

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80671; File No. SR-CBOE-2017-039)

May 15, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 1, 2017, 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 the 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 amend its Fees Schedule to adopt a new Supplemental CBOE Volatility Index (“VIX”) Total Firm Volume Discount for Clearing Trading Permit Holders’ (“TPHs”) proprietary orders (“Supplemental VIX Discount”). The Supplemental VIX Discount allows VIX options transaction fees for Clearing TPHs’ (including its Non-TPH affiliates) proprietary orders to be discounted provided a Clearing TPH (including its Non-TPH affiliates) reaches certain VIX firm volume percentage thresholds during a calendar month.

The proposed transaction fee discounts for the different volume percentage tiers for the Supplemental VIX Discount are as follows:

VIX Firm Volume Percentage	Transaction Fee Discount
11.00% - 12.99%	20%
13.00% - 14.99%	30%
Above 14.99%	40%

The VIX Discount applies to orders bearing the origin codes “F” and “L.” The purpose of the VIX Discount is to encourage greater Clearing TPH proprietary trading of VIX options while maintaining an incremental incentive for Clearing TPHs to strive for the highest discount level.

To determine a Clearing TPH’s applicable discount, the Exchange will calculate a Clearing TPH’s total proprietary order volume in VIX as a percentage of all Clearing TPHs’ total proprietary order volume in VIX during a calendar month. Total proprietary order volume is calculated by accounting for all volume in VIX with an “F” or “L” Origin Code, with volume in

the Extended Trading Hours (ETH) aggregated with Regular Trading Hours (RTH) volume for the same calendar month included for purposes of calculating the VIX firm volume threshold and applicable transaction fee discount. The transaction fee discount percentage will apply to all of a Clearing TPH's transaction fees assessed for proprietary order volume in VIX during the calendar month.

In conjunction with the adoption of the Supplemental VIX Discount, the Exchange proposes to amend Footnote 11 of its Fees Schedule to reference the Supplemental VIX Discount. Like the Clearing TPH Fee Cap, CBOE Proprietary Products Sliding Scale, and the Proprietary VIX Sliding Scale, the VIX Discount will apply to (i) Clearing TPH proprietary orders ("F" origin code), and (ii) orders of Non-TPH Affiliates of a Clearing TPH.<sup>3</sup> A "Non-TPH Affiliate" would be defined for the purposes of the VIX Discount the same way it is defined for the Clearing TPH Fee Cap, CBOE Proprietary Products Sliding Scale, and the Proprietary VIX Sliding Scale: A 100% wholly-owned affiliate or subsidiary of a Clearing TPH that is registered as a United States or foreign broker-dealer and that is not a CBOE TPH. As with the Clearing TPH Fee Cap, CBOE Proprietary Products Sliding Scale, and the Proprietary VIX Sliding Scale, only proprietary orders of the Non-TPH Affiliate ("L" origin code) effected for purposes of hedging the proprietary over-the-counter trading of the Clearing TPH or its affiliates will be included in calculating the VIX Discount, and such orders must be marked with a code approved by the Exchange identifying the orders as eligible for the VIX Discount. As with the Clearing TPH Fee Cap, CBOE Proprietary Products Sliding Scale, and the Proprietary VIX Sliding Scale, each Clearing TPH is responsible for notifying the TPH Department of all of its affiliations so that fees and contracts of the Clearing TPH and its affiliates may be aggregated for

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<sup>3</sup> See CBOE Fees Schedule, Footnote 11.

purposes of the VIX Discount and is required to certify the affiliate status of any Non-TPH Affiliate whose trading activity it seeks to aggregate. In addition, each Clearing TPH is required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate.

As with the Clearing TPH Fee Cap, the CBOE Proprietary Products Sliding Scale, and the Proprietary VIX Sliding Scale, the Exchange will aggregate the fees and trading activity of separate Clearing TPHs for the purposes of the VIX Discount if there is at least 75% common ownership between the Clearing TPHs as reflected on each Clearing TPH's Form BD, Schedule A. A Clearing TPH's fees and contracts executed pursuant to a CMTA agreement (i.e., executed by another clearing firm and then transferred to the Clearing TPH's account at the OCC) are aggregated with the Clearing TPH's non-CMTA fees and contracts for purposes of the VIX Discount.

## 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.<sup>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>5</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the

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

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

Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</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 adoption of the Supplemental VIX Discount is reasonable because it will allow Clearing TPHs who engage in VIX options trading the opportunity to obtain a discount on its transaction fees. Similarly, aggregating the fees and trading activity of separate Clearing TPHs for the purposes of the Supplemental VIX Discount if there is at least 75% common ownership between the Clearing TPHs and aggregating a Clearing TPH's fees and contracts executed pursuant to a CMTA agreement with the Clearing TPH's non-CMTA fees and contracts for the purpose of the Supplemental VIX Discount is reasonable because this will allow more Clearing TPHs to qualify for the discount at the higher rates in the Supplemental VIX Discount table.

Applying the Supplemental VIX Discount to Clearing TPH (and their affiliates, in the manner described above) proprietary orders only is equitable and not unfairly discriminatory because, as noted above, Clearing TPHs take on a number of obligations and responsibilities (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations that other market participants are not required to undertake. Further, the Supplemental VIX Discount is designed to encourage increased Clearing TPH proprietary VIX options volume, which provides increased VIX options volume and greater trading opportunities for all market participants. Similarly, applying higher discount rates for Clearing TPHs who hit

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<sup>6</sup> Id.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

the higher percentage of total VIX options contract proprietary volume of all Clearing TPHs on the VIX Discount is equitable and not unfairly discriminatory because this is designed to encourage increased TPH proprietary VIX options volume, which provides increased VIX options volume and greater trading opportunities for all Clearing TPHs, including those who are not able to reach the higher volume percentages. Moreover, the Exchange already offers other fee-lowering programs (such as the Fee Cap, CBOE Proprietary Products Sliding Scale, and Proprietary VIX Sliding Scale) which entail lower fees for Clearing TPHs (and their affiliates, in the manner described above) and are limited to Clearing TPHs (and their affiliates, in the manner described above).

Applying the Supplemental VIX Discount to VIX options and not to other products is equitable and not unfairly discriminatory because the Exchange would like to encourage more trading in VIX.

The Exchange believes adding references to the Supplemental VIX Discount in Footnote 11 of the Fees Schedule alleviates potential confusion by investors reading the Fees Schedule in light of the proposed change. This avoidance of confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects 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 is 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 the Supplemental VIX Discount applies only to Clearing TPH proprietary orders,

Clearing TPHs take on a number of obligations and responsibilities (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations that other market participants are not required to undertake. Further, the Supplemental VIX Discount is designed to encourage increased Clearing TPH proprietary VIX options volume, which provides increased VIX options volume and greater trading opportunities for all market participants. Therefore, the Exchange believes that any potential effects on intramarket competition that the proposed adoption of the Supplemental VIX Discount may cause are therefore justifiable. 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.

B. 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>8</sup> and paragraph (f) of Rule 19b-4<sup>9</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>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</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 No. SR-CBOE-2017-039 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 No. SR-CBOE-2017-039. 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, D.C. 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 No. SR-CBOE-2017-039, 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>10</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).