

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83453; File No. SR-CBOE-2018-041)

June 15, 2018

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Physical Port Fees for Cboe Options

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 June 1, 2018, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) 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 also 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 for Network Access Ports used for Disaster Recovery, effective June 1, 2018. Currently, the Exchange assesses \$250 per port, per month for 1 gigabit (Gbps) and 10 Gbps Network Access Ports that connect to the Exchange’s Disaster Recovery Systems in Chicago (“Disaster Recovery Ports”). The Exchange proposes to increase its fees for Disaster Recovery Ports. Specifically, the Exchange proposes to assess a monthly fee of \$2,000 per 1 Gbps Disaster Recovery Port and a monthly fee of \$6,000 per 10 Gbps Disaster Recovery Port. This amount will continue to enable the Exchange to maintain the Disaster Recovery Ports in case they become necessary. The Exchange notes that the Disaster Recovery Ports may now also be used to access the Disaster Recovery Systems for the following affiliate exchanges: Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe C2 Exchange, Inc., Cboe BYX Exchange, Inc. and Cboe Futures Exchange, LLC (“Affiliated Exchanges”). The Exchange proposes to provide that market participants will only be assessed a single fee for any Disaster Recovery Port that also accesses the Disaster Recovery Systems for these exchanges.³

Lastly, the Exchange notes that the Fees Schedule currently provides that separate Network Access Port fees are assessed for unicast (orders, quotes) and multicast (market data) connectivity and includes a parenthetical that clarifies that “if a TPH uses the 1 Gbps Disaster Recovery Network Access Port for unicast and multicast connectivity, the TPH will be charged \$500 per month”. The exchange notes that certain Network Access Ports that connect to the

³ For example, if a market participant uses a 1 Gbps Disaster Recovery Port to connect to the Disaster Recovery Systems for both Cboe Options and EDGX, the market participant would only be assessed one monthly fee of \$2,000.

Disaster Recovery Systems are able to receive both multicast and unicast traffic, whereas other Network Access Ports can only receive one type of connectivity each (thus requiring a market participants to maintain two ports if that market participant desires both types of connectivity). Accordingly, market participants are currently assessed fees based on connectivity (i.e., a TPH is charged two port fees regardless of whether it receives both unicast and multicast connectivity over a single port or each type of connectivity over two separate ports). The Exchange notes that physical ports, including Disaster Recovery Ports, at its Affiliated Exchanges allow for unicast and multicast connectivity to be received through a single port and that those Exchanges therefore assess only a “per port” fee (instead of a “per connectivity type” fee). Since market participants will be able to use Disaster Recovery Ports to access the Disaster Recovery Systems of Cboe Options and its Affiliated Exchanges, the Exchange proposes to no longer charge for unicast and multicast connectivity separately for Disaster Recovery Ports. Therefore, the Exchange proposes to eliminate the clarification pertaining to Disaster Recovery Ports currently in the parenthetical in the Notes section. Similarly, the Exchange also proposes to make clear in the Fees Schedule that if a market participant maintains two Disaster Recovery Ports of the same size in order to receive unicast and multicast connectivity (i.e., they cannot receive both connectivity types over 1 port), then the Exchange will only assess one Disaster Recovery Port fee (e.g., if a TPH has two 1 Gb Disaster Recovery Ports, one of which receives unicast traffic and the other of which only receives multicast traffic, that TPH will be assessed \$2,000, instead of \$4,000).

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.⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵ 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 the Section 6(b)(5)⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee increase is reasonable because it will assist the Exchange in recouping costs associated with maintaining its Disaster Recovery Ports and Disaster Recovery Systems in case of necessity. The Exchange also notes that it hasn't amended the fee amount since it adopted the fee in 2012.⁷ Additionally, the proposed fees are the same as are concurrently being proposed for its Affiliate Exchanges and other exchanges assess similar fees for connection to their Disaster Recovery Systems by their market participants.⁸ The Exchange believes it's reasonable, equitable and not unfairly discriminatory to assess the Disaster Recovery Port fee only once if it connects with another affiliate exchange because only

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ Id.

⁷ See Securities Exchange Act Release No. 68342 (December 3, 2012) 77 FR 73096 (December 7, 2012) (SR-CBOE-2012-114).

⁸ See e.g., NYSE Arca Equities Fees and Charges, NYSE Arca Marketplace: Other Fees and Charges, Connectivity Fees. See also, Nasdaq Phlx LLC Pricing Schedule, Section XI.

one port is being used and the Exchange does not wish to charge multiple fees for the same port. Similarly, the Exchange believes it's reasonable to assess only one fee for multicast and unicast connectivity, regardless if both connectivity types are available on a single port or separate ports, because the Exchange's affiliate exchanges do not charge port fees based on connectivity types. Lastly, the Exchange believes the proposed changes are equitable and nondiscriminatory because it applies uniformly to all market participants.

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

The Exchange 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 proposed change applies uniformly to all market participants. The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Market participants may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Further, excessive fees for connectivity would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

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 Act⁹ and paragraph (f) of Rule 19b-4¹⁰ thereunder. At any time within 60 days of the filing of

⁹ 15 U.S.C. 78s(b)(3)(A).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2018-041 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-2018-041. 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

¹⁰ 17 CFR 240.19b-4(f).

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2018-041 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.¹¹

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Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).