

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100444; File No. SR-CBOE-2024-028)

June 27, 2024

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule to Clarify its Certification Port Fees

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 13, 2024, 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” or “Cboe Options”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend its Fee Schedule. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 clarify its fees for Certification Logical Port fees.³

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange’s System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports⁴ [sic] Purge Ports⁵, Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports⁶. For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Trading Permit Holders (“TPHs”) and non-TPHs access to the Exchange’s certification environment to test proprietary systems and applications (i.e., “Certification Logical Ports”). The certification environment facilitates testing using replicas of the Exchange’s production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order

³ The Exchange initially filed this proposed rule change on May 31, 2024 for June 3, 2024 effectiveness (SR-CBOE-2024-023). On June 13, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁵ Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

⁶ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange’s Multicast PITCH data feeds.

management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. The Exchange currently provides free of charge one Certification Logical Port per port type offered in the production environment (i.e., Logical Ports, Purge, Multicast PITCH GRP, and Multicast PITCH Spin Server Ports) and a monthly fee of \$250 per Certification Logical Port for any additional Certification Logical Ports.⁷

The Exchange proposes to make clear in the notes section under the Logical Port Fees section of the Fees Schedule that the Certification Logical Port fees only apply if the corresponding logical port is also in the production environment. For example, if the Exchange intends to adopt a new port type that has not yet been launched in the live production environment, any certification port for that port type will be free until such time that the proposed new port is in the production environment. Once any new logical port type is in the live production environment, TPHs and Non-TPHs will only be entitled to one free certification logical port for that port type, and any additional certifications ports of that type will be assessed the regular monthly \$250 per port charge.

The Exchange notes that purchasing additional Certification Logical Ports continues to be voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, TPHs and non-TPHs are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.⁸

⁷ For example, if a TPH maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the TPH will be assessed \$500 per month for Certification Logical Port Fees (i.e., 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports x \$0 and 2 FIX Certification Logical Ports x \$250).

⁸ For example, a TPH may obtain a Certification Purge Port free of charge, even if that TPH has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled, but rather must be proactively requested by TPHs or Non-TPHs.

Further, the Exchange also notes that other exchanges similarly assess fees related to their respective testing environments.⁹

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.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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 Section 6(b)(4) of the Act,¹² which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

As noted above, the Exchange’s certification environment provides a robust and realistic testing experience using a replica of the Exchange’s production environment process configurations. This environment enables market participants to manage risk more effectively through testing software development changes in certification prior to implementing them in the

⁹ See e.g., Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. See also MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(4).

live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing a new port type that has not yet launched in the production environment. As such, the Exchange believes it's reasonable to only assess the Certification Logical Port fee to ports that are also available in the production environment as to not discourage the testing of new ports ahead of any respective launch date. The Exchange also believes applying the Certification Logical Port fee is reasonable once such ports are available in the production environment because while such ports will no longer be completely free, TPHs and non-TPHs will continue to be entitled to receive free of charge one Certification Logical Port for such port. The Exchange continues to believe one Certification Logical Port per logical port type will be sufficient for most TPHs or non-TPHs and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. For those who wish to obtain additional Certification Logical Ports based on their respective business needs, such as those wishing to test across various diverse systems within their own infrastructure, they are able to do so for a modest fee. Indeed, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.¹³ Further, the Exchange has observed that market participants that do choose to purchase additional Certification Logical Ports maintain significantly fewer Certification Logical Ports as compared to the corresponding logical ports they use in the production in environment.

¹³ Although many TPHs and Non-TPHs use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by user and depends on their respective business needs. To the extent a TPH or Non-TPH purchases additional Certification Logical Ports and their needs later change, or they determines they no longer wish to maintain excess Certification Logical Ports, the TPH or Non-TPH is free to cancel such ports for the following month(s).

The Exchange believes the proposal to make clear that the Certification Logical Port fee applies only to logical ports that are in the production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports and all market participants will have further clarity as to which certification ports are subject to the current fee. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of Certification Logical Ports for new port types before they launch to become acclimated with the new connectivity offering ahead of going live in the trading environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Certification Logical Port fee applies and reduces potential confusion.

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. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type once offered in the production environment. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment, which may be especially critical during the time leading up to the launch of a new port type in the production environment.

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. Particularly, the proposed change applies only to the Exchange’s certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 16 other options exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall 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.”¹⁴ 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

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

execution of order flow from broker dealers' . . .".¹⁵ 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 Act¹⁶ and paragraph (f) of Rule 19b-4¹⁷ 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:

¹⁵ 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)).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2024-028 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-2024-028. 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-2024-028 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,

Deputy Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).