

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79745; File No. SR-CBOE-2016-094)

January 5, 2017

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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 23, 2016, 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.

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. Specifically, the Exchange proposes to waive transaction fees incurred from certain transactions executed in compression forums.

SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers) (“Net Capital Rules”) requires every registered broker-dealer [sic] maintain certain specified minimum levels of capital.³ The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring broker-dealers to have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.⁴

All Options Clearing Corporation (“OCC”) clearing members are subject to the Net Capital Rules. However, a subset of clearing members are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S. bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd–Frank Wall Street Reform and Consumer Protection Act.⁵ Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation approved a comprehensive

³ 17 CFR §240.15c3-1.

⁴ In addition, the Net Capital Rules permit various offsets under which a percentage of an option position’s gain at any one valuation point is allowed to offset another position’s loss at the same valuation point (e.g. vertical spreads).

⁵ H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the “Act”) (15 U.S.C. § 78c(a))).

regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.⁶ Generally, these rules impose higher minimum capital requirements, more restrictive capital eligibility standards, and higher asset risk weights than were previously mandated for clearing members that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the rules do not permit deductions for hedged securities or offsetting options positions.⁷ Rather, capital charges under these standards are based on the aggregate notional value of short positions regardless of offsets. As a result, clearing Trading Permit Holders (“TPHs”) generally must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules. The impact of these regulatory capital rules are compounded in the SPX options market due to the large notional value of SPX contracts.

The Exchange believes these regulatory capital requirements could impede efficient use of capital and undermine the critical liquidity role that Market-Makers play in the SPX options market by limiting the amount of capital clearing TPHs can allocate to clearing member transactions. Specifically, the rules may cause clearing TPHs to impose stricter position limits on their clearing members. These stricter position limits may impact the liquidity Market-

⁶ 12 CFR §50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

⁷ Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by market-makers and institutions, are risk-limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying assets), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined. Whereas regulatory capital requirements have historically reflected the risk-limited nature of carrying offsetting positions, these positions may now be subject to large regulatory capital requirements. Various factors, including administration costs; transaction fees; and limited market demand or counterparty interest, however, discourage market participants from closing these positions even though many market participants likely would prefer to close the positions rather than carry them to expiration.

Makers might supply in the SPX market, and this impact may be compounded when a clearing TPH has multiple Market-Maker client accounts, each having largely risk-neutral portfolio holdings.⁸

Currently, TPHs may reduce open interest in SPX options for regulatory capital purposes by simply trading out of positions at the end of each month as they would trade any open position. The Exchange currently waives transaction fees incurred as a result of transactions that compress or reduce certain open positions.⁹ However, the Exchange believes wide-scale reduction of open interest in SPX options in such a manner is burdensome and inefficient. Accordingly, the Exchange recently adopted a procedure to facilitate these types of transactions on the Exchange to allow TPHs seeking to close positions in SPX options to more easily identify counterparty interest and efficiently conduct closing transactions in SPX options on the Exchange in “compression forums” without interfering with normal SPX trading.¹⁰ In general,

⁸ Several TPHs have indicated to the Exchange that these rules could hamper their ability to provide consistent liquidity in the SPX options market unless they reduce their positions in SPX by the end of the year.

⁹ See CBOE Fees Schedule, Footnote 41 (The Exchange rebates transaction fees if a transaction (i) involves 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) is a closing-only transaction or, if the transaction involves a Firm order (origin code “F”), is an opening transaction executed to facilitate a compression of option positions for a market-maker or joint-back office (JBO) account executed as a cross pursuant to and in accordance with CBOE Rule 6.74(b) or (d); (iii) is a position with a required capital charge equal to the minimum capital charge under OCC rules RBH calculator or is a position comprised of option series with a delta of ten or less; and (iv) is entered on any of the final three (3) trading days of any calendar month. To receive this rebate, a rebate request with supporting documentation must be submitted to the Exchange within three business days of the transactions.); see also Securities Exchange Act Release Nos. 79279 (November 10, 2016), 81 FR 81200 (November 17, 2016) (SR-CBOE-2016-074) and 76842 (January 6, 2016), 81 FR 1455 (January 12, 2016) (SR-CBOE-2015-117).

