

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79873; File No SR-CBOE-2017-007)

January 25, 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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 17, 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.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new Liquidity Provider Sliding Scale Adjustment Table (“Adjustment Table”).³ By way of background, under the Liquidity Provider Sliding Scale (“LP Sliding Scale”), a Liquidity Provider’s (CBOE Market-Makers, DPMs and LMMs) standard per-contract transaction fees for all products except Underlying Symbol List A⁴ and mini options are reduced based upon the Liquidity Provider (“LP”) reaching certain contract volume thresholds in a month.⁵ The Exchange proposes to adopt the Adjustment Table which would establish Taker fees to be applied to “Taker” volume and a Maker rebate that would be applied to “Maker” volume in addition to the transaction fees assessed under the LP Sliding Scale. The amount of the Taker fee (or Maker rebate) would be determined by the LP’s percentage of volume from the previous month that was Maker (“Make Rate”). The proposed Performance Tiers (determined by the Make Rate), fees and rebate are as follows:

Performance Tier	Make Rate	Maker Rebate		Taker Fee	
	(% based on prior month)	Penny Classes	Non- Penny Classes	Penny Classes	Non- Penny Classes
1	0% - 50%	(\$0.00)	(\$0.00)	\$0.04	\$0.08
2	51% - 75%	(\$0.00)	(\$0.00)	\$0.03	\$0.06
3	76% - 85%	(\$0.00)	(\$0.00)	\$0.02	\$0.04
4	86% - 90%	(\$0.00)	(\$0.00)	\$0.01	\$0.02

³ The Exchange initially filed the proposed fee change on January 3, 2017 (SR-CBOE-2017-002). On January 17, 2017, the Exchange withdrew that filing and submitted this filing.

⁴ As of January 3, 2017, Underlying Symbol List A includes Underlying Symbol List A consists of [sic] OEX, XEO, RUT, RLG, RLV, RUI, AWDE, FTEM, FXTM, UKXM SPX/SPXW, SPXpm, SRO, VIX, Volatility Indexes and binary options.

⁵ See CBOE Fees Schedule, Liquidity Provider Sliding Scale.

5	91% -100%	(\$0.01)	(\$0.00)	\$0.00	\$0.00
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As indicated above, the adjustment to a LP’s transaction fees will be determined by which Performance Tier a LP qualifies for, which is based on the LP’s “Make Rate.” More specifically, the Make Rate is derived from an LP’s electronic volume the previous month in all symbols excluding Underlying Symbol List A using the following formula: (i) the LP’s total electronic automatic execution (“auto-ex”) Maker volume (i.e., volume resulting from that LP’s resting quotes or single sided quotes/orders that were executed by an incoming order or quote), divided by (ii) the LP’s total auto-ex volume (i.e., volume that resulted from the LP’s resting quotes/orders and volume that resulted from that LP’s quotes/orders that removed liquidity).⁶ The Exchange notes that (i) trades on the open, and (ii) complex orders⁷ will be excluded from Make Rate calculation. Additionally, as with the Liquidity Provider Sliding Scale, the Exchange will aggregate the trading activity of separate Liquidity Provider firms for purposes of the Adjustment Table if there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. The Exchange notes that the Performance Tiers are independent from the tier levels in the LP Sliding Scale (e.g., a LP that falls in Tier 3 of the LP Sliding Scale can fall in Performance Tier 4 of the Adjustment Table). The Exchange also notes once a LP’s Make Rate has been determined for a given month, the corresponding Performance Tier will applicable for the next month only. For example, the Performance Tier rates that will be applied in February 2017 will be based on a LP’s Make Rate volume from January 2017.

⁶ For example, a Trading Permit Holder’s electronic auto-ex Maker contract volume in December 2016 is 1,800,000 contracts and its total electronic auto-ex volume is 3,000,000 contracts, resulting in a Make Rate of 60% (Performance Tier 2). As such, the Trading Permit Holder’s electronic Taker volume in January 2017 would be assessed \$0.03 per contract for penny classes and \$0.06 per contract for non-penny class volume.

⁷ Simple, non-complex orders that execute against a complex order will not be excluded.

Similarly, the Performance Tier that would apply for a Market-Maker in March 2017, would be based off the LP's Make Rate for February 2017 and so forth.

The Exchange next proposes to establish the applicable Taker fees and Maker rebate set forth in the Performance Tiers for Penny and non-Penny classes. The Exchange proposes to apply these adjustments to a LP's electronic volume only, including auction responses, but excluding the following: (i) trades on the open, (ii) Qualified Contingent Cross ("QCC") orders, (iii) complex orders⁸, and (iv) original paired orders executed via an auction mechanism. As noted above, the Taker fees set forth in the Adjustment Table would be applied to "Taker" volume. Taker volume under the Adjustment Table would include the following: (i) volume resulting from a LP's orders and/or quotes removing other market participants' resting orders and/or quotes and (ii) volume resulting from a LP's primary orders in unpaired auctions (i.e., Hybrid Agency Liaison ("HAL") and HAL on the Open ("HALO")). The Exchange notes that Taker fees for Penny classes would be subject to a cap of \$0.50 per contract, which includes the LP Sliding Scale transaction fee, Adjustment Table fee and Marketing Fee.⁹ The Maker rebate set forth in the Adjustment Table would be applied to "Maker" volume, defined for this purpose as the following: (i) volume resulting from executions against a LP's resting orders and/or quotes and (ii) volume resulting from a LP's responses to auctions (i.e., Automated Improvement Mechanism ("AIM"), HAL, and/or HALO responses).¹⁰ The Exchange notes that other

⁸ Simple, non-complex orders that execute against a complex order will not be excluded.

