

adversely affect access to clearing or the ability of Clearing Members, their customers or other market participants to continue to clear contracts, including CDS Contracts. ICE Clear Europe also does not believe the amendments would materially affect the cost of clearing or otherwise limit market participants' choices for selecting clearing services. Accordingly, ICE Clear Europe does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

ICE Clear Europe has conducted a public consultation on the amendments to its CDS Procedures set forth herein.¹⁹ ICE Clear Europe received two written responses to the consultation pursuant to which certain definitional clarifications and minor typographical corrections were requested. ICE Clear Europe has made certain drafting clarifications to the proposed rules as a result of these requests. Certain comments in these responses related to the standard terms supplements and confirmations referenced in the revised CDS Procedures, and ICE Clear Europe determined that no changes to the proposed rules themselves were appropriate as a result of such comments. One commenter also questioned whether there was a need to explicitly amend Customer-CM Transactions as a result of the proposed rule changes; ICE Clear Europe determined that no such change was necessary to effectuate the proposed rule amendments. ICE Clear Europe will notify the Commission of any further written comments with respect to the proposed rules received by ICE Clear Europe.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ICEEU-2019-027 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-ICEEU-2019-027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>. 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-ICEEU-

2019-027 and should be submitted on or before January 8, 2020.

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

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2019-27197 Filed 12-17-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87729; File No. SR-DTC-2019-011]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Distributions Guide and the Fee Guide Relating to Tax Events

December 12, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 5, 2019, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rules 19b-4(f)(2) and (f)(4) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change⁵ of DTC would (i) revise the Distributions Guide to enhance the DTC announcements ("Announcements") feature within the DTC distributions service ("Distributions Service")⁶ with respect

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2) and (f)(4).

⁵ Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of The Depository Trust Company (the "DTC Rules"), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>, and the DTC Corporate Actions Distributions Service Guide ("Distributions Guide"), available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Service%20Guide%20Distributions.pdf>.

⁶ The Distributions Service includes DTC's announcement, collection, allocation and reporting of dividend, interest and certain principal payments on behalf of Participants holding Securities at DTC. See Distributions Guide, *id.*, at 9.

¹⁹ ICE Clear Europe Circular C19/175 (November 12, 2019), available at https://www.theice.com/publicdocs/clear_europe/circulars/C19175.pdf.

to corporate action events that do not involve the payment of funds or distribution of Securities through DTC, but which may result in a taxable event for holders ("Tax Events"), to accommodate the announcement of Tax Events subject to provisions of Section 871(m) of the Internal Revenue Code ("Section 871(m)"),⁷ and (ii) amend the Guide to the DTC Fee Schedule ("Fee Guide")⁸ to change the name and amount of the fee relating to the announcement of Tax Events ("Tax Event Fee"), as discussed below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would (i) revise the Distributions Guide to enhance the Announcements feature within the Distributions Service with respect to Tax Events, to accommodate the announcement of Tax Events subject to provisions of Section 871(m), and (ii) amend the Fee Guide to change the name and amount of the Tax Event Fee, as discussed below.

Distributions Service Announcements Feature

The Distributions Service includes the announcement, collection, allocation and reporting by DTC, on behalf of its Participants, of dividend, interest and principal payments for Eligible Securities held by Participants at DTC. This centralized processing provides efficiency for Participants for their receipt of (i) payment information and (ii) payments on distributions covered by Announcements ("Distribution Event"),⁹ from multiple issuers and

agents.¹⁰ In this regard, Announcements provide Participants with information pertaining to their record date ("Record Date")¹¹ positions for Distribution Events.¹² This information facilitates Participants' ability to reconcile their records with DTC before the date DTC has been instructed by the issuer or issuer's agent to allocate a distribution ("Payable Date").¹³

Tax Events

Pursuant to a DTC rule change¹⁴ that became effective in October 2017, DTC implemented the Announcements feature for Tax Events and the Tax Event Fee relating to the announcement of distributions subject to Section 305(c) of the Internal Revenue Code ("Section 305(c)").¹⁵ Section 305(c) states that holders of convertible Securities may be deemed to have received a distribution because of a corporate action on common stock into which the convertible Security may be converted.¹⁶ A lack of information relating to these deemed distributions and other Tax Events may affect Participants' ability to comply with applicable federal tax withholding requirements and applicable DTC Rules requirements relating to the use of DTC services.¹⁷

Pursuant to the Tax Event Rule Filing, the Distributions Guide was revised to enable DTC to distribute to Participants the Tax Event information for a deemed distribution in the same standardized manner that DTC uses to announce distributions. The Tax Event Rule Filing also added text to (a) describe and

reinvestments, spinoffs, rights distributions, pay in kind, and liquidation. See Distributions Guide, *supra* note 5, at 12.

