

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87873; File No. SR-CBOE-2019-127)

December 31, 2019

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its 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 December 20, 2019, 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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to adopt certain linkage fee codes. The text of the proposed rule change is provided in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange’s Fees Schedule currently provides for fee codes for Routing Fees. In particular, the Fees Schedule currently lists fee codes and their corresponding transaction fee for routed Customer orders to other options exchanges specifically in Exchange Traded Funds (“ETF”) and equity options, and for non-Customer orders routed in Penny and Non-Penny options classes. The Exchange notes that in connection with a recent technology migration (including the migration of the Exchange’s billing system to a new billing system), the Exchange amended and updated a majority of its Fees Schedule,³ which became effective upon the technology migration.⁴ Prior to the migration-related amendments and updates, the Fees Schedule had provided for a general transaction fee assessed for all routed Customer orders in all options classes. More specifically, it had provided that for Customer orders, in addition to the customary Cboe Options execution charges for each Customer order that is routed, the Exchange passed through the actual transaction fee assessed by the exchange(s) to which the order was routed plus an additional \$0.15 per contract.

³ See Securities and Exchange Act Release No. 87495 (November 8, 2019), 84 FR 63701 (November 18, 2019) (SR-CBOE-2019-106).

⁴ In 2016, the Exchange’s parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (“Cboe Global”), which is also the parent company of Cboe C2 Exchange, Inc. (“C2”), acquired Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX” or “EDGX Options”), Cboe BZX Exchange, Inc. (“BZX” or “BZX Options”), and Cboe BYX Exchange, Inc. (“BYX” and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the “Cboe Affiliated Exchanges”). Cboe Options migrated its trading platform to the same system used by the Cboe Affiliated Exchanges on October 7, 2019.

In light of the migration, the Exchange amended, among other things, the general routing fee for Customer orders to instead provide for an exact charge for routing per specific types of transaction and a particular corresponding fee code, which currently exists in the Fees Schedule today. The Exchange, however, inadvertently did not adopt a fee code for Customer orders routed in index options, which the Exchange had intended to adopt in the migration-related Fee Schedule amendments along with the fee codes currently in place for Customer orders routed in ETF and equity options, as the general routing fee for Customer orders contained in the Fees Schedule prior to migration was assessed for orders in all option classes. As such, the Exchange now proposes to adopt fee codes and reinstate fees in connection with Customer orders routed in index options. Particularly, the Exchange proposes to adopt fee code “RX”, which would be appended to Customer orders routed in Mini-SPX Index (“XSP”) options⁵ and assessed a fee of \$0.19, and fee code “RS”, which would be appended to Customer orders routed in all other index options⁶ and assessed a fee of \$0.48. The Exchange notes that the routing rates for routed Customer orders in index options, as proposed, would not change from when such fees were in place prior to the migration-related amendments to the Fees Schedule, but rather, would be expressed as their specific, single rates by combining the \$0.15 per contract fee plus the customary Cboe Options Customer execution charges (i.e., \$0.04 for XSP options and \$0.18 in all other index options) and the actual transaction fee assessed by the Exchange to which the order was routed (i.e., \$0.00 for EDGX Options, to which orders in XSP options may be routed, and \$0.15 for C2 and BZX Options, to which orders in all

⁵ The Exchange notes the XPS options may be routed to its affiliated exchange, Cboe EDGX Exchange, Inc. (“EDGX Options”), as EDGX Options also lists XSP options.

⁶ The Exchange notes that all other index options include Russell 2000 Index (“RUT”) and Dow Jones Industrial Average Index (“DJX”) options. Orders in RUT options may be routed to the Exchange’s affiliates, Cboe C2 Exchange, Inc. (“C2”) and Cboe BZX Exchange, Inc. (“BZX Options”), as these exchanges also list RUT options, and orders in DJX options may be routed to C2, as C2 also lists RUT options.

other index options may be routed).⁷ The Exchange also notes that this specific single rate is consistent with the manner in which fee codes for Customer orders in ETF and equity options are currently provided in the Fees Schedule. The Exchange notes that other exchanges, including its affiliated exchanges, assess routing fees expressed as a single fee for routed Customer orders and that the proposed fees are in line with, and generally lower than, those fees.⁸

