

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76842; File No. SR-CBOE-2015-117)

January 6, 2016

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

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 23, 2015, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 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 amend its Fees Schedule, effective December 23, 2015.

Specifically, the Exchange proposes to waive transaction fees incurred as a result of transactions that compress or reduce certain Clearing Trading Permit Holder ("TPH") open positions.

By way of background, SEC Rule 15C3-1 [sic], Net Capital Requirements for Brokers or Dealers ("Net Capital Rules"), requires that every registered broker-dealer maintain certain specified minimum levels of capital. The primary purpose of these rules is to regulate the ability of broker-dealers to meet their financial obligations to customers and other creditors. All of the broker-dealers that are clearing members of the Options Clearing Corporation ("OCC") are subject to the Net Capital Rules. However, a subset of OCC's clearing members are subsidiaries of U.S. bank holding companies. As such, these broker-dealers, through their affiliation with their parent U.S. bank holding companies, must comply with bank regulatory capital requirements pursuant to rule-making required under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). New rule-making recently enacted under Dodd-Frank will require U.S. bank holding companies to hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules. The Exchange is aware that, due to the large contract size of S&P 500 Index ("SPX") options, open interest in certain series will result in extremely large bank regulatory capital requirements but have minimal requirements under the Net Capital Rules. Transactions that would result in the closing of this open interest would have a beneficial impact on the bank regulatory capital requirements of the Clearing TPH's parent company with a minimal impact on regulatory capital required under the capital rules. The Exchange notes that most of these open positions are in out-of-the-money

options and certain spread positions that are essentially riskless strategies because they have little or no market exposure. Particularly, the Exchange notes that given the nature of these options, there is minimal chance for large losses to occur, yet these positions will still be subject to large bank regulatory capital requirements. Exchange transaction fees, however, discourage market participants from closing these positions out even though those market participants may also prefer to close them rather than carry them to expiration³.

In order to encourage the compression of certain out-of-the-money and riskless option positions, the Exchange proposes to rebate all transactions fees for transactions that close these positions, provided they meet certain criteria, as described more fully below. The Exchange believes compression of these positions would improve market liquidity by freeing capital currently tied up in positions for which there is a minimal chance that a significant loss would occur.

The Exchange proposes to limit rebating transaction fees to those transactions that the Exchange believes would have the greatest impact on bank regulatory capital requirements but are also constrained to those positions that have little economic risk associated with them. Specifically, to be eligible for a rebate, a transaction must be: (i) for a complex order with at least five (5) different series in S&P 500 Index (SPX) options, SPX Weeklys (SPXW) options or p.m.-settled SPX options (SPXPM), (ii) a closing-only transaction or, if the transaction involves a Firm order (origin code "F"), an opening transaction executed to facilitate a compression of option positions for a market-maker or joint-back office ("JBO") account; (iii) for a position with

³ For example, an out-of-the-money SPX option market-maker transaction may be worth only a few pennies per contract, but would cost approximately \$0.33 per contract (\$0.20 transaction fee plus \$0.13 SPX Index License Surcharge) to close out.

a required capital charge equal to the minimum capital charge under OCC rules RBH Calculator⁴ or a position comprised of option series with a delta of ten (10) or less and (iv) entered between the first business day following a quarterly expiration through the last business day of that quarter⁵. The Exchange notes that while Clearing TPHs may request that their clients holding the out-of-the-money and riskless positions permit the Clearing TPHs to attempt to close these positions out, firms are not required to do so (i.e., these transactions are voluntary and within the discretion of the Clearing TPHs' clients). The Exchange also proposes to provide that to obtain a

⁴ Under OCC rules, the required capital charge is equal to either the minimum capital charge or an amount equal to the largest potential loss pursuant to OCC's Risk-Based Haircut ("RBH") calculator. The RBH methodology may be used to calculate theoretically based capital charges as set forth within the SEC net capital rule <http://apps.theocc.com/pmc/pmc.do>. For example, a Market-Maker has the following eight-leg position: long 1000 Jan 1000 SPX calls, short 1000 Jan 2000 SPX calls, short 842 Jan 2500 SPX calls, short 89 Jan 2600 SPX calls, long 200 Jan 700 puts, short 200 Jan 750 SPX puts, short 1000 Jan 1000 SPX puts, and long 1000 Jan 2000 SPX puts. Under OCC rules, the minimum capital charge for this position is \$128,435. Using the RBH calculator, there is no potential loss that is greater than this amount; in fact, under each of the 10 equidistant theoretical valuation points of the underlying index, this strategy would net a profit. Therefore, the clearing firm incurs a charge of \$128,435. However, as the RBH calculator values demonstrate, this is essentially a riskless position for which there is a minimal chance that a theoretical loss of \$128,435 could ever occur. Therefore, this position is eligible for the rebate (assuming all requirements are satisfied), because the OCC theoretical minimum capital charge is larger than any potential loss that may result within the range of an 8% decrease to a 6% increase in the underlying index value. Alternatively, a Market-Maker has the following five-leg strategy position: short 892 Jan 1400 SPX calls, short 80 Jan 1500 SPX calls, long 200 Jan 1950 SPX puts, short 200 Jan 2000 SPX puts, and long 165 Jan 2100 SPX puts. Under OCC rules, the minimum capital charge for this position is \$38,425. Using the RBH calculator, an increase in the underlying index value of 6% could cause this position to lose \$12,801,718 (which is the highest potential loss under each of the 10 equidistant theoretical valuation points of the underlying index). Because this potential loss is larger than the theoretical minimum charge, the actual capital requirement is this amount of \$12,801,718. This position is therefore not eligible for the proposed rebate, as there is a risk of a potential large loss on this position.

