

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

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[FR Doc. 2022-13960 Filed 6-29-22; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95155; File No. SR-CBOE-2022-029]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Facility Fees Section in the Fees Schedule in Connection With the Exchange's New Trading Floor

June 24, 2022.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on June 10, 2022, 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 and II below, which Items have been prepared by 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 Facility Fees section in the Fees Schedule in connection with the Exchange's new trading floor. The text of the proposed rule change is provided in Exhibit 5.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

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

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

##### 1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with the opening of a new trading floor. Currently, the Exchange conducts open outcry trading at 400 S. LaSalle, Chicago, Illinois. On or about June 6, 2022, the Exchange intends to move its open outcry trading operations to a new trading floor located at 141 W Jackson Blvd., Chicago, Illinois. As a result of this transition, certain infrastructure and technology on the current trading floor will be rendered obsolete and the new trading floor will have new infrastructure and offer new technology. Accordingly, the Exchange proposes to adopt new, and/or update current, facility fees with respect to the new trading floor, as well as eliminate obsolete facility fees that are only applicable to the Exchange's current facility and trading floor which will no longer be in use as of June 6, 2022.<sup>4</sup>

##### Booth Fees

The Exchange currently assesses monthly fees for "standard Booths", which refers to a portion of designated space on the trading floor of the Exchange adjacent to or in particular trading crowds, which may be occupied by a Trading Permit Holder ("TPH"), clerks, runners, or other support staff for operational and other business-related activities. The Exchange assesses a monthly fee of \$195 for standard Booths located along the perimeter of the trading floor, and \$550 for standard Booths located in the OEX, Dow Jones, MNX and VIX trading crowds. The Exchange also assesses monthly fees for "nonstandard Booths", which refers to space on the trading floor of the Exchange that is set off from a trading crowd, which may be rented by a TPH for whatever support, office, back-office, or any other business-related activities for which the TPH may choose to use the space. A TPH that rents non-

standard booth space on the floor of the Exchange is subject to a base non-standard booth rental fee of \$1,250 per month in addition to a square footage fee of \$1.70 per square foot per month based on the size of the TPH's non-standard booth. The Exchange proposes to modify and simplify its fees assessed for booth rentals. First, the Exchange proposes to eliminate the distinction between standard and non-standard Booths. The Exchange also proposes to adopt a tiered pricing schedule for Booths based on the number of Booths rented by a TPH. Particularly, the Exchange proposes to adopt the following fees for Booths that are set off from a trading crowd:

Quantity of booths	Monthly fee
1-2 .....	\$400
3-6 .....	\$300
7-10 .....	\$200
11 or more .....	\$100

The proposed tiered pricing provides discounted pricing for additional Booths. For example, if a TPH rented 4 Booths, the TPH would be assessed \$1,400 a month (2 Booths at \$400 and 2 Booths at \$300). The Exchange also proposes to adopt a monthly fee of \$750 per booth for any booth located in a trading crowd. The Booth Pass-Through Fee would remain unchanged.<sup>5</sup> The Exchange notes that use of Booths, whether or located away from or in a trading crowd are optional and not necessary in order to conduct open outcry trading on the trading floor. Booth spaces are also uniform and nearly identical in size. The Exchange also notes that at this time, the Exchange has ample space on its new trading floor for booth space.

##### Policy

The Exchange also proposes to update the Exchange's policy ("Policy") regarding the rental and use of booth space on its trading floor by TPH organizations. The Exchange memorialized the Policy and filed it with the Commission in 1994.<sup>6</sup> The Exchange proposes to update the Policy in a few respects. First, the Exchange proposes to change references to "Chicago Board Options Exchange, Incorporated" and "CBOE" to "Cboe

<sup>5</sup> Pursuant to the Booth Pass-Through Fee, TPHs bear responsibility for all costs associated with any modifications and alterations to any trading floor Booths leased by the TPH (or TPH organization) and must reimburse the Exchange for all costs incurred in connection therewith.

<sup>6</sup> See Securities Exchange Act Release No. 33972 (April 28, 1994), 59 FR 23242 (May 5, 1994).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Exchange initially filed the proposed fee changes on June 1, 2022 (SR-CBOE-2022-026). On June 10, 2022, the Exchange withdrew that filing and submitted this filing.

Exchange, Inc.,” and “Cboe Options”, respectively to reflect the Exchange’s current legal name which has been updated since the last update to the Policy. The Exchange also proposes to update the rule reference relating to the Appeals process from Chapter “19” to Chapter “15” to reflect recent updates to the Exchange’s rulebook.

The Exchange notes the Policy includes a section that sets forth the requirement that all TPH organizations renting Booths execute a “Trading Floor Booth Rental Agreement” (hereinafter, “Agreement”) which sets forth the contractual terms, conditions and restrictions governing rental and use of Booths by TPH organizations.<sup>7</sup> A copy of the Agreement was included in the Exchange’s 1994 rule filing noted above for the Commission’s information.<sup>8</sup> The Agreement specifically sets forth the details of the parties’ contractual relationship regarding rental and use of the Booths. Among other provisions, the Agreement includes specific provisions delineating the termination rights of both the TPH organization and the Exchange and sets forth a procedure for adding Booths to and deleting Booths from the Agreement. The Agreement also spells out requirements respecting the TPH’s use of the Booths, such as those governing the installation of equipment, the conduct of business, and access of persons to the Booths.

