

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85855; File No. SR-C2-2019-010)

May 14, 2019

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Add Certain Fees Related to the Listing and Trading of Options Contracts on the Dow Jones Industrial Average Index (“DJX”)

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 May 7, 2019, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) 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 C2 Exchange, Inc. (the “Exchange” or “C2”) proposes to add certain fees related to the listing and trading of options contracts on the Dow Jones Industrial Average Index (“DJX”).

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://markets.cboe.com/us/options/regulation/rule_filings/ctwo/), 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

On May 8, 2019, the Exchange will begin listing DJX options for trading.³ Accordingly, the Exchange proposes to amend its Fee Schedule to codify standard transaction fees for DJX transactions. The proposed changes will be effective May 8, 2019.

Specifically, the Exchange proposes to add various fee codes for executions and linkage routing in DJX options. The proposed rates applicable to each proposed fee code for executions and for linkage routing correspond to the rates that currently apply to the same execution and linkage routing types in the Russell 2000 Index options ("RUT"). The Exchange also proposes to amend the Index License Surcharge fees that apply to all non-Public Customer transactions to include a fee for DJX.

Regarding executions in DJX options, fee code DC will be appended to all Public Customer orders executed in DJX options, and will result in a rate of \$0.15 per contract. Fee code DM will be appended to all C2 Market-Maker orders executed in DJX options, and will result in a rate of \$0.35 per contract. Fee code DN will be appended to Non-Customer and Non-Market-Maker orders executed in DJX options, and will result in a rate of \$0.55 per contract. Fee code DO will be appended to trades executed on the open in DJX options, and will be free. The proposed fees assessed are the same for corresponding execution types in RUT.

³ See Interpretation and Policy .01 to Rule 24.

Regarding linkage routing fees for orders routed away to another exchange in DJX, fee code FC will be appended to all routed Customer orders in DJX options, and will result in a fee of \$0.85. Fee code FM will be appended to all routed Market-Maker orders in DJX options, and will result in a fee of \$1.05. Fee code FN will be appended to all routed Non-Customer and Non-Market-Maker orders in DJX options, and will result in a fee of \$1.25. Fee code FO will be appended to all order routed at the open in DJX, and will be free. The proposed fees assessed are the same for corresponding linkage routing types in RUT.

As stated, the Exchange also proposes to amend the Index License Surcharge fee, which is applicable to all non-Public Customer transactions, to include a fee of \$0.10 per contract assessed for transactions in DJX options. The Exchange proposes to assess a Surcharge of \$0.10 per contract in order to recoup the costs associated with the DJX license.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Section 6 of the Act,⁴ in general, and Section 6(b)(4),⁵ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Trading Permit Holders (“TPHs”) and other persons using its facilities.

Specifically, the Exchange believes it is reasonable to charge different fee amounts to different user types for executions and linkage routing in DJX options in the manner proposed because the proposed fees are consistent with the price differentiation and type of TPH transactions that exists today on the Exchange for another index option product, RUT, as well as on its affiliated exchange, Cboe Exchange, Inc. (“Cboe Options”) for index option products,

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

which includes DJX options.⁶ Additionally, the Exchange believes the proposed fee amounts for DJX executions and linkage routing are reasonable because the proposed fee amounts correspond to the fee amounts charged for executions and linkage routing in RUT on the Exchange today. In addition to this, the Exchange believes that the proposed surcharge for DJX options is reasonable because a similar surcharge exists on the Exchange today for RUT options (which is higher than the proposed surcharge for DJX). The Exchange also notes that Cboe Options currently assesses a \$0.10 surcharge fee for DJX options.⁷ Furthermore, the Exchange believes that the proposed fees for the newly listed DJX options on C2 are reasonable as the Exchange's affiliated exchange, Cboe BZX Exchange, Inc. ("BZX Options") recently added comparable execution, linkage routing and surcharge fees for a newly listed index option product, RUT.⁸ The Exchange believes these types of fee codes for newly or recently listed index options are reasonable because they promote and encourage trading in such products.

