

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77479; File No. SR-CBOE-2016-026)

March 30, 2016

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule 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 28, 2016, 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 the 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

Background

FLEX Broad-Based Index Options provide users with the ability to customize key contract terms, like exercise prices, exercise styles, expiration dates and exercise settlement values. Pursuant to CBOE Rules 24A.5 and 24B.5, to initiate a FLEX transaction, a Submitting Trading Permit Holder submits a Request for Quotes (“RFQs”) to a FLEX Post Official or into CBOE’s Hybrid System.³ FLEX-participating Trading Permit Holders (“FLEX Traders”), who have elected to receive RFQs, may then enter bids and offers responsive to each RFQ during a specified Request Response Period.⁴

On March 21, 2016, the Exchange will begin offering Asian style settlement and Cliquet style settlement for certain FLEX Broad-Based Index Options. In general, Asian style settlement provides for payout based on the average of prices of a broad-based index on pre-determined dates over a specified time period, and Cliquet style settlement provides for a payout that is the greater of \$0 or the (positive) sum of “capped” monthly returns of a broad-based index on pre-determined dates over a specified period of time. These settlement types are also referred to as “Exotics” due to their untraditional nature.

After surveying potential FLEX Broad-Based Index Options users, the Exchange learned that indexed annuity writers (insurance companies) extensively use over-the-counter (“OTC”)

³ See CBOE Rules 24A.5 and 24B.5.

⁴ Id. See CBOE Rules 24A.5 and 24B.5 for additional information regarding FLEX trading procedures.

options with Asian and Cliquet style settlement as a crediting method.⁵ Because of the level of customization that FLEX Broad-Based Index options provide, the Exchange is introducing exchange-traded products that would provide potential market users with an alternative to the OTC market in customized options. The new settlement types were approved pursuant to a CBOE rule filing on July 10, 2015.⁶

Proposed Change

The Exchange proposes an Exotic Surcharge of \$0.25 to be assessed on all customer (“C” origin code) Exotic contracts executed on CBOE.⁷ The Exotic surcharge will be assessed to those FLEX Traders who trade customer orders in FLEX Asian and Cliquet options.

The Exchange also proposes a FLEX Asian and Cliquet FLEX Trader Incentive Program (“Program”). The Program will provide monthly payments to FLEX Traders who trade orders with origin codes other than “C” against customer orders in FLEX Asian and Cliquet options. A compensation pool equal to the lesser of 20% of customer exchange fees for Exotics (collected from customer orders traded against orders with origin codes other than “C”) or \$50,000 will be available each month.⁸ For example: (1) on SPX contracts, CBOE expects to collect \$1.00 per

⁵ A “crediting method” is the method used to measure the change in the underlying index (e.g., point-to-point or annual reset).

⁶ See Securities Exchange Act Release No. 75312 (July 10, 2016), 80 FR 42152 (July 16, 2016) (SR-CBOE-2015-044).

⁷ The Exchange initially filed the proposed fee changes on March 17, 2016 (SR-CBOE-2016-020). On March 18, 2016, the Exchange withdrew that filing and replaced it with SR-CBOE-2016-022. On March 24, 2016, the Exchange withdrew SR-CBOE-2016-022 and replaced it with SR-CBOE-2016-025. On March 28, 2016 the Exchange withdrew SR-CBOE-2016-025 and replaced it with this filing.

⁸ Fees collected from customer-to-customer FLEX Asian and Cliquet option transactions would be excluded from the compensation pool. Further, fees collected from contracts executed in a FLEX Trader’s customer-to-customer transactions would not be included to determine the FLEX Trader’s share of the compensation pool. Customer fees would be assessed normally on both sides of the transaction.

contract (customer transaction fee of \$0.44⁹ + \$0.10 CFLEX surcharge¹⁰ + \$0.21 Hybrid 3.0 execution surcharge¹¹ + \$0.25 customer exotic surcharge); (2) on XSP contracts, CBOE expects to collect \$0.35 per contract (\$0.00 customer transaction fee + \$0.10 CFLEX surcharge + \$0.25 customer exotic surcharge); (3) on DJX and RUT contracts, CBOE expects to collect \$0.53 per contract (\$0.18 customer transaction fee + \$0.10 CFLEX surcharge + \$0.25 customer exotic surcharge); and (4) on NDX contracts, CBOE expects to collect \$0.43 per contract (\$0.18 standard index exchange fee + \$0.25 customer exotic surcharge).

A FLEX Trader will be entitled to a pro-rata share of the monthly compensation pool based on the customer order fees collected from customer orders traded against that FLEX Trader's orders with origin codes other than "C" in FLEX Asian and Cliquet options each month. The Exchange believes the Program will incentivize FLEX Traders to provide liquidity in FLEX Asian and Cliquet options. The Program shall be in place until December 31, 2016 or until total average daily volume in Exotics exceeds 15,000 contracts for three consecutive months, whichever comes first. At the time the FLEX Asian & Cliquet FLEX Trader Incentive Program ends, the Exchange will submit a rule filing removing the program from the fee schedule and notice shall be given via regulatory circular.

⁹ SPX contract transaction fees are dependent upon premium prices. The parenthetical and the examples below assume executions at a premium price of \$1.00 or greater.

