

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85100; File No. SR-CBOE-2019-002)

February 11, 2019

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Establish Fees for a Recently Added Option that Overlies the S&P Select Sector Index Options (“Sector Index options”)

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 February 5, 2019, 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, 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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to establish fees for a recently added option that overlies the S&P Select Sector Index options (“Sector Index options”). The text of the proposed rule change is provided in Exhibit 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

On October 4, 2017, the Exchange submitted a proposed rule change to amend certain rules in connection with listing ten S&P Select Sector Index³ options under generic narrow-based listing standards, which became effective on November 3, 2017.⁴ On March 1, 2018, the Exchange established fees for Sector Index options.⁵ On October 15, 2018, the Exchange amended its rules to authorize the Exchange to list for trading options on a recently added eleventh S&P Select Sector Index – the S&P Communication

³ There are ten S&P Select Sector Indexes: S&P Financial Select Sector Index (IXM), S&P Energy Select Sector Index (IXE), S&P Technology Select Sector Index (IXT), S&P Health Care Select Sector Index (IXV), S&P Utilities Select Sector Index (IXU), S&P Consumer Staples Select Sector Index (IXR), S&P Industrials Select Sector Index (IXI), S&P Consumer Discretionary Select Sector Index (IXY), S&P Materials Select Sector Index (IXB), and S&P Real Estate Select Sector Index (IXRE). The options listing symbols for options overlying these indexes will be: SIXM, SIXE, SIXT, SIXV, SIXU, SIXR, SIXI, SIXY, SIXB, and SIXRE, respectively.

⁴ See Securities Exchange Act Release No. 81879 (October 16, 2017), 82 FR 48858 (October 20, 2017) (SR-CBOE-2017-065).

⁵ See Securities Exchange Act Release No. 82854 (March 16, 2018), 83 FR 11803 (March 16, 2018) (SR-CBOE-2018-012).

Services Select Sector Index (“SIXC”).⁶ The Exchange proposes to establish fees for SIXC. The proposed fees for SIXC will be the same as the fees previously established for the original ten Sector Indexes.

By way of background, a specific set of proprietary products are commonly included or excluded from a variety of programs, qualification calculations and transaction fees. In lieu of listing out these products in various sections of the Fees Schedule, the Exchange uses the term “Underlying Symbol List A” to represent these products.⁷ The Exchange notes the reason the products in Underlying Symbol List A are often collectively included or excluded from certain programs, qualification calculations and transactions fees is because the Exchange has expended considerable resources developing and maintaining its proprietary, exclusively listed products. Similar to the products currently represented by “Underlying Symbol List A,” Sector Index options are not listed on any other exchange. As such, the Exchange established fees for Sector Index options similar to those applicable to options overlying the indexes in Underlying Symbol List A, as well as similarly excluding those options from several programs from products in Underlying Symbol List A are excluded. In lieu of listing out these products in various sections of the Fees Schedule, the Exchange refers to Sector Indexes in the Fees Schedule (which is defined in footnote 47). The Exchange proposes to add a reference to “SIXC” to footnote 47 of the Fees Schedule.

Like products in Underlying Symbol List A and the current Sector Indexes, the

⁶ See Securities Exchange Act Release No. 84490 (October 25, 2018), 83 FR 54796 (October 31, 2018) (SR-CBOE-2018-067).

⁷ Currently, Underlying Symbol List A is defined in Footnote 34 and represents the following proprietary products: OEX, XEO, RUT, RLG, RLV, RUI, AWDE, FTEM, FXTM, UKXM, SPX (including SPXW), VIX, VOLATILITY INDEXES and binary options.

Exchange proposes to except SIXC options from the Volume Incentive Program (“VIP”),⁸ the Marketing Fee,⁹ the Clearing Trading Permit Holder Fee Cap (“Fee Cap”),¹⁰ exemption from fees for facilitation orders,¹¹ the AIM Contra Execution Fee,¹² the CFLEX AIM Response Fee,¹³ the Clearing Trading Permit Holder Proprietary and/or their Non-Trading Permit Holder Affiliates transaction fee cap for all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction,¹⁴ the Order Router Subsidy (“ORS”) and Complex Order Router Subsidy (“CORS”) Programs,¹⁵ the per contract per side surcharge for noncustomer complex order executions that remove liquidity from the COB and auction response in the complex order auction and AIM,¹⁶ and the calculation of qualifying volume for rebates for Floor Broker Trading Permit Holder Trading Permit Fees.¹⁷

Like the other Sector Indexes, the Exchange does intend to apply to SIXC options the Liquidity Provider Sliding Scale.¹⁸ The Exchange proposes to apply to SIXC options the Liquidity Provider Sliding Scale to encourage Market-Makers to provide liquidity in

⁸ See Cboe Options Fees Schedule, Volume Incentive Program (VIP) table and Footnote 36.

