

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75188; File No. SR- CBOE-2015-058)

June 17, 2015

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 9, 2015, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is 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.

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

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

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

1. Purpose

The Exchange proposes to make certain changes to its Fees Schedule.<sup>3</sup> First, the Exchange proposes to amend its Volume Incentive Program (“VIP”). Under VIP, the Exchange credits each Trading Permit Holder (“TPH”) the per contract amount set forth in the VIP table resulting from each public customer (“C” origin code) order transmitted by that TPH (with certain exceptions) which is executed electronically on the Exchange in all underlying symbols excluding Underlying Symbol List A<sup>4</sup>, DJX, MXEA, MXEF, XSP, XSPAM, and mini-options, provided the TPH meets certain volume thresholds in a month.<sup>5</sup> The Exchange proposes to increase the VIP credit for complex orders in Tier 2 from \$0.16 per contract to \$0.21 per contract, in Tier 3 from \$0.16 per contract to \$0.22 per contract and in Tier 4 from \$0.17 per contract to \$0.23 per contract. The purpose of this change is to incentivize the sending of complex orders to the Exchange and to adjust the incentive tiers accordingly as competition requires while maintaining an incremental incentive for TPH’s to strive for the highest tier level.

The Exchange next proposes to amend the Complex Order Book (“COB”) Taker Surcharge. By way of background, the COB Taker Surcharge (“Surcharge”) is a \$0.05 per

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<sup>3</sup> The Exchange initially filed the proposed fee changes on June 1, 2015 (SR-CBOE-2015-054). On June 9, 2015, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> The following products are included in “Underlying Symbol List A”: OEX, XEO, RUT, SPX (including SPXw), SPXpm, SRO, VIX, VXST, VOLATILITY INDEXES and binary options.

<sup>5</sup> Excluded from the VIP credit are options in Underlying Symbol List A, DJX, MXEA, MXEF, XSP, XSPAM, mini-options, QCC trades, public customer to public customer electronic complex order executions, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80 (see CBOE Fees Schedule, Volume Incentive Program).

contract per side surcharge for non-customer complex order executions that take liquidity from the COB in all underlying classes except Underlying Symbol List A and mini-options.

Additionally, the Surcharge is not assessed on non-customer complex order executions in the Complex Order Auction (“COA”), the Automated Aim Mechanism (“AIM”), orders originating from a Floor Broker PAR, electronic executions against single leg markets, or stock-option order executions. The Exchange first proposes to increase the amount of the Surcharge from \$0.05 per contract to \$0.08 per contract. Additionally, the Exchange proposes to eliminate the exclusion of non-customer complex order executions in the COA and AIM mechanisms from the Surcharge. Specifically, the Exchange notes that all complex order auction responses executed in COA and AIM will be assessed the Surcharge (i.e., initiating orders and AIM Contra orders will not be assessed the Surcharge). The Exchange proposes these changes in order to help offset the increased rebates given to complex orders under VIP. In light of the abovementioned changes, the Exchange also proposes to rename the COB Taker Surcharge to “Complex Taker Fee.” Particularly, the surcharge is no longer limited to COB executions as the Surcharge will now include auction responses in COA and AIM. As such, the Exchange believes it is appropriate to rename the Surcharge to more accurately reflect what transactions are being charged and avoid potential confusion. Additionally, the Exchange proposes to change the term “Surcharge” to “Fee” to avoid confusion with other surcharges currently listed in the Fees Schedule.

The Exchange next notes that it currently assesses a \$0.65 per contract fee for electronic executions by Broker-Dealers, non-Trading Permit Holders (“non-TPHs”) Market-Makers, Professionals/Voluntary Professionals and Joint Back-Offices (“JBOs”) in non-Penny Pilot equity, ETF, ETN and index options (excluding Underlying Symbol List A) classes. The Exchange proposes increasing this transaction fee from \$0.65 per contract to \$0.75 per contract.