The Exchange has updated the Agreement (which is now referred to as the Agreement for “standard Booths”). In 2012, the Exchange also created a separate form of the Agreement for non-standard Booths.<sup>9</sup> In connection with the proposal to eliminate non-standard Booths, the Exchange proposes to eliminate use of that agreement. A copy of the standard form of Agreement is included with this filing in Exhibit 3. The Exchange proposes to update this section of the Policy to eliminate references to the non-standard booth agreement. The Exchange also proposes to update the Agreement to (i) change references to “Chicago Board Options Exchange, Incorporated” and “CBOE” to “Cboe Exchange, Inc.,” and “Cboe Options”, respectively; (ii) update the link to where the Cboe Options Fees Schedule can be found; (iii) eliminate the requirement for Cboe to provide TPH organizations with a copy of TPH Organization’s current booth assignments, as it no longer believes

such record is necessary or desired by TPHs; and (iv) eliminate Section 13, which prohibits TPH Organizations leasing SPX arbitrage Booths from installing data equipment in such Booths, as the Exchange does not intend to provide such Booths and to the extent it determines to do so in the future does not anticipate maintaining such prohibition. The Exchange will disseminate the updated Policy and forms of the Agreement to Trading Permit Holders by posting them on the Trading Permit Holder portion of the Cboe website.

#### Line to Cboe Floor Network

On the current trading floor, TPHs use various lines and telecommunications (“telco”) circuits to connect to the trading floor. Independent wiring must be used for each line or telco circuit, which means firms may need to relocate their lines or telco circuits if they move into, or relocate to, a new trading space or Booth. These telco circuits are also on a per device basis. The new trading floor will utilize a single floor network (*i.e.*, “Cboe Floor Network”) for TPHs’ devices consisting of both wired jacks and wireless network access located at kiosks, in trading pits, and in Booths throughout the new trading floor. As such, unlike the current trading floor infrastructure, TPHs will not need to order lines from the Exchange to specific locations on the floor. Rather, a TPH only needs to order one Ethernet port (“Line”) (or a pair for redundancy) to connect to the Cboe Floor Network and will be able to connect their devices to the Exchange’s network anywhere on the trading floor through wired jack ports or the wireless network. Additionally, firms will no longer need to provide network equipment to support dedicated lines to the floor, as on the new trading floor the Exchange will be providing the network switches and local area network (LAN) lines for all firms.

The Exchange believes the new trading floor will provide TPHs more flexibility to move and relocate as needed, as compared to the current trading floor. If a TPH wishes to relocate trading spaces or trading booths on the current trading floor, it could trigger installation, relocation and removal of various lines and circuits, which subsequently triggers various installation, relocation and removal fees.<sup>10</sup> For example, on the current trading floor, if a Market-Maker were to move to a new trading space, it may need relocate the lines or circuits from its current space to the new space and

would be subject to relocation fees such as \$129 relocation fee to relocate any Exchangefones and \$200 relocation fee for relocation of any Market-Maker Handheld Terminal.<sup>11</sup> As another example, if a TPH were to relocate to a new Booth, they may be subject to relocation fees of \$625 for relocating lines from the trading floor to local carriers or the Communications Center.<sup>12</sup> Since all network access will be wireless or plug and play at any location on the new trading floor, the new infrastructure eliminates the need for installation of multiple lines, as well as relocation and removal of connectivity lines to devices and also renders the following Lines fees (including fees relating to installation, relocation and removal) obsolete: Intra-Floor, Voice Circuits, Appearances, Data Circuits at Local Carrier, and Data Circuits at In-House Frame. The Exchange therefore proposes to instead adopt a monthly fee of \$350 per Line and notes it does not expect TPHs to purchase more than one Line and one redundant Line. The Exchange also proposes to adopt a one-time \$500 installation fee for the installation of the line to the Cboe Floor Network. The proposed \$500 installation fee would include installation of a redundant line at no additional cost and allows the Exchange to recoup the costs it incurs from third-party vendors for the installation of the Lines.

#### Co-Location and Meet-Me-Room

For a monthly fee, the Exchange currently provides TPHs (and third-party vendors, collectively “firms”) with cabinet space in its building for placement of network and server hardware. Particularly, TPHs are charged a monthly fee of \$50 per “U” of shelf space<sup>13</sup> and Sponsored Users<sup>14</sup> are assessed a monthly fee of \$100 per “U”. Fees are charged in increments of 4 “U” (*i.e.*, a minimum of \$200 per 4 “U” is charged or, for Sponsored Users, a minimum of \$400 per 4 “U” is charged). A firm also receives power, cooling, security and assistance with installation and connection of the

<sup>11</sup> See Cboe Options Fees Schedule, Communications Table, Exchangefone and Miscellaneous Table, Market-Maker Handheld Terminal Tethering Services.

<sup>12</sup> See Cboe Options Fees Schedule, Lines Table, Lines Direct from Local Carrier to Trading Floor and Lines Between Communication Center and Trading Floor.

<sup>13</sup> The term “U” is used to indicate an equipment unit 1.75” high with a maximum power of 125 watts per U space. Per the Fees Schedule, Co-Location fees are charged in increments of 4 “U” (7 inches).

<sup>14</sup> See Cboe Options Rule 3.60.

<sup>7</sup> The Agreement is non-negotiable and its terms are the same for every TPH organization.

<sup>8</sup> See Securities Exchange Act Release No. 33972 (April 28, 1994), 59 FR 23242 (May 5, 1994).

<sup>9</sup> See Securities Exchange Act Release No. 66727 (April 9, 2012), 77 FR 21134 (April 3, 2012) (SR-CBOE-2012-025).

<sup>10</sup> See Cboe Options Fees Schedule, Lines Table.

equipment to the Exchange's servers, at no additional charge.

