

**SECURITIES AND EXCHANGE COMMISSION**  
(Release No. 34-72207; File No. SR-CBOE-2014-045)

May 21, 2014

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule

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 19, 2014, 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 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. 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.

**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

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

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

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 is proposing to update the text in its Fees Schedule. First, the Exchange proposes to amend Footnote 21 of the Fees Schedule, which currently states that “All electronic executions in Hybrid 3.0 classes shall be assessed the Hybrid 3.0 Execution Surcharge, except that this fee shall not apply to: (i) orders in SPX options in the SPX electronic book that are executed during opening rotation on the final settlement date of VIX options and futures...” As currently provided, on the CBOE Volatility Index (“VIX”) settlement day, the Exchange waives the Hybrid 3.0 Execution Surcharge for orders in S&P 500 Index (“SPX”) options in the SPX electronic book that are executed during opening rotation on the final settlement date of VIX options and futures.

Currently, this exception encompasses all SPX options in the SPX electronic book executed during the opening rotation on final settlement date of VIX options and futures regardless of whether those options had a bearing on the final settlement value. Indeed, certain SPX options in the SPX electronic book that are executed during opening rotation on the final settlement date of VIX options and futures cannot be used to determine the final settlement value of VIX. The Exchange seeks to amend this language to only exclude from the Hybrid 3.0 Execution Surcharge those SPX options that are executed during opening rotation and which have the expiration that contribute to the VIX settlement calculation. This is because the only way to participate in the settlement process is electronically; there is no open outcry alternative. Therefore, the Exchange

does not want to assess a surcharge for the only possible method of participation in the VIX settlement process. Additionally, since the VIX settlement value is based upon SPX options, the Exchange does not believe it would be appropriate to charge the surcharge to those SPX options that have the expiration that is used in determining the final settlement value on the final settlement date of VIX options and futures (as opposed to those SPX options that cannot and do not have a bearing on the final settlement value). The Exchange notes that as it relates to CBOE Short-Term Volatility Index (“VXST”) options and futures, Footnote 21 excepts from the assessment of the Hybrid 3.0 Execution Fee SPX options that are executed during opening rotation and which are used to determine the final settlement value on the final settlement date of VXST options and futures.<sup>3</sup> The Exchange is seeking to similarly amend this language to exclude from the Hybrid 3.0 Execution Surcharge only those SPX options that are executed during opening rotation and which have the expiration that contribute to the VXST settlement calculation. The Exchange believes that because the VXST settlement value is also be [sic] based upon SPX options on the standard third-Friday expiration, it is not appropriate to assess the surcharge to those SPX options that are or can be used in determining the final settlement value on the final settlement date of VXST options and futures (as opposed to those SPX options that cannot and do not have a bearing on the final settlement value). The Exchange believes it is reasonable to apply the same fees and fees structure to SPX

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<sup>3</sup> VXST, because it expires weekly instead of monthly, uses SPXW options to determine the 9-day VXST settlement value except for the one week a month for which there are not expiring SPXW options. That week is the standard third-Friday expiration, and for that week, VXST uses SPX options to determine the 9-day VXST settlement value.

options that have the expiration that is used to determine final settlement value on settlement date of both VIX and VXST options and futures.

Similarly, the Exchange next proposes to provide that it will waive the SPXW Customer Priority Surcharge for orders in SPX Weeklys (“SPXW”) options in the SPXW electronic book that are executed during opening rotation and which have the expiration that contribute to the VXST settlement calculation. Currently, Footnote 31 states that such surcharge applies to all customer contracts executed electronically “except those contracts executed by a floor broker using a PAR terminal and orders in SPXW options in the SPXW electronic book that are executed during opening rotation on the final settlement date of VXST options and futures in which SPXW options are being used to determine the final settlement value.” The Exchange seeks to amend this language and provide that the waiver of the SPXW Customer Priority Surcharge is applicable for SPXW options in the SPXW electronic book that are executed during opening rotation on the final settlement date of VXST options and futures and which have the expiration that contribute to the VXST settlement calculation. As explained above, the Exchange does not want to assess a surcharge for the only possible method of participation in the VXST settlement process, but wants to limit this exception to those options which have the expiration that contributed to the VXST settlement calculation on the final settlement date.

