

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73354; File No. SR-CBOE-2014-075)

October 15, 2014

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the CBOE Order Routing Subsidy Program and the Complex Order Routing Subsidy Program

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 1, 2014, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) 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

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is 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 make a number of amendments to its Order Routing Subsidy (ORS) and Complex Order Routing Subsidy (CORS) Programs (collectively “Programs”). By way of background, the ORS and CORS Programs allow CBOE to enter into subsidy arrangements with any CBOE Trading Permit Holder (“TPH”) (each, a “Participating TPH”) or Non-CBOE TPH broker-dealer (each a “Participating Non-CBOE TPH”) that meet certain criteria and provide certain order routing functionalities to other CBOE TPHs, Non-CBOE TPHs and/or use such functionalities themselves.³ (The term “Participant” as used in this filing refers to either a Participating TPH or a Participating Non-CBOE TPH). Participants in the ORS Program receive a payment from CBOE for every executed contract for simple orders routed to CBOE through their system. CBOE does not make payments under the ORS Program with respect to executed contracts in single-listed options classes traded on CBOE, or with respect to complex orders or spread orders. Participants in the CORS Program receive a payment from CBOE for every executed contract for complex orders routed to CBOE through their system. CBOE does not make payments under the CORS Program with respect to executed contracts in single-listed options classes traded on CBOE or with respect to simple orders. The Exchange currently pays a subsidy of \$0.04 per contract for regular orders and a subsidy of \$0.004 per

³ See CBOE Fees Schedule, “Order Router Subsidy Program” and “Complex Order Router Subsidy Program” tables for more details on the ORS and CORS Programs.

contract for mini-options orders under both the ORS and CORS programs in order to subsidize Participants' costs associated with providing order routing functionalities.

The Exchange first proposes to eliminate the \$0.04 per contract subsidy in both Programs and establish instead different subsidies for customer and non-customer orders. Specifically, the Exchange proposes to introduce a separate subsidy per contract for customer (C origin code) orders and increase the current subsidy per contract for all non-customer orders. The Exchange proposes to pay a subsidy of \$0.02 per contract for all customer (C) orders and a subsidy of \$0.06 per contract for all non-customer orders. The proposed change is applicable to both Programs. Additionally, the Exchange proposes to cease making payments under both Programs with respect to executed contracts in mini-option classes. The Exchange no longer believes it is competitively necessary to incentivize the sending of mini-options to the Exchange and accordingly does not wish to offer a subsidy for mini-options under the ORS and CORS Programs. The Exchange notes that a similar subsidy program offered by NYSE Amex Options ("Amex") also excludes mini-options.⁴

The Exchange next proposes to eliminate from the ORS and CORS Programs payment of subsidies for contracts executed via the Automated Improvement Mechanism ("AIM"). Contracts that execute via AIM already have an opportunity to earn various rebates and discounts and thus the Exchange believes it is appropriate to exclude AIM executions from the Programs.⁵

⁴ See NYSE Amex Options Fee Schedule ("Fee Schedule"), Market Access and Connectivity ("MAC") Subsidy.

⁵ See e.g., CBOE Fees Schedule, Volume Incentive Program. Additionally, the Exchange notes Facilitation orders executed via AIM are not assessed transaction fees.

The Exchange notes that the subsidy program offered by Amex excludes contracts executed via Amex's auction mechanism.⁶

Next, the Exchange seeks to eliminate Marketing and Billing Services Elections from the ORS Program. By way of background, a Participant of the ORS Program may elect to have CBOE perform certain additional marketing services on its behalf. If a Participant elected to have CBOE perform these services, the amount that CBOE would pay the Participant for orders routed to CBOE through the Participant's system would be reduced from \$0.04 per executed contract to \$0.03 per executed contract. A Participant of the ORS Program can also elect to have CBOE perform the service of billing other CBOE TPHs with respect to the use of the Participant's router. A Participant that elects to have CBOE perform this service would pay CBOE a service fee of one percent of the fees collected by CBOE for that TPH. The Exchange notes that currently there are no Participants that are using either election. The Exchange no longer wishes to offer either election and as such seeks to eliminate them from the ORS Program and Fees Schedule. The Exchange also notes that the CORS Program does not offer these optional services.

