custom Baskets consistent with an issuer's exemptive relief, would introduce additional competition among various ETF products to the benefit of investors.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate

and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEArca–2021–64 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–2021–64. 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 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–2021–64, and should be submitted on or before September 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**J. Matthew DeLesDernier**,  
Assistant Secretary.

[FR Doc. 2021–17173 Filed 8–11–21; 8:45 am]

**BILLING CODE 8011–01–P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–92597; File No. SR–CBOE–2021–044]**

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

August 6, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on August 2, 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 relating to the Options Regulatory Fee. 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

<sup>8</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

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 reduce the Options Regulatory Fee (“ORF”) from \$0.0023 per contract to \$0.0017 per contract, effective August 2, 2021, in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange’s total regulatory costs.

The ORF is assessed by Cboe Options to each Trading Permit Holder (“TPH”) for options transactions cleared by the TPH that are cleared by the Options Clearing Corporation (“OCC”) in the customer range, regardless of the exchange on which the transaction occurs.<sup>3</sup> In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a TPH, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Trading Permit Holder (“CTPH”) or non-CTPH that ultimately clears the transaction. With respect to

linkage transactions, Cboe Options reimburses its routing broker providing Routing Services pursuant to Cboe Options Rule 5.36 for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange’s other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of TPH customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, compliance, information technology, facilities and accounting. These indirect expenses are estimated to be approximately 27% of Cboe Options’ total regulatory costs for 2021. Thus, direct expenses are estimated to be approximately 73% of total regulatory costs for 2021. In addition, it is Cboe Options’ practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs.

The Exchange monitors its regulatory costs and revenues at a minimum on a

semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange also notifies TPHs of adjustments to the ORF via an Exchange Notice.<sup>4</sup> Based on the Exchange’s most recent semi-annual review, the Exchange is proposing to reduce the amount of ORF that will be collected by the Exchange from \$0.0023 per contract side to \$0.0017 per contract side. The proposed decrease is based on the Exchange’s estimated projections for its regulatory costs, which have decreased, balanced with recent options volumes, which has increased. For example, total options contract volume in March 2021 was approximately 34% higher than the total options contract volume in March 2020 and the total options contract volume in June 2021 was approximately 25% higher than the total options contract volume in June 2020.<sup>5</sup> In fact, March 2021 was the highest, and June 2021 was the second highest, options volume month in the history of U.S. equity options industry.<sup>6</sup> Below is also industry data from OCC which illustrates the significant increase in volume from January 2021 through March 2021.<sup>7</sup> Moreover, the options volume in the first quarter of 2021 was higher than the fourth quarter of 2020.<sup>8</sup> Also April and May 2021 volumes remain significantly high as compared to 2020 options volume in general.<sup>9</sup>

Volume	January 2021	February 2021	March 2021	April 2021	May 2021
Total .....	838,339,790	823,412,827	898,653,388	711,388,828	718,368,993
Customer .....	784,399,878	782,113,450	837,247,059	667,208,963	659,913,862
Total ADV .....	44,123,146.84	43,337,517.20	39,071,886.40	33,875,658.50	35,918,449.70
Customer ADV .....	41,284,204.11	41,163,865.79	36,402,046.04	36,402,046.04	32,995,693.10

These expectations are estimated, preliminary and may change. There can be no assurance that the Exchange’s final costs for 2021 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with the

Exchange’s other non-ORF regulatory fees and fines, the revenue being generated by ORF using the current rate results in revenue that is running in excess of the Exchange’s estimated regulatory costs for the year.<sup>10</sup> Particularly, as discussed above, the options market has seen a substantial increase in volume over the first half of the year, up even from last year’s

unprecedented spike in volatility and volume. This increase resulted in higher volume than was originally projected by the Exchange (thereby resulting in higher ORF revenue than projected). Moreover, in addition to projected reductions in regulatory expenses, the Exchange experienced further unanticipated reductions in costs, in connection with the continuing COVID-

<sup>3</sup> The Exchange notes ORF also applies to customer-range transactions executed during Global Trading Hours.