The Exchange will continue to provide firms cabinet space in the new facility ("Meet-me-Room") for placement of network and server hardware at the same rate of \$50 per "U", billed in increments of 4 "U". The Exchange proposes however to eliminate the separate rate for Co-Location of Equipment Fee for Sponsored Users, as the Exchange does not currently have any Sponsored Users, nor has it had any Sponsored users in several years. As such, the Exchange no longer believes its necessary to maintain a separate rate for Sponsored Users.<sup>15</sup> The Exchange also proposes to relocate the "Co-Location" section in the Fees Schedule to immediately follow the "Lines" section in the Fees Schedule, as it believes such fees are more appropriately grouped together and will make the Fees Schedule easier to read and follow. The Exchange also believes it will make the Fees Schedule easier to read and follow if it reflects the rate of the minimum increment charged, instead of a broken-out rate that can never be assessed. As noted above, the Fees Schedule currently sets forth the monthly rate per "U" (*i.e.*, "\$50 per "U"), even though it states it only charges in increments of 4 "U" (*i.e.*, fee is really \$200 per 4 "U"). The Exchange will continue to charge in increments of 4 "U" in the new facility and therefore proposes to update the fee language in the relocated line item to reflect the rate for the minimum increment of 4 "U". Despite this language change, the Exchange reiterates it is not changing the amount assessed for the Co-Location of Equipment Fee. Within the new Meet-me-Room however, the Exchange is proposing to limit firms to 8 "U" in order to ensure all firms can be accommodated in the Meet-me-Room.

The Exchange next proposes to adopt monthly and installation fees for cross connects, including telecommunication (*i.e.*, telco) and Cboe Floor Network cross connects,<sup>16</sup> within the Meet-Me-Room. Particularly, each cross connect will be subject to a \$25 per month per cross connect fee. Additionally, firms will be subject to a one-time \$500 installation fee for each cross connection. The Exchange notes that currently it assesses third-party vendors

a \$50 per month fee for "Data Circuits from Local Carrier to Equipment Shelf" which offers similar cross-connectivity from Local Carriers (telco providers) to a firm's equipment shelf in the current meet-me-room. The Exchange no longer will use data circuits from Local Carriers to equipment on the shelf and proposes to therefore eliminate this fee (currently under the Vendor Services section) from the Fee Schedule.

The Exchange next proposes to adopt a fee relating to accessing the Meet-me-Room. Particularly, in order for a firm to access the Meet-me-Room (*e.g.*, if they need technical support), they must request access. The Exchange notes that because the Meet-me-Room now resides in a facility not owned by the Exchange, the Exchange is assessed a fee by a third-party for providing firms access to the Meet-me-Room. The Exchange therefore proposes to adopt a fee to recoup fees it is billed for providing this access ("Cboe Datacenter Services"). Specifically, the Exchange proposes to assess a fee of \$100 per half-hour (with a 1 hour minimum required). The Exchange also proposes to waive this fee for the month of June 2022. Particularly, the Exchange understands that firms may have a greater need during the first month of operations on the new trading floor to visit the Meet-me-Room. The proposed waiver therefore allows firms to respond to any potential issues that may arise in the Meet-me-Room during the first month at no additional cost. The Exchange anticipates that firm requests for this type of access will be infrequent thereafter. The Exchange also notes that it similarly assesses fees for various third-party technical support or vendor services on the current trading floor.<sup>17</sup> However, these services will no longer be available in the new facility and the Exchange therefore proposes to eliminate the following corresponding fees: Technical Support Outside Normal Hours, IPC (vendor) Time & Material, IPC (vendor) Time & Material Overtime, After Hours Technician Service, Market-Maker Handheld Tethering Services, and Market-Maker Handheld Tethering Services For Indexes.

#### Trading Floor Device Fees

The Exchange currently lists various fees under the Trading Floor Terminal Rentals section of the Facility Fees

table.<sup>18</sup> For example, TPHs are currently assessed \$125 per month for "PAR Workstations" to help offset hardware costs incurred by the Exchange in making PAR workstations available to TPHs. A PAR (Public Automated Routing System) Workstation is an Exchange-provided order management tool for use on the Exchange's trading floor by TPHs and PAR Officials to manually handle orders pursuant to the Rules and facilitate open outcry trading. Access to PAR is only available on Exchange-provided tablets (currently Surface Tablets) and the current monthly fee covers both the Exchange-provided tablet and PAR access. In connection with the transition to the new trading floor, the Exchange proposes to modify the way it assesses fees for use of PAR<sup>19</sup> and also adopt fees for non-Exchange provided tablets that connect to the Exchange's network. Particularly, the Exchange proposes to adopt a separate monthly Exchange Tablet fee of \$140 for any tablet provided by the Exchange and a separate monthly fee of \$45 to access PAR. TPHs will continue to utilize PAR on the new trading floor, which will continue to only be available on Exchange-provided tablets. Exchange tablets used for PAR may also be used for access to Silexx.<sup>20</sup>

The Exchange also proposes to adopt a separate Exchange Tablet fee as TPHs will have the option of using Exchange-provided tablets for Cloud9, which is the new telecommunication system that will be offered by the Exchange on the new trading floor.<sup>21</sup> The Exchange notes that TPHs have the option of using their own tablet to access Cloud9 in lieu of using an Exchange-provided tablet. Such tablets would be subject to the

<sup>18</sup> The Exchange proposes to rename this section "Trading Floor Device Fees".

<sup>19</sup> The Exchange proposes to replace the reference to "PAR Workstation" to "PAR Access". Particularly, the current version of PAR is no longer a physical touch screen terminal (*i.e.*, workstation) but an order management tool that can be accessed on a tablet such as a Surface.

<sup>20</sup> Silexx is a User-optional order entry and management trading platform. 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. The Silexx front-end and back-end platforms are a software application that is installed locally on a user's laptop.

