

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99111; File No. SR-CBOE-2023-064]

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

December 7, 2023.

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 December 1, 2023, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend fees for the Cboe Silexx platform. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

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

##### 1. Purpose

The Exchange proposes to amend fees for the Cboe Silexx platform (“Silexx platform”),<sup>3</sup> effective December 1, 2023. By way of background, the Silexx platform consists of a “front-end” order entry and management trading platform (also referred to as the “Silexx terminal”) for listed stocks and options that supports both simple and complex orders, and a “back-end” platform which provides a connection to the infrastructure network. From the Silexx platform (*i.e.*, the collective front-end and back-end platform), a Silexx user has the capability to send option orders to U.S. options exchanges, send stock orders to U.S. stock exchanges (and other trading centers), input parameters to control the size, timing, and other variables of their trades, and also includes access to real-time options and stock market data, as well as access to certain historical data. The Silexx platform is designed so that a user may enter orders into the platform to send to an executing broker (including Trading Permit Holders (“TPHs”)) of its choice with connectivity to the platform, which broker will then send the orders to Cboe Options (if the broker is a TPH) or other U.S. exchanges (and trading centers) in accordance with the user’s instructions. The Silexx front-end and back-end platforms are a software application that is installed locally on a user’s desktop. Silexx grants users licenses to use the platform, and a firm or individual does not need to be a TPH to license the platform.

The Exchange offers several versions of its Silexx platform. Originally, the Exchange offered the following versions of the Silexx platform: Basic, Pro, Sell-Side, Pro Plus Risk and Buy-Side Manager (“Legacy Platforms”). The Legacy Platforms are designed so that a User may enter orders into the platform to send to the executing broker, including TPHs, of its choice with connectivity to the platform. The executing broker can then send orders to Cboe Options (if the broker-dealer is a TPH) or other U.S. exchanges (and trading centers) in accordance with the User’s instructions. Users cannot directly route orders through any of the Legacy Platforms to an exchange or trading center nor is the platform integrated into or directly connected to

Cboe Option’s System. In 2019, the Exchange made available a new version of the Silexx platform, Silexx FLEX, which supports the trading of FLEX Options and allows authorized Users with direct access to the Exchange to establish connectivity and submit orders directly to the Exchange.<sup>4</sup> In 2020, the Exchange made an additional version of the Silexx platform available, Cboe Silexx, which supports the trading of non-FLEX Options and allows authorized Users with direct access to the Exchange to establish connectivity and submit orders directly to the Exchange.<sup>5</sup> Cboe Silexx is essentially the same platform as Silexx FLEX, with the same applicable functionality, except that it additionally supports non-FLEX trading. Use of the Silexx platform is completely optional.

##### CAT Fees

The Exchange has adopted a fee for CAT Files.<sup>6</sup> Particularly, Silexx makes Consolidated Audit Trail (“CAT”)-formatted files available to Silexx users for orders processed by the user via Silexx applications. Users may also elect to have Silexx, which is a CAT Reporter Agent, submit these files to CAT on their behalf. The Exchange assesses a monthly fee of \$250 per trading firm for CAT Files, payable by the trading firm for CAT files related to its own and its customers’ executions. The Exchange proposes to increase the monthly fee for CAT Files for all Silexx users, from \$250 per month to \$500 per month.

##### Data Management Fee

The Exchange also proposes to introduce a Data Management fee for users of Legacy Platforms. This fee will cover the administrative costs of supporting and maintaining data feeds a Legacy user may have, as well as the cost of additional data provided in the terminal such as earnings and dividends. The Exchange proposes to assess \$20 per month per Login ID.

<sup>4</sup> See Securities Exchange Act Release No. 87028 (September 19, 2019) 84 FR 50529 (September 25, 2019) (SR-CBOE-2019-061). Only Users authorized for direct access and who are approved to trade FLEX Options may trade FLEX Options via Cboe Silexx. Only authorized Users and associated persons of Users may establish connectivity to and directly access the Exchange, pursuant to Rule 5.5 and the Exchange’s technical specifications.

<sup>5</sup> See Securities Exchange Act Release No. 88741 (April 24, 2020) 85 FR 24045 (April 30, 2020) (SR-CBOE-2020-040). Only authorized Users and associated persons of Users may establish connectivity to and directly access the Exchange, pursuant to Rule 5.5 and the Exchange’s technical specifications.

<sup>6</sup> See Securities Exchange Act Release No. 89285 (July 10, 2020) 85 FR 43284 (July 16, 2020) (SR-CBOE-2020-062).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Cboe Silexx, Inc. (“Cboe Silexx”), which is a subsidiary of the Exchange’s parent, Cboe Global Markets, Inc., offers the Silexx platform.

## 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>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>9</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes the proposed monthly fee for CAT Files is reasonable, equitable, and not unfairly discriminatory because the CAT Files fee will apply to all users that elect to receive CAT Files. Further, the Exchange notes receipt of the CAT Files is completely voluntary and not compulsory. Indeed, all users of Silexx can extract the necessary data from Silexx to create a CAT report themselves to comply with their reporting obligations even if they choose not to purchase the optional CAT Files. The Exchange believes the CAT File fee, as proposed, remains reasonable, as the moderate increase is the first increase to the fee since its introduction in 2020.

