

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83241; File No. SR-CBOE-2018-039)

May 15, 2018

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Fees Schedule in Connection with the Exchange's Planned Migration of Standard Third-Friday Options on the S&P 500 Index to the Hybrid Trading System from the Hybrid 3.0 System

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 3, 2018, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 in connection with the Exchange's planned migration of standard third-Friday options on the S&P 500 Index ("SPX options") to the Hybrid Trading System from the Hybrid 3.0 System.

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

By way of background, a.m.-settled standard third-Friday options on the S&P 500 Index ("SPX options") were previously traded on the Hybrid 3.0 trading platform. On April 30, 2018, the Exchange retired the Hybrid 3.0 platform and transitioned SPX options series then traded on the Hybrid 3.0 trading platform during Regular Trading Hours ("RTH") onto the standard Hybrid trading platform. The Exchange notes that SPX options were the only product traded on the Hybrid 3.0 platform and consequently, the symbol for these series remains SPX. In light of SPX's transition to Hybrid, the Exchange proposes to amend its Fees Schedule with respect to references to Hybrid 3.0 and also adopt an SPX Select Market-Makers ("SPX SMMs") financial incentive program.<sup>5</sup>

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<sup>5</sup> The Exchange initially filed the proposed fee changes on April 20, 2018 (SR-CBOE-2018-032). On May 3, 2018, the Exchange withdrew that filing and

First, the Exchange proposes to eliminate references to Hybrid 3.0 in the Fees Schedule. Particularly, the Exchange proposes to rename the “Hybrid 3.0 Execution Surcharge (SPX only)” to the “SPX Hybrid Execution Surcharge (SPX only)”. As noted above, SPX options were the only product available to trade on Hybrid 3.0 and as such, the term Hybrid 3.0 as used for the Hybrid 3.0 Execution Surcharge was synonymous with SPX options. The Exchange similarly proposes to delete and update references to Hybrid 3.0 in corresponding Footnote 21. The Exchange next proposes to eliminate the reference to Hybrid 3.0 in the “Quoting Bandwidth” section under “Trading Permit Descriptions” in the Trading Permit and Tier Appointment Fees table. Specifically, the Fees Schedule currently provides: “To the extent a Market-Maker is able to submit electronic quotes in a Hybrid 3.0 class (such as an LMM that streams quotes in the class or a Market-Maker or LMM that streams quotes in a series of a Hybrid 3.0 class that trades on the Hybrid Trading System), the Market-Maker shall receive the quoting bandwidth allowance to quote in, and only in, that class.” The Exchange proposes to eliminate the reference to Hybrid 3.0 class (which includes both SPX and SPXW) and replace it with “SPX and/or SPXW”. The Exchange also proposes to eliminate the parenthetical that follows the new reference, as it does not believe it’s necessary given that the proposed reference specifies the exact products affected (i.e., SPX and SPXW). The Exchange notes that no substantive changes are being made by the proposed “Hybrid 3.0” deletions and corresponding reference updates.

The Exchange lastly proposes to adopt a financial incentive program for SPX Select Market-Makers (“SPX SMMs”), effective May 1, 2018. More specifically, the

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submitted this filing.

Exchange proposes to provide incentives to Market-Makers that are appointed as SPX SMMs and meet heightened quoting obligations.<sup>6</sup> SPX SMMs that meet the heightened quoting standard (which shall be explained herein), will receive one Market-Maker Permit and one SPX Tier Appointment free of charge.

