

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79279; File No. SR-CBOE-2016-074)

November 10, 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 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 27, 2016, Chicago Board Options Exchange, Incorporated (“CBOE” or the “Exchange”) filed with the Securities and Exchange Commission (“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 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. Specifically, the Exchange proposes to amend its Fees Schedule with respect to waiving transaction fees incurred as a result of transactions that compress or reduce certain Clearing Trading Permit Holder (“TPH”) open positions.

By way of background, SEC Rule 15c3-1, Net Capital Requirements for Brokers or Dealers (“Net Capital Rules”), requires that every registered broker-dealer maintain certain specified minimum levels of capital. The primary purpose of these rules is to regulate the ability of broker-dealers to meet their financial obligations to customers and other creditors. All of the broker-dealers that are clearing members of the Options Clearing Corporation (“OCC”) are subject to the Net Capital Rules. However, a subset of OCC’s clearing members are subsidiaries of U.S. bank holding companies and these broker-dealers, through their affiliation with their parent U.S. bank holding companies, must also comply with bank regulatory capital requirements pursuant to rule-making required under the Dodd–Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”). Recent rule-making enacted under Dodd–Frank now requires U.S. bank holding companies to hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules. Additionally, due to the large contract size of S&P 500 Index (“SPX”) options, open interest in certain SPX series can result in extremely large bank regulatory capital requirements, even though the positions incur minimal requirements under the Net Capital Rules. As such, transactions that would result in the closing of this open interest have a beneficial impact on the bank regulatory capital requirements of the Clearing TPH’s parent company with a minimal impact on regulatory capital required under the

capital rules. The Exchange notes that most of these open positions are in out-of-the-money options and certain spread positions that are essentially riskless strategies because they have little or no market exposure. Particularly, the Exchange notes that given the nature of these options, there is minimal chance for large losses to occur, yet these positions are still subject to large bank regulatory capital requirements. Exchange transaction fees, however, if not waived, could discourage market participants from closing these positions out even though those market participants may also prefer to close them rather than carry them to expiration³. Accordingly, in order to encourage the compression of certain out-of-the-money and riskless option positions, the Exchange previously adopted a rebate of all transactions fees for transactions that close these positions, provided they meet certain criteria, as described more fully below.⁴

The rebate of transaction fees⁵ is currently limited to those transactions that the Exchange believes would have the greatest impact on bank regulatory capital requirements but are also constrained to those positions that have little economic risk associated with them. Specifically, to be eligible for a rebate, a transaction must be: (i) for a complex order with at least five (5) different series in S&P 500 Index (SPX) options, SPX Weeklys (SPXW) options or p.m.-settled SPX options (SPXPM), (ii) a closing-only transaction or, if the transaction involves a Firm order (origin code “F”), an opening transaction executed to facilitate a compression of option positions for a market-maker or joint-back office (“JBO”) account; (iii) for a position with a required capital charge equal to the minimum capital charge under OCC rules RBH Calculator or a

³ For example, an out-of-the-money SPX option market-maker transaction may be worth only a few pennies per contract, but would cost approximately \$0.33 per contract (\$0.20 transaction fee plus \$0.13 SPX Index License Surcharge) to close out.

⁴ See Securities Exchange Act Release No. 76842 (January 6, 2016) 81 FR 1455 (January 12, 2016) (SR-CBOE-2015-117).

⁵ Rebate of transaction fees would include the transaction fee assessed along with any other surcharges assessed per contract (e.g., the Index License Surcharge).

position comprised of option series with a delta of ten (10) or less and (iv) entered between the first business day following a quarterly expiration through the last business day of that quarter⁶. To receive a rebate, a rebate request with supporting documentation must also be submitted to the Exchange within 3 business days of the transactions. The Exchange proposes to amend the last criteria (i.e., the time period for which a Trading Permit Holder can enter these transactions and be eligible for the rebate). Specifically, the Exchange proposes to provide that in addition to meeting the first three criteria described above, the transaction would be eligible for a rebate if entered on any of the final three (3) trading days of any calendar month. The proposed rule change allows TPHs to mitigate their regulatory capital requirements on a monthly basis, instead of quarterly.

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

⁶ For example, the third quarter of 2016 standard-Friday expiration occurred on September 16, 2016. For that quarter, qualifying transactions needed to be entered no earlier than September 19, 2016 and no later than September 30, 2016.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ 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 providing a rebate of fees for transactions that compress certain out-of-the-money and riskless options positions is reasonable, equitable and not unfairly discriminatory because these positions would result in extremely large bank regulatory capital requirements for Clearing TPHs even though there is minimal chance for large losses to occur. Additionally, these positions have little or no economic benefit to the TPHs that hold the positions, who would likely prefer to close them but for the associated transaction fees. The fee rebate therefore allows TPHs to close out of these positions that are needlessly burdensome on themselves and Clearing TPHs.

The Exchange believes the proposed rule change is reasonable, equitable and not unfairly discriminatory because TPHs can now mitigate their regulatory capital requirements on a monthly basis, instead of quarterly. The proposed change would encourage the closing of positions at the end of each month that needlessly result in burdensome capital requirements that, once closed, would alleviate the capital requirement constraints on TPHs and improve overall market liquidity by freeing capital currently tied up in certain out-of-the-money and riskless positions. The Exchange also notes that the proposed amended requirement would apply to all TPHs seeking a rebate for these transactions.

⁹ 15 U.S.C. 78f(b)(4).

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are 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 Act because it applies to all market participants in the same manner with positions that meet the eligible criteria. The proposed change would encourage the closing of positions, on a monthly basis, that needlessly result in burdensome capital requirements that, once closed, would alleviate the capital requirement constraints on TPHs and improve overall market liquidity by freeing capital currently tied up in certain out-of-the-money and riskless positions. 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 proposed rule change applies only to CBOE. To the extent that the proposed change makes 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and paragraph (f) of Rule 19b-4¹¹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f).

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-2016-074 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2016-074. 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 such 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-2016-074, 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.¹²

Brent J. Fields
Secretary

¹² 17 CFR 200.30-3(a)(12).