

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79816; File No. SR-CBOE-2017-003)

January 18, 2017

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 3, 2017, 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 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 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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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.<sup>3</sup> (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. Similarly, 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. Currently, under both programs the Exchange pays a subsidy of \$0.02 per contract for all customer (origin code “C”) orders and a subsidy of \$0.06 per contract for all non-customer orders.

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

The Exchange first proposes to exclude customer orders from the Programs and eliminate the customer order subsidy. The Exchange also proposes to increase the subsidy for non-customer orders from \$0.06 per contract to \$0.07 per contract under both ORS and CORS. The Exchange notes that another Exchange with a similar subsidy program also does not provide subsidies for customer orders.<sup>4</sup>

The Exchange next proposes to amend one of the system requirements under the Programs. Specifically, the Exchange notes that to qualify for the subsidy arrangement under ORS and CORS, a Participant's order routing functionality has to, among other things, cause CBOE to be the default destination exchange for simple (under ORS) and complex (under CORS) orders, but allow any user to manually override CBOE as the default destination on an order-by-order basis. As the Exchange is proposing to eliminate subsidies for customer orders, the Exchange does not believe it's necessary to require that CBOE be set as the default destination exchange for customer orders. As such, the Exchange proposes to amend the Fees Schedule to provide that under the ORS and CORS programs, CBOE must be set as the default exchange for non-customer orders only (and still allow any user to manually override CBOE as the default destination on an order-by-order basis).

## 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.<sup>5</sup> Specifically, the

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<sup>4</sup> See NASDAQ PHLX LLC Pricing Schedule, Section IV(e) [sic], Other Transaction Fees, Market Access and Routing Subsidy ("MARS").

<sup>5</sup> 15 U.S.C. 78f(b).

Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> 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 Section 6(b)(4) of the Act,<sup>7</sup> 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 affords 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 increased \$0.07 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.<sup>8</sup> The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to maintain a subsidy for non-customer orders only under the Programs. Particularly, the Exchange notes that customer orders already have the opportunity to earn various rebates, discounts or fee caps.<sup>9</sup>

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<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> See supra note 4.

<sup>9</sup> See e.g., CBOE Fees Schedule, Customer Large Trade Discount and Volume Incentive Program.

Moreover, the Exchange notes that another exchange also does not provide subsidies for customer orders.<sup>10</sup>

The Exchange believes the elimination of the requirement to set CBOE as the default destination for customer orders is reasonable, equitable and not unfairly discriminatory because the Exchange will no longer be providing a subsidy for such orders.

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 participants. Additionally, although customer orders will no longer be eligible for subsidies under the programs, customer orders are eligible for other rebates, discounts or fee caps.<sup>11</sup> The Exchange also 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

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<sup>10</sup> See supra note 4.

<sup>11</sup> See e.g., CBOE Fees Schedule, Customer Large Trade Discount and Volume Incentive Program.

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 Act<sup>12</sup> and paragraph (f) of Rule 19b-4<sup>13</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2017-003 on the subject line.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(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-2017-003. 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-2017-003 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.<sup>14</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).