

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86617; File No. SR-CBOE-2019-043)

August 9, 2019

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Ability to Submit Frequent Trader Forms

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 August 7, 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 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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend the ability to submit Frequent Trader Forms. 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.

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 fee schedule with respect to its Frequent Trader Program. By way of background, through the Frequent Trader Program, the Exchange offers transaction fee rebates to Customers and Professional Customers and Voluntary Professionals (origin codes "C" and "W", respectively) (collectively "Customers") that meet certain volume thresholds in VIX, SPX (including SPXW) and RUT options, provided the Customer registers for the program (the "Frequent Trader Program" or "Program"). Once registered, the Customer is provided a unique identification number ("FTID") that can be affixed to each of its orders. The FTID allows the Exchange to identify and aggregate all electronic and manual trades during both the Regular Trading Hours and Global Trading Hours sessions from that Customer for purposes of determining whether the Customer meets any of the various volume thresholds. The Customer has to provide its FTID to the Trading Permit Holder ("TPH") submitting that Customer's order to the Exchange ("executing agent" or "executing TPH") and that executing TPH would have to enter the Customer's FTID on each of that Customer's orders.⁵

⁵ The Exchange notes that it is the responsibility of the Customer to request that the

The Exchange notes that there are instances however, in which a Customer's FTID was not or could not be, affixed to an order. For example, an executing TPH may receive an order with multiple contra parties, including parties that are also customers with their own unique FTIDs. The executing TPH's front end system however, may only allow it to input only one FTID on the order. Thus the other Customers to the trade would not have their FTID represented at the time of submission. Additionally, it is possible that an executing TPH inadvertently enters an incorrect FTID number on an order. Accordingly, the Exchange adopted a rule to provide executing TPHs the ability to submit to the exchange a form (the "Frequent Trader Program – Volume Corrections Form" or "Form") that would provide a mechanism for executing TPHs to identify transactions to the Exchange that should have been, but were not, associated with particular FTIDs. More specifically, the executing TPH would identify on the form the "correct" FTID that should be associated with a specific transaction, so that such volume is properly counted towards the appropriate Customer's aggregated volume for purposes of determining what tier, if any, the customer meets. Currently, the Frequent Trader Program – Volume Corrections Form ("FT Form") has to be submitted to the Exchange within 3 business days⁶. The Exchange now proposes to modify the means in which TPHs submit the information required on the FT Form and shorten the submission deadline. Specifically, the Exchange proposes that instead of using the current FT Form, all TPHs must submit FTID information electronically to the Exchange in a form and manner prescribed by the Exchange.⁷ Such electronic submission

executing TPH affix its FTID to its order(s), and that it is voluntary for the executing TPH to do so.

⁶ See Securities Exchange Act Release No. 77659 (April 20, 2016), 81 FR 24678 (April 26, 2016) (SR-CBOE-2016-037)

⁷ The Exchange has issued an Exchange Trade Notice providing the details as to how TPHs may submit such information to the Exchange and any corresponding deadline. See

must be received no later than 6:00 pm CT on the trade date. In order to provide some flexibility in the event of extenuating circumstances (such as a system issue), the Exchange additionally proposes to provide that, in extenuating circumstances as determined by the Exchange, the deadline may be extended until 6:00 pm CT on the business day following the trade date. The Exchange believes that it is no longer necessary to provide TPHs 3 days to submit the current form. Particularly, the Exchange believes that TPHs shouldn't need more than the trade date to submit FTID information electronically as it is not an overly burdensome process. The Exchange also notes that the Frequent Trader Program was established over three years ago and TPHs therefore should be familiar with the program and its requirements and more proficient in ensuring FTID information is submitted in a timely manner. Indeed, absent unusual circumstances, the Exchange believes all TPHs should be able to meet the modified deadline. The proposed rule change would streamline the process and result in the FTID information being submitted in a timelier manner.

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.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirements

Cboe Options Trade Notice, "Frequent Trader ID Additions and Corrections – Change in Procedures", Reference ID C2019060700, which sets forth the file format, information required and corresponding deadlines. To the extent the Exchange amends the process or deadline in the future, the Exchange will similarly issue Exchange a new Trade Notice describing the changes.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange notes that eliminating the 3 day submission period for FTID information to be submitted helps ensure that a Customer's real trading volume is more immediately and accurately represented, which helps streamline the administration of the Program. The Exchange believes that all TPHs should be able to prepare and submit such FTID information electronically to the Exchange on the trade date. The proposed change also ensures timely processing and finality. The establishment of this process will also make it easier for the Exchange to administer the Frequent Trader Program. Additionally, it has been approximately 3 years since the original FT Form was adopted and as such, TPHs should be familiar with the Frequent Trader Program and should have systems and procedures in place to process to provide the required FTID information on the trade date. The Exchange also notes that the ability to provide FTID information electronically to the Exchange post-trade is merely an additional means to ensure FTID information is relayed to the Exchange. TPHs still have the option of affixing FTIDs on the orders or may add or modify FTID information on post-trade records on the trade date via Cboe Trade Match ("CTM") terminals. As such, the Exchange believes

¹⁰

Id.

notwithstanding the proposed changes, that TPHs still are provided a variety of means to ensure FTID information is relayed to the Exchange in a timely, efficient manner, 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 because the proposed change applies uniformly to all executing TPHs of Customer FTID orders and because it still provides for an alternative means for which a Customer's FTID that was not applied to that Customer's order at the time of entry is still submitted to the Exchange to be counted towards the Frequent Trader Program thresholds. The Exchange believes that the proposed rule change will not cause an unnecessary burden on intermarket competition because it only applies to trading 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

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 Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁴ 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 upon filing. The Exchange states that in June 2019, TPHs received prior notice of the proposed change and proposed implementation date for the beginning of August.¹⁵ The proposal converts the paper-based process through which TPHs submit information required pursuant to the optional frequent trader fee incentive program and instead requires TPHs to submit that information electronically. Given the ministerial nature of this change, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁶

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its 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.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See Cboe Options Trade Notice, “Frequent Trader ID Additions and Corrections – Change in Procedures”, Reference ID C2019060700.

¹⁶ 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.

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-2019-043 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-2019-043. 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

See 15 U.S.C. 78c(f).

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-2019-043 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

Jill M. Peterson
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).