The Exchange also believes the proposed Data Management fee is reasonable, equitable, and not unfairly discriminatory because the fee will apply to all users of the Legacy Platforms. Additionally, the Exchange believes the proposed fee is reasonable as it accounts for administrative costs that Cboe Silexx is incurring, but not

charging users, to maintain support for Legacy Platforms while Cboe Silexx transitions away from the Legacy Platforms. Further, the Exchange believes the proposed rule change to waive the Data Management fee for Silexx FLEX and Cboe Silexx is reasonable because users of these newer platforms would do not need to receive the support for older platforms. As noted in previous filings, the Exchange is in the process of transitioning the Legacy Platforms to the current version of Cboe Silexx and Silexx FLEX.<sup>10</sup> The Exchange believes not assessing these fees for Silexx FLEX and Cboe Silexx also serves as an incentive to market participants to transition to the current version of Cboe Silexx from the Legacy Platforms.

Finally, the Exchange notes that use of the platform is discretionary and not compulsory, as users can choose to route orders, including to Cboe Options, without the use of the platform. The Exchange makes the platform available as a convenience to market participants, who will continue to have the option to use any order entry and management system available in the marketplace to send orders to the Exchange and other exchanges; the platform is merely an alternative offered by the Exchange.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act

<sup>10</sup> See Securities Exchange Release No. 98722 (October 11, 2023) 88 FR 71619 (October 17, 2023) (SR-CBOE-2023-060). Only authorized Users and associated persons of Users will continue to be able to establish connectivity to and directly access the Exchange, pursuant to Rule 5.5 and the Exchange’s technical specifications. Unauthorized Users will not be able to connect directly to the Exchange. The new Cboe Silexx platform will function in the same manner as the Legacy Platforms versions currently available to Users: it will be completely voluntary; orders entered through the platform will receive no preferential treatment as compared to orders electronically sent to Cboe Options in any other manner; orders entered through the platform will be subject to current trading rules in the same manner as all other orders sent to the Exchange, which is the same as orders that are sent through the Exchange’s System today; the Exchange’s System will not distinguish between orders sent from Silexx and orders sent in any other manner; and Silexx will provide technical support, maintenance and user training for the new platform version upon the same terms and conditions for all Users. The Exchange plans to decommission the Legacy Platforms at a future to-be-determined date, at which time the Legacy Platforms will be unavailable to users.

because the proposed rule change will apply to similarly situated participants uniformly, as described in detail above.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies only to Cboe Options. Additionally, Cboe Silexx is similar to types of products that are widely available throughout the industry, including from some exchanges, at similar prices. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants. Further, the proposed rule change relates to an optional platform. As discussed, the use of the platform continues to be completely voluntary and market participants will continue to have the flexibility to use any entry and management tool that is proprietary or from third-party vendors, and/or market participants may choose any executing brokers to enter their orders. The Cboe Silexx platform is not an exclusive means of trading, and if market participants believe that other products, vendors, front-end builds, etc. available in the marketplace are more beneficial than Cboe Silexx, they may simply use those products instead, including for routing orders to the Exchange (indirectly or directly if they are authorized Users). Use of the functionality is completely voluntary.

### *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>11</sup> and paragraph (f) of Rule 19b-4<sup>12</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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CBOE-2023-064 on the subject line.

##### Paper Comments

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

All submissions should refer to file number SR-CBOE-2023-064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2023-064 and should be submitted on or before January 3, 2024.

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

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99113; File No. SR-CBOE-2023-065]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Low Priced Stock Strike Price Interval Program

December 7, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 4, 2023, Cboe Exchange, Inc. ("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 Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 adopt a Low Priced Stock Strike Price Interval Program. 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 Rule 4.5. Miami International Securities Exchange, LLC ("MIAX") recently received approval to amend its Rule 404 to implement a new strike interval program for stocks that are priced less than \$2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the 3 preceding calendar months.<sup>5</sup> At this time, the Exchange proposes to adopt rules substantively identical to MIAX in proposed Rule 4.5, Interpretation and Policy .20 and amend Rule 4.5(d) to harmonize the table within that Rule to the proposed rule text.

Currently, Rule 4.5 describes the process and procedures for listing and trading series of options on the Exchange. Rule 4.5, Interpretation and Policy .04 provides for a \$2.50 Strike Price Program, where the Exchange may select up to 60 option classes on individual stocks for which the interval of strike prices will be \$2.50 where the strike price is greater than \$25 but less than \$50.<sup>6</sup> Rule 4.5, Interpretation and Policy .01 also provides for a \$1 Strike Price Interval Program, where the interval between strike prices of series of options on individual stocks may be \$1.00 or greater provided the strike price is \$50.00 or less, but not less than \$1.00.<sup>7</sup> Additionally, Rule 4.5, Interpretation and Policy .01 provides for a "\$0.50 Strike Program." The interval of strike prices of series of options on individual stocks may be \$0.50 or greater beginning at \$0.50 where the strike price is \$5.50 or less, but only for options classes whose underlying security closed at or below \$5.00 in its primary market on the previous trading day and which have national average daily volume that

<sup>5</sup> See Securities Exchange Act Release No. 98917 (November 13, 2023), 88 FR 80361 (November 17, 2023) (SR-MIAX-2023-36) (Order Approving a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading).

<sup>6</sup> See Rule 4.5, Interpretation and Policy .04.

<sup>7</sup> See Rule 4.5, Interpretation and Policy .01(a)(1).

<sup>13</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.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).