<sup>21</sup> Cloud9 is the voice communication solution for the new trading floor. Cloud9 is a VoIP cloud-based service offering a traditional turret, the Cloud Hub. The Cloud Hub will be provided by Cboe and will need to connect to a laptop or device provided either by the TPH or by Cboe. TPHs may not use the same Exchange Tablet for both PAR and Cloud9.

<sup>15</sup> To the extent the Exchange has Sponsored Users in the future, such participants will be assessed the same rate as all other firms (*i.e.*, \$50 per "U", billed in minimum increments of 4 "U").

<sup>16</sup> The Exchange offers fiber cross connect. The cross connects may run between a firm's hardware to a third-party telecommunications service or the Cboe Floor Network switches that will service the trading floor.

<sup>17</sup> See Cboe Options Fees Schedule, Vendor Services, Technical Support Outside Normal Hours, and Miscellaneous, IPC (vendor) Time & Material, IPC (vendor) Time & Material Overtime, After Hours Technician Service, Market-Maker Handheld Tethering Services, and Market-Maker Handheld Tethering Services For Indexes.

“TPH-Owned Device Authentication Fee” described more fully below.

On the new trading floor TPHs will be able to use a variety of devices such as tablets, laptops, Market-Maker handheld devices, printers, and phone systems. TPHs will be able to connect these devices to the Exchange’s network anywhere on the trading floor through wired jack ports or the wireless network on the trading floor, as long as they are onboarded to the Cboe Network Authentication System. The Exchange proposes to assess a fee for TPH-owned devices that connect to the Exchange’s network on the new trading floor (“TPH-Owned Device Authentication Fee”). Particularly, the Exchange proposes to assess a fee of \$100 per authenticated connection (*i.e.*, when a device connects to the wired jack and/or wireless network on the trading floor).<sup>22</sup> The proposed fee will be based on the maximum number of concurrent authenticated connections made during

market hours during the calendar month. As discussed above, the Exchange believes the new trading floor provides TPHs more flexibility to move and relocate any of their devices by eliminating the need for installation, relocation and removal of connectivity lines to devices. Consequently, corresponding monthly, installation, relocation and removal fees will also be eliminated on the new trading floor.

Replacement Fees

The Exchange currently assesses fees related for certain hardware that needs to be replaced because of loss or because of non-normal wear and tear. Particularly, the Exchange assesses the following replacement fees:

Replacement Tablet	\$1,300 each.
Replacement Stylus Pen.	\$100 each.
Replacement Chargers.	\$75 each.

Replacement Adapters and Protective Cases. \$50 each

The Exchange proposes to maintain these replacement fees on the new trading floor. However, the Exchange proposes to increase the fee to replace a table from \$1,300 per tablet to \$1,400 per tablet to reflect increased costs to the Exchange. The Exchange also proposes to adopt a new replacement fee for lost Access Badges at the rate of \$100 per badge in order to encourage TPHs to hold onto their badges and not misplace them.

Obsolete Fees

The Exchange next proposes to eliminate fees assessed for technology and infrastructure and related services that will be rendered obsolete upon the transition to the new trading floor. Particularly, the Exchange proposes to eliminate the following fees that have not otherwise been discussed above:

Description	Fee
Arbitrage Phone Positions .....	\$550/month.
HP Laser Printer Paper .....	\$5.00 per packet of 500 sheets.
Zebra Printer Papers .....	\$19.50 per roll.
Zebra Printer Ink .....	\$19.50 per roll.
Forms Storage .....	\$11.
Exchangefone .....	\$935/installation; \$129/relocation; \$100/removal.
Exchangefone—Maintenance .....	\$57/month.
Exchangefone—With Recorded Coupler Between Booths .....	\$126/relocation.
Exchangefone—Within Booth .....	\$25/relocation.
Single Line—Maintenance .....	\$11.50/month
Phone Rentals—Monthly Fee .....	\$110/month.
Phone Rentals—Replacement Repairs .....	cost.
Lines—Intra Floor .....	\$57.75/per month.
Lines—Voice Circuits .....	\$16/month; \$52.50/installation; \$36.75/removal.
New Circuits—First .....	\$120/installation; \$50/removal.
New Circuits—@Additional .....	\$18/installation; \$18/removal.
Existing Line Appearance—First .....	\$50/installation; \$25/removal.
Existing Line Appearance—A Additional .....	\$18/installation; \$18/removal.
Data Circuits (DC) at Local Carrier (entrance) .....	\$16/month; \$52.50/installation; \$36.75 removal.
DC @In-House Frame—Lines between Local Carrier and Comms Center .....	\$12.75/month; \$550/installation.
DC @In-House Frame- Lines Between Comms Center and Trading Floor .....	\$12.75/month; \$725/installation; \$625/relocation.
DC @In-House Frame—Lines Direct from Local Carrier to Trading Floor .....	\$12.75/month; \$725/installation; \$625/relocation
Shelf for Equipment .....	\$100/month.
Lines from Equipment to Floor .....	\$50/month.
Handsets .....	\$79/installation.
Headset Jack .....	\$131/installation; \$58 relocation; \$28/removal.
Recorder Coupler .....	\$150 new/\$50 existing installation; \$25/relocation; \$25/removal.
Thomson/Other (Basic Service) .....	\$425/month.
Satellite TV .....	\$50/month.
Cboe Options Trading Floor Terminal .....	\$250/month; \$175/installation; \$225 relocation; \$125/removal.
Trading Floor Printer Maintenance <sup>23</sup> .....	\$75/month.

The Exchange also proposes to eliminate all PULSe Workstation fees as PULSe was decommissioned in January 2021, but the Exchange inadvertently did not delete references to PULSe-related fees at that time.

