

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77710; File No. SR-CBOE-2016-038)

April 26, 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 April 12, 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule.³

The Exchange first proposes to amend its Volume Incentive Program (“VIP”). By way of background, under VIP, the Exchange credits each Trading Permit Holder (“TPH”) the per contract amount set forth in the VIP table resulting from each public customer (“C” origin code) order transmitted by that TPH (with certain exceptions) which is executed electronically on the Exchange, provided the TPH meets certain volume thresholds in a month.⁴ The current qualification tiers are set to, in ascending order, 0%-0.75%, above 0.75%-1.50%, above 1.50%-3.00% and above 3%. The Exchange proposes to adjust the threshold percentages for Tiers 2 and 3. Specifically, the Exchange is proposing to amend Tier 2 to above 0.75% - 1.80% and Tier 3 to be above 1.80% - 3.00%. The purpose of this change is to incentivize the sending of both simple and complex orders to the Exchange and to adjust the incentive tiers accordingly as competition requires while maintaining an incremental incentive for TPH’s [sic] to strive for the highest tier level.

³ The Exchange initially filed the proposed change on April 1 2016 (SR-CBOE-2016-033). On April 12, 2016, the Exchange withdrew that filing and replaced it with SR-CBOE-2016-038.

⁴ Currently, qualification for the different fee rates at different tiers in the VIP is based on a TPH’s percentage of national customer volume in all products, excluding Underlying Symbol List A, DJX, MXEA, MXEF, MNX, NDX, XSP, XSPAM and mini-options. Excluded from the VIP credit are options in Underlying Symbol List A, DJX, MXEA, MXEF, MNX, NDX, XSP, XSPAM, mini-options, QCC trades, public customer to public customer electronic complex order executions, 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 (see CBOE Fees Schedule, Volume Incentive Program).

The Exchange next proposes to amend its Affiliate Volume Plan (“AVP”). By way of background, under AVP if a TPH Affiliate⁵ of a Market-Maker (including a Designated Primary Market-Maker (“DPM”) or Lead Market-Maker (“LMM”)) qualifies under VIP, that Market-Maker will also qualify for a discount on that Market-Maker’s Liquidity Provider Sliding Scale (“Sliding Scale”) transaction fees (“Sliding Scale Credit”). More specifically, if a Market-Maker’s Affiliate reaches Tier 2, Tier 3 or Tier 4 of VIP, that Market-Maker will receive a discount on their Sliding Scale Market-Maker transaction fees of 10%, 15% or 20%, respectively. The Exchange now proposes to increase the current discounts for Tiers 3 and 4 as follows:

Tier	VIP Thresholds	Current AVP Transaction Fee Discount	Proposed AVP Transaction Fee Discount
1	0.00% - 0.75%	0%	0%
2	Above 0.75% - 1.50%	10%	10%
3	Above 1.50% - 3.00%	15%	20%
4	Above 3.00%	20%	30%

The Exchange believes the increased credit rate will incentivize increased volume while also maintaining an incremental incentive for TPH’s [sic] to strive for the highest tier level.

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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirements

⁵ “Affiliate” is defined as having at least 75% common ownership between the two entities as reflected on each entity’s Form BD, Schedule A.

⁶ 15 U.S.C. 78f(b).

⁷ 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 Section 6(b)(4) of the Act,⁸ 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.

In particular, the Exchange believes it's reasonable to increase the lower threshold in the third tier of VIP (and thus the corresponding upper threshold in the second tier) because the change is designed to adjust the incentive tiers accordingly as competition requires while maintaining an incremental incentive for TPH's [sic] to strive for the highest tier level to reach the highest credits available. This change is also equitable and not unfairly discriminatory because it will be applied to all TPHs uniformly. The Exchange believes the proposed change will incentivize the sending of more simple and complex orders to the Exchange. The greater liquidity and trading opportunities should benefit not just public customers (whose orders are the only ones that qualify for the VIP) but all market participants.

The Exchange believes that increasing the Tier 3 and Tier 4 Sliding Scale Credits from 15% to 20% and 20% to 30%, respectively, is reasonable because it is increasing available credits. Additionally, enhancing the incentives under the Sliding Scale Credit further incentivizes a Market-Maker Affiliate to achieve the highest tier on the VIP so that the Market-

⁸ 15 U.S.C. 78f(b)(4).

Maker can achieve those higher credits, which thereby can result in greater customer liquidity. The resulting increased volume benefits all market participants (including Market-Makers or their affiliates who do not achieve the higher tiers on the VIP; indeed, this increased volume may allow them to reach these tiers).

The Exchange believes that limiting the Sliding Scale Credit to Market-Makers is equitable and not unfairly discriminatory because Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. For example, Market-Makers have a number of obligations, including quoting obligations that other market participants do not have.

The Exchange also believes that it's equitable and not unfairly discriminatory to limit the discounts under the Sliding Scale Credit to Market-Makers with Affiliates that reach certain tiers under VIP. The Exchange notes that in the options industry, many options orders are routed by consolidators, which are firms that have both order router and Market-Maker operations. The Exchange is aware not only of the importance of providing credits on the order routing side in order to encourage the submission of orders (which is [sic] currently does via VIP), but also of the operations costs on the Market-Maker side. The Exchange believes the Sliding Scale Credit allows the Exchange to provide further relief to the Market-Maker side via the discount, which incents these Market- Makers to tighten market widths due to the reduced costs the incentives provide. Additionally, the Exchange believes the discount attracts more volume and liquidity to the Exchange, which benefits all Exchange participants through increased opportunities to trade as well as enhancing price discovery. The Exchange also notes that incentivizing a Market-Maker Affiliate to achieve higher tiers on the VIP, so that the Market-Maker can achieve higher tiers under the Sliding Scale Credit, can result in greater customer liquidity, and the resulting

increased volume also benefits all market participants (including Market-Makers that do not have Affiliates or whose Affiliates do not achieve the higher tiers on the VIP; indeed, this increased volume may allow them to reach these tiers). Lastly, other options exchanges also provide credits to Market-Makers if a Market-Maker's affiliate adds a certain amount of customer liquidity to that exchange.⁹

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. In particular, the Exchange believes the proposed change to amend certain tier thresholds in VIP does not impose a burden on intramarket competition because it applies uniformly to all TPHs and incentivizes the sending of more simple and complex orders to the Exchange, which provides greater liquidity and trading opportunities. Additionally, the Exchange does not believe increasing credits under Tiers 3 and 4 of the Liquidity Provider Sliding Scale Credit imposes a burden on intramarket competition because, although it applies only to Market-Makers, Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market-Makers also have a number of obligations, including quoting obligations that other market participants do not have. Additionally, the Exchange notes that although the Sliding Scale Credit is limited to Market-Makers with an Affiliate, incentivizing a Market-Maker Affiliate to achieve higher tiers on the VIP, so that the affiliated Market-Maker can achieve higher tiers under the Sliding Scale Credit, can result in

⁹ See e.g., NYSE Arca, Inc. ("Arca") Options Fees and Charges, specifically the table describing the Market Maker Monthly Posting Credit Super Tier, under which transaction volume from a Market Maker's affiliates count towards the Market Maker's ability to qualify for higher credit tiers.

greater liquidity (including customer liquidity), and the resulting increased volume 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 because the proposed changes are intended to promote competition and better improve the Exchange's competitive position and make CBOE a more attractive marketplace in order to encourage market participants to bring increased volume to the Exchange (while still covering costs as necessary). Further, the proposed changes only affect trading on CBOE. 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f).

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-2016-038 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-2016-038. 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 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-2016-038, 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

Robert W. Errett
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).