

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72855; File No. SR-CBOE-2014-064)

August 15, 2014

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the 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 August 6, 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 specified in

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

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

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, to be effective August 6, 2014. The Exchange's Volume Incentive Program ("VIP") credits each Trading Permit Holder ("TPH") the per contract amount resulting from each public customer ("Customer") ("C" origin code) order transmitted by that TPH which is executed electronically on the Exchange in all multiply-listed option classes (excluding RUT, mini-options, QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80), provided the TPH meets certain percentage thresholds in a month as described in the VIP table.<sup>3</sup> Currently, the Exchange provides a VIP credit for Customer to Customer complex orders transmitted and executed electronically on the Exchange (such credits are provided on both sides of the transaction, at a negative revenue situation for the Exchange). The Exchange proposes to exclude from the VIP electronic executions that occur when a Customer complex order executes against another Customer complex order.<sup>4</sup> The Exchange believes that electronic Customer complex order to

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<sup>3</sup> For more information on the VIP, including the amounts of the credits provided at the specific tiers, see the VIP table of the CBOE Fees Schedule.

<sup>4</sup> The Exchange's proposed first sentence of the Notes section of the VIP table would therefore read: "The Exchange shall credit each Trading Permit Holder the per contract amount resulting from each public customer ("C" origin code) order transmitted by that Trading Permit Holder which is executed electronically on the Exchange in all multiply-listed option classes (excluding RUT, mini-options, QCC trades, executions that occur when an electronically-delivered Customer Complex Order executes against another electronically-delivered Customer Complex Order, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection

Customer complex order transactions are rare and no longer believes that offering credits pursuant to the VIP for this scenario (and the resulting negative revenue situation) is necessary to attract Customer complex orders to the Exchange.

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>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</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 it is reasonable to not provide a VIP credit for Customer to Customer complex orders transmitted and executed electronically on the Exchange because the Exchange does not believe it is necessary to provide a credit in the above-mentioned scenario in order to attract Customer complex orders to the Exchange for execution. Further, the instances of these executions are rare and the Exchange believes it is reasonable to not incur negative revenue scenarios for complex orders as would be the case with the above-described transaction. Indeed, in circumstances in which a Customer complex order executes electronically against another Customer complex order, the Exchange currently provides a credit on both sides, and since the Exchange does not believe offering a credit for such transactions serves as a necessary

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and Locked/Crossed Market Plan referenced in Rule 6.80), provided the Trading Permit Holder meets certain percentage thresholds in a month as described in the Volume Incentive Program (VIP) table.”

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

incentive to attract Customer complex orders to the Exchange, the Exchange has determined that, at the current time, it is not economically desirable to offer a rebate on both sides of such transactions. Also, the Exchange does not feel that the Customer rebate incentive brings a greater number of Customer orders as a result of this incentive and therefore desires to exclude these types of transactions from the VIP. Finally, the Exchange believes that the proposed exclusion is reasonable because it will merely remove a credit on such transactions and not impose a greater fee.

The Exchange believes that the proposed exclusion is equitable and not unfairly discriminatory because the VIP credit only applies to customers and therefore the elimination of the credit in the described situation puts customers on the same competitive footing as other market participants. As such, no market participant would be entitled to a credit for these types of transactions. Additionally, another exchange also has a similar exclusion for situations in which a Customer complex order executes electronically against another Customer complex order from its program that is similar to CBOE's VIP.<sup>7</sup>

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. 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 the VIP credit only applies to customers and therefore the elimination of the credit in the described situation puts customers on the same competitive footing as other market participants. As such, no market participant would be entitled to a credit for these types of transactions. The

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<sup>7</sup> See NASDAQ OMX PHLX LLC ("PHLX") Pricing Schedule, Section B ("Customer Rebate Program") and SR-PHLX-2014-52.

Exchange 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 change only applies to trading on CBOE. Further, the Exchange believes that the VIP will continue to encourage Customer order flow to be directed to the Exchange. While market participants will be encouraged to transact a greater number of Customer orders to qualify for a rebate, the Exchange does not believe the current credit incentivizes a greater number of Customer complex orders executing electronically against other electronic Customer complex orders on CBOE.

The Exchange operates in a highly competitive market, comprised of many options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those TPHs that opt to direct orders to the Exchange rather than competing venues.

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>8</sup> and paragraph (f) of Rule 19b-4<sup>9</sup> thereunder. At any time within 60 days of the filing of the

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f).

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-2014-064 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-2014-064. 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 offices of the Exchange. 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-2014-064, 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>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).