

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88678; File No. SR-CBOE-2020-033)

April 17, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending its Fees Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 16, 2020, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“SEC” or “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 amend its fees schedule. 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 proposes to amend Footnote 12 of the Fees Schedule, which governs pricing changes in the event the Exchange trading floor becomes inoperable. In the event the trading floor becomes inoperable, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor facility is inoperable. The Exchange would operate using that configuration only until the Exchange’s trading floor facility became operational. Open outcry trading would not be available in the event the trading floor becomes inoperable. Particularly, the Exchange proposes to amend Footnote 12 to waive fees incurred from certain transactions executed in electronic compression forums.

By way of background, the Exchange recently adopted Rule 5.24(e)(1)(E), which provides that in the event the trading floor is inoperable, the Exchange will make available an electronic “compression forum” in the same manner as an open outcry “compression forum” as set forth in Rule 5.88, subject to certain exceptions.³ When the trading floor is open, the Exchange facilitates compression forums on the trading floor at the end of each calendar week, month, and quarter in which Trading Permit Holders (“TPHs”) may reduce open positions in series of SPX options in order to mitigate the effects of capital constraints on market participants,

³ See Securities and Exchange Act Release No. 88490 (March 26, 2020), 85 FR 18318 (April 1, 2020) (SR-CBOE-2020-026).

which may contribute to continued depth of liquidity in the SPX options market.⁴ The Exchange adopted Rule 5.24(e)(1)(E) to provide for an electronic forum that replicates the compression forum that is available when the Exchange is operating with an open outcry environment. Particularly, an electronic compression forum would continue to provide TPHs an opportunity to efficiently reduce their open SPX positions and free up capital in the event the Exchange must operate in an all-electronic environment (as it currently is), which is particularly important in volatile market conditions.

The Exchange currently waives transaction fees (and surcharges) incurred as a result of transactions that compress or reduce certain open positions.⁵ One such waiver in particular is for transactions involving SPX and SPXW compression-list positions executed in a floor compression forum (pursuant to Rule 5.88).⁶ Particularly, the Exchange waives SPX/SPXW transaction fees, including surcharges, in order to encourage TPHs to submit compression-list positions in advance of monthly compression forums and compress these positions during

⁴ In general, under the floor Compression Forum process, each month, TPHs may submit to the Exchange lists of open SPX positions (these positions are referred to in Rule 5.88 as “compression-list positions”) they wish to close against opposing (long/short) positions of other TPHs. The Exchange would then aggregate these positions into a single list to allow TPHs to more easily identify those positions with counterparty interest on the Exchange. The Exchange then provides a forum on the Exchange’s trading floor during which TPHs could conduct closing-only transactions in series of SPX options. The Exchange holds compression forums on the last three trading days of each calendar month.

⁵ See CBOE Fees Schedule, Footnote 41.

⁶ See Cboe Options Fees Schedule, Footnote 41. The Exchange notes it inadvertently failed to update the rule references in Footnote 41, including Rule 5.88, when it relocated the rules upon migration See Securities and Exchange Act Release No. 86772 (August 27, 2019), 84 FR 46069 (September 3, 2019) (SR-CBOE-2019-042). The Exchange proposes to update those rule references now.

compression forums.⁷ The Exchange wishes to similarly waive all transaction fees, including any applicable surcharges (e.g., Index License Surcharge and SPX/SPXW Execution Surcharges), for closing transactions involving SPX and SPXW compression-list positions executed in an electronic compression forum (pursuant to Rule 5.24).

The Exchange believes compression of these positions may improve market liquidity by freeing capital currently tied up in positions for which there is a minimal chance that a significant loss would occur. The Exchange further believes advanced submission of compression-list positions to the Exchange allows TPHs to more easily identify counterparty interest and efficiently conduct closing transactions of these positions during compression forums. The Exchange notes the submission of compression-list positions is completely voluntary, open to all TPHs with open positions in SPX, and does not require a TPH to trade any compression-list position or participate in a compression forum. As such, the Exchange believes it's appropriate to waive fees incurred for transaction executed in an electronic compression forum. The Exchange proposes to make clear that in order to receive a fee waiver of all transaction fees and applicable surcharges for these transactions, a TPH must mark its orders in a form and manner determined by the Exchange to identify them as eligible for the compression fee waiver. Orders identified as eligible for a fee waiver will yield fee code "SC". The Exchange proposes to similarly clarify in Footnote 41, that in order for a TPH to receive a rebate for compression trades that occur on floor, a TPH must mark its orders in a form and manner determined by the Exchange to identify them as eligible for the compression rebates.⁸

⁷ See Cboe Options Fees Schedule, Footnote 41. A rebate of transaction fees would include the transaction fee assessed along with any other surcharges assessed per contract (e.g., the Index License Surcharge).

⁸ See Securities and Exchange Act Release No. 87338 (October 17, 2019), 84 FR 56873 (October 23, 2019) (SR-CBOE-2019-094).

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.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 believes the proposed rule change to waive transaction fees, including the Index License Surcharge and SPX/SPXW Execution Surcharges, for closing transactions involving SPX and SPXW compression-list positions executed in an electronic compression forum (pursuant to Rule 5.24) while the trading floor is inoperable is reasonable because market participants will not be subject to transaction fees or surcharges for these executions. While the trading floor is inoperable, the Exchange still wishes to incentivize TPHs to submit to the Exchange compression-list positions executed in a compression forum, albeit for an electronic

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

compression forum, and as such, does not wish to assess any transaction fees or surcharges on such volume that would otherwise be executed on the trading floor and not be charged. The Exchange believes compression of these positions would improve market liquidity by freeing capital currently tied up in positions for which there is a minimal chance that a significant loss would occur. All TPHs may submit compression-list positions and may participate in compression forums. Moreover, as noted above, the Exchange already waives transaction fees, including surcharges, for closing transactions involving SPX and SPXW compression-list positions executed in a compression forum on the trading floor (pursuant to Rule 5.88).¹² The Exchange believes the proposed change is also equitable and not unfairly discriminatory as it applies uniformly to all market participants that identify eligible orders in the form and manner determined by the Exchange.

Lastly, the Exchange believes the proposed clarification and updates to rule references in Footnote 41 maintains transparency in the Fees Schedule and alleviates potential confusion, thereby removing impediments to, and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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. The Exchange notes the proposed changes are not intended to address any competitive issue, but rather to address a fee change it believes is reasonable in the event the trading floor becomes inoperable, thereby only permitting electronic participation on the Exchange. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that

¹² See Cboe Options Fees Schedule, Footnote 41.

is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply equally to all similarly situated 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 only affect trading on the Exchange in limited circumstances.

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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2020-033 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-2020-033. 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 offices 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-2020-033, 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).