

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74709; File No. SR-CBOE-2015-036)

April 10, 2015

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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 31, 2015, 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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, effective April 1, 2015. Specifically, the Exchange proposes to amend its fees for the Russell 2000 Index ("RUT"). As of April 1, 2015, RUT will be listed exclusively on CBOE and C2 Options Exchange Incorporated ("C2"). As such, the Exchange proposes to make certain conforming changes to its Fees Schedule.

By way of background, a specific set of proprietary products had been commonly listed out in the Fees Schedule as being included or excluded from a variety of programs, qualification calculations and transactions fees. In lieu of listing out these products in various sections of the Fees Schedule, the Exchange recently adopted the term "Underlying Symbol List A," to represent these products.³ Currently, Underlying Symbol List A is defined in Footnote 34 and represents the following proprietary products: OEX, XEO, SPX (including SPXw), SPXpm, SRO, VIX, VXST, VOLATILITY INDEXES and binary options. The Exchange notes that 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," RUT will no longer be listed on any other exchange (other than C2). As such, the Exchange proposes to exclude or include RUT in the same programs as the other products in Underlying Symbol List A (except as otherwise noted below), as well as add RUT to the definition of

³ See Securities Exchange Act Release No. 73832 (December 12, 2014), 79 FR 243 (December 18, 2014) (SR-CBOE-2014-092).

Underlying Symbol List A in Footnote 34. Specifically, like the other products in Underlying Symbol List A, the Exchange proposes to except RUT from the Liquidity Provider Sliding Scale, the Marketing Fee, the Clearing Trading Permit Holder Fee Cap (“Fee Cap”) and exemption from fees for facilitation orders, and the Order Router Subsidy (ORS) and Complex Order Router Subsidy (CORS) Programs. Like all other products in Underlying Symbol List A (with the exception of SROs), the Exchange proposes to apply to RUT the CBOE Proprietary Products Sliding Scale. Unlike the products in Underlying Symbol List A, the Exchange does intend to keep RUT volume in the calculation of qualifying volume for the rebate of Floor Broker Trading Permit fees.

Next, as the Exchange proposes to include RUT in Underlying Symbol List A, the reference to RUT in the “Index Options Rate Table - All Index Products Excluding Underlying Symbol List A” table will be deleted and new references to RUT, where applicable, will be added to the “Specified Proprietary Index Options Rate Table - Underlying Symbol List A” table. Additionally, the Exchange will add “RUT” to the list of products excluded from the Customer section of the Index Options Rate Table. The Exchange also proposes to spell out and add a separate row for the remaining products of Underlying Symbol List A for Broker-Dealers, Non-Trading Permit Holder Market-Makers, Professionals/Voluntary Professionals and Joint Back Offices (“JBOs”) transaction fees.

The Exchange also proposes to amend certain transaction fees for RUT options. Currently, Clearing Trading Permit Holder proprietary (“F” origin code) and Non-Trading Permit Holder Affiliate (“L” origin code) RUT transactions are assessed \$0.35 per contract for electronic transactions and \$0.20 per contract for both manual and Automated Improvement Mechanism (“AIM”) transactions. The Exchange proposes to assess a \$0.25 per contract

transaction fee for all Clearing Trading Permit Holder and Non-Trading Permit Holder Affiliate transactions, which is the same fee amount assessed to Clearing Trading Permit Holder proprietary and Non-Trading Permit Holder Affiliate transactions for all products in Underlying Symbol List A.⁴ Next, the Exchange notes that currently, RUT is subject to the Liquidity Provider Sliding Scale, which provides for reduced transaction fees for Market-Makers that reach certain volume thresholds in all underlying symbols excluding Underlying Symbol List A and mini-options. As mentioned above, the Liquidity Provider Sliding Scale will no longer apply to RUT as RUT will now be exclusively listed on CBOE (and C2) and part of Underlying Symbol List A. As such, the Exchange proposes to assess Market-Makers \$0.20 per contract for all RUT transactions, which is also the same fee amount as applies to Market-Makers for all products in Underlying Symbol List A.

The Exchange also proposes to amend the AIM transaction RUT fees for Broker-Dealers, Non-Trading Permit Holder Market-Makers, Professionals/Voluntary Professionals and Joint Back Offices (“JBOs”). Currently, the Exchange assesses these market participants \$0.20 per contract for AIM Agency/Primary transactions and \$0.05 per contract for AIM Contra transactions. The Exchange proposes to charge all RUT AIM transactions \$0.25 per contract. The current fees of \$0.65 per contract for Broker-Dealer, Non-Trading Permit Holder Market-Maker, and JBO electronic RUT transactions and \$0.25 per contract for manual transactions are not changing. Currently, Customer transactions are assessed \$0.18 per contract for all RUT orders other than AIM Contra orders. AIM Contra transactions are currently assessed \$0.05 per contract. The Exchange proposes to increase the AIM Contra fee to \$0.18 per contract, so that

⁴ The \$0.25 per contract fee for Clearing Trading Permit Holders and Non-Trading Permit Holder Affiliates is subject to the applicability of the CBOE Proprietary Products Sliding Scale.

all Customer transactions will be assessed the same rate (i.e., \$0.18). The Exchange notes that Customer AIM orders (both AIM Agency/Primary and Contra) for other Underlying Symbol List A products are also charged the same amount(s) as apply to Customer non-AIM transactions for each respective product.