¹⁰ CFLEX surcharge fees are capped at \$250 per trade and assessed on electronic FLEX transactions. The parenthetical and the examples below assume the \$250 cap was not reached on any individual transaction and that the transactions were entered electronically.

¹¹ The Hybrid 3.0 execution surcharge is assessed for transactions in SPX contracts executed via the Hybrid 3.0 system. The parenthetical and the examples below assume the SPX transactions were executed via the Hybrid 3.0 system.

The following examples demonstrate how the program will work when both the monthly cap is and is not reached.

Example 1-Monthly Cap Not Reached

Index	Customer fees per contract	Total Exotic contracts traded for the month, Customer-to-orders with origin codes other than "C"	FLEX Trader 1	FLEX Trader 2	FLEX Trader 3
SPX	\$1.00	18,000	4,000	6,500	7,500
XSP	\$0.35	10,500	2,500	3,000	5,000
DJX	\$0.53	10,500	2,500	3,000	5,000
RUT	\$0.53	3,000	500	1,000	1,500
NDX	\$0.43	1,800	300	500	1,000
Total monthly Customer fees collected from Customer orders traded against orders with origin codes other than "C"	\$29,604.00		\$6,594.00	\$9,885.00	\$13,125.00
FLEX Trader % of fees collected from Customer-to-orders with origin codes other than "C".			22.27%	33.39%	44.34%
Compensation pool amount (i.e. 20% of the Customer fees collected)	\$5,920.80				
FLEX Trader's pro-rata share of compensation pool			\$1,318.80	\$1,977.00	\$2,625.00

Example 2-Monthly Cap is Reached

Index	Customer fees per contract	Total Exotic contracts traded for the month, Customer-to-orders with origin codes other than “C”	FLEX Trader 1	FLEX Trader 2	FLEX Trader 3
SPX	\$1.00	180,000	40,000	65,000	75,000
XSP	\$0.35	105,000	25,000	30,000	50,000
DJX	\$0.53	105,000	25,000	30,000	50,000
RUT	\$0.53	30,000	5000	10,000	15,000
NDX	\$0.43	18,000	3000	5000	10,000
Total monthly Customer fees collected from Customer orders traded against orders with origin codes other than “C”	\$296,040.00		\$65,940.00	\$98,850.00	\$131,250.00
FLEX Trader % of fees collected from Customer-to-orders with origin codes other than “C”.			22.27%	33.39%	44.34%
Compensation pool amount (i.e. 20% of the Customer fees collected is \$59,208.00, so cap applied)	\$50,000.00				
FLEX Trader’s pro-rata share of compensation pool			\$11,137.01	\$16,695.38	\$22,167.61

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.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ 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 Section 6(b)(4) of the Act,¹⁴ 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 Exotic Surcharge of \$0.25 is reasonable because the amount of the new fee is within the range of surcharges assessed for customer transactions in other products (for example, customers are currently assessed a \$0.21 Hybrid 3.0 Execution Surcharge (which essentially acts as a customer priority surcharge) in SPX options). Furthermore, the Exchange believes customers are willing to pay premium exchange fees on FLEX Asian and Cliquet options to obtain traditional exchange-traded benefits, like price discovery, transparency and centralized clearing.

The Exchange believes that it is equitable and not unfairly discriminatory to assess the Exotic Surcharge to customers and not other market participants because customers are not subject to additional costs for effecting transactions in FLEX Broad-Based Index options that are

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

applicable to other market participants, such as license surcharges. Additionally, customers are not subject to fees for effecting transactions in general that are applicable to other market participants, such as connectivity fees and fees relating to Trading Permits, and are not subject to the same obligations as other market participants, including regulatory and compliance requirements and quoting obligations.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to offer FLEX Traders a pro-rata share of a compensation pool equal to the lesser of 20% of the customer exchange fees collected on FLEX Asian and Cliquet options (from customer orders traded against orders with origin codes other than “C”) or \$50,000. FLEX Asian and Cliquet options currently trade exclusively in the OTC market. The traditional benefits of exchange-traded options cannot be realized unless there is liquidity in the FLEX markets as compared to OTC. Providing FLEX Traders with incentives to trade FLEX Asian and Cliquet options should result in a more robust price discovery process that will result in better execution prices for customers. In addition, FLEX Traders in broad-based index options have equal opportunity to receive and respond to RFQs in FLEX Asian and Cliquet options and accordingly equal opportunity to receive a pro-rata allocation of the compensation pool (based upon the share of total fees collected from customer contracts against which the respective FLEX Trader trades orders with origin codes other than “C” orders).

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

The Exchange does not believe that the proposed rule changes will impose any burdens 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. While different transaction fees are assessed to different market participants, different market participants have different obligations and circumstances as noted above. Furthermore the incentive program encourages market participants to bring liquidity in FLEX Asian and Cliquet options to the Exchange (which benefits all market participants).

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. As of March 21, 2016, CBOE will be the only exchange to trade FLEX Asian and Cliquet options. 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. Finally, as mentioned above, FLEX Asian and Cliquet options on the CBOE will provide competition with OTC products while providing the benefits of trading on an exchange.

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 Act¹⁵ and paragraph (f) of Rule 19b-4¹⁶ 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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

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-2016-026 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-2016-026. 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-2016-026 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

Robert W. Errett
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).