

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-99740; File No. SR-CBOE-2024-012)

March 14, 2024

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

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 March 5, 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 Options”) proposes to amend its Fees 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 proposed rule change. The text of these statements may be examined at the places specified in

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

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

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.<sup>3</sup>

New XSP RTH LMM Program

The Exchange proposes to amend its Fees Schedule to adopt Regular Trading Hours (“RTH”) XSP Lead Market-Makers (“LMMs”) Incentive Program (the “Program”) under which LMMs appointed to the Program would receive the proposed payment and rebate if they provide continuous electronic quotes during RTH from 8:30AM CST to 3:15PM CST that meet or exceed the proposed quoting standards under the Program (as described in further detail below)

As proposed, if an LMM appointed to the Program provides continuous electronic quotes during RTH that meet or exceed the proposed heightened quoting standards (below) in at least 95% of the series 93% of the time in a given month, the LMM will receive (i) a payment for that month in the amount of \$40,000 and (ii) a rebate of \$0.27 per XSP contract that is executed in RTH in Market-Maker capacity and adds liquidity electronically contra to non-customer capacity.

<b>Width</b>					
<b>VIX Value at Prior Close ≤ 30</b>					
<b>Moneyness<sup>4</sup></b>	<b>Expiring Option</b>	<b>1 day</b>	<b>2 days to 5 days</b>	<b>6 days to 14 days</b>	<b>15 days to 35 days</b>

<sup>3</sup> The Exchange initially filed the proposed fee changes on March 1, 2024 (SR-CBOE-2024-011). On March 5, 2024, the Exchange withdrew that filing and submitted this proposal.

<sup>4</sup> Moneyness is calculated as  $1 - \text{strike}/\text{index}$  for calls,  $\text{strike}/\text{index} - 1$  for puts. Negative numbers are Out of the Money (“OTM”) and positive values are In the Money (“ITM”). A Moneyness value of zero for either calls or puts is considered At the Money (“ATM”). For example, if the index is at 400, the 396 call =  $1 - 396/400 = 0.01 = 1\%$  ITM, whereas the 396 put =  $396/400 - 1 = -0.01 = 1\%$  OTM.

[> 3% ITM)	\$0.20	\$0.25	\$0.25	\$0.50	\$1.00
[3% ITM to 2% ITM)	\$0.10	\$0.15	\$0.15	\$0.25	\$0.75
[2% ITM to 0.25% ITM)	\$0.04	\$0.05	\$0.05	\$0.06	\$0.10
[0.25% ITM to ATM)	\$0.02	\$0.03	\$0.04	\$0.05	\$0.08
[ATM to 1% OTM)	\$0.02	\$0.02	\$0.02	\$0.03	\$0.06
[> 1% OTM]	\$0.02	\$0.02	\$0.02	\$0.02	\$0.04
<b>VIX Value at Prior Close &gt; 30</b>					
[> 3% ITM)	\$0.25	\$0.30	\$0.30	\$0.55	\$1.05
[3% ITM to 2% ITM)	\$0.15	\$0.20	\$0.20	\$0.30	\$0.80
[2% ITM to 0.25% ITM)	\$0.05	\$0.06	\$0.06	\$0.07	\$0.11
[0.25% ITM to ATM)	\$0.03	\$0.04	\$0.05	\$0.06	\$0.09
[ATM to 1% OTM)	\$0.03	\$0.03	\$0.03	\$0.04	\$0.07
[> 1% OTM]	\$0.03	\$0.03	\$0.03	\$0.03	\$0.05

<b>Moneyiness</b>	<b>Size (0 to 35 days to expiry)</b>
[> 3% ITM)	5
[3% ITM to 2% ITM)	10
[2% ITM to 0.25% ITM)	15
[0.25% ITM to ATM)	20
[ATM to 1% OTM)	20
[>1% OTM]	20

Meeting or exceeding the heightened quoting standards in XSP, as proposed, to receive the proposed compensation payment(s) is optional for any LMM appointed to the Program. The Exchange may consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM met the heightened quoting standard each month, the Exchange will exclude from the calculation in that month the business day in which the LMM missed meeting or exceeding the heightened quoting standard in the highest number of series. The heightened quoting requirements offered by the Program are designed to incentivize LMMs appointed to the Program to provide significant liquidity in XSP options during the RTH session, which, in turn, would provide

greater trading opportunities, added market transparency and enhanced price discovery for all market participants in XSP.

