

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90332; File No. SR-CBOE-2020-107)

November 4, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating 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 October 28, 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. 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 its Fees Schedule in connection with Compression, or Position Compression Cross (“PCC”), orders, effective October 29, 2020.

By way of background, the Exchange has historically permitted open outcry compression forums which allow Trading Permit Holders (“TPHs”) to reduce open interest in SPX options. Footnote 41 of the Fees Schedule currently provides a rebate of transaction fees, including the Index License Surcharge, for closing transactions involving SPX and SPXW compression-list positions executed in a compression forum. From March 16 to June 12, 2020, the Exchange’s trading floor was closed due to the coronavirus pandemic. During that time, the Exchange operated in an all-electronic configuration, which would have prevented market participants from reducing open SPX interest in open outcry compression forums. As a result, the Exchange adopted Rule 5.24(e)(1)(E) to permit TPHs to reduce open interest in SPX options in electronic compression forums in the same manner as an open outcry compression forum (as set forth in Rule 5.88) while the trading floor was inoperable.³ Footnote 12 of the Fees Schedule was also amended to provide a waiver for 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

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

forum, like that of the waiver provided in footnote 41 for open outcry compression forums.⁴ The Exchange recently adopted Compression, or “PCC”, orders that can be executed electronically or in open outcry on a permanent basis, and, as a result, removed Rule 5.24(e)(1)(E), as well as relocated and amended Rule 5.88.⁵ The Exchange notes that PCC orders may be comprised of opening and closing positions. The Exchange plans to launch PCC order functionality on October 29, 2020.

The Exchange proposes to amend the Fees Schedule in light of the adoption of PCC orders (i.e., compression orders) on a permanent basis. As noted above, footnote 12 currently provides that the Exchange shall waive transaction fees, including the Index License Surcharge and SPX/SPXW Execution Surcharge, for closing transactions involving SPX and SPXW compression-list positions executed in a compression forum (pursuant to Rule 5.24) when the trading floor is inoperable. In order to receive a waiver of fees for compression forum transactions, a TPH must mark its orders in a form and manner determined by the Exchange to identify them as eligible for the compression rebates. Likewise, footnote 41 currently provides that the Exchange shall rebate transaction fees, including the Index License Surcharge, for closing transactions involving SPX and SPXW compression-list positions executed in a compression forum (pursuant to Rule 5.88). In order to receive either rebate, a TPH must mark its orders in a form and manner determined by the Exchange to identify them as eligible for the

⁴ See Securities Exchange Release No. 88678 (April 17, 2020), 85 FR 22770 April 23, 2020) (SR-CBOE-2020-033).

⁵ See Securities Exchange Release Nos. 89707 (August 28, 2020), 85 FR 55040 September 3, 2020) (SR-CBOE-2020-074) (Notice of Filing of a Proposed Rule Change Relating To Adopt Compression Orders); and 90179 (October 14, 2020), 85 FR 66590 (October 20, 2020) (SR-CBOE-2020-074) (Order Granting Approval of a Proposed Rule Change To Adopt Position Compression Cross (“PCC”) Orders for SPX).

compression rebates. Pursuant to both footnote 12 and 41, orders identified as compression trades do not count towards any volume thresholds.⁶

The Exchange notes that the proposed rule change does not alter the current waiver already in place pursuant to footnote 12 for transactions in temporary electronic compression forums (when the Exchange’s trading floor is inoperable) or rebate in place pursuant to footnote 41 for transactions in open outcry compression forums. Instead, the proposed rule change removes the electronic compression forum waiver language in footnote 12 and relocates it to footnote 41, as the waiver will now apply at all times, as PCC orders will be available at all times rather than only when the trading floor is inoperable. The proposed rule change updates and streamlines the compression waiver language in footnote 41 by replacing the language describing the prior compression forum process with “PCC orders”, clarifying that the waiver will apply to PCC orders executed both electronically and in open outcry, removing references to closing transactions (as PCC orders may now be comprised of opening and closing positions) and removing references to prior Rules 5.24 and 5.88. Specifically, the proposed language in footnote 41 provides that the Exchange shall waive transaction fees, including the Index License Surcharge and SPX/SPXW Execution Surcharge, for PCC transactions executed electronically or in open outcry, as applicable.⁷ A PCC order submitted for execution in open outcry must be

