

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79276; File No SR-CBOE-2016-075)

November 9, 2016

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 November 1, 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 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.

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

<sup>2</sup> 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. Particularly, the Exchange proposes to amend its fees for Firm (origin codes "F" and "L") facilitation orders. The Fees Schedule currently defines "Facilitation orders" as any order in which a Clearing Trading Permit Holder ("F" origin code) or Non-Trading Permit Holder Affiliate ("L" origin code) is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the transaction (for open outcry) or both sides of a paired order (for orders executed electronically).<sup>3</sup> The Fees Schedule also provides that for facilitation orders (other than Underlying Symbol List A (34) excluding binary options) executed in open outcry, or electronically via the Automated Improvement Mechanism ("AIM") or as a Qualified Contingent Cross order ("QCC") or CFLEX transaction, CBOE will assess no Clearing Trading Permit Holder Proprietary transaction fees. The Exchange proposes to amend the Fees Schedule to provide that for facilitation orders executed via AIM (i.e., AIM facilitation contra orders), Firms would be assessed \$0.05 per contract and for facilitation orders executed as a QCC order, Firms would be assessed \$0.17 per contract. Additionally, the Exchange would amend the Clearing Trading Permit Holder Fee Cap rate table to reflect that AIM facilitation contra orders would now count towards the Clearing Trading Permit Holder Fee Cap ("Fee Cap"). The Exchange notes that AIM and QCC orders are already subject to rebates and therefore, it does not wish to further provide free facilitation on these executions.<sup>4</sup> The Exchange also notes that other Exchanges do not waive fees for

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<sup>3</sup> See CBOE Fees Schedule, Footnote 11.

<sup>4</sup> See e.g., CBOE Fees Schedule, the Volume Incentive Program, which provides credits for customer AIM orders and QCC Rate Table, which provides \$0.10 per contract credit for all transaction QCC orders.

facilitation orders that are executed through an electronic pairing mechanism or as a QCC order.<sup>5</sup>

## 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>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> 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,<sup>8</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 assessing \$0.05 per contract for Firm facilitation orders executed via AIM (i.e., AIM facilitation contra orders) is reasonable because it is the same amount assessed to Firms for AIM Solicitation contra orders. The Exchange believes it is equitable and not unfairly discriminatory to no longer waive transaction fees for AIM facilitation

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<sup>5</sup> See e.g., NASDAQ PHLX Pricing Schedule, Section II, Multiply Listed Options Fees and Section IV Other Transaction Fees, PIXL Pricing. See also, NYSE Amex Options (“Amex”) Fees Schedule, Credits and Key Terms and Definitions and Section I, Options Transaction Fees.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

contra orders because AIM orders are already eligible for a rebate under the Volume Incentive Program (“VIP”). The Exchange also notes that transaction fees for similar facilitation transactions executed via an electronic pairing system at other exchanges are not waived.<sup>9</sup> The Exchange believes amending the Fee Cap table to reflect that AIM facilitation contra orders would count towards the Fee Cap is reasonable, equitable and not unfairly discriminatory because the Exchange will now be charging for these transactions (whereas before they were listed as “\$0.00) and because AIM Solicitation contra orders are also applied to the Fee Cap.

The Exchange believes that assessing \$0.17 per contract for Firm facilitation orders executed as a QCC order is reasonable because it is the same amount all non-Customer orders are assessed for QCC order executions. The Exchange believes it is equitable and not unfairly discriminatory to no longer waive transaction fees for QCC facilitation contra orders because QCC orders already receive a rebate of \$0.10 per contract. The Exchange also notes that transaction fees for similar QCC facilitation orders executed at other exchanges are not waived.<sup>10</sup>

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 because while the Exchange is eliminating its Firm Facilitation fee waiver for AIM and QCC orders, these orders are subject to the benefit of various rebates and will be assessed the same amounts charged to Firms for non-facilitation AIM contra orders and QCC orders, respectively. The Exchange does not believe that the proposed change will cause any unnecessary burden on

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<sup>9</sup> See supra Note 5.

<sup>10</sup> Id.

intermarket competition because the proposed change only affects 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 Act<sup>11</sup> and paragraph (f) of Rule 19b-4<sup>12</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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2016-075 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.

All submissions should refer to File Number SR-CBOE-2016-075. 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 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-2016-075 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>13</sup>

Brent J. Fields  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).