¹⁰ See Distributions Guide, *supra* note 5, at 9.

¹¹ The Record Date is the date set by an issuer of a security by which an investor must own the security in order to be eligible to receive an upcoming distribution. See DTC Operational Arrangements Necessary for Securities to Become and Remain Eligible for DTC Services, available at <http://www.dtcc.com/-/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>, at 20.

¹² See Distributions Guide, *supra* note 5, at 11–13.

¹³ See Distributions Guide, *supra* note 5, at 11.

¹⁴ See Securities Exchange Act Release No. 81871 (October 13, 2017), 82 FR 48734 (October 19, 2017) (SR-DTC-2017-018) ("Tax Event Rule Filing").

¹⁵ 26 U.S.C. 305(c).

¹⁶ Under Section 305(c), a change in the conversion ratio or conversion price or a similar transaction is treated "as a distribution [by the issuer] with respect to any shareholder whose proportionate interest in the earnings and profits or assets of the corporation is increased by such change." *Id.*

¹⁷ In connection with their use of DTC's services, Participants must comply with all applicable laws, including, but not limited to, all applicable laws relating to taxation. See DTC Rule 2, Section 8, *supra* note 5.

define Tax Events and Tax Event announcements, and (b) describe the systemic data fields ("Fields") that DTC uses to provide relevant Tax Event information for a Security to Participants, including: (1) "Event Type" shown as "Tax Event," (2) "Sub Event Type," which is used to classify the type of Tax Event, (3) Payable Date, (4) Record Date, (5) "Cash Rate," to provide the amount of the deemed distribution, and (6) "Comments," which is used to provide any other pertinent information regarding the Tax Event.¹⁸

Tax Event Fee

Fees are charged by DTC to Participants, pursuant to the Fee Guide,¹⁹ to offset the cost of processing corporate action events, including the announcement processing, the actual processing of payments, and book-entries associated with the corporate action. Pursuant to the Tax Event Rule Filing, the Fee Guide was revised so that a Participant that holds Securities subject to a Tax Event would be charged a flat Tax Event Fee of \$40 per announcement for a Section 305(c) announcement.²⁰ As indicated in the Tax Event Rule Filing, the addition of the Tax Event Fee to the Fee Guide aligned DTC's revenue with its costs for retrieval of Tax Event information from issuers and announcing that information to Participants.²¹ The Tax Event Fee was added to the Fee Guide underneath the section for U.S. tax withholding services, which is a feature of the Distributions Service, for reference purposes, and is in the Fee Guide in the same place as other fees charged for tax-related processing performed by DTC.²²

Section 871(m) of the Internal Revenue Code

Like a Section 305(c) Tax Event, an event subject to the provisions of Section 871(m) is also a corporate action event in which no cash or security entitlement is allocated to a Participant but may trigger a taxable event for DTC to perform tax withholding and reporting.

Section 871(m), which was enacted in 2010, imposes a 30 percent withholding tax on "dividend equivalent" payments that are made or deemed to be made to non-U.S. persons with respect to certain derivative Securities that reference equity ("Equity Derivative") of a U.S. issuer. In enacting Section 871(m),

¹⁸ See Tax Event Rule Filing, *supra* note 14.

¹⁹ *Supra* note 8.

²⁰ See Tax Event Rule Filing, *supra* note 14.

²¹ *Id.*

²² See Fee Guide, *supra* note 8, at 15–16.

⁷ 26 U.S.C. 871(m).

⁸ Available at <http://www.dtcc.com/-/media/Files/Downloads/legal/fee-guides/dtcfreeguide.pdf?la=en>.

⁹ Distribution Events covered by Announcements include cash dividends, interest, principal, capital gains, sale of rights on American depositary receipts, return of capital, dividend with option, stock splits, stock dividends, automatic dividend

Congress was attempting to address the ability of foreign persons to obtain the economics of owning dividend-paying stock through an Equity Derivative while avoiding the withholding tax that would apply to dividends paid on the stock if the foreign person owned the stock directly.²³

In September 2015, the U.S. Treasury Department adopted final regulations (the “Final Section 871(m) Regulations”)²⁴ based on a proposal issued in December 2013 that implemented and enforced Section 871(m) with an effective date of January 1, 2017. The Final Section 871(m) Regulations introduced various new tax-related obligations for Participants and DTC.

