

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81613; File No. SR-CBOE-2017-061)

September 14, 2017

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Correct an Inadvertent Marking Error in 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 September 6, 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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 to correct an inadvertent marking error made to the Exhibit 5 in a previous rule filing. Specifically, on January 27, 2017, the Exchange filed a rule filing, SR-CBOE-2017-011, which proposed to expand the Marketing Fee program to Lead Market-Makers and also make certain clarifications

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

to Footnote 6 of the Fees Schedule (which governs the Marketing Fee program), effective February 1, 2017.⁵

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

The Exchange proposes to amend its Fees Schedule to correct an inadvertent marking error made to the Exhibit 5 in a previous rule filing. Specifically, on January 27, 2017, the Exchange filed a rule filing, SR-CBOE-2017-011, which proposed to expand the Marketing Fee program to Lead Market-Makers and also make certain clarifications to Footnote 6 of the Fees Schedule (which governs the Marketing Fee program), effective February 1, 2017.⁶ The Exchange notes that it mistakenly used outdated text contained in Footnote 6 of the Fees Schedule in the Exhibit 5 of that filing. Particularly, prior to filing

⁵ See Securities Exchange Act Release No. 80003 (February 9, 2017), 82 FR 10846 (February 15, 2017) (SR-CBOE-2017-011).

⁶ See Securities Exchange Act Release No. 80003 (February 9, 2017), 82 FR 10846 (February 15, 2017) (SR-CBOE-2017-011).

SR-CBOE-2017-011, Footnote 6 included the statement that “...the marketing fee shall not apply to DJX, MXEA, MXEF, MNX, NDX, XSP or Underlying Symbol List A (34) excluding binaries options.”⁷ The Exhibit 5 filed in SR-CBOE-2017-011 however, inadvertently left out the reference to “MXEA, MXEF, MNX, NDX” in that same sentence. The Exchange notes that it was not its intention to start including those products in the Marketing Fee program and also notes that no such change was otherwise referenced or implied in the 19b-4 of SR-CBOE-2017-011 or any other filing since then.⁸ Rather it was an inadvertent mistake that the Exchange seeks to correct. Accordingly, the Exchange proposes to add back the reference to “MXEA, MXEF, MNX, NDX” to the sentence in Footnote 6 that lists the excluded option classes from the marketing fee. No substantive changes are being made by the proposed rule change.

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.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ 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,

⁷ See Securities Exchange Act Release No. 76923 (January 15, 2016), 81 FR 3841 (January 22, 2016) (SR-CBOE-2016-002), which rule filing was the last rule filing before SR-CBOE-2017-011 to amend Footnote 6 of the Fees Schedule.

⁸ See Securities Exchange Act Release No. 80003 (February 9, 2017), 82 FR 10846 (February 15, 2017) (SR-CBOE-2017-011).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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.

The Exchange believes correcting an inadvertent marking error from a previous rule filing in order to accurately reflect the option classes that are excluded from the marketing fee will alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system and protecting investors and the public interest.

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

The Exchange 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. As discussed above, the proposed change is merely intended to correct an inadvertent marking error made in a previous rule filing, which will alleviate potential confusion.

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

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public

interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,¹¹ the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five day refiling requirement and the 30-day operative delay so that the Exchange may immediately correct the Fees Schedule. The Commission notes that the proposed rule change does not present any new, unique or substantive issues, but rather is merely correcting an error and that waiver of the five-day prefiling requirement and the 30-day operative delay will help prevent potential confusion to market participants as to CBOE's intended applicability of the marketing fee. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.¹⁶

¹¹ The Exchange has satisfied this requirement.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ Id.

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ For purposes only of waiving the five-day prefiling requirement and the 30-day

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-2017-061 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-2017-061. 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

operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<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 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-2017-061 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.¹⁷

Eduardo A. Aleman
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).