⁹ See Cboe Options Fees Schedule, Footnote 6.

¹⁰ See Cboe Options Fees Schedule, Footnote 11.

¹¹ See Cboe Options Fees Schedule, Footnotes 11 and 12.

¹² See Cboe Options Fees Schedule, Footnote 18.

¹³ See Cboe Options Fees Schedule, Footnote 20.

¹⁴ See Cboe Options Fees Schedule, Footnote 22.

¹⁵ See Cboe Options Fees Schedule, Order Router Subsidy Program and Complex Order Router Subsidy Program table and Footnotes 29 and 30.

¹⁶ See Cboe Options Fees Schedule, Footnote 35.

¹⁷ See Cboe Options Fees Schedule, Footnote 25.

¹⁸ See Cboe Options Fees Schedule, Specified Proprietary Index Options Rate Table – Underlying Symbol List A and Sector Indexes.

these classes and believes that including them in this sliding scale will provide such incentive.

The Exchange next proposes to establish transaction fees for SIXC options, which will be the same as the transaction fees for the other 10 Sector Indexes. Particularly, the Exchange proposes to assess the same fees for SIXC options as apply to the original Sector Index options, OEX Weekly and XEO Weekly options, except for Market-Maker transaction fees, which will be subject to the Liquidity Provider Sliding Scale as described above, and except for Clearing Trading Permit Holder Proprietary transactions, which will be \$0.25 rather than subject to the Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders. Transaction fees for SIXC options will be as follows (all listed rates are per contract)¹⁹:

Customer (origin code C)	\$0.30
Clearing Trading Permit Holder Proprietary (origin codes F and L)	\$0.25
Market-Maker (origin code M)	Liquidity Provider Sliding Scale
Joint Back-Office, Broker-Dealer, Non-Trading Permit Holder Market-Maker, Professional/Voluntary Professional (origin codes BNWJ)	\$0.40

The Exchange also proposes to apply to SIXC options the CFLEX Surcharge Fee of \$0.10 per contract for all Sector Index option orders executed electronically on CFLEX, capped at \$250 per trade (i.e., first 2,500 contracts per trade).²⁰ The CFLEX Surcharge Fee assists the Exchange in recouping the cost of developing and maintaining

¹⁹ See id.

²⁰ See id.

the CFLEX system. The Exchange notes that the CFLEX Surcharge Fee (and \$250 cap) also applies to other proprietary index options, including the original ten Sector Indexes and products in Underlying Symbol List A.

The Exchange currently assesses an Index License Surcharge of \$0.10 per contract for all non-customer orders for Sector Indexes and products in the Underlying Symbol A except RUT and SPX. The Exchange proposes to assess a Surcharge of \$0.10 per contract in order to recoup the costs associated with the Sector Index license.

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.²¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²² 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 the Section 6(b)(5)²³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ Id.

believes the proposed rule change is consistent with Section 6(b)(4) of the Act,²⁴ 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.

Particularly, the Exchange believes it is reasonable to charge different fee amounts to different user types in the manner proposed because the proposed fees are consistent with the price differentiation that exists today for the previously adopted Sector Indexes, as well as other index products, including those in Underlying Symbol A. The Exchange also believes that the proposed fee amounts for SIXC option orders are reasonable because as previously discussed, the proposed fee amounts are the same as the fees already established for Sector Indexes and are also assessed for other proprietary products (i.e. OEX Weeklys and XEO Weeklys). The proposed fee amounts are also within the range of amounts assessed for the Exchange's other proprietary products.²⁵

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Customers as compared to certain other market participants except Market-Makers and Clearing Trading Permit Holders because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The fees offered to customers are intended to attract more customer trading volume to the Exchange. Moreover, the options industry has a long

²⁴ 15 U.S.C. 78f(b)(4).

²⁵ See Cboe Options Fees Schedule, Specified Proprietary Index Options Rate Table – Underlying Symbol A and Sector Indexes.

history of providing preferential pricing to Customers, and the Exchange's current Fees Schedule currently does so in many places, as do the fees structures of many other exchanges. Finally, all fee amounts listed as applying to Customers will be applied equally to all Customers (meaning that all Customers will be assessed the same amount).