#### Routing Fee Codes Changes

The Exchange also proposes to modify fees associated with certain routing fee codes. The Fees Schedule currently lists fee codes and their corresponding transaction fee for routed Customer orders to other options exchanges specifically in Exchange Traded Funds (“ETF”) and equity options, and for non-Customer orders routed in Penny and Non-Penny options classes.

The Exchange notes that its current approach to routing fees is to set forth in a simple manner certain sub-categories of fees that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as a flat \$0.15 assessment that covers costs to the Exchange for routing (i.e., clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, “Routing Costs”). The Exchange then monitors the fees charged as compared to the costs of its routing services and adjusts its routing fees and/or sub-categories to ensure that the Exchange’s fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. The Exchange notes that at least one other options exchanges currently assesses routing fees in a similar manner as the Exchange’s current approach to assessing approximate routing fees.<sup>5</sup>

The Exchange assesses fees in connection with orders routed away to various exchanges. Currently, under the Routing Fees table of the Fee Schedule, fee codes RD, RF, and RI are appended to certain Customer orders in ETF and Equity options, as follows:

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<sup>5</sup> See e.g., MIAX Options Exchange Fee Schedule, Section 1(c), “Fees for Customer Orders Routed to Another Options Exchange.”

- fee code RD is appended to Customer orders in ETF/Equity options routed to NYSE American (“AMEX”), BOX Options Exchange (“BOX”), Nasdaq BX Options (“BX”), Cboe EDGX Exchange, Inc. (“EDGX”), MIAX Options Exchange (“MIAX”) or Nasdaq PHLX LLC (“PHLX”) (excluding orders in SPY options), and assesses a charge of \$0.25 per contract;
- fee code RF is appended to Customer orders in ETF/Equity, Penny options routed to NYSE Arca, Inc (“ARCA”), Cboe BZX Exchange, Inc. (“BZX”), Cboe C2 Exchange, Inc. (“C2”), Nasdaq ISE (“ISE”), ISE Gemini, LLC (“GMNI”), ISE Mercury, LLC (“MERC”), MIAX Emerald Exchange (“EMLD”), MIAX Pearl Exchange (“PERL”), Nasdaq Options Market LLC (“NOM”), or PHLX (for orders in SPY options only) and assesses a charge of \$0.75 per contract;
- fee code RI is appended to Customer orders in ETF/Equity, Non-Penny options routed to ARCA, BZX, C2, ISE, GMNI, MERC, EMLD, PERL or NOMX, and assesses a charge of \$1.25 per contract.
- fee code TD is appended to Customer orders in ETF options originating on an Exchange-sponsored terminal for greater than or equal to 100 contracts routed to AMEX, BOX, BX, EDGX, MIAX, or PHLX, and assesses a charge of \$0.18 per contract;
- fee code TE is appended to Customer orders in ETF/Equity options originating on an Exchange-sponsored terminal for less than 100 contracts routed to AMEX, BOX, BX, EDGX, MIAX, PHLX, and assesses no charge per contract;
- fee code TF is appended to Customer orders in ETF, Penny options originating on an Exchange-sponsored terminal for greater than or equal to 100 contracts routed to ARCA,

BZX, C2, ISE, GMNI, EMLD, PERL, MERC, or NOM, and assesses a charge of \$0.18 per contract;

- fee code TG is appended to Customer orders in ETF, Non-Penny options originating on an Exchange-sponsored terminal for greater than or equal to 100 contracts routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, MERC, or NOM, and assesses \$0.18 per contract;
- fee code TH is appended to Customer orders in ETF/Equity, Penny options originating on an Exchange-sponsored terminal for less than 100 contracts routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, MERC, or NOM, and assesses no charge per contract; and
- fee code TI is appended to Customer orders in ETF/Equity, Non-Penny options originating on an Exchange-sponsored terminal for less than 100 contracts routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, or NOM, and assesses no charge per contract.