⁹ For example, if an LP is assessed the Marketing Fee on a given transaction (\$0.25 per contract) for which it was a Taker in a Penny class, and that LP falls in Tier 1 of the LP Sliding Scale (\$0.23 per contract) and Performance Tier 1 of the Adjustment Table (\$0.04 per contract), the LP would be assessed \$0.50 per contract for the transaction, instead of \$0.52 per contract.

¹⁰ For example, based on December 2016's volume, a LP's Performance Tier is Tier 2 for January 2017. In January 2017, the LP has the following breakdown of volume:

Exchanges assess transactions fees based on whether volume is “maker” or “taker”.¹¹ The Exchange lastly proposes to make clear in the “Notes” section of the Affiliate Volume Program (“AVP”) table that the transaction fee credits under AVP do not apply to the LP Adjustment Table.

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.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ 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

1,162,500 contracts from AIM responses in Penny Classes
2,000,000 contracts from electronic Maker activity in Penny Classes
1,000,000 contracts from electronic Maker activity in Non-Penny Classes
500,000 contracts from electronic Taker activity in Penny Classes
100,000 contracts from electronic Taker activity in Non-Penny Classes
200,000 contracts from responses to HAL in Penny Classes

Per the proposed Adjustment Table, the LP would be assessed \$0.03 per contract for the 500,000 Taker Penny contracts (\$15,000) and \$0.06 per contract for the 100,000 Taker non-Penny contracts (\$6,000), resulting in an additional charge of \$21,000. If based on December 2016’s volume the LP had instead met Performance Tier 5, for January 2017, the LP would have been entitled to a rebate of \$0.01 for its Penny Maker volume of 3,362,500 (1,162,500 AIM responses, 2,000,000 Maker auto-ex Penny contracts and 200,000 HAL responses) for a total rebate of \$33,625. In this example, no additional fees would be assessed on the LP’s Taker volume.

¹¹ See e.g., Miami International Securities Exchange LLC (“MIAX”) Options Fees Schedule, Section 1(a), Market Maker Transaction Fees.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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,¹⁴ 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 that adopting the Adjustment Table is reasonable because the amount of LP transaction fees including the proposed Taker fees and Taker cap of \$0.50 per contract are similar and in line with the amount assessed for similar transactions at other Exchanges.¹⁵ Additionally, the Adjustment Table provides LPs an opportunity to qualify for a rebate they would not otherwise receive. The Exchange also notes that other exchanges have established transaction fees for Market-Makers based on maker and taker activity.¹⁶ Additionally the proposed rule change is designed to encourage LPs to provide and post liquidity to the Exchange. The different tiers provide an incremental incentive for LPs to add, rather than take, liquidity.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to only assess an additional Taker fee to those transactions removing liquidity from the market (“Takers”) and not Maker volume because the Exchange wants to continue to encourage market participation and price improvement. The Exchange’s proposal to charge LPs who remove more

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ See e.g., International Securities Exchange (“ISE”) Schedule of Fees, Regular Order Fees and Rebates. See also, BOX Options Exchange Fees Schedule, Section I., Exchange Fees.

¹⁶ Id. See also MIAX Options Fees Schedule, Section 1(a), Market Maker Transaction Fees.

liquidity higher fees is equitable and not unfairly discriminatory as it is common practice among options exchanges to differentiate fees for adding liquidity and fees for removing liquidity as discussed above.

The Exchange also believes it's equitable and not unfairly discriminatory to assess higher fees for non-Penny option classes than Penny option classes and provide a rebate only for Penny classes because Penny classes and Non-Penny classes offer different pricing, liquidity, spread and trading incentives. The spreads in Penny classes are tighter than those in Non-Penny classes (which trade in \$0.05 increments). The wider spreads in non-Penny option classes allow for greater profit potential.

Limiting the Adjustment Table to orders entered electronically is equitable and not unfairly discriminatory because the Exchange seeks to improve the quality of posted electronic markets. Additionally, the Exchange cannot discern whether an order is a Maker or Taker in open-outcry.

The Exchange believes it's equitable and not unfairly discriminatory to exclude Trades on the Open because these transactions involve the matching of undisplayed pre-opening trading interest. As such, there is, in effect, no Maker or Taker activity occurring. The Exchange would also like to encourage users to submit pre-opening orders. This brings greater liquidity and trading opportunity, which benefits all market participants. Similarly, the Exchange believes it's equitable and not unfairly discriminatory to exclude the original paired orders entered into an auction mechanism because there is no Maker or Taker activity occurring with respect to the original paired order.

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to exclude complex orders from the Adjustment Table because complex orders are already subject to the Complex Surcharge.

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to exclude QCC orders from the Adjustment Table because QCC orders are also not subject to the Liquidity Provider Sliding Scale.

Excluding auction responses from the Make Rate is equitable and not unfairly discriminatory because the Exchange wants to encourage improved resting liquidity. The Exchange notes however, that auction responses are included as Maker with respect to the potential Maker rebate, as it still wants to reward price improvement and using auction mechanisms.

Lastly, the Exchange believes the proposed change is also equitable and not unfairly discriminatory because all similarly situated LPs are subject to the same fee structure.

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 purposes of the Act because all similarly situated LPs are subject to the same fee structure. Additionally the proposed rule change is designed to encourage LPs to provide and post liquidity to the Exchange, which benefits all market participants.

The Exchange 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 change only affects trading on 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 Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ 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. Please include File Number SR-CBOE-2017-007 on the subject line.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

Paper comments:

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

All submissions should refer to File Number SR-CBOE-2017-007. 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-2017-007 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.¹⁹

Eduardo A. Aleman
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).