The Exchange believes that it is equitable and not unfairly discriminatory to, assess lower fees to Market-Makers pursuant to the Liquidity Provider Sliding Scale as compared to other market participants because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, these lower fees offered to Market-Makers are intended to incent Market-Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. Additionally, the proposed fee for Market-Makers will be applied equally to all Market-Makers (meaning that all Market-Makers will be subject to the Liquidity Provider Sliding Scale). This concept also applies to orders from all other origins. It should also be noted that all fee amounts described herein are intended to attract greater order flow to the Exchange in SIXC options, which should therefore serve to benefit all Exchange market participants.

Similarly, it is equitable and not unfairly discriminatory to assess lower fees to Clearing Trading Permit Holder Proprietary orders than those of other market participants (except Market-Makers) because Clearing Trading Permit Holders also have a number of obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that other market participants do not need to take on. The Exchange also notes that the SIXC option fee amounts for each separate type of market participant will be assessed equally to all such market participants (i.e. all Broker-

Dealer orders will be assessed the same amount, all Joint Back-Office orders will be assessed the same amount, etc.). The Exchange believes the proposed transaction fee of \$0.25 per contract for Clearing Trading Permit Holders is reasonable, equitable, and not unfairly discriminatory because is comparable to the amount of transaction fees for Clearing Trading Permit Holders in other proprietary products.²⁶

The Exchange believes the proposed transaction fees for Brokers Dealers, Non-Trading Permit Holder Market-Makers, Professionals/Voluntary Professionals, JBOs and Customers are reasonable because they are the same as those assessed for transactions in certain other proprietary products.²⁷ The Exchange also notes that the SIXC option fee amounts for each separate type of market participant will be assessed equally to all such market participants (i.e. all Broker-Dealer orders will be assessed the same amount, all Joint Back-Office orders will be assessed the same amount, etc.).

The Exchange believes that assessing an Index License Surcharge Fee of \$0.10 per contract to SIXC option transactions is reasonable because the Surcharge helps recoup some of the costs associated with the license for Sector Index options, including SIXC. Additionally, the Exchange notes that the Surcharge amount is the same as, and in some cases lower than, the amount assessed as an Index License Surcharge to other index products. The proposed Surcharge is also equitable and not unfairly discriminatory because the amount will be assessed to all market participants to whom the Surcharge applies. Not applying the SIXC License Surcharge Fee to Customer orders is equitable and not unfairly

²⁶ See Cboe Options Fee Schedule, Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scales Table. The maximum transaction fee per contract in the Table B (related to the VIX Sliding Scale) part of that table is \$0.25.

²⁷ Id.

discriminatory because this is designed to attract Customer Sector Index option orders, which increases liquidity and provides greater trading opportunities to all market participants.

Similarly, the Exchange believes assessing a CFLEX Surcharge Fee of \$0.10 per contract for SIXC option orders executed electronically on CFLEX and capping it at \$250 (i.e., first 2,500 contracts per trade) is reasonable because it is the same amount currently charged to other Sector Indexes and proprietary index products for the same transactions.²⁸ The proposed Surcharge is also equitable and not unfairly discriminatory because the amount will be assessed to all market participants to whom the CFLEX Surcharge applies.

Excepting VIP, the Marketing Fee, the Fee Cap, exemption from fees for facilitation orders, the AIM Contra Execution Fee, the CFLEX AIM Response Fee, the Clearing Trading Permit Holder Proprietary and/or their Non-Trading Permit Holder Affiliates transaction fee cap for all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction, the ORS and CORS Programs,²⁹ the per contract per side surcharge for noncustomer complex order executions that remove liquidity from the COB and auction response in the complex order auction and AIM,³⁰ and the calculation of qualifying volume for rebates for Floor Broker Trading Permit Holder Trading Permit Fees is reasonable because the original ten Sector Indexes, as well as other proprietary products are excepted from those same items. This is equitable and not

²⁸ See Cboe Options Fees Schedule, Index Options Rate Table - All Index Products Excluding Underlying Symbol List A and Sector Indexes, CFLEX Surcharge Fee and Specified Proprietary Index Options Rate Table - Underlying Symbol List A and Sector Indexes, CFLEX Surcharge Fee.

²⁹ See Cboe Options Fees Schedule, Order Router Subsidy Program and Complex Order Router Subsidy Program table and Footnotes 29 and 30.

³⁰ See Cboe Options Fees Schedule, Footnote 22.

unfairly discriminatory for the same reason; it seems equitable to except SIXC options from items on the Fees Schedule from which other Sector Indexes and proprietary products are also excepted.

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 different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market-Makers have quoting obligations that other market participants do not have. 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 SIXC options will be exclusively listed 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.

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 Act³¹ and paragraph (f) of Rule 19b-4³² 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-2019-002 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.

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2019-002. 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-2019-002 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.³³

Eduardo A. Aleman
Deputy Secretary

³³ 17 CFR 200.30-3(a)(12).