Finally, the Exchange proposes to explicitly clarify in Footnote 30 that CBOE does not make payments under the CORS program with respect to executed contracts in single-listed option classes traded on CBOE. Such a statement is already included in Footnote 29, which governs the ORS Program, but was inadvertently not included in Footnote 30 when the CORS Program was adopted. The Exchange believes the proposed change will reduce potential confusion.

⁶ See NYSE Amex Options Fee Schedule ("Fee Schedule"), Market Access and Connectivity ("MAC") Subsidy.

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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 facilitation 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 the Section 6(b)(5)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also 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.

In particular, the Exchange believes the proposed amendments to the ORS and CORS Programs are reasonable because the proposed changes still afford Participants an opportunity to receive payments to subsidize the costs associated with providing certain order routing functionalities that would otherwise go unsubsidized. Additionally, the Exchange believes the

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ Id.

¹⁰ 15 U.S.C. 78f(b)(4).

increased \$0.06 per contract subsidy for non-customer orders is reasonable because it is within the range of subsidies paid by another exchange under a similar subsidy program.¹¹

The Exchange believes that limiting the subsidy payments to those that provide order routing functionalities is equitable and not unfairly discriminatory because the Participants of the Programs have devoted resources to provide the order routing functionalities. The Programs further encourages CBOE TPHs and broker-dealers that are not CBOE TPHs to provide order routing functionalities.

In addition, the Exchange believes that the proposed changes are equitable and not unfairly discriminatory because the changes are applicable to all Participants and any CBOE TPH or broker-dealer that is not a CBOE TPH may continue to avail itself of the arrangements under the Programs, provided that their routing functionality incorporates the respective requirements of each Program.

The Exchange also believes it is equitable and not unfairly discriminatory to establish separate subsidies for customer and non-customer orders under the Programs. Particularly, the Exchange notes that customer orders already have the opportunity to earn various rebates, discounts or fee caps.¹² As such, the Exchange believes it is fair and equitable to provide a lesser subsidy for customer orders as compared to non-customer orders. The Exchange also notes that Amex does not provide a subsidy for any Customer volume under its MAC Subsidy Program.¹³

¹¹ See NYSE Amex Options Fee Schedule, Market Access and Connectivity (“MAC”) Subsidy.

¹² See e.g., CBOE Fees Schedule, Customer Large Trade Discount and Volume Incentive Program.

¹³ See Securities Exchange Act Release No. 71532 (February 12, 2014), 79 FR 9563 (February 19, 2014) (SR-NYSEAmex-2014-12).

The Exchange believes the elimination of subsidies for mini-options under the Programs is reasonable, equitable and not unfairly discriminatory because the Exchange believes it is no longer competitively necessary to encourage the sending of mini-options to the Exchange and thus does not believe it's necessary to provide a subsidy for mini-option orders. Additionally, as noted in the purpose section, Amex's MAC Program also excludes mini-options. The Exchange believes it is equitable and not unfairly discriminatory to exclude AIM contracts from both Programs because, like customer orders, orders executed via AIM already have an opportunity to earn various rebates or discounts.¹⁴

The Exchange believes the clarification that the CORS Program excludes single-listed options will alleviate potential confusion. The alleviation of potential confusion will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Finally, the Exchange believes the elimination of the Marketing and Billing Services Elections from the ORS Program is reasonable, equitable and not unfairly discriminatory because it merely eliminates optional services, which currently are not being used by any Participant.

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

CBOE 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. The Exchange does not believe that the proposed changes will impose an unnecessary burden on intramarket competition because they will apply equally to all participating parties. Although the subsidy for orders routed to CBOE through a Participant's system only applies to Participants of the Programs, the subsidies are designed to encourage the sending of more orders to the Exchange, which should provide greater liquidity and trading opportunities for all market

¹⁴ See supra note 5.

participants. Further, the Exchange does not believe that such changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that, should the proposed changes make CBOE more attractive for trading, market participants trading on other exchanges can always elect to provide order routing functionality to CBOE. Additionally, to the extent that the proposed changes to the ORS and CORS Programs result in increased trading volume on CBOE and lessened volume on other exchanges, the Exchange notes that market participants trading on other exchanges can always elect to become TPHs on CBOE to take advantage of the trading opportunities.

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 Act¹⁵ and paragraph (f) of Rule 19b-4¹⁶ 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.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 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-2014-075 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-2014-075. 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; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2014-075 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).