By way of background, the Exchange previously appointed Lead Market-Makers (“LMMs”) in SPX. The Exchange does not intend to appoint LMMs in SPX following its transition to the Hybrid trading platform. Rather, the Exchange proposes to provide a financial incentive to Market-Makers that satisfy heightened quoting standards and are appointed by the Exchange to serve as SPX SMMs.<sup>7</sup> Similar to LMMs, the Exchange proposes to provide that it may approve one or more Market-Makers to act as an SMM in SPX for terms of at least one year.<sup>8</sup> Various factors will be considered by the Exchange in selecting SPX SMMs, which include: adequacy of capital, experience in trading options, presence in the trading crowd, adherence to Exchange rules and ability to meet the heightened quoting standard, described further below. The Exchange notes that the factors it considers in appointing SPX SMMs are the same as the factors it currently uses to appoint

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<sup>6</sup> SPX SMMs would serve as SPX SMMs during the RTH session only for a.m.-settled standard third-Friday options on the S&P 500 Index only (i.e., does not apply to SPXW).

<sup>7</sup> This is similar to Market-Makers that serve as LMMs during the Exchange’s Extended Trading Hours Session (“ETH”) (including SPX LMMs during ETH).

<sup>8</sup> On March 23, 2018, the Exchange issued an Exchange Notice which announced that the Exchange had appointed 4 LMMs (now proposed to be known as “SPX SMMs”) in SPX for A.M.-settled SPX options (P.M.-settled options, which already trade on Hybrid, will continue to utilize a competing Market-Maker structure without any LMMs). The SPX SMM appointments will be effective for a one-year period, beginning on the launch date for SPX trading on Hybrid. The financial incentive will not apply for the month of April 2018.

LMMs.<sup>9</sup> The Exchange also proposes to provide that removal of an SPX SMM may be effected by the Exchange on the basis of the failure of the SPX SMM to meet the heightened quoting standards or any other applicable Exchange Rule, which standard is the same as used for the removal of LMMs.<sup>10</sup> If an SPX SMM is removed or if for any reason an SPX SMM is no longer eligible for, or resigns, its appointment, the Exchange may appoint one or more interim SPX SMMs for the remainder of the term or shorter time period designated by the Exchange.

With respect to quoting obligations, the Exchange first notes that to the extent the Exchange approves a Market-Maker to act as an SPX SMM, the SMM must comply with the continuous quoting obligation<sup>11</sup> and other obligations of Market-Makers described in Cboe Options Rules. The Exchange proposes that an SPX SMM will receive one Market-Maker Trading Permit and one SPX Tier Appointment free of charge if it (1) provides continuous electronic quotes in 95% of all SPX series 90% of the time in a given month, (2) submits opening quotes that are no wider than the Opening Exchange Prescribed Width (“OEPW”) within one minute of the initiation of an opening rotation in any series that is not open due to the lack of a qualifying quote, on all trading days, to ensure electronic quotes on the open that allow the series to open, (3) submit opening quotes that are no wider than the OEPW quote by 8:00 am (CT) on volatility settlement days and (4) provide quotes for the end-of-month fair value closing rotation on a rotating basis. The Exchange may consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances. SPX SMMs will not

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<sup>9</sup> See Cboe Options Rule 8.15(a)(i).

<sup>10</sup> See Cboe Options Rule 8.15(a)(ii).

<sup>11</sup> See e.g., Cboe Options Rule 8.7.

be obligated to satisfy the aforementioned heightened quoting standard. Rather, SPX SMMs will only receive a waiver of fees otherwise assessed for one Market-Maker Trading Permit and one SPX Tier Appointment if they satisfy the abovementioned heightened quoting standard. If an SPX SMM does not meet the heightened quoting standard, then they simply will not receive one free Trading Permit and Tier Appointment for that month. The Exchange believes the proposed incentive however, will encourage SPX SMMs to provide significant liquidity in SPX. Additionally, the Exchange notes that it expects that TPHs may need to undertake expenses to be able to quote at a significantly heightened standard in these classes, such as purchase additional bandwidth. The Exchange notes that the proposed financial incentive program for SPX SMMs is similar to the rebate program adopted for ETH LMMs, as both programs offer financial benefits for meeting increased quoting standards as opposed to providing benefits for those that are required to meet heightened quoting obligations.<sup>12</sup>

## 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>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</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,

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<sup>12</sup> See Cboe Options Fees Schedule, Footnote 38.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>15</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 eliminating references to “Hybrid 3.0” in the Fees Schedule helps avoid confusion by eliminating language that will be rendered obsolete following the transition of moving the only product trading on the Hybrid 3.0 platform (i.e., SPX options series) to the Hybrid trading platform, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. The Exchange notes that no substantive changes are being made by eliminating references to Hybrid 3.0.