¹⁰ See Rule 6.56; see also Securities Exchange Act Release No. 79610 (December 20, 2016) (SR-CBOE-2016-090).

under this new process, each month, TPHs may submit to the Exchange lists of open SPX positions (these positions are referred to in Rule 6.56 as “compression-list positions”) they wish to close against opposing (long/short) positions of other TPHs. The Exchange would then aggregate these positions into a single list to allow TPHs to more easily identify those positions with counterparty interest on the Exchange. The Exchange will then provide a forum on the Exchange’s trading floor during which TPHs could conduct closing-only transactions in series of SPX options. The Exchange will hold compression forums on the last three trading days of each calendar month.

To encourage TPHs to submit compression-list positions in advance of monthly compression forums and compress these positions during compression forums, the Exchange proposes to rebate all transaction fees for closing transactions involving SPX and SPXW compression-list positions executed in a compression forum (pursuant to Rule 6.56).¹¹ 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 further believes advanced submission of compression-list positions to the Exchange will allow TPHs to more easily identify counterparty interest and efficiently conduct closing transactions of these positions during compression forums. The Exchange notes the submission of compression-list positions is completely voluntary, open to all TPHs with open positions in SPX, and does not require a TPH to trade any compression-list position or participate in a compression forum. To receive a rebate, a TPH must submit to the Exchange a rebate request with supporting documentation within three business days of the transactions.

¹¹ A rebate of transaction fees would include the transaction fee assessed along with any other surcharges assessed per contract (e.g., the Index License Surcharge).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ 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 Section 6(b)(4) of the Act,¹⁴ which requires Exchange rules to provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes rebating transaction fees to TPHs that submit compression-list positions to the Exchange in advance is reasonable and not unfairly discriminatory because it encourages TPHs to submit to the Exchange these positions in advance of compression forums. The Exchange may then aggregate these positions, which will allow TPHs to more easily identify counterparty interest and increase opportunities for TPHs to ultimately close these positions during a compression forum. 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. All TPHs

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

may submit compression-list positions, are subject to the same submission deadline, and may participate in compression forums.

The Exchange believes rebating transaction fees for transactions closing compression-list positions during compression forums is reasonable, equitable and not unfairly discriminatory because compression forums will provide an opportunity for TPHs to efficiently conduct closing transactions of these positions. These positions would result in extremely large bank capital requirements for Clearing TPHs even though there is minimal change [sic] for large losses to occur. Additionally, these positions have little or no economic benefit to the TPHs that hold these positions, who would likely prefer to close them but for the associated transaction fees. The fee rebate therefore allows 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 close compression-list positions, which must either have a required capital charge equal to the minimum capital charge pursuant to the RBH calculator in OCC's rules or a delta of ten or less, because these criteria identify 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 an option position that is, by definition, out-of-the-money.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to limit the rebate to SPX options (including SPXW) because only SPX options may be traded in compression forums. 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 riskless SPX option positions therefore has a greater impact on reducing a bank regulatory capital requirement.

The Exchange believes it is reasonable to limit the rebate of transactions fees to closing-only transactions, [sic] only closing transactions are permitted during compression forums. If a transaction were to open interest, it would defeat the purpose of the proposed rebate, which is to encourage the closing of positions creating high bank regulatory capital requirements for positions that are of low economic benefit and risk and could otherwise be offset. The Exchange notes it already waives transaction fees for compression of certain eligible SPX positions.¹⁵

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 mechanism of a free and open market. Additionally, the Exchange notes such requirement will apply to all TPHs and is similar to the current requirement for requesting a rebate of transaction fees for compression of certain eligible SPX positions.¹⁶

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

CBOE 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 the proposed rule change will impose any burden on intramarket competition not necessary or appropriate in furtherance of the Act because it applies to all TPHs in the same manner with positions that meet the eligible criteria. The proposed rule change

¹⁵ See supra note 9.

¹⁶ Id.

would encourage closing of positions that needlessly result in burdensome capital requirements. Closing of the positions 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 SPX positions. The proposed rule change also encourages TPHs to submit to the Exchange in advance a list of these positions, which will allow TPHs to more easily identify counterparty interest and increase opportunities for to efficiently conduct closing transactions of these positions during compression forums.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change applies only to the trading of SPX options, which are exclusively-listed on CBOE. To the extent the proposed rule change makes the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

Furthermore, as stated above, submission of lists of positions for compression is completely voluntary, open to all TPHs, and non-binding, in that submission of a list does not require a TPH to trade any position or even represent any position in a trading crowd. Lists of positions will be made available to all TPHs and contain very limited information regarding open interest in positions in SPX. The list will simply alert TPHs to certain SPX positions that other TPHs are interested in closing at the end of each calendar month.

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 Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ 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-2016-094 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2016-094. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 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 such 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-2016-094 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.¹⁹

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Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).