The Exchange proposes to amend fee code RD, TD, and TE to exclude applicable Customer orders routed to Nasdaq BX Options (BX) and to amend fee codes RF, RI, TF, TG, TH, and TI to add applicable Customer orders routed to BX. The charges assessed per contract for each fee code remain the same under the proposed rule change.

The proposed changes result in an assessment of fees that, given fees of an away options exchange, is more in line with the Exchange's current approach to routing fees, that is, in a manner that approximates the cost of routing Customer orders to other away options exchanges, based on the general cost of transaction fees assessed by the sub-category of away options exchanges for such orders (as well as the Exchange's Routing Costs).<sup>6</sup> The Exchange notes that

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<sup>6</sup> See BX Options 7 (Pricing Schedule), Section 2.

routing through the Exchange is optional and that TPHs will continue to be able to choose where to route applicable Customer orders.

## 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. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>10</sup> 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.

The Exchange believes the proposed XSP RTH LMM Incentive Program is reasonable, equitable and not unfairly discriminatory. Particularly, the proposed Program is a reasonable

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

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

<sup>9</sup> Id.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

financial incentive program because the proposed heightened quoting standards and rebate amounts for meeting the heightened quoting standards in XSP series are reasonably designed to incentivize LMMs appointed to the Program to meet the proposed heightened quoting standards during RTH for XSP, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants.

The Exchange believes that the proposed heightened quoting standards are reasonable because they are similar to the detail and format of the quoting standards currently in place for LMM Incentive Programs for other proprietary Exchange products that trade during RTH.<sup>11</sup> The Exchange also believes that proposed heightened quoting requirements are reasonably tailored to reflect market characteristics of XSP. For example, the Exchange believes the generally smaller widths appropriately reflect the lower-priced and smaller notional sized XSP product (XSP options are 1/10<sup>th</sup> the size of SPX options). The Exchange believes utilizing moneyness as a quoting standard is reasonable, given the program objectives to achieve tight liquidity in a market where options premiums change quickly.

The Exchange also believes that the proposed incentive payment for appointed LMMs that meet the proposed heightened quoting standards in XSP in a month is reasonable and equitable as it is comparable to the incentive payments offered for other LMM Incentive Programs for other proprietary products. For example, the GTH1 and GTH2 LMM Incentive Programs for SPX/SPXW offer incentive payments of \$40,000 per month, in which an appointed LMM meets the given quoting standards.<sup>12</sup> The Exchange also believes it is reasonable to offer

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<sup>11</sup> See Cboe Options Fees Schedule, “RTH SPESG LMM Incentive Program”, “MRUT LMM Incentive Program”, “NANOS LMM Incentive Program”, and “MSCI LMM Incentive Program.”

<sup>12</sup> See Cboe Options Fees Schedule, “SPX/SPXW LMM Incentive Program”, and GTH2 SPX/SPXW LMM Incentive Program.”



to an appointed LMM that meets the given quoting standards a rebate of \$0.27 per XSP contract that is executed in RTH in Market-Maker capacity and adds liquidity electronically contra to non-customer capacity because the proposed rebate is an incentive reasonably designed to encourage appointed LMMs to provide liquidity electronically contra to non-customer capacity in XSP options during the trading day.