The Exchange believes it is reasonable to offer SPX SMMs that meet a certain heightened quoting standard (described above) one free Market-Maker Trading Permit and one SPX Tier Appointment given the potential added costs that an SPX SMM may undertake in order to satisfy that heightened quoting standard (e.g., having to purchase additional bandwidth). Additionally, if an SPX SMM does not satisfy the heightened quoting standard, then it will not receive the proposed free Trading Permit and Tier Appointment.

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

The Exchange believes it is equitable and not unfairly discriminatory to only offer the financial incentive to SPX SMMs because it benefits all market participants trading in the SPX to encourage SPX SMMs to satisfy the heightened quoting standards, which may increase liquidity and provide more trading opportunities and tighter spreads. Because there are no additional required obligations imposed on SPX SMMs, they receive no additional benefits (e.g., no participation entitlement). The Exchange notes that creating an incentive in which SPX SMMs must satisfy a heightened standard encourages Market-Makers that are appointed as SPX SMMs to provide significant liquidity in SPX. The Exchange notes that without the proposed financial incentive, there would not be sufficient incentive for Trading Permit Holders to undertake an obligation to quote at heightened levels, which could result in lower levels of liquidity. The SPX SMM incentive program is also reasonable, as it is designed to encourage increased quoting to add liquidity in SPX, thereby protecting investors and the public interest.

The Exchange also believes the incentive program is not unfairly discriminatory, as all Trading Permit Holders have the opportunity to apply to act as SPX SMMs and participate in the incentive program, and the Exchange will appoint SPX SMMs based on the factors described above, which are proposed to be set forth in the Fees Schedule and otherwise disclosed to Trading Permit Holders.<sup>16</sup> The Exchange notes that the factors used by the Exchange in appointing SPX SMMs are the same currently used to appoint

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<sup>16</sup> See Exchange Notice “Solicitation for SPX Lead Market-Makers (“LMMs”) During Regular Trading Hours (“RTH”)” (dated February 27, 2018).



LMMs.<sup>17</sup> The Exchange lastly notes that a similar financial incentive program was adopted for appointed LMMs in ETH.<sup>18</sup>

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 the financial incentive is offered only to certain market participants (i.e., appointed SPX SMMs that meet a heightened quoting standard), those market participants must meet heightened quoting standards to receive the financial incentive. Additionally, SPX SMMs may incur additional costs to meet the heightened quoting standard. The Exchange believes the financial incentive of one free Trading Permit and Tier Appointment encourages those market participants to bring liquidity to the Exchange in SPX options (which benefits all market participants).

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 SPX options are proprietary products that will only be traded on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

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<sup>17</sup> See Cboe Options Rule 8.15(i).

<sup>18</sup> See Cboe Options Fees Schedule, Footnote 38 and Cboe Options Rule 6.1A.

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 proposed rule change 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>21</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>22</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, waiver of the operative delay will allow the immediate implementation of the SPX SMM program and updated references relating to “Hybrid 3.0”. The Exchange also states that delaying the

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of 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.

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii).

implementation of the SPX SMM program could result in lower levels of liquidity, as without the program there may not be sufficient incentive for Trading Permit Holders to undertake an obligation to quote at heightened levels. In addition, the Exchange states that the SPX SMM program does not present any new or novel issues. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. As discussed above by the Exchange, there are no new or novel issues raised by the proposed rule change. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>23</sup>

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 shall 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

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<sup>23</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2018-039 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 Number SR-CBOE-2018-039. 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 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to

File Number SR-CBOE-2018-039 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>24</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).