<sup>22</sup> For example, a TPH that connects to Cloud9 using its own laptop would be assessed \$100 per month for that connection. If that same TPH chooses to connect an additional laptop and a

Temporary Fees

In June 2020, the Exchange adopted Footnote 24 of the Fees Schedule to govern pricing changes that would apply for the duration of time the

printer to the network, that TPH will be assessed a total of \$300 per month (*i.e.*, \$100 for each of the tablet used for Cloud9, the laptop and the printer).

<sup>23</sup> The Exchange proposes to eliminate a corresponding reference in Footnote [sic] 40 to

Exchange trading floor was being operated in a modified manner in connection with the COVID–19 pandemic. By way of background, the Exchange closed its trading floor on March 16, 2020 due to the COVID–19

Trading Floor Printer Maintenance in light of the proposal to eliminate this fee.

pandemic and reopened its trading floor on June 15, 2020, but with a modified configuration of trading crowds in order to implement social distancing and other measures consistent with local and state health and safety guidelines to help protect the safety and welfare of individuals accessing the trading floor.

As a result, the Exchange relocated and modified the physical area of certain trading crowds and also determined and reduced how many floor participants may access the trading floor. In connection with these changes, the Exchange proposed a number of modified billing changes that would

remain in place for the duration of the time the Exchange operated in a modified manner. Particularly, the following fees are modified when the Exchange is operating in a modified state due to the COVID-19 pandemic:

Trading Permits .....	Floor trading permit fees are not be assessed on the total number of floor trading permits a TPH organization holds, and instead are based on the floor trading permits used by nominees of the TPH each day during the month using the following formula: (i) the number of floor trading permits that have a nominee assigned to it in the Customer Web Portal system ("Portal") in a given month, multiplied by the number of trading days that the floor is open and that a nominee is assigned to each respective trading permit in that month, divided by (ii) the total number of trading days in a month. The Exchange rounds up to determine the total number of trading permits assessed the fees set forth in the Floor Trading Permit Sliding Scales.
SPX Tier Appointment Fee .....	The monthly fee for the SPX/SPXW Floor Market-Maker Tier Appointment Fee will be increased to \$5,000 per Trading Permit from \$3,000 per Trading Permit.
Inactive Nominee Status (Parking Space) .....	\$300 Parking Space Fees is not applied.
Inactive Nominee Status Change (Trading Permit Swap) .....	\$100 Trading Permit Swap Fee is not applied.
SPX/SPXW and SPESG Floor Brokerage Fees .....	SPX/SPXW and SPESG Floor Brokerage Fees are be assessed the rate of \$0.05 per contract for non-crossed orders and \$0.03 per contract for crossed order instead of \$0.04 and \$0.02, respectively.
Facility Fees .....	Monthly fees are waived for the following facilities fees: arbitrage phone positions and satellite tv. If a TPH is unable to utilize designated facility services while the trading floor is operating in a modified state, corresponding fees, including for standard and non-standard booth rentals, Exchangefone maintenance, single line maintenance, intra floor lines, voice circuits, data circuits at local carrier (entrance), and data circuits at in-house frame, are waived.

The Exchange notes that while the current floor still utilizes social distancing and reconfigured trading crowds (and therefore is considered to be operating in a modified manner), it does not believe it to be necessary to implement such safety measures on the new trading floor at the time of transition given recent developments relating to the COVID-19 pandemic. As such, upon moving to the new trading floor on June 6, 2022, the Exchange will no longer be operating in a modified manner and Footnote 24 would not apply. The Exchange notes that absent a proposed rule change however, the Exchange would have to apply certain billing modifications under Footnote 24 for the first three business days of the calendar month. The Exchange therefore proposes to provide in Footnote 24 that it will not apply between June 1, 2022 through June 3, 2022 in order to provide seamless billing in the month of June 2022. Accordingly, effective June 1, 2022: (1) Floor Trading Permit fees will be assessed based on the total number of floor trading permits a TPH holds each month; (2) Parking Space and Trading Swap fees will no longer be waived; and (3) SPX/SPXW and SPESG Floor Brokerage fees will be assessed \$0.04 per contract for non-crossed orders (instead of \$0.05 per contract) and \$0.02 per contract for crossed orders (instead of \$0.03 per contract). As

noted above, arbitrage phone positions, satellite tv, Exchangefone maintenance, single line maintenance, intra floor lines, voice circuits, data circuits at local carrier (entrance), and data circuits at in-house frame are being eliminated as of June 1, 2022 so the Exchange proposes to also eliminate references to such fees from Footnote 24. The Exchange also proposes to maintain the current modified rate of \$5,000 for the SPX Floor Tier Appointment Fee under Footnote 24 (i.e., increase the fee from \$3,000 per permit to \$5,000 permit regardless of whether the Exchange is operating in a modified state due to COVID-19 pandemic). The Exchange notes that it has not amended the original Tier Appointment Fee since its inception almost twelve years ago in July 2010.<sup>24</sup>

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>25</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section

6(b)(5)<sup>26</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>27</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the proposed changes are prompted by the Exchange's upcoming transition from its current trading floor, which it has occupied since the 1980s, to a brand new, modern and upgraded trading floor in a new facility. The Exchange believes the build out of a new modern trading floor is consistent with its commitment to open outcry trading and focus on providing the best possible trading experience for its customers. Indeed, the new trading floor provides a state-of-the-art

<sup>24</sup> See Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR-CBOE-2010-060).

<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> *Id.*

environment and technology and more efficient use of physical space, which the Exchange believes better reflects and supports the current trading environment. The Exchange also believes the new infrastructure provides a cost-effective, streamlined, and modernized approach to floor connectivity. As described above, the upcoming transition will render much of the Exchange's current trading floor technology and infrastructure obsolete, as it will be replaced by new infrastructure in a new location (not owned by the Exchange). As such, the Exchange believes the proposed modifications to corresponding facility fees are not only necessary, but reasonable, equitable and not unfairly discriminatory as further discussed below. The Exchange also believes the proposed rule change results in a streamlined and simplified trading floor and facility fee structure.

