

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90103; File No. SR-CBOE-2020-089)

October 7, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend its Fees Schedule with Respect to its Strategy Fee Cap

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 September 30, 2020, 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 amend its Fees Schedule with respect to its strategy fee cap. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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 in connection with its strategy order fee cap, effective September 30, 2020.

Effective September 1, 2020, the Exchange amended Footnote 13 to provide that market-maker, Clearing Trading Permit Holder, JBO participant, broker-dealer and non-Trading Permit Holder market-maker transaction fees are capped at \$0.00 for all merger, short stock interest, reversal, conversion and jelly roll strategies executed in open outcry on the same trading day in the same option class across all symbols.³ Essentially, that rule change removed three previous strategy fee cap amounts, and, instead, adopted a \$0.00 cap for strategies executed in open outcry in all classes (i.e., all strategies transacted on the trading floor will be free). The Exchange proposes to explicitly clarify in Footnote 13 that in order for a strategy transaction to be eligible for the fee cap (i.e., not be assessed transaction fees), TPHs must mark such strategy orders with a code approved by the Exchange identifying the orders as eligible for the fee cap.⁴ The Exchange also proposes to provide that strategy orders executed during September 2020 will be

³ See Securities Exchange Act Release No. 89831 (September 11, 2020) 85 FR 58096 (September 17, 2020) (SR-CBOE-2020-084).

⁴ The Exchange notes that its billing system is unable to recognize that an order is a strategy order absent such order being explicitly marked as a strategy order.

eligible for the fee cap notwithstanding not being marked, provided that a TPH submits a rebate request with supporting documentation for such orders to the Exchange within 3 business days of September 30, 2020 (i.e., October 5, 2020).

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.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ 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,⁷ 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 making it clear and explicit in its fees schedule that TPHs must mark strategy orders with a code approved by the Exchange in order to receive the fee cap is reasonable as it reduces the risk of orders not receiving the current fee cap that would otherwise be entitled to it by ensuring TPHs are aware of the marking requirement. Additionally, the

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(4).

clarification provides 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 protecting investors and the public interest. The Exchange also believes the marking requirement is equitable and not unfairly discriminatory as it applies uniformly to all TPHs.

The Exchange also believes it's reasonable to provide TPHs the option of submitting a written rebate request to qualify strategy orders executed in September 2020 for the fee cap as it provides TPHs who did not know to mark their orders an opportunity to receive the fee cap for strategies that would otherwise qualify. Particularly, the Exchange notes it operates in highly competitive market. To respond to this competitive marketplace, the Exchange adopted a fee cap of \$0.00 for all strategy orders, effective September 1, 2020, which was designed to incentivize Trading Permit Holders to increase their strategy orders submitted to and executed on the Exchange's trading floor, which can benefit all markets participants. The Exchange believes that as a result of that change, TPHs did in fact send more strategy orders to the Exchange. However, due to the Exchange's inadvertent omission to explicitly state in the fees schedule that such orders must be marked to qualify for the fee cap, some TPHs were not aware of the requirement and did not mark their orders as strategy orders at the time of entry. As such, absent the proposed rule change, such orders submitted this month would not be eligible to receive the fee cap, notwithstanding the fact that such orders were strategy orders that otherwise could have qualified. The Exchange lastly believes allowing TPHs to submit documentation in order to qualify for the strategy order is equitable and not unfairly discriminatory as it applies uniformly to all TPHs who submitted strategy orders this month.

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 because the proposed change applies uniformly to all TPHs and still provides for TPHs an opportunity to receive the above described fee cap. The Exchange believes that the proposed rule change will not cause an unnecessary burden on intermarket competition because it only applies to trading on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options 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 Act⁸ and paragraph (f) of Rule 19b-4⁹ 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.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 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-2020-089](#) 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-2020-089](#). 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.

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-2020-089](#) 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.¹⁰

J. Matthew DeLesDernier
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).