

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86329; File No. SR-CBOE-2019-032)

July 8, 2019

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule for XSP Fees and PAR Official Fees

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 July 1, 2019, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) 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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fees schedule to (i) adopt a fee for Customer Mini-SPX Index (“XSP”) options (an Exchange proprietary product) transactions, (ii) amend the Customer Large Trade Discount for XSP orders, (iii) eliminate a sliding scale transaction fee for Market Maker XSP options transactions and propose a flat-rate transaction, and (iv) eliminate Par Official fees, effective July 1, 2019.

First, the Exchange proposes to adopt a fee for Customer (origin code “C”) transactions in XSP (a proprietary product). The Exchange currently does not assess any fee (or provide any rebate) for Customer orders in XSP. The Exchange now proposes to adopt a fee of \$0.04 per contract for Customer orders in XSP. The Exchange notes that it currently assesses Customer transaction fees associated with other index products, and the proposed transaction fee for XSP is lower than that of Customer fees associated with such other index products. For example, the Exchange assesses a Customer transaction fee of \$0.18 for orders in most all other index products (including other proprietary index products), as well as a transaction fee of \$0.25 for certain MSCI index options.³

³ Excluding products listed in Underlying Symbol List A. See Cboe Options Fee Schedule, “Index Options Rate Table - All Index Products Excluding Underlying Symbol List A and Sector Indexes.”

The Exchange also proposes to amend the Customer Large Trade Discount program with respect to XSP customer transactions. The Customer Large Trade Discount program (the “Discount”) provides a discount in the form of a cap on the quantity of customer (“C” origin code”) contracts that are assessed transaction fees in certain options classes. The Discount table in the Fees Schedule sets forth the quantity of contracts necessary for a large customer trade to qualify for the Discount, which varies by product. Different caps are set for (i) VIX, (ii) SPX (including SPXW), (iii) ETF and ETN Options and (iv) “Other Index Options”, which currently includes XSP. More specifically, Customer transaction fees for index products (including XSP) are currently only charged up to the first 5,000 contracts. The Exchange proposes to raise the quantity of XSP contracts necessary for a large customer trade to qualify for the Discount from 5,000 contracts per order to 20,000 contracts per order. The purpose of the proposed rule change is to moderate the discount level for Customer (C) orders in XSP in light of the increased sizes of qualifying Discount XSP orders. The Exchange believes that notwithstanding the proposed change, the large trade discount for Customer orders in XSP options will continue to incentivize the sending of large customer orders in XSP, providing an increase in trading opportunities which attracts Market-Makers. As a result, an increase in Market-Maker activity facilitates tighter spreads, which may lead to additional increase of order flow from other market participants.

Next, the Exchange proposes to eliminate the sliding-scale transaction fees for Market-Maker (origin code “M”) transactions in XSP options, which currently range from \$0.03 to \$0.23 per contract, contingent on the volume threshold (per tier level) reached. The criterion for tier levels is comprised of the percentage of a Market-Maker’s

volume transacted in XSP options during the calendar month. In lieu of assessing such transactions on a sliding-scale, the Exchange now proposes to assess a flat-rate fee of \$0.23 per contract for Market-Maker orders in XSP. Particularly, the Exchange notes that there are currently fewer than five Market-Makers in XSP options to which the fees under the current sliding-scale structure apply. The Exchange notes that, on average in recent months, the percentage of volume in XSP options among these Market-Makers has hovered around the two lowest volume thresholds (which assess a transaction fee of \$0.23 per contract or \$0.17 per contract). Therefore, the Exchange has determined that the proposed change to exclude XSP options from the sliding-scale transaction fees and to assess a flat fee of \$0.23 per contract in XSP options for Market-Makers better reflects the current volume trends in this options class, and will allow for the Exchange to capture revenue from potential spikes in volume that would occur outside of the current trend. In addition, the Exchange notes that various other index products, including proprietary products like that of XSP options, are also excluded from the sliding-scale [sic] scale transaction fee table and assessed a flat-rate fee that is commensurate with the proposed flat-rate fee for Market-Maker transactions in XSP.⁴ For example, the Exchange assesses a flat-rate fee of \$0.23 per contract for Market-Maker transactions in Cboe Volatility Index (“VIX”) options (a proprietary product) and \$0.30 per contract for transactions in Russell 2000 Index (“RUT”) options.