Lastly, the Exchange wishes to make a clarification regarding the option classes included in the Customer Large Trade Discount program. This proposed change is solely administrative and clarifying and will not amend any current fees. The Customer Large Trade Discount program (the “Discount”) provides a discount in the form of a cap on the

quantity of customer (“C” origin code”) contracts that are assessed transactions fees in certain options classes. The Discount table in the Fees Schedule sets forth the quantity of contracts necessary for a large customer trade to qualify for the Discount, which varies by product. Currently, under the “Products” section in the Discount table, the following S&P products for which the Discount is in effect are listed: “SPX, SPXpm, SRO.” Customer transaction fees for each of these products are only charged up to the first 10,000 contracts. Currently, SPX Weeklys (“SPXW”) and SPX Quarterly (“SPXQ”) are not separately spelled out in the Discount table, as SPXW and SPXQ fall within the universe of SPX transactions. The Exchange is proposing however, to clarify and make clear in the text of the Fees Schedule that the term “SPX” is intended to include SPXW and SPXQ options. The Exchange notes that the term “SPX” has been interpreted to date to include SPXW and SPXQ options for purposes of the Discount program. The Exchange believes the proposed rule change will make it clear to all market participants that the term “SPX” as used in the Discount table includes SPXW and SPXQ options. The Exchange believes the proposed addition of rule text will provide greater clarity for customers and will allow market participants to better understand how fees are applied.

## 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>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section

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

6(b)(4) of the Act,<sup>5</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 that the proposed changes to Footnote 21 related to the Hybrid 3.0 Execution Surcharge and Footnote 31 related to the SPXW Customer Priority Surcharge are reasonable because they will result in market participants at times not being required to pay these surcharges for SPX and/or SPXW transactions in the circumstances described. The Exchange believes it is equitable and not unfairly discriminatory to exclude from the Hybrid 3.0 Execution Surcharge and SPXW Customer Priority Surcharge only those options that are executed during opening rotation and which have the expiration that contribute to the VIX or VXST settlement calculation because, as discussed above, the VIX and VXST settlement values are based upon those SPX or SPXW options and the Exchange therefore wants to encourage trading in those options at the opening on settlement days. Additionally, the Exchange believes the proposed rule change will encourage the trading of SPX and SPXW options that have the expiration that contribute to the VIX or VXST settlement calculation at the opening on settlement days, which will provide additional liquidity and enhance competition in those securities, which ultimately benefits all CBOE TPHs and all investors.

Finally, the Exchange believes the amendment to the Customer Large Trade Discount table will promote just and equitable principles of trade by clarifying to Trading Permit Holders that SPXW and SPXQ fall within the universe of transactions for purposes of the Discount program, thereby eliminating potential confusion and removing

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<sup>5</sup> 15 U.S.C. 78f(b)(4).

impediments to and perfecting the mechanism of a free and open market and a national market system. Providing a clearer representation of fees in the Exchange fee schedule will remove any confusion that may exist with the current wording in the Fees Schedule. The proposed changes are equitable and not unfairly discriminatory because bringing clarity to the Exchange Fees Schedule benefits all Trading Permit Holders.

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

CBOE 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. CBOE 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 all of the proposed changes will apply to all market participants. CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only apply to trading on CBOE. To the extent that any of the proposed changes makes CBOE a more attractive market for market participants on other exchanges, such market participants may elect to become market participants on CBOE.

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 Act<sup>6</sup> and paragraph (f) of Rule 19b-4<sup>7</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2014-045 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.

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f).



All submissions should refer to File Number SR-CBOE-2014-045. 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 such filing also will be available for inspection and copying at the principal office of the CBOE. 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-2014-045 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>8</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).