

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83587; File No. SR-CBOE-2018-051)

July 3, 2018

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule with Respect to Expiring Fee Waivers and Remove the FLEX Trader Incentive Program

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 July 2, 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 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 relating to various fee waivers and the Flex Trader Incentive Program that are set to expire June 30, 2018.

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.

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).

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 relating to various fee waivers and the Flex Trader Incentive Program that are set to expire June 30, 2018.

VIX and Select Sector License Index Surcharge

The Exchange first proposes to extend the current waiver of the VIX and Select Sector Index License Surcharge of \$0.10 per contract for Clearing Trading Permit Holder Proprietary ("Firm") (origin codes "F" or "L") VIX and Select Sector orders that have a premium of \$0.10 or lower and have series with an expiration of seven (7) calendar days or less. The Exchange adopted the current waiver to reduce transaction costs on expiring, low-priced VIX and Select Sector options, which the Exchange believed would encourage Firms to seek to close and/or roll over such positions close to expiration at low premium levels, including facilitating customers to do so, in order to free up capital and encourage additional trading. The Exchange had proposed to waive the surcharge through June 30, 2018, at which time the Exchange had stated that it would evaluate whether the waiver has in fact prompted Firms to close and roll over these positions close to expiration as intended. The Exchange believes the waiver encourages Firms to do so and as such, proposes to extend the waiver of the surcharge through December 31, 2018, at

which time the Exchange will again reevaluate whether the waiver has continued to prompt Firms to close and roll over positions close to expiration at low premium levels. Accordingly, the Exchange proposes to delete the reference to the current waiver period of June 30, 2018 from the Fees Schedule and replace it with December 31, 2018.

Extended Trading Hour Fees

In order to promote and encourage trading during the Extended Trading Hours (“ETH”) session, the Exchange currently waives ETH Trading Permit and Bandwidth Packet fees for one (1) of each initial Trading Permits and one (1) of each initial Bandwidth Packet, per affiliated TPH. The Exchange notes that waiver is set to expire June 30, 2018. The Exchange also waives fees through June 30, 2018 for a CMI and FIX login ID if the CMI and/or FIX login ID is related to a waived ETH Trading Permit and/or waived Bandwidth packet. In order to continue to promote trading during ETH, the Exchange wishes to extend these waivers through December 31, 2018.

RLG, RLV, RUI, AWDE, FTEM, FXTM and UKXM Transaction Fees

In order to promote and encourage trading of seven new FTSE Russell Index products (i.e., Russell 1000 Growth Index (“RLG”), Russell 1000 Value Index (“RLV”), Russell 1000 Index (“RUI”), FTSE Developed Europe Index (“AWDE”), FTSE Emerging Markets Index (“FTEM”), China 50 Index (“FXTM”) and FTSE 100 Index (“UKXM”)), the Exchange waives all transaction fees (including the Floor Brokerage Fee, Index License Surcharge and CFLEX Surcharge Fee) for each of these products. This waiver however, is set to expire June 30, 2018. In order to continue to promote trading of these options classes, the Exchange proposes to extend the fee waiver through December 31, 2018.

FLEX Asian and Cliquet Flex Trader Incentive Program

By way of background, a FLEX Trader is entitled to a pro-rata share of the monthly compensation pool based on the customer order fees collected from customer orders traded against that FLEX Trader's orders with origin codes other than "C" in FLEX Broad-Based Index Options with Asian or Cliquet style settlement ("Exotics") each month ("Flex Trader Incentive Program"). The Fees Schedule provides that the Flex Trader Incentive Program is set to expire either by June 30, 2018 or until total average daily volume in Exotics exceeds 15,000 contracts for three consecutive months, whichever comes first. The Exchange notes that total average daily volume in Exotics has not yet exceeded 15,000 contracts for three consecutive months. The Exchange also has determined that it no longer wishes to maintain this program and as such does not intend to extend the program past June 30, 2018. As such, the Exchange proposes to remove the program (currently set forth in Footnote 42) from the Fees Schedule.

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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ 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 it's appropriate to continue to waive the VIX and Select Sector Index License Surcharge for Clearing Trading Permit Holder Proprietary VIX and Select Sector orders that have a premium of \$0.10 or lower and have series with an expiration of 7 calendar days or less because the Exchange wants to continue encouraging Firms to roll and close over positions close to expiration at low premium levels. Particularly, the Exchange believes it's reasonable to waive the entire \$0.10 per contract surcharge because without the waiver of the surcharge, firms are less likely to engage in these transactions, as opposed to other VIX and Select Sector transactions, due to the associated transaction costs. The Exchange believes it's equitable and not unfairly discriminatory to limit the waiver to Clearing Trading Permit Holder Proprietary orders because they contribute capital to facilitate the execution of VIX and Select Sector customer orders with a premium of \$0.10 or lower and series with an expiration of 7 calendar days or less. Finally, the Exchange believes it's reasonable, equitable and not unfairly discriminatory to provide that the surcharge will be waived through December 2018, as it gives the Exchange additional time to evaluate if the waiver is continuing to have the desired effect of encouraging these transactions.

The Exchange believes extending the waiver of ETH Trading Permit and Bandwidth Packet fees for one of each type of Trading Permit and Bandwidth Packet, per affiliated TPH through December 31, 2018 is reasonable, equitable and not unfairly discriminatory, because

⁷ 15 U.S.C. 78f(b)(4).

those respective fees are being waived in their entirety, which promotes and encourages trading during the ETH session and applies to all ETH TPHs. The Exchange believes it's also reasonable, equitable and not unfairly discriminatory to waive fees for Login IDs related to waived Trading Permits and/or Bandwidth Packets in order to promote and encourage ongoing participation in ETH and also applies to all ETH TPHs.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to extend the waiver of all transaction fees for RLG, RLV, RUI, AWDE, FTEM, FXTM and UKXM transactions, including the Floor Brokerage fee, the License Index Surcharge and CFLEX Surcharge Fee, because the respective fees are being waived in their entirety, which promotes and encourages trading of these products which are still relatively new and applies to all TPHs.

The Exchange believes eliminating the FLEX Asian and Cliquet Flex Trading Incentive Program is reasonable, equitable and not unfairly discriminatory because the program is not providing the desired result of incentivizing FLEX Traders to trade FLEX Asian and Cliquet options. The Exchange believes the proposed change is not unfairly discriminatory because it will apply equally to all Flex Traders.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are intended to either extend existing fee waivers or eliminate from the Fees Schedule a program that is expiring on June 30, 2018 and apply to all TPHs uniformly. The proposed changes only affect trading on Cboe Options. The Exchange believes the proposed change therefore does not raise any competitive issues.

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 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)(iii) of the Act⁸ and subparagraph (f)(6) Rule 19b-4 thereunder.⁹

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative for 30 days after the date of filing. However Rule 19b-4(f)(6)(iii)¹¹ 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 requested that the Commission waive the 30-day operative delay to permit the applicable fee waivers to be extended on a timely basis and without interruption and to update its rule text to reflect the sunseting of the FLEX Trader Incentive Program as scheduled. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal to extend to December 31, 2018 temporary incentives designed to encourage trading in the above-discussed products and trading sessions, and to remove obsolete text concerning the FLEX

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

Trader Incentive Program, does not raise any new or novel issues. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹²

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2018-051 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.

¹² For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-CBOE-2018-051. 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, 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. 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-2018-051 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

Eduardo A. Aleman
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).