Under the Final Section 871(m) Regulations, an Equity Derivative held by a non-U.S. person may be considered a “Section 871(m) Transaction” and can potentially give rise to a dividend equivalent subject to withholding tax.²⁵ A complex set of rules and exceptions in the Final Section 871(m) Regulations must be followed in order for the withholding agent to determine if the withholding tax in fact applies, and, if so, the amount of the dividend equivalent subject to withholding tax.²⁶

Proposed Rule Change

Distributions Guide

Distributions that occur with respect to Securities subject to the provisions of Section 871(m) are Tax Events as defined in the Distributions Guide.²⁷ Therefore, pursuant to the proposed rule change, DTC would provide announcements relating to these Securities to Participants in accordance with the provisions of the Distributions Guide relating to Tax Events, as discussed above. As a result, Participants would receive Tax Event announcements relating to Securities subject Section 871(m), as they do to

with respect to Securities subject to Section 305(c), and they would be able to use the data provided via the announcements to help them meet their tax withholding and reporting obligations.

In addition, DTC proposes to update the Distributions Guide to update the Payable Date Field to provide for an enhanced description for Payable Date information to be provided by DTC for Section 305(c) announcements versus Section 871(m) announcements. In this regard, the existing Payable Date Field description would be updated from stating it is the “field used for the date of the deemed distribution” to instead state it is a “field used for the date of deemed distributions for sub event types of 305(c) Deemed Dividends” or a “field used to provide the payable date of the underlying security for sub event type of 871(m) Dividend Equivalent Amount.”

Pursuant to the proposed rule change DTC would also add a new Field titled “Timing of the Dividend Equivalent Amount” with a description that it is a “field used for the timing of dividend equivalents under 1.871–15 of Treasury regulations.”

The proposed rule change would also make a technical change for enhanced readability and clarity by changing the opening text of the subsection titled “The Tax Event Announcement Feature” from stating “The Tax Event announcement feature leverages the following data fields from other event types to provide relevant information to participants:” to instead state “The Tax Event announcement feature uses the following data fields to provide relevant information to participants:”.

Fee Guide

Pursuant to the proposed rule change, because all Tax Events would be announced pursuant to the same Procedures and processes, including using similar Fields, as described above, DTC would charge the same Tax Event Fee amount to Participants for all Tax Event Announcements, regardless of whether they relate to Securities subject to Section 305(c) or Section 871(m). In this regard, DTC would change the name for the Tax Event Fee in the Fee Guide from “Tax Event Announcement—305c” to “Tax Event Announcement,” so there would be one fee item in the Fee Guide applicable to Tax Events.

DTC believes that the proposed rule change, as described above, would significantly increase the volume of Tax Event announcements processed by DTC and therefore increase the volume of Tax Event Fees charged to

Participants. After reviewing the costs of providing Tax Event announcements, and the revenue necessary for DTC to recover development costs and operating expenses relating to providing Tax Event announcements as proposed above, DTC has determined that due to anticipated increasing economies of scale, the increased volumes in Tax Event announcements at the current amount of the Tax Event Fee would result in the collection of a total amount of Tax Events Fees that is significantly more than would be necessary to offset DTC’s costs relating to retrieval of Tax Event information from issuers and announcing that information to Participants. In this regard, DTC has determined that it should reduce the Tax Event Fee from \$40 per announcement to \$12 per announcement for consistency with its cost-based plus markup²⁸ fee model. Therefore, DTC proposes to amend the Fee Guide to reduce the Tax Event Fee from \$40 per announcement to \$12 per announcement.

Implementation Timeframe

The proposed rule change would be implemented on December 6, 2019.

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to DTC, in particular Sections 17A(b)(3)(D)²⁹ and 17A(b)(3)(F)³⁰ of the Act.

Section 17A(b)(3)(D) of the Act³¹ requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. DTC believes that the proposed Tax Event Fee, as described above, would be equitably allocated among Participants because each Participant holding Securities subject to Tax Events would be charged the same Tax Event Fee amount per Announcement. DTC believes that the proposed Tax Event Fee amount would be reasonable because it would allow DTC to recover

²³ See 26 U.S.C. 871(a)(1)(A) (30 percent tax on dividends paid to non-resident aliens).

²⁴ See T.D. 9734, 80 FR 56866 (Sept. 18, 2015).