The Exchange also proposes to increase the Marketing Fee for all non-Penny Pilot option classes from \$0.65 per contract to \$0.70 per contract. The Exchange notes that these increases are similar to, and in line with, the amounts assessed by another exchange for similar transactions.<sup>6</sup>

Lastly, the Exchange proposes to amend language in the Fees Schedule relating to the VIX Tier Appointment Surcharge. The VIX Tier Appointment is assessed to any Market-Maker that either (a) has a VIX Tier Appointment at any time during a calendar month and trades at least 100 VIX options contracts electronically while that appointment is active; or (b) trades at least 1,000 VIX options contracts in open outcry during a calendar month. Additionally, a description of the VIX Tier Appointment Fee in the Fees Schedule provides that “In order for a Market-Maker Trading Permit to be used to act as a Market-Maker in VIX, the Trading Permit Holder must obtain a VIX Tier Appointment for that Market-Maker Trading Permit.” The Exchange seeks to add clarifying language to this sentence in the Fees Schedule. Particularly, the Exchange seeks to clarify that Trading Permit Holders must obtain a VIX Tier Appointment in order for a Market-Maker Trading Permit to be used to act electronically as a Market-Maker in VIX. The Exchange notes that Rule 8.3(i) provides that during Regular Trading Hours, a Market-Maker has an appointment to trade open outcry in all Hybrid classes traded on the Exchange. As VIX is a Hybrid class, a Market-Maker does not need an appointment to trade open outcry. Accordingly, the Exchange seeks to amend the first sentence of the VIX Tier Appointment description to clarify in the Fees Schedule that a VIX Tier Appointment is only necessary for acting as a Market-Maker electronically.

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<sup>6</sup> See NASDAQ OMX PHLX LLC (“PHLX”) Pricing Schedule, Section II, Multiply Listed Options Fees.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that increasing the VIP complex order credits is reasonable because it will allow all TPHs transmitting public customer complex orders that reach certain volume thresholds to receive an increased credit for doing so. The amounts of the credits being proposed are also closer to the amounts of credits paid to market participants by another exchange for similar transactions.<sup>10</sup> Additionally, the Exchange notes that increasing the credit

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

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> See International Securities Exchange, LLC (“ISE”) Schedule of Fees, Section II (which lists complex order fees and rebates). For each public customer order transmitted by a market participant (with certain exceptions) a rebate of between \$0.30 per contract and

(and providing higher credits for complex orders than for simple orders) is reasonable, equitable and not unfairly discriminatory because it is intended to incentivize the sending of more complex orders to the Exchange. This should provide greater liquidity and trading opportunities, including for market participants who send simple orders to the Exchange (as simple orders can trade with the legs of complex orders). The greater liquidity and trading opportunities should benefit not just public customers (whose orders are the only ones that qualify for the VIP) but all market participants.

The Exchange believes that the proposed increase to the amount of the COB Contra Surcharge from \$0.05 per contract per side to \$0.08 per contract per side is reasonable because the total amount assessed to these transactions, including the Surcharge, is still within the range of fees paid by other market participants for similar transactions.<sup>11</sup> Further, other exchanges assess higher fees for complex orders than for noncomplex ones.<sup>12</sup> Applying the Surcharge to all market participants except customers is equitable and not unfairly discriminatory because customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market

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\$0.46 per contract in Select Symbols and between \$0.63 per contract and \$0.83 per contract is given to that market participant, depending on the qualifying thresholds that market participant meets.

<sup>11</sup> See e.g., NYSE Arca, Inc. (“Arca”) Options Fees Schedule, page 7 (Electronic Complex Order Executions) which provides that for complex order-to-complex order transactions, non-customers are assessed \$0.50 in penny pilot options and \$0.85 in non-penny pilot options. Depending upon the type of market participant a CBOE TPH is, non-customer CBOE TPHs would be assessed between \$0.11 and \$0.73 (which includes the proposed COB Contra Surcharge increase) for such transactions (see CBOE Fees Schedule).

<sup>12</sup> See ISE Schedule of Fees, Section I (which lists regular Maker rebates and fees and Taker fees for Select Symbols) as compared to Section II (which lists complex order fees and rebates for Select Symbols). Market participants are assessed higher fees for executing complex orders.

participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. By exempting customer orders, the Surcharge will not discourage the sending of customer orders, and therefore there should still be plenty of customer orders for other market participants to trade with. The Exchange believes it's reasonable, equitable and not unfairly discriminatory to assess the Surcharge to complex order auction responses executed in COA and AIM (and not on initiating orders or AIM contra orders) because auction responses in COA and AIM, like other non-customer complex order executions that take liquidity from the COB and are assessed the Surcharge, remove liquidity from the market and because the proposed change applies uniformly to all TPHs. The Exchange believes renaming the surcharge from "COB Taker Surcharge" to "Complex Taker Fee" alleviates potential confusion as to what transactions the surcharge applies to and therefore prevents 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 investors and the public interest.