The Exchange also proposes to apply to RUT, like the other products in Underlying Symbol List A, the Floor Brokerage Fee of \$0.04 per contract (\$0.02 per contract for crossed orders) (the Floor Brokerage Fee applies only to Floor Brokers, and only for open outcry trading).

Currently, the Exchange assesses an Index License Surcharge for RUT of \$0.30 per contract for all non-customer orders. The Exchange now proposes to increase the RUT Surcharge from \$0.30 to 0.45 per contract in order to recoup the increased costs associated with the RUT license. The Exchange will still be subsidizing the costs of the RUT license.

Footnote 25, which governs rebates on Floor Broker Trading Permits, currently provides that any Floor Broker that executes a certain average of customer open-outcry contracts per day over the course of a calendar month in all underlying symbols excluding Underlying Symbol List A, DJX, XSP, XSPAM, mini-options and subcabinet trades, will receive a rebate on that Floor Broker's Trading Permit Holder's Floor Broker Trading Permit Fees. The Exchange notes that although RUT is being added to "Underlying Symbol List A", it wishes to continue to include RUT in the calculation of the qualifying volume for the rebate of Floor Broker Trading Permit fees. As such, the Exchange seeks to explicitly note in Footnote 25 that RUT will be included in the calculation, notwithstanding its inclusion in Underlying Symbol List A. The Exchange wishes to continue to encourage Floor Brokers to execute open-outcry trades in RUT options and believes that continuing to include RUT in the qualifying volume will provide such incentive.

Additionally, the Exchange notes that as discussed above, Floor Brokers will now be assessed floor brokerage fees for RUT, which had not been assessed to them previously.

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 facilitation 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 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.

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 other proprietary products. The Exchange also believes

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(4).

that the proposed fee amounts for RUT orders are reasonable because the proposed fee amounts are within the range of amounts assessed for the Exchange's other proprietary products.⁸

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Customers as compared to other market participants 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 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 as compared to other market participants other than Customers 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 assessed the same amount). This concept also applies to orders from all other

⁸ See CBOE Fees Schedule, Specified Proprietary Index Options Rate Table.

origins. It should also be noted that all fee amounts described herein are intended to attract greater order flow to the Exchange in RUT, 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 Customers and 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 RUT 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 changes to AIM transaction fees for Brokers Dealers, Non-Trading Permit Holder Market-Makers, Professionals/Voluntary Professionals, JBOs and Customers are reasonable because the amounts are still lower than assessed for AIM transactions in other proprietary products.⁹ The Exchange believes it's equitable and not unfairly discriminatory to assess lower fees for AIM executions as compared to electronic executions because AIM is a price-improvement mechanism, which the Exchange wishes to encourage and support.

Assessing the Floor Brokerage Fee of \$0.04 per contract for non-crossed orders and \$0.02 per contract for crossed orders to Floor Brokers (and not other market participants) trading RUT orders is equitable and not unfairly discriminatory because only Floor Brokers are statutorily capable of representing orders in the trading crowd, for which they charge a

⁹ Id.

commission. Moreover, this fee is already assessed, in the same amounts, to the other products in Underlying Symbol List A.

Increasing the Index License Surcharge Fee from \$0.30 to \$0.45 per contract to RUT transactions is reasonable because the Exchange still pays more for the RUT license than the amount of the proposed RUT Index License Surcharge Fee (meaning that the Exchange will be subsidizing the costs of the RUT license). This increase is equitable and not unfairly discriminatory because the increased amount will be assessed to all market participants to whom the RUT Surcharge applies. Not applying the RUT Index License Surcharge Fee to Customer orders is equitable and not unfairly discriminatory because this is designed to attract Customer RUT orders, which increases liquidity and provides greater trading opportunities to all market participants.

Excepting RUT from the Liquidity Provider Sliding Scale, the Marketing Fee, the Fee Cap, and the exemption from fees for facilitation orders is reasonable because other Underlying Symbol List A products (i.e., other products that are exclusively-listed) are excepted from those same items. This is equitable and not unfairly discriminatory for the same reason; it seems equitable to except RUT from items on the Fees Schedule from which other proprietary products are also excepted.

Applying to RUT the CBOE Proprietary Products Sliding Scale is reasonable because it also applies to other Underlying Symbol List A products. This is equitable and not unfairly discriminatory for the same reason; it seems equitable to apply to RUT the same items on the Fees Schedule that apply to Underlying Symbol List A options classes (i.e., proprietary options classes that are not listed on other exchanges).

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to continue to include RUT in the calculation of the qualifying volume for the Floor Broker Trading Permit Fees rebate because the Exchange wishes to support and encourage open-outcry trading of RUT, which allows for price improvement and has a number of positive impacts on the market system.

Finally, the Exchange believes the proposed change to relocate the RUT fees from the "Index Options Rate Table- All Index Products Excluding Underlying Symbol List A" to the "Specified Proprietary Index Options Rate Table- Underlying Symbol List A" and make other technical conforming changes to the Fees Schedule makes clear to market participants that RUT is now part of Underlying Symbol List A and reduces potential confusion as to which Rate Table applies. The alleviation of potential confusion will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

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 RUT will now be exclusively listed on CBOE (and C2). To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE 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 Act¹⁰ and paragraph (f) of Rule 19b-4¹¹ 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2015-036 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2015-036. 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; 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-2015-036 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.¹²

Brent J. Fields
Secretary

¹² 17 CFR 200.30-3(a)(12).