#### Booth Fees

The Exchange believes the proposed Booth Fees are reasonable as they are not a significant departure from fees currently assessed for Booths on the current trading floor (and in some instances are even lower than currently assessed). Additionally, the Booths on the new trading floor will be slightly larger than the standard Booths available on the current trading floor. The proposed fees are also in line with similar fees charged currently and historically at other exchanges with a physical trading floor.<sup>28</sup> The Exchange believes that the proposed booth space fee is equitable and not unfairly discriminatory because it applies uniformly to trading floor participants who choose to rent Booths (and all booths are uniform and nearly identical in size). Moreover, the use of Booths, whether located away from or in a trading crowd, are optional and not necessary in order to conduct open outcry trading on the trading floor.

The Exchange believes the proposed rule changes to the Booth Policy and Agreement make non-substantive changes that merely clarify the Policy and Agreement, make it more accurate, and alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting

<sup>28</sup> In 2011, Nasdaq PHLX charged a flat \$300 per month fee for Trading/Administrative Booth paid by floor brokers and clearing firms. See Securities Exchange Act Release No. 34-66086 (January 3, 2012), 77 FR 1111 (January 9, 2012) (SR-Phlx-2011-181). NYSE American currently assesses \$40 per linear foot per month for all booth space utilized by such Floor Broker.

investors and the public interest. The Exchange believes that notwithstanding any of the proposed changes, the Booth Policy and Agreement continues to ensure that trading floor Booths are leased to TPH organizations on equal and non-discriminatory terms.

#### Line to Cboe Floor Network

The Exchange believes the proposed Line to Cboe Floor Network fee is reasonable as TPHs will not be subject to the current lines and circuit fees set forth in the Fees Schedule, including for relocation and removal, that are assessed on the current trading floor for similar connectivity to the trading floor network. Additionally, unlike the current floor which requires independent wiring be used for each line or circuit and on a per device basis, the new trading floor will allow TPHs to maintain one Line (or 2 for redundancy purposes). Moreover, as discussed above, firms will no longer need to provide network equipment to support dedicated lines to the floor, as on the new trading floor, the Exchange will be providing the network switches and local area network (LAN) lines for all firms. Accordingly, the new trading floor will provide TPHs more flexibility to move and relocate as needed and be able to do so without incurring additional relocation and removal fees. The Exchange also notes other exchanges assess a variety of facility fees relating to connectivity and equipment in order to maintain their trading floor facilities.<sup>29</sup> The Exchange believes the proposed installation fee is also reasonable as the Exchange is recouping costs it incurs from a third party with respect to the installation of such Lines. The proposed fee also includes a redundant Line at no additional cost. The Exchange believes the proposed monthly and installation Line fees are equitable and not unfairly discriminatory as they will apply uniformly to all trading floor participants.

#### Co-Location and Meet-Me-Room

The Exchange believes it is reasonable to cap all TPHs and non-TPHs to 8 "U" because the Exchange no longer owns

<sup>29</sup> For example, Nasdaq PHLX assesses a Floor Facility Fee of \$330 per month for such purpose. See Securities Exchange Act Release No 69672 (June 5, 2013), 78 FR 33873 (May 30, 2013) (SR-PHLX-2013-58). Nasdaq PHLX also assesses a variety of options trading floor fees including for equipment services and relocation requests. See Nasdaq PHLX Options 7 Pricing Schedule, Section 9. Other Member Fees, A. Option Trading Floor Fees. See also NYSE America Options Fees Schedule, Section IV, Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees and NYSE Price List, Equipment Fees.

the premises in which the Meet-me-Room resides and there is finite amount of space. The proposed cap however applies to all TPHs and non-TPHs uniformly. Additionally, the Exchange believes 8 "U" should be sufficient amount of space for any TPH or non-TPH and that with such cap in place there is sufficient space to accommodate all TPHs or non-TPHs who request co-location service. The Exchange believes it's reasonable, equitable and not unfairly discriminatory to eliminate the Co-Location of Equipment Fee for Sponsored Users as it has not had any Sponsored Users in several years. If the Exchange were to approve a Sponsored User, such participant would merely be subject to the remaining (and lower) Co-Location of Equipment Fee (*i.e.*, \$200 per 4 "U"). The Exchange believes the proposed relocation and language updates to the current Co-Location fee are reasonable as the Exchange is not proposing to change the amount assessed but is merely updating and simplifying the Fees Schedule and making it easier to read.

The Exchange believes the proposed \$25 per cross-connect monthly fee is reasonable as it is a modest fee that is a pass-through of the fee the Exchange is assessed by a third-party to maintain such cross connect. Additionally, the Exchange notes third-party vendors such as telecommunication providers will no longer be subject to the \$50 per month fee for "Data Circuits from Local Carrier to Equipment Shelf". Additionally, the Exchange believes the proposed amount is in line (and lower than) the amount assessed by another exchange for similar cross connects.<sup>30</sup> The proposed cross connect installation fee is also reasonable as it is intended to recoup the fees incurred by the Exchange by third-party vendors for establishing the cross connects. The Exchange believes the proposed monthly and installation cross connect fees are also reasonable, equitable and not unfairly discriminatory as they apply uniformly to similarly situated market participants.

The Exchange believes the proposed Cboe Datacenter Services fee is reasonable as it recoups the costs the Exchange incurs for providing access to the Meet-me-Room for firms for purposes such as on-site support.