Increasing the fee for electronic executions by broker-dealers, non-TPHs, Market-Makers, Professionals/Voluntary Professionals and JBOs in non-Penny Pilot equity, ETF, ETN and Index options (excluding Underlying Symbol List A) classes is reasonable because the proposed fee amount is similar to the amount assessed by another exchange for similar transactions.<sup>13</sup> The Exchange believes that the proposed increase is also equitable and not unfairly discriminatory because the Exchange will assess broker-dealers, non-TPH Market-Makers, Professionals/Voluntary Professionals and JBOs the same electronic options transaction fees in Non-Penny Pilot options classes. The Exchange notes that it does not assess Customers

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<sup>13</sup> See PHLX Pricing Schedule, Section II, Multiply Listed Options Fees.

the electronic options transaction fees in Non-Penny Pilot options because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants, as discussed above. The Exchange notes that Market-Makers are assessed lower electronic options transaction fees in Non-Penny Pilot options as compared to Professionals, JBOs, Broker Dealers and non-Trading Permit Holder Market-Makers because they have obligations to the market and regulatory requirements, which normally do not apply to other market participants (e.g., obligations to make continuous markets). Further, Market-Makers will pay a \$0.70 per contract Marketing Fee for many non-Penny Pilot transactions, which broker-dealers, non-Trading Permit Holder Market-Makers, Professionals/Voluntary Professionals and JBOs do not pay.<sup>14</sup> Clearing Trading Permit Holder Proprietary orders are assessed lower options transaction fees in Non-Penny Pilot options because they also have obligations, which normally do not apply to other market participants (e.g., must have higher capital requirements, clear trades for other market participants, must be members of the Options Clearing Corporation). Accordingly, the differentiation between electronic transaction fees for Customers, Market-Makers, Clearing Trading Permit Holders and other market participants recognizes the differing obligations and contributions made to the liquidity and trading environment on the Exchange by these market participants. Assessing higher fees for transactions in electronic, non-Penny Pilot classes is equitable and not unfairly discriminatory because in non-Penny Pilot classes the spreads are naturally larger than in Penny Pilot classes, and these wider spreads allow for greater profit potential. Limiting this fee increase to electronic transactions is equitable and not unfairly discriminatory because electronic trading requires constant system development and maintenance.

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<sup>14</sup> See CBOE Fees Schedule, Marketing Fee.



Increasing the Marketing Fee for all non-Penny Pilot options classes is reasonable, equitable and not unfairly discriminatory because the proposed fee amount is in line with the amount assessed by another exchange for similar transactions and because it applies to all Market-Makers.<sup>15</sup> Additionally, assessing higher fees for transactions in non-Penny Pilot classes is equitable and not unfairly discriminatory because in non-Penny Pilot classes the spreads are naturally larger than in Penny Pilot classes, and these wider spreads allow for greater profit potential.

Finally, the Exchange believes clarifying its Fees Schedule with regards to when a VIX Tier Appointment is necessary (i.e., acting as a Market-Maker electronically versus on-floor) maintains clarity in the rules and eliminates potential confusion. The alleviation of potential confusion will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees and rebates are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances (as described in the "Statutory Basis" section above). For example, Clearing TPHs have clearing obligations that other market participants do not have. Market-Makers have quoting obligations that other market participants do not have. There is a history in the options

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<sup>15</sup> See PHLX Pricing Schedule, Section II, Multiply Listed Options Fees.

markets of providing preferential treatment to Customers. Further, the Exchange fees and rebates, both current and those proposed to be changed, are intended to encourage market participants to bring increased volume to the Exchange (which benefits all market participants), while still covering Exchange costs (including those associated with the upgrading and maintenance of Exchange systems).

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes are intended to promote competition and better improve the Exchange's competitive position and make CBOE a more attractive marketplace in order to encourage market participants to bring increased volume to the Exchange (while still covering costs as necessary). Further, the proposed changes only affect trading on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and paragraph (f) of Rule 19b-4<sup>17</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2015-058 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-2015-058. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2015-058 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Brent J. Fields  
Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).