⁶ This includes the following programs: (1) SPX Liquidity Provider Sliding Scale, (2) Clearing Trading Permit Holder Proprietary Products Sliding Scale, (3) Select Customer Options Reduction (“SCORE”) Program, (4) SPX/SPXW Market-Maker Tier Appointment Fees, (5) SPX/SPXW Floor Broker Trading Surcharge, (6) Floor Broker ADV Discount, (7) Floor Brokerage Fees Discount, and (8) Frequent Trader Program. See also Securities Exchange Release No. 88836 (May 7, 2020), 85 FR 28669 (May 13, 2020) (SR-CBOE-2020-044).

⁷ The proposed rule change also appends footnote 41 to the surcharges in the Fees Schedule to which the compression waiver for Rule 5.24 electronic compression trades applied, as the waiver will continue to apply for electronic PCC orders.

marked as “compression” in order to receive waiver of fees for PCC orders. PCC transactions will not count towards any volume thresholds. The Exchange notes that the proposed language provides for a waiver of transaction fees for all PCC orders, as is currently the case for electronic compression trades, instead of the rebate currently provided for compression trades in open outcry. This proposed rule change does not alter the ultimate amount charged or benefit provided to a TPH for compression transactions in open outcry, but instead removes the extra reimbursement step in the billing process and provides uniformity for the billing process across electronic and open outcry compression trades by waiving all compression transaction fees. Finally, the proposed rule change removes the requirement that in order to receive a waiver of fees for compression forum transactions, a TPH must mark its orders (for both electronic execution and open outcry) in a form and manner determined by the Exchange to identify them as eligible for the compression rebates. It replaces this former requirement with the requirement that only PCC orders submitted for execution in open outcry must be marked as “compression”, as the System will now be able to automatically determine electronic PCC orders as “compression” without any other marking.

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.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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,¹⁰ 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 is consistent with the Act, in that, it is reasonable, equitable and not unfairly discriminatory. The proposed rule change is reasonable because it does not alter the transaction fee waiver currently available for compression trades, but merely updates the waiver language to appropriately reflect its application to the permanent electronic compression orders (i.e., PCC orders) recently adopted by the Exchange and clarifies that only open outcry compression orders must be marked for open outcry execution. All compression transactions will continue not to count toward volume thresholds. Additionally, the Exchange notes that the proposed change to update the rebate applied to open outcry compression trades to a fee waiver is reasonable as it does not change the ultimate amount charged or benefit currently provided to a TPH for compression transactions, but instead removes the extra reimbursement step in the billing process and provides uniformity for the billing process across electronic and open outcry compression trades by waiving all compression transaction fees. Also, the Exchange believes that, generally, the transaction fee waiver in place for compression orders is reasonable and equitable because the compression of these positions would improve market

¹⁰ 15 U.S.C. 78f(b)(4).

liquidity by freeing capital currently tied up in positions for which there is a minimal chance that a significant loss would occur. Finally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because the fee waiver will continue to apply in the same uniform manner for the same transactions, both electronically and in open outcry,¹¹ for all TPHs that submit compression orders to the Exchange.

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

Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket 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 compression transaction fee waiver will apply to all TPHs that submit compression orders to the Exchange, as it does today and will to compression orders executed electronically and in open outcry. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the transaction fee waiver will continue to apply to compression orders available only for Exchange proprietary products, SPX/SPXW.

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.

¹¹ See supra note 7.

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 Act¹² and paragraph (f) of Rule 19b-4¹³ 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-2020-107 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-2020-107. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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, 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-2020-107 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.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).