²⁵ See 26 CFR 1.871–15(g)(1).

²⁶ See *id.*

²⁷ Pursuant to the Distributions Guide, Tax Events announcements are information only announcements regarding taxable events that may give rise to information and/or withholding obligations which occur even in the absence of an actual distribution of dividend and interest payments. See Distributions Guide, *supra* note 5, at 9. Announcements of Distribution Events for Securities subject to Section 871(m) meet the definition of Tax Event as defined in the Distributions Guide because under the Final Section 871(m) Regulations, an Equity Derivative held by a non-U.S. person may be considered a “Section 871(m) Transaction” and can potentially give rise to a dividend equivalent subject to withholding tax even in the absence of an actual distribution payment. See *supra* note 25.

²⁸ DTC has in place procedures to control costs and to regularly review pricing levels against costs of operation. DTC’s fees are cost-based plus a markup as approved by its Board of Directors. This markup is applied to recover development costs and operating expenses, and to accumulate capital enough to meet regulatory and economic requirements. See DTC Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, available at http://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf, at 124.

²⁹ 15 U.S.C. 78q–1(b)(3)(D).

³⁰ 15 U.S.C. 78q–1(b)(3)(F).

³¹ 15 U.S.C. 78q–1(b)(3)(D).

its costs of retrieval of Tax Event information from issuers and announcing that information to Participants holding the applicable Securities, which information is needed by the Participants to facilitate their compliance with applicable tax withholding obligations, as described above. Therefore, DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act, cited above.

Section 17A(b)(3)(F) of the Act³² requires, *inter alia*, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. As described above, the proposed rule change would enhance the Distributions Service to include the distribution of announcements for Tax Events for Securities subject to Section 871(m) to Participants. As described above, by providing for the distribution of Tax Event information to Participants, the proposed rule change would facilitate Participants' ability to comply with their federal tax withholding obligations. This would further facilitate Participants' ability to continue to maintain Eligible Securities subject to Tax Events on Deposit at DTC and make use of DTC's book-entry transfer and settlement services with respect to those Securities, in accordance with DTC Rules requirements relating to the use of DTC services by Participants.³³ Therefore, by facilitating Participant's ability to continue to use DTC's book-entry transfer and settlement services at DTC with respect to Eligible Securities that are subject to Tax Events, the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC believes that the proposed rule change to amend the Distributions Guide to update Fields used by DTC to report Tax Events and make other technical and clarifying changes, as described above, could impose a burden on competition, because by designating Section 871(m) announcements as Tax Events, and causing Participants that hold Securities subject Section 871(m) to be subject to the Tax Event Fee, it would subject Participants to a mandatory DTC Tax Event Fee that they would not incur today.

To the extent the proposed rule change may impose a burden on competition, DTC believes it would be necessary and appropriate in furtherance of the purposes of the Act,³⁴ because the proposed rule change would provide for Participants to obtain the Tax Event announcement information needed to facilitate their compliance with tax withholding obligations and DTC's Rules relating to Participants' compliance with applicable law, as described above. DTC has discussed the proposal with Participants that hold Securities subject to Section 871(m), and issuers of those Securities, and DTC is not aware of either (i) an alternative method available to Participants to obtain Section 871(m) announcement information in a centralized format or (ii) established or planned arrangements by issuers to provide tax-related information for Section 871(m) Securities directly to DTC Participants and/or investors.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited and does not intend to solicit written comments regarding the proposed rule change. DTC has not received any unsolicited written comments from interested parties. To the extent DTC receives written comments on the proposed rule change, DTC will forward such comments to the Commission.

Participants most likely to be affected by the proposed rule change have indicated in discussions with DTC that receiving Section 871(m) announcements through DTC would facilitate their ability to comply with their tax withholding obligations.

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 Act³⁵ and paragraph (f) of Rule 19b-4 thereunder.³⁶ 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.

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. Please include File Number SR-DTC-2019-011 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-DTC-2019-011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-DTC-2019-011 and should be submitted on or before January 8, 2020.

³² 15 U.S.C. 78q-1(b)(3)(F).

³³ See *supra* note 17.

³⁴ 15 U.S.C. 78q-1(b)(3)(I).

³⁵ 15 U.S.C. 78s(b)(3)(A).

³⁶ 17 CFR 240.19b-4(f).

³⁷ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-27206 Filed 12-17-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87727; File No. SR-CBOE-2019-111]

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

December 12, 2019.