Finally, the Exchange believes it is equitable and not unfairly discriminatory to offer the financial incentive to LMMs appointed to the Program because it will benefit all market participants trading in XSP during RTH by encouraging the appointed LMMs to satisfy the heightened quoting standards, which incentivizes continuous increased liquidity and thereby may provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade XSP, which can lead to increased volume, providing for robust markets. The Exchange ultimately proposes to offer the Program to sufficiently incentivize the appointed LMMs to provide key liquidity and active markets in XSP options to encourage liquidity, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to the Program may undertake added costs each month to satisfy that heightened quoting standards (e.g., having to purchase additional logical connectivity). The Exchange believes the Program is equitable and not unfairly discriminatory because similar programs currently exist for LMMs appointed to programs in other proprietary products,<sup>13</sup> including for XSP during the GTH session, and the Program will equally apply to any TPH that is appointed as an LMM to the Program. Additionally, if an appointed LMM does not satisfy the heightened quoting standard in

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<sup>13</sup> See supra notes 11 and 12.

XSP for any given month, then it simply will not receive the offered payments or rebates for that month.

The Exchange also believes the proposed rule change to amend fee codes RD, RF, RI, TD, TE, TF, TG, TH, and TI to account for BX's current assessment of fees for Customer orders is reasonable because it is reasonably designed to assess routing fees in line with the Exchange's current approach to routing fees. That is, the proposed rule change is intended to include Customer orders in ETF and equity options routed to BX in the most appropriate sub-category of fees that approximates the cost of routing to a group of away options exchanges based on the cost of transaction fees assessed by each venue as well as Routing Costs to the Exchange. As noted 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 Exchange notes that routing through the Exchange is optional and that TPHs will continue to be able to choose where to route their Customer orders in ETF and equity options in the same sub-category group of away exchanges as they currently may choose to route. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all TPHs. The Exchange further notes that at least one other options exchange currently approximates routing fees in a similar manner as the Exchange's current approach.<sup>14</sup> The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all TPHs' applicable Customer orders in ETF and equity options routed to BX will be automatically and uniformly assessed the applicable routing charges.

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<sup>14</sup> See supra note 4.

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 also does not believe that the Program would impose any burden on intramarket competition because it applies to all LMMs appointed to the Program in a uniform manner, in the same way similar programs apply to LMMs in other proprietary products today. To the extent these LMMs receive a benefit that other market participants do not, as stated, LMMs have different obligations and are held to different standards. For example, LMMs play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have.

The Exchange does not believe the proposed rule change to amend fee codes RD, RF, RI, TD, TE, TF, TG, TH, and TI will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. All TPHs' Customer orders routing to BX and currently yielding fee code RD, TD, or TE will yield fee code RF, RI, RF, TG, TH, or TI (depending on the order) and will automatically and uniformly be assessed the current fees already in place for such routed orders, as applicable.

The Exchange does not believe that the proposed rule change to establish the Program will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed incentive payment and rebate apply to a product exclusively listed on the Exchange.

Further, the Exchange does not believe the proposed rule change to amend fee codes RD, RF, RI, TD, TE, TF, TG, TH, and TI will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that

at least one other options exchange approximates routing costs in a similar manner as the Exchange’s current approach.<sup>15</sup> Also, the Exchange 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 and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.<sup>16</sup> 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 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.”<sup>17</sup> 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

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<sup>15</sup> Id.

<sup>16</sup> See Cboe Global Markets U.S. Options Market Monthly Volume Summary (February 26, 2024), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

<sup>17</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”<sup>18</sup> 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<sup>19</sup> and paragraph (f) of Rule 19b-4<sup>20</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:

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<sup>18</sup> 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)).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f).

Electronic Comments:

- Use the Commission's internet comment form

(<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CBOE-2024-012 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-2024-012. This file number should be included on the subject line if e-mail 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 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-2024-012 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.<sup>21</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>21</sup> 17 CFR 200.30-3(a)(12).