<sup>4</sup> The Exchange endeavors to provide TPHs with such notice at least 30 calendar days prior to the effective date of the change. The Exchange notified TPHs of the proposed rate change for August 2, 2021 on July 1, 2021. See Exchange Notice,

C2021070103 “Cboe Options Exchanges Regulatory Fee Update Effective August 2, 2021.”

<sup>5</sup> See <https://www.theocc.com/Newsroom/Press-Releases/2021/04-05-OCC-March-2021-Total-Volume-Up-34-8-Percent> and <https://www.theocc.com/Newsroom/Press-Releases/2021/07-02-OCC-June-2021-Total-Volume-Up-25-6-Percent-f>.

<sup>6</sup> *Id.*

<sup>7</sup> See data from OCC at: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Account-Type>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Consistent with Rule 2.2 (Regulatory Revenue), the Exchange notes that notwithstanding the excess ORF revenue collected to date, it has not used such revenue for nonregulatory purposes.

19 pandemic (e.g., continued reduction in travel expenses).<sup>11</sup> Accordingly, because revenue generated by the current ORF rates, when combined with the Exchange's other non-ORF regulatory fees and fines, is expected to exceed the Exchange's regulatory costs for the year, the Exchange proposes to decrease its ORF rate. Particularly, the Exchange believes that by [sic] decreasing the ORF, as amended, when combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the current rate.<sup>12</sup>

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>14</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>15</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because customer transactions will be subject to a lower ORF fee than the current rate. Moreover, the proposed reduction is necessary in order to lessen the potential that the Exchange collects revenue in excess of its anticipated

regulatory costs, in combination with other regulatory fees and fines, which is consistent with the Exchange's practices. The Exchange had designed the ORF to generate revenues that would be less than or equal to 75% of the Exchange's regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after its semi-annual review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it would be collecting revenue in excess of 75% of its regulatory costs. Indeed, the Exchange notes that when taking into account the recent options volume, coupled with the projected reduction in regulatory costs, it estimates the ORF will generate revenues that would cover more than the approximated 75% of the Exchange's projected regulatory costs. Moreover, when coupled with the Exchange's other regulatory fees and revenues, the Exchange estimates ORF to generate over 100% of the Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to decrease the ORF amount from \$0.0023 to \$0.0017 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all TPHs on all their transactions that clear in the customer range at the OCC. The Exchange believes the ORF ensures fairness by assessing higher fees to those TPHs that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (e.g., staff and travel expenses), as well as investigations into customer complaints and the terminations of Registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., TPH proprietary transactions) of its

regulatory program.<sup>16</sup> Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to its TPHs' activities, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity irregardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group ("ISG")<sup>17</sup> the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to its TPH's customer trading activity.

## 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 not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the

<sup>16</sup> If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on TPH proprietary transactions if the Exchange deems it advisable.

<sup>17</sup> ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

<sup>11</sup> The Exchange notes that in connection with proposed ORF rate changes, it provides the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a breakout of its projected regulatory expenses, including both direct and indirect allocations.

<sup>12</sup> The Exchange notes that its regulatory responsibilities with respect to TPH compliance with options sales practice rules have largely been allocated to FINRA under a 17d-2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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

ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and paragraph (f) of Rule 19b-4<sup>19</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2021-044 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 No. SR-CBOE-2021-044. 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 No. SR-CBOE-2021-044, and should be submitted on or before September 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2021-17172 Filed 8-11-21; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[SEC File No. 270-518, OMB Control No. 3235-0576]

**Proposed Collection; Comment Request**

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

*Extension:*  
Regulation G

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation G (17 CFR 244.100—244.102) under the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*) requires publicly reporting companies that disclose or releases financial information in a manner that is calculated or presented other than in accordance with generally accepted accounting principles ("GAAP") to provide a reconciliation of the non-GAAP financial information to the most directly comparable GAAP financial measure. Regulation G implemented the requirements of Section 401 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7261). We estimate that approximately 14,000 public companies must comply with Regulation G approximately six times a year for a total of 84,000 responses annually. We estimated that it takes approximately 0.5 hours per response (84,000 × 0.5 hours) for a total reporting burden of 42,000 hours annually.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: August 6, 2021.

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2021-17160 Filed 8-11-21; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f).

<sup>20</sup> 17 CFR 200.30-3(a)(12).