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 November 29, 2019, 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 the Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Fees Schedule in connection with migration. 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

In 2016, the Exchange’s parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (“Cboe Global”), which is also the parent company of Cboe C2 Exchange, Inc. (“C2”), acquired Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX” or “EDGX Options”), Cboe BZX Exchange, Inc. (“BZX” or “BZX Options”), and Cboe BYX Exchange, Inc. (“BYX” and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the “Affiliated Exchanges”). The Cboe Affiliated Exchanges recently aligned certain system functionality, including with respect to connectivity, retaining only intended differences between the Affiliated Exchanges, in the context of a technology migration. The Exchange migrated its trading platform to the same system used by the Affiliated Exchanges, which the Exchange completed on October 7, 2019 (the “migration”). As a result of this migration, the Exchange’s pre-migration connectivity architecture was rendered obsolete, and as such, the Exchange now offers new functionality, including new logical connectivity, and therefore proposes to adopt corresponding fees.³ In determining the proposed fee changes, the Exchange assessed the impact on market participants to ensure that the proposed fees would not create an undue financial burden on any market participants, including smaller market participants. While the Exchange has no way of predicting with certainty the impact of the proposed changes, the Exchange had anticipated its post-migration connectivity revenue⁴ to be approximately 1.75% lower than connectivity revenue pre-migration.⁵ In

addition to providing a consistent technology offering across the Cboe Affiliated Exchanges, the migration also provided market participants a latency equalized infrastructure, improved system performance, and increased sustained order and quote per second capacity, as discussed more fully below. Accordingly, in connection with the migration and in order to more closely align the Exchange’s fee structure with that of its Affiliated Exchanges, the Exchange intends to update and simplify its fee structure with respect to access and connectivity and adopt new access and connectivity fees.⁶

Physical Connectivity

A physical port is utilized by a Trading Permit Holder (“TPH”) or non-TPH to connect to the Exchange at the data centers where the Exchange’s servers are located. The Exchange currently assesses fees for Network Access Ports for these physical connections to the Exchange. Specifically, TPHs and non-TPHs can elect to connect to Cboe Options’ trading system via either a 1 gigabit per second (“Gb”) Network Access Port or a 10 Gb Network Access Port. Pre-migration the Exchange assessed a monthly fee of \$1,500 per port for 1 Gb Network Access Ports and a monthly fee of \$5,000 per port for 10 Gb Network Access Ports for access to Cboe Options primary system. Through January 31, 2020, Cboe Options market participants will continue to have the ability to connect to Cboe Options’ trading system via the current Network Access Ports. As of October 7, 2019, in connection with the migration, TPHs and non-TPHs may alternatively elect to connect to Cboe Options via new latency equalized Physical Ports.⁷ The new Physical Ports similarly allow TPHs and non-TPHs the ability to connect to the Exchange at the data center where the Exchange’s servers are located and TPHs and non-TPHs have the option to connect via 1 Gb or 10 Gb Physical Ports. As noted above, both the new 1 Gb and 10 Gb Physical Ports provide latency

may still be in the process of transitioning their connectivity. As such, the Exchange believes any changes in revenue until such time are not reflective of the predicted and modeled impact.

⁶ The Exchange initially filed the proposed fee changes on October 1, 2019 (SR-CBOE-2019-077). On business date October 2, 2019, the Exchange withdrew that filing and submitted SR-CBOE-2019-082. See Securities Exchange Act Release No. 87304 (October 15, 2019), 84 FR 56240, (October 21, 2019). On business date November 29, 2019, the Exchange withdrew that filing and submitted this filing.

⁷ As previously noted, market participants will continue to have the option of connecting to Cboe Options via a 1 Gbps or 10 Gbps Network Access Port at the same rates as proposed, respectively.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As of October 7, 2019, market participants no longer have the ability to connect to the old Exchange architecture.

⁴ Connectivity revenue post-migration includes revenue from physical port fees (other than for disaster recovery), Cboe Data Services Port Fee, logical port fees, Trading Permit Fees, Market-Maker EAP Appointment Unit fees, Tier Appointment Surcharges and Floor Broker Trading Surcharges, less the Floor Broker ADV discounts and discounts on BOE Bulk Ports via the Affiliate Volume Plan and the Market-Maker Access Credit program.

⁵ The Exchange does not anticipate realizing the projected revenue reduction prior to February 2020, as the Exchange’s legacy physical ports will not be decommissioned until January 31, 2020 and firms