

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77659; File No. SR-CBOE-2016-037)

April 20, 2016

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the 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 April 11, 2016, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 the Frequent Trader Program. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule.⁵ By way of background, on April 1, 2016, the Exchange adopted a program that offers transaction fee rebates to Customers (origin code "C") that meet certain volume thresholds in CBOE VIX Volatility Index options ("VIX options") and S&P 500 Index options ("SPX"), weekly S&P 500 options ("SPXW") and p.m.-settled SPX Index options ("SPXpm") (collectively referred to as "SPX options") provided the Customer registers for the program (the "Frequent Trader Program" or "Program").⁶

To participate in the Frequent Trader Program, Customers register with the Exchange. Once registered, the Customer is provided a unique identification number ("FTID") that can be affixed to each of its orders. The FTID allows the Exchange to identify and aggregate all electronic and manual trades during both the Regular Trading Hours and Extended Trading Hours sessions from that Customer for purposes of determining whether the Customer meets any

⁵ The Exchange initially filed the proposed change on April 4, 2016 (SR-CBOE-2016-035). On April 11, 2016, the Exchange withdrew that filing and replaced it with SR-CBOE-2016-037.

⁶ See SR-CBOE-2016-023.

of the various volume thresholds. The Customer has to provide its FTID to the Trading Permit Holder (“TPH”) submitting that Customer’s order to the Exchange (executing agent” or “executing TPH”) and that executing TPH would have to enter the Customer’s FTID on each of that Customer’s orders.⁷

The Exchange notes that there are instances however, in which a Customer’s FTID was not or could not be, affixed to an order. For example, an executing TPH may receive an order with multiple contra parties, including parties that are also customers with their own unique FTIDs. The executing TPH’s front end system however, may only allow it to input only one FTID on the order. Thus the other Customers to the trade would not have their FTID represented at the time of submission. Additionally, an executing TPH’s front end system may not yet allow for the input of an FTID on an order upon submission altogether. The Exchange also notes that it is possible that an executing TPH inadvertently enters an incorrect FTID number on an order. Accordingly, the Exchange is proposing to provide executing TPHs the ability to submit to the exchange a form (the “Frequent Trader Program – Volume Corrections Form” or “Form”) that would provide a mechanism for executing TPHs to identify transactions to the Exchange that should have been, but were not, associated with particular FTIDs. More specifically, the executing TPH would identify on the form the “correct” FTID that should be associated with a specific transaction, so that such volume is properly counted towards the appropriate Customer’s aggregated volume for purposes of determining what tier, if any, the customer meets. The Exchange notes that transactions identified on the Form will only be counted towards the identified Customer’s volume if that Customer was already registered for the Frequent Trader

⁷ The Exchange notes that it is the responsibility of the Customer to request that the executing TPH affix its FTID to its order(s), and that it is voluntarily for the executing TPH to do so.

Program prior to the time the transaction occurred (e.g., if a customer trades 1,000 contracts the morning of April 1 and registers for the Frequent Trader Program the afternoon of April 1, that customer cannot have its executing TPH submit a form on its behalf for those 1,000 contracts executed prior to registration in the Program). The Exchange lastly proposes to provide that the Frequent Trader Program – Volume Corrections Form be submitted to the Exchange within 3 business days in order to ensure timely processing.

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 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 the Section 6(b)(5)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes providing executing TPHs the ability to submit to the exchange a form that identifies transactions that should have been, but were not, associated with

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ Id.

particular FTIDs, removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest because there are a number of instances in which a Customer's FTID may not be affixed to a particular transaction at the time of execution even though the traded contracts, or a portion thereof, is actually associated with that Customer. The Exchange notes that providing a mechanism to "correct" FTIDs post-trade, helps ensure that a Customer's total volume at the end of the month accurately reflects their real trading volume, including volume from transactions that, upon submission of the order, did not reflect their FTID. The Exchange believes it's reasonable to provide that the Form be submitted within 3 business days in order to ensure timely processing and finality. The Exchange also believes it's reasonable, equitable and not unfairly discriminatory to provide that transactions identified on the Form will only be counted towards the identified Customer's volume if that Customer was already registered for the Frequent Trader Program because the Exchange does not wish to encourage or allow the Frequent Trader Program to be applied retroactively. Additionally, by establishing a clear process for identifying transactions in order for them to qualify for the Frequent Trader Program rebates, the proposed rule change eliminates confusion, thereby removing an impediment to and perfecting the mechanism of a free and open market system. The establishment of this process will also make it easier for CBOE to administer the Frequent Trader Program and ensure that it is appropriately assessed when it is applicable.

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 because the proposed change applies uniformly to all executing TPHs of Customer FTID orders and because it provides for a clear process to rectify scenarios in which a Customer's FTID was not

applied to that Customer's order. 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. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE 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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Consistent with the protection of investors and the public interest, waiver of the 30-day operative delay will facilitate the implementation of the Frequent Trader Program and allow executing TPHs to use the Exchange's process to claim rebates for their customers. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁵

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 shall 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-2016-037 on the subject line.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2016-037. 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-2016-037, 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.¹⁶

Robert W. Errett
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).