<sup>30</sup> See Nasdaq PHLX Options 7 Pricing Schedule, Section 9. Other Member Fees, A. Option Trading Floor Fees, Cabinet-to-Cabinet Connectivity and Cabinet-to-Cabinet MPOE Connectivity, which are both subject to a \$50 per month fee.

Additionally, the Exchange proposes to waive the fee for the month of June 2022, so that visits to the Meet-me-Room to address any onboarding questions or issues that may arise during the first month in the new facility are free of charge. Moreover, as noted above, the Exchange does not anticipate that access to the Meet-me-Room will be needed on a frequent basis. The Exchange believes the proposed fee is also equitable and not unfairly discriminatory as it will apply uniformly to all market participants that request this service, and the fee will be waived for all market participants for the month of June 2022.

#### Trading Floor Devices

The Exchange believes the proposed changes related to the PAR fee are reasonable as the combined proposed fees for using PAR (*i.e.*, Exchange Tablet fee and PAR Access fee) are modestly higher than the fee TPHs are currently assessed for use of PAR. The Exchange notes that although TPHs that use PAR will be subject to a modestly higher fee, the PAR Workstation fee has remained unchanged for over eleven years, notwithstanding technology changes and improvements over the last decade, including for example, the ability to also access Silexx from the same tablet on which PAR is accessed.<sup>31</sup> Moreover, the Exchange notes the proposed fee is still lower than fees assessed at other exchanges for trading floor terminals. For example, NYSE American assesses \$450 per device per month for Floor Broker Handheld and an additional \$215 per month per Exchange sponsored Floor Broker order entry system.<sup>32</sup> The Exchange believes the proposed Exchange Tablet fee is also reasonable as TPHs may, but do not have to, use an Exchange Tablet to access Cloud9. Indeed, they may use their own TPH-owned device for purposes of accessing Cloud9 and be subject to the alternative, and lower, TPH-Owned Device Authentication Fee.

The Exchange believes the proposed PAR Access fee is equitable and not unfairly discriminatory as it applies to all TPHs using PAR. Moreover, the proposed changes enable the Exchange to offer Exchange-provided tablets for a separate monthly fee to TPHs that wish to use them for Cloud9, which is the Exchange's new telecommunications system that it will offer on the new

trading floor. Currently, TPHs are subject to various communication fees including monthly fees, installation fees, relocation fees and removal fees which will no longer be assessed by the Exchange as the Exchange's current communications offerings will be rendered obsolete upon the transition to the new trading floor.<sup>33</sup>

The Exchange believes the proposed TPH-Owned Device Authentication Fee is reasonable as the proposed fee is lower than the proposed fee assessed for Exchange Tablets which may alternatively be used if a TPH is looking to access Silexx or Cloud9.

Additionally, the Exchange believes it's reasonable to assess TPHs a monthly fee for access to its network. Moreover, the Exchange believes the new trading floor provides TPHs more flexibility to move and relocate any of their devices by eliminating the need for installation, relocation and removal of connectivity lines to devices and consequently, corresponding monthly, installation, relocation and removal fees. The proposed fee also applies to all TPHs accessing the Cboe floor Network from their own device.

#### Replacement Items

The Exchange believes the proposed change to increase the tablet replacement fee is reasonable as the proposed amount better reflects the approximate cost to the Exchange to provide a replacement tablet to TPHs. Additionally, the Exchange believes adopting a \$100 fee for replaced access badges is reasonable as the Exchange believes it will incentivize TPHs to keep track of their access badges and reduce the need for the Exchange to expend resources to print additional replacement badges. The Exchange believes these changes are also reasonable, equitable and not unfairly discriminatory because TPHs that lose these items or damage these items from non-normal wear or tear should be responsible for the cost of replacement. The Exchange believes the proposed fees will encourage TPHs to take proper care and track of these items. Additionally, the Exchange notes that it will not charge TPHs to replace defective items (that were not the result of non-normal wear and tear).

#### Obsolete Fees

The Exchange believes eliminating the facility fees discussed above is reasonable as such corresponding services and architecture will be rendered obsolete upon transitioning to

the new trading floor. Additionally, the Exchange believes the proposed new fee structure as compared to the fees being eliminated provides for a more streamlined and simplified approach to facility fees. The Exchange believes the proposed elimination of these fees is equitable and not unfairly discriminatory as it will apply uniformly to all TPHs. The proposal to eliminate references to these fees in Footnote 12, 24 and 50 also maintains clarity in the Fees Schedule and avoids potential confusion.

#### Footnote 24

The Exchange believes it's reasonable to provide that Footnote 24 will not apply during the period of June 1–June 3, 2022 in order to provide seamless billing in the month of June 2022. Particularly, as discussed above, on June 6, 2022, the Exchange will no longer be operating in a modified state due to the COVID-19 pandemic as the Exchange will no longer be maintaining a modified configuration of trading crowds to implement social distancing nor will it reduce or limit how many floor participants may access the trading floor. Accordingly, because the Exchange will not be considered to be operating in a modified configuration as of June 6, 2022, Footnote 24 will no longer be applicable and the modified billing practices will revert back to original billing. However, because the Exchange will be operating in a modified state between June 1–June 3, 2022, absent a proposed rule change, Footnote 24 would still apply thereby subjecting TPHs to disparate billing for only three trading days of the month. The Exchange therefore believes the proposed change is reasonable, especially given the short amount of time Footnote 24 would otherwise apply. The Exchange believes its proposal to maintain the current modified rate of \$5,000 for the SPX Floor Tier Appointment Fee under Footnote 24 (*i.e.*, increase the fee from \$3,000 per permit to \$5,000 permit regardless of whether the Exchange is operating in a modified state due to COVID-19 pandemic)<sup>34</sup> is reasonable because the proposed amount is not significantly higher than was previously assessed. Additionally, the Exchange notes that it has not amended the Market-Maker SPX Tier Appointment Fee since such fee was adopted nearly

<sup>31</sup> See Securities Exchange Act Release No. 63701 (January 11, 2011), 76 FR 2934 (January 18, 2011) (SR-CBOE-2010-116).