Finally, the Exchange proposes to eliminate its PAR Official Fees. Currently, the Exchange assesses fees for transactions executed through PAR Official in VIX and Volatility Index options, ranging from \$0.03 to \$0.12 per order executed, and for

⁴ See Cboe Options Fee Schedule, “Specified Proprietary Index Options Rate Table - Underlying Symbol List A and Sector Indexes.”

transactions executed through PAR Official in all other options classes, ranging from \$0.02 to \$0.04. The fees assessed per contract executed are currently contingent on the tier level reached, for which the criteria for each level is the percentage of monthly volume executed through PAR Official in either VIX or Volatility Index options or in all other options classes.

PAR Officials are Exchange employees or independent contractors whom the Exchange may designate as being responsible for operating a PAR workstation and effecting proper executions placed with them. The Exchange notes that in 2011 it implemented PAR Official fees in order to help offset the Exchange's costs of providing PAR Official services (e.g., salaries, etc.).⁵ Today, PAR Officials no longer maintain many of their responsibilities as they did when the Exchange implemented PAR Official fees; among other things, PAR Officials no longer maintain the book with respect to assigned classes, as the electronic book manages electronic orders and quotes, no longer have responsibilities with respect to routed orders under the current linkage plan,⁶ and (with the migration of Cboe Options trading platform to that of the technology of its affiliated exchanges, Cboe C2 Exchange, Inc. (“C2”), Cboe EDGX Exchange, Inc. (“EDGX Options”), and Cboe BZX Exchange, Inc. (“BZX Options”), in the fourth quarter of 2019) order routed through PAR will no longer be automatically routed for

⁵ See Securities Exchange Act Release No. 67301 (January 11, 2011), 76 FR 2934 (January 18, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Exchange Fees for Fiscal Year 2011) (SR-CBOE-2010-116); and Securities Exchange Act Release No. 64834 (July 7, 2011), 76 FR 41839 (July 15, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PAR Official Fees in Volatility Index Options) (SR-CBOE-2011-057).

⁶ See Cboe Options Rules, Chapter VI, Section E which describes Exchange responsibilities pursuant to the current linkage plan, the Options Order Protection and Locked/Crossed Market Plan.

manual handling by a PAR Official. As a result, the Exchange has determined that PAR Official fees are no longer necessary to assist the Exchange in offsetting its costs of providing PAR Official services, and now proposes to eliminate its PAR Official fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,⁷ in general, and furthers the requirements of Section 6(b)(4),⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that its proposed fee for Customer transactions in XSP is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable, equitable and not unfairly discriminatory. The Exchange believes that it is reasonable and equitable to assess fees for Customer transactions in XSP because the Exchange currently assesses fees for Customer transactions in other index products, including other proprietary products. In addition to this, the Exchange notes that the proposed XSP Customer transaction fee is less than Customer transaction fees for other index products. To reiterate the example above, assessment of Customer transaction fees in most other index products (including other proprietary products like that of XSP) is \$0.18 per contract, as well as \$0.25 per contract for certain MSCI index options.⁹

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

⁹ See Cboe Options Fee Schedule, “Index Options Rate Table - All Index Products Excluding Underlying Symbol List A and Sector Indexes.”

The Exchange believes that raising the Customer Large Trade Discount threshold for XSP is reasonable because customers will still be receiving a discount for large trades that they would not otherwise receive. The Exchange believes that notwithstanding the proposed increase, the Customer Large Trade Discount will continue to incentivize larger Customer XSP executions. As stated, Customer order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which potentially increases order flow from other market participants. This change is equitable and not unfairly discriminatory because all customers whose large trades qualify for the Discount will still receive it.

Moreover, the Exchange notes that while the proposed Customer fee assessed is lower as compared to other market participants¹⁰ and the large trade discount in XSP is Customer specific, the Exchange believes that the proposed fee and discount is equitable and not unfairly discriminatory because, as described above, Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Moreover, the options industry has a long history of providing preferential pricing to Customers, and the Exchange's current Fee Schedule currently does so in many places, as do the fees structures of multiple other exchanges.¹¹ The Exchange notes that all fee amounts applicable to Customers will be applied equally to all Customers, *i.e.*, all Customers will be assessed the same amount.