In addition, the Exchange also proposes to amend certain language in the Fees Schedule under the Frequent Trader Program table. Specifically, the Fees Schedule currently provides that the Exchange will disperse a customer's rebates pursuant to the customer's instructions, which may include receiving the rebates as a direct payment or via a distribution to one or more of its Clearing Trading Permit Holders. The Exchange notes that the integrated post-migration billing system does not currently offer distribution to Clearing Trading Permit Holder, therefore the Exchange proposed to remove this payment method in connection with the Frequent Trader Program. As such, the proposed change is designed to amend language in the Fees Schedule in order to accurately reflect the manner in which the billing system currently functions. Additionally, the Exchange notes that prior to the migration-related changes made to the billing system the Exchange generally dispersed all customers' rebates as direct payments.

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

⁷ See supra note 5 and 6.

⁸ See Cboe C2 Options Exchange Fee Schedule, which assesses a fee of \$0.85 per routed Customer order in both RUT and DJX options; Cboe BZX Options Exchange Fee Schedule, which also assesses a fee of \$0.85 per routed Customer order in RUT options; Cboe EDGX Exchange Fee Schedule, which assesses a fee of \$0.25 for routed Customer orders in XSP options. See also MIAX Options Fees Schedule which assesses \$0.65 per routed Customer order in penny classes and \$0.15 in non-penny classes.

Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ 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,¹¹ 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 also believes the proposed fee codes for Customer orders routed in index options are reasonable and equitable because such fees would be reinstated for the same amount they were previously assessed in the Fees Schedule, as the Exchange inadvertently omitted such fees, which were prior in place, when it made migration-related amendments and updates to a majority of its Fees Schedule. As a result, the proposed fee codes would alleviate potential confusion and provide clarity for market participants by ensuring the continuation of fees that were not intended, nor announced, to be discontinued. As stated, the manner in which the proposed single fee rates for Customer orders routed in index options would be provided in the Fees Schedule is consistent with the manner in which the routed fee rates are currently provided for Customer orders

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

routed in ETF and equity options. The Exchange also believes its proposed fees in connection with Customer orders routed in index options are reasonable as the proposed fees take into account routing costs, as they did when previously in place, and are in line with amounts assessed and presented as single fee rates by other exchanges, including its affiliated exchanges.¹²

The Exchange believes the proposed routing fees are equitable and not unfairly discriminatory because the proposed fees apply equally to all Customers who choose to use the Exchange to route orders in index options (either in XSP or all other index options). The Exchange highlights that routing through the Exchange is voluntary and that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

Additionally, the Exchange believes that the proposed change to remove the Frequent Trader Program payment method in connection with distributions to Clearing Trading Permit Holders is reasonable because it is intended to accurately reflect the payment methods currently offered by the billing system post-migration, thereby providing for clarity in the Fees Schedule and mitigating any potential confusion surrounding the Frequent Trader Program payment options. The Exchange also notes that the proposed change would not significantly impact investors as prior to the migration the Exchange generally only dispersed customer's rebates as a direct payment. The proposed change would have no impact on the ability of customer's to receive their payments. The Exchange further believes that the proposed rule change is equitable and not unfairly discriminatory because, as proposed, the same payment method would apply equally to all Frequent Trader Program customer rebates.

¹² See supra note 5 [sic].

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed change to the payment methods in connection with its Frequent Trader Program does not involve or impact trading on the Exchange, and is merely intended to clarify the manner in which the Exchange's billing system currently functions.

Further, the Exchange does not believe that the proposed fee codes would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes would, again, be applied equally to all Customer orders routed in index options. As stated, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change would merely reinstate an inadvertently omitted fee in order to continue to reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes enhances market quality to the benefit of all TPHs. The Exchange does not believe that the proposed rule change would impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fee codes are not intended as a competitive change, as these fees were prior in place in the Fees Schedule and recently removed inadvertently. As such, the proposed rule change is corrective and clarifying in nature.

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 Act¹³ and paragraph (f) of Rule 19b-4¹⁴ 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2019-127 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-2019-127. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

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. 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-2019-127 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.¹⁵

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).