<sup>32</sup> See also NYSE America Options Fees Schedule, Section IV, Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees.

<sup>33</sup> See Cboe Options Fee Schedule, Communications Fees.

<sup>34</sup> The Exchange proposes to eliminate this language from Footnote 24 as it will no longer be considered a "modified" rate, and instead update the rate reflected in the Market-Maker Tier Appointment Fees table.

twelve years ago in July 2010.<sup>35</sup> The proposed change also is equitable and not unfairly discriminatory as it applies to all similarly situated TPHs.

#### *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 does not believe that the proposed rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes would be applied in the same manner to all similarly situated participants and as such, would not impose a disparate burden on competition among the same classes of market participants. As described in further detail above, the proposed fees are also applicable only to market participants that choose to avail themselves to the corresponding facility services. For example, only firms that choose to rent Booths (which are optional and not required for open-outcry trading) will be subject to the proposed Booth Fees. Similarly, only firms that choose to purchase Exchange-provided tablets are subject to the tablet fee, and firms may otherwise choose to purchase and provide their own tablets.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes apply only to fees relating to the Exchange's floor facility. Further, as described in detail above, the Exchange believes its proposed facilities fees are in line with facility fees assessed at other exchanges that maintain physical trading floors. Additionally, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges (four of which also maintain physical trading floors), as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 16% of the market share of executed

volume of options trades.<sup>36</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. 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>37</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 for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .".<sup>38</sup> Accordingly, the Exchange does not believe its proposed changes to the incentive programs impose 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 is effective upon filing pursuant to Section 19(b)(3)(A)<sup>39</sup> of the Act and

<sup>36</sup> See Cboe Global Markets, U.S. Options Market Volume Summary by Month (May 31, 2022), available at [http://markets.cboe.com/us/options/market\\_share/](http://markets.cboe.com/us/options/market_share/).

<sup>37</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>38</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>39</sup> 15 U.S.C. 78s(b)(3)(A).

subparagraph (f)(2) of Rule 19b-4<sup>40</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 shall institute proceedings under Section 19(b)(2)(B)<sup>41</sup> of the Act 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 Number SR-CBOE-2022-029 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-2022-029. 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

<sup>40</sup> 17 CFR 240.19b-4(f)(2).

<sup>41</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>35</sup> See Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR-CBOE-2010-060).

provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2022-029, and should be submitted on or before July 21, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

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

[FR Doc. 2022-13943 Filed 6-29-22; 8:45 am]

**BILLING CODE 8011-01-P**

**SOCIAL SECURITY ADMINISTRATION**

[Docket No: SSA-2022-0030]

**Agency Information Collection Activities: Proposed Request**

The Social Security Administration (SSA) publishes a list of information

collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and one extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Comments: <https://www.reginfo.gov/public/do/PRAMain>. Submit your comments online referencing Docket ID Number [SSA-2022-0030].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-966-2830, Email address: [OR.Reports.Clearance@ssa.gov](mailto:OR.Reports.Clearance@ssa.gov).

Or you may submit your comments online through <https://www.reginfo.gov/public/do/PRAMain>, referencing Docket ID Number [SSA-2022-0030].

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 29, 2022. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. *Application for Lump Sum Death Payment—20 CFR 404.390-404.392—0960-0013.* SSA uses Form SSA-8 to collect information needed to authorize payment of the lump sum death payment (LSDP) to a widow, widower, or children as defined in section 202(i) of the Social Security Act (Act). Respondents complete the application for this one-time payment through use of the paper form, or personal interview with an SSA employee either via telephone, or in a field office. For all personal interviews (either telephone or in-person), we collect the information via our electronic Modernized Claim System (MCS) screens. When a respondent completes the paper Form SSA-8, they mail it back to SSA. Respondents are applicants for the LSDP.

*Type of Request:* Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Average wait time in field office or for teleservice centers (minutes)**	Total annual opportunity cost (dollars)***
SSA-8—(MCS Version) .....	733,254	1	9	109,988	*\$28.01	**21	***\$10,269,222
SSA-8 —(Paper Version) .....	5,747	1	10	958	*\$28.01	.....	***\$26,834
Totals .....	739,001	.....	.....	110,946	.....	.....	***\$10,296,056

\* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data ([https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm)).  
 \*\* We based this figure by averaging the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.  
 \*\*\* This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. *Representative Payee Evaluation Report—20 CFR 404.2065 & 416.665—0960-0069.* Sections 205(j) and 1631(a)(2) of the Act state that SSA may authorize payment of Social Security benefits or Supplemental Security Income (SSI) payments to a representative payee on behalf of individuals unable to manage, or direct the management of, those funds themselves. SSA requires certain appointed representative payees to

report once each year on how they used or conserved those funds. Some representative payees, such as natural or adoptive parents of minor children or spouses of beneficiaries, are generally not required to complete this report. When a representative payee fails to adequately report to SSA, SSA conducts a face-to-face interview with the payee and completes Form SSA-624-F5, Representative Payee Evaluation Report, to determine the continued suitability of

the representative payee to serve as a payee. In addition to interviewing the representative payee, we also interview the recipient, and custodian (if other than the payee), to confirm the information the payee provides, and to ensure the payee is meeting the recipient's current needs. However, we do not require the interviews to be face-to-face with non-representative payees. The respondents are individuals or organizations serving as representative

<sup>42</sup> 17 CFR 200.30-3(a)(12).