The Exchange also believes that it is equitable and not unfairly discriminatory to assess lower fees for executions and linkage routing to Customers (including Public Customers) as compared to other market participants because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Moreover, the options industry has a long history of providing preferential pricing to Customers,

⁶ See Cboe Options Fees Schedule, Index Options Rate Table.

⁷ Id.

⁸ See Securities Exchange Act Release No. 84401 (October, 11, 2018), 83 FR 52591 (October 17, 2018) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees on Cboe BZX Exchange, Inc.) (SR-CboeBZX-2018-075).

and the Exchange's current Fee Schedule currently does so in many places, as do the fees structures of multiple other exchanges.⁹ The Exchange notes that all fee amounts applicable to Customers will be applied equally to all Customers, i.e. all Customers will be assessed the same amount.

Additionally, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees for executions and linkage routing to Market-Makers as compared to other market participants, other than Customers, because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations, which other market participants do not have. Further, these lower fees offered to Market-Makers are intended to incent Market-Makers to quote and trade more on C2 Options, thereby providing more trading opportunities for all market participants. The Exchange notes that all fee amounts applicable to Market-Makers will be applied equally to all Market-Makers, i.e. all Market-Makers will be assessed the same amount. Similarly, the Exchange notes that the DJX fee amounts for each separate type of other market participant will be assessed equally to all such market participants, i.e. all Non-Customer and Non-Market-Maker orders will be assessed the same amount.

The Exchange believes its proposed fees for DJX orders that are routed away from the Exchange are reasonable taking into account routing costs and also notes that the proposed fees are in line with amounts assessed by other exchanges.¹⁰ For the reasons described above, the Exchange also believes that it is equitable and not unfairly discriminatory to assess lower routing fees to Customers as compared to other market participants. The Exchange notes that routing through the Exchange is voluntary and market participants can readily direct order flow to

⁹ See e.g. supra note 6. See also BZX Options Fee Schedule, Fee Codes and Associated Fees.

¹⁰ See supra note 9.

another exchange if they deem Exchange fee levels to be excessive.

Finally, the Exchange believes that it is reasonable to assess an Index License Surcharge fee to all non-Public Customer transactions because the surcharge helps recoup some of the costs associated with the license for DJX. As previously stated, the Exchange notes that the surcharge amount is the same as the amount assessed on other exchanges and lower than the amount assessed for RUT options on the Exchange. The proposed Surcharge is also equitable and not unfairly discriminatory because the amount will be assessed to all market participants to whom the Surcharge applies. Not applying the DJX License Surcharge fee to Public Customer orders is equitable and not unfairly discriminatory because this is designed to attract Customer DJX option orders, which increases liquidity and provides greater trading opportunities to all market participants.

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

The Exchange believes the proposed amendments to its Fee Schedule will not 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 DJX fee amounts for each separate type of market participant will be assessed equally to all such market participants. While different fees are assessed to different market participants in some circumstances, the obligations and circumstances between these market participants differ, as discussed above. For example, Market-Makers have quoting obligations that are not applicable to other market participants. Further, the proposed fees structure for DJX is intended to encourage more trading of DJX, which brings liquidity to the Exchange and benefits all market participants.

The Exchange also 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 DJX fees are in line with amounts assessed for index option products by other exchanges. The Exchange notes that to the extent that the proposed fee rates and rebates for certain orders in DJX options make the Exchange a more attractive venue for market participants than other exchanges, market participants are welcome to become TPHs and execute such orders on the Exchange. Also, as stated, market participants are free to direct order flow to other competing venues if they deem the Exchange's fees excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from TPHs or other interested parties.

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 Act¹¹ and paragraph (f) of Rule 19b-4¹² 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.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 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-C2-2019-010 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-C2-2019-010. 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-C2-2019-010 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.¹³

Eduardo A. Aleman
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).