¹⁰ See *supra* note 9. Firms are assessed a transaction fee between \$0.20 and \$0.70, depending on the transaction type, and Market-Makers, as proposed, are assessed a transaction fee of \$0.23

¹¹ See MIAX Options Fee Schedule, Transaction Fees, SPIKES, which gives preferential Customer treatment for transaction in MIAX Option's proprietary product, SPIKES.

Furthermore, the Exchange believes that the proposed elimination of the sliding-scale fee structure for Market-Maker transactions in XSP and, instead, the assessment of the flat-rate fee of \$0.23 per contract for Market-Maker transactions in XSP options, is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable, equitable and not unfairly discriminatory. The Exchange believes that the proposed fee change in connection with Market-Maker transactions in XSP is reasonable and equitable because it better reflects the current trend in Market-Maker volume in XSP. As stated, in recent months, the average percentage of volume per Market-Maker in XSP options has hovered around the lowest two volume threshold tiers (which assess a transaction fee of \$0.23 per contract or \$0.17 per contract). Therefore, the Exchange believes that the change from assessing a sliding-scale fee to a flat-rate fee of \$0.23 is reasonably related to the overall levels and patterns of Market-Maker market activity. Moreover, because Market-Maker volume on average has remained within bottom two tiers, the proposed flat-fee will not significantly impact or alter the current cost for executions in XSP that Market-Makers incur today. Additionally, the Exchange notes that various other index products, including other proprietary products like that of XSP options, are also excluded from the sliding-scale scale transaction fee table and assessed a flat-rate fee that is commensurate with the proposed flat-rate fee assessed for Market-Maker transactions in XSP.¹²

The Exchange also believes the proposed flat-fee for Market-Maker transactions in XSP is equitable and not unfairly discriminatory because they will apply equally to all Market-Maker transactions in XSP, i.e., all Market-Makers will be assessed the same amount. Though Market-Maker transactions in XSP will be assessed a lower fee than

¹² See supra note 4.

other market participants,¹³ the Exchange believes that the proposed fee is equitable and not unfairly discriminatory because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market-Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market-Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing.

Finally, the Exchange believes that the proposed fee schedule change to remove PAR Official fees from the fee schedule is equitable and reasonable because, today, PAR Officials no longer maintain many of their responsibilities as they did when the Exchange implemented PAR Official fees in order to help offset the Exchange's costs of providing PAR Official services (e.g., salaries, etc.).¹⁴ As a result, the Exchange has determined that PAR Official fees are no longer necessary to assist the Exchange in offsetting its costs of providing PAR Official services. In addition to this, the Exchange believes that removing PAR Official fees from the fee schedule is equitable and not unfairly discriminatory because all orders routed through a PAR Official will no longer be assessed a PAR Official fee.

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

The Exchange 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

¹³ See supra note 10.

¹⁴ See supra note 5.

of the Act. Specifically, the Exchange does not believe that the proposed change will impose any burden on intramarket competitions that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fee assessed for Customers (as well as the proposed change to the Customer Large Trade Discount) and Market-Makers in XSP will be assessed equally to all such participants, respectively. As described above, while different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances. For example, Market Makers have quoting obligations that other market participants do not have, whereas preferential pricing to Customers is a long-standing options industry practice which serves to enhance Customer order flow, thereby attracting Market-Makers to facilitate tight spreads and trading opportunities to the benefit of all market participants. In addition to this, the Exchange notes that it currently assesses fees for Customers and Market-Maker transactions in other index products, including proprietary products.

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 propose fees assessed and discount apply to an Exchange proprietary product, which are traded exclusively on the Exchange and the Exchange's affiliate, Cboe EDGX Exchange, Inc.

In addition to this, the Exchange notes that the proposed change to remove the PAR Official fees from its fee schedule will not impose an burden on intramarket or intermarket competition, as it is not intended as a competitive pricing change, but rather as a change to reflect the reduction in PAR Officials' responsibilities and the correlated

reduction in revenue necessary to assist the Exchange in compensating PAR Officials for such responsibilities.

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 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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2019-032 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-2019-032. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish

to make available publicly. All submissions should refer to File Number SR-CBOE-2019-032 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

Eduardo A. Aleman
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).