⁵ For example, the fourth quarter of 2015 standard-Friday expiration occurred on December 18, 2015. For that quarter, qualifying transactions would need to be entered no earlier than December 23, 2015 and no later than December 31, 2015.

rebate,⁶ a TPH must request the rebate with supporting documentation within three (3) days of the transactions.

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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,⁹ 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 providing a rebate of fees for transactions that compress certain out-of-the-money and riskless options positions is reasonable, equitable and not unfairly discriminatory because these positions will result in extremely large bank regulatory capital requirements for Clearing TPHs even though there is minimal chance for large losses to occur.

⁶ Rebate of transaction fees would include the transaction fee assessed along with any other surcharges assessed per contract (e.g., the Index License Surcharge).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(4).

Additionally, these positions have little or no economic benefit to the TPHs that hold the positions, who would likely prefer to close them but for the associated transaction fees. The fee rebate would therefore allow TPHs to close out of these positions that are needlessly burdensome on themselves and Clearing TPHs.

The Exchange believes it is reasonable and not unfairly discriminatory to limit the rebate to transactions that are done to close a position with (i) a required capital charge equal to the minimum capital charge under OCC's RBH Calculator or (ii) option series with a delta of ten (10) or less, because this criteria identifies option positions that are truly out-of-the-money or spread positions that are essentially riskless strategies. Particularly, the Exchange notes theoretically riskless positions can be identified when the required capital charge equals the minimum capital charge under OCC's RBH Calculator. Transactions comprised of option series with a delta of no greater than 10 would indicate that an option position is by definition out-of-the-money. For the reasons discussed above, the Exchange wishes to limit the fee rebate to these types of transactions.

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to limit the rebate to SPX options (including SPXW and SPXPM) because SPX has a substantially higher notional value than other options classes. As such, open interest in SPX has a much greater effect on a bank's regulatory capital requirements. Compressing out-of-the-money and riskless SPX option positions therefore has a greater impact on reducing a bank regulatory capital requirement.

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to limit the rebate to complex orders that involve 5 different series of SPX because the Exchange

believes transactions with 5 legs or more would have the most material impact on a bank's regulatory capital requirements.

The Exchange believes it's reasonable to limit the rebate of transaction fees to closing-only transactions (other than Firm "F" orders). Particularly, if a transaction were to open interest, it would defeat the purpose of the proposed rebate, which is to encourage the closing of positions that are creating high bank regulatory capital requirements for positions that are of low economic benefit and risk and could otherwise be offset. The Exchange believes it's equitable and not unfairly discriminatory to allow Firm ("F") orders to result in opening transactions because, in these instances, the Firm would be facilitating the closing out of these positions for their clients. The Exchange notes that it already waives transaction fees for facilitation orders in all products other than those listed in Underlying Symbol List A.¹⁰

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to limit the rebate to transactions effected after the quarterly expiration through the end of that month because the universe of transactions are not fully known until after the quarterly expiration. Additionally, in order for TPHs to realize the benefit of the transactions under the bank capital regulatory requirements, all transactions must be settled by the end of the financial reporting quarter.

The Exchange believes requiring TPHs to submit a request for a rebate within three business days of the transactions clarifies the manner in which the rebate can be accomplished in a timely manner and will eliminate any confusion and provide a clear procedure for applicants to get a rebate for their compression transactions, removing impediments to and perfecting the

¹⁰ See CBOE Fees Schedule, Equity Options Rate Table, ETF and ETN Options Rate Table and Index Options Rate Table - All Index Products Excluding Underlying Symbol List A Rate Table.

mechanism of a free and open market. Additionally, the Exchange notes that such requirement will apply to all market participants.

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 Act because it applies to all market participants in the same manner with positions that meet the eligible criteria. The proposed change would encourage the closing of positions that needlessly result in burdensome capital requirements that, once closed, would alleviate the capital requirement constraints on TPHs and improve overall market liquidity by freeing capital currently tied up in certain out-of-the-money and riskless positions. 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 rule change applies only to 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 Act¹¹ and paragraph (f) of Rule 19b-4¹² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

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. Please include File Number SR-CBOE-2015-117 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-2015-117. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

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 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-2015-117 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.¹³

Robert W. Errett
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).