

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-87338; File No. SR-CBOE-2019-094)

October 17, 2019

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule to Modify Certain Processes and Requirements Relating to the Submission of Rebate Requests

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 October 4, 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 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)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 to modify certain processes and requirements relating to the submission of rebate requests. 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.

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

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

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

<sup>4</sup> 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

In 2016, the Exchange’s parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (“Cboe Global”), which is also the parent company of Cboe C2 Exchange, Inc. (“C2”), acquired Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX” or “EDGX Options”), Cboe BZX Exchange, Inc. (“BZX” or “BZX Options”), and Cboe BYX Exchange, Inc. (“BYX” and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the “Cboe Affiliated Exchanges”). Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, and also migrate its current billing system to a new billing system, on October 7, 2019 (the “migration”). In connection with the migration, the Exchange proposes to modify certain processes and requirements relating to the submission of rebate requests, effective October 7, 2019.

Particularly, the Exchange proposes to modify the process relating to Frequent Trader ID updates and eliminate the ability for TPHs to submit certain forms and written requests relating to: (i) strategy order rebates, (ii) customer and non-customer large trade discounts and (iii)

compression order rebates. Instead, TPHs will be required to mark inbound orders appropriately or make same-day changes in the Clearing Editor.

The Exchange first proposes to amend its fee schedule with respect to the Frequent Trader Program. By way of background, through the Frequent Trader Program, the Exchange offers transaction fee rebates to Customers and Professional Customers and Voluntary Professionals (origin codes “C” and “W”, respectively) (collectively “Customers”) that meet certain volume thresholds in VIX, SPX (including SPXW) and RUT options, provided the Customer registers for the program. Once registered, the Customer is provided a unique Frequent Trader 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 from that Customer for purposes of determining whether the Customer meets any 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.<sup>5</sup>

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, it is possible that an executing TPH inadvertently enters an incorrect FTID number on an order. Accordingly, the Exchange currently allows TPHs to add

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<sup>5</sup> 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 voluntary for the executing TPH to do so.

or modify FTID information on post-trade records using a Cboe Trade Match (CTM) terminal for changes on the trade date or submit such FTID information electronically to the Exchange in a form and manner prescribed by the Exchange.<sup>6</sup> Such electronic submission must be received no later than 6:00 pm CT on the trade date. The Exchange currently allows, in extenuating circumstances as determined by the Exchange, the deadline to be extended until 6:00 pm CT on the business day following the trade date.

The Exchange notes that post-migration, in connection with the transition of the Exchange's billing system, the Exchange will no longer be able to apply rebates to any trades that were not marked or updated on the trade date. As such, the Exchange proposes to eliminate the ability for TPHs to submit electronically updated FTID information on the following trade date. Instead, the Exchange proposes to provide that an executing TPH may add or modify FTID information on post-trade records using the Clearing Editor<sup>7</sup> for changes on the trade date or electronically submit such FTID information to the Exchange in a form and manner prescribed by the Exchange no later than 4:29 pm CT, or by such time that the Exchange submits its final trade submission to the Options Clearing Corporation ("OCC") if later than 4:29 pm CT, on the trade date.<sup>8</sup> The Exchange believes that the vast majority of TPHs shouldn't need more than the

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<sup>6</sup> The Exchange has issued an Exchange Trade Notice providing the details as to how TPHs may submit such information to the Exchange and any corresponding deadline. See Cboe Options Trade Notice, "Frequent Trader ID Additions and Corrections – Change in Procedures", Reference ID C2019060700, which sets forth the file format, information required and corresponding deadlines. To the extent the Exchange amends the process or deadline in the future, the Exchange will similarly issue Exchange a new Trade Notice describing the changes.

<sup>7</sup> The Exchange notes that post-migration, the Cboe Trade Match (CTM) system will be replaced with the Clearing Editor, which is functionally equivalent to current CTM. As such, the Exchange proposes to replace the reference to Cboe Trade Match ("CTM") with "Clearing Editor" in the Frequent Trader Program Notes section.

<sup>8</sup> Effective October 7, 2019, FTIDs can be added or modified using the Clearing Edit

trade date to submit FTID information electronically as it is not an overly burdensome process. The Exchange also notes that the Frequent Trader Program was established over three years ago and TPHs therefore should be familiar with the program and its requirements and more proficient in ensuring FTID information is submitted in a timely manner. Moreover, TPHs still have the option of affixing FTIDs on the orders or may add or modify FTID information on post-trade records on the trade date via the Clearing Editor.

Next, the Exchange proposes to amend Footnote 13 of the Fees Schedule to eliminate the requirement to submit a rebate request with supporting documentation in order to qualify for strategy order fee caps. By way of background, Market-Maker, Clearing TPH, Joint-Back Office (“JBO”), broker-dealer and non-TPH market-maker transaction fees are capped at (1) \$1,000 for all (i) merger strategies and (ii) short stock interest strategies and at (2) \$700 for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class for options on equities, ETFs and ETNs. Such transaction fees for these strategies are further capped at \$25,000 per month per initiating TPH or TPH organization (excluding Clearing TPHs). Currently, to qualify transactions for the cap, a rebate request with supporting documentation must be submitted to the Exchange within 3 business days of the transactions. The Exchange notes that post-migration, it will no longer support the intake of various rebate request forms. Accordingly, the Exchange proposes to modify current Footnote 13 to eliminate the requirement

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Service in the Secure Web API (“Clearing Editor API”) on the trading day the trade occurred. See Cboe Options Trade Notice, “Frequent Trader ID Additions and Corrections – Change in Procedures”, Reference ID C2019060700, which sets forth the manner in which TPHs may update FTID information. The Exchange notes that the default cutoff time to make changes via the Clearing Editor tool or API is 4:29 pm CT, which is the time the Exchange submits its final trade submission to the OCC, which triggers OCC’s end of day processing and settlement. However, there may be instances in which the Exchange must delay its final trade submission and the Clearing Editor would in those instances not preclude changes to be made or submitted.

that TPHs must submit a written request with supporting documentation in order to qualify for the fee caps. The Exchange notes that upon migration, TPHs will be able to mark their strategy orders as strategy orders and the fee caps will therefore automatically be processed without requiring any supporting documentation. As such, rebate forms are no longer necessary to process the above-mentioned fee caps. Additionally, the Exchange has only received a handful of these rebate requests over the past year and therefore believes the impact of the proposed change to be de minimis.

Next, the Exchange proposes to amend Footnotes 27 and 47 which govern the Customer Large Trade Discount Program and a non-customer Large Trade Discount Program, respectively. By way of background, the Customer Large Trade Discount Program caps fees for customer orders of a certain size in VIX, SPX/SPXW, XSP, other index options and ETF and ETN options. The Large Trade Discount Program similarly caps fees for non-customer orders of a certain size in VIX options. Both programs provide that qualification of an order for the fee caps are based on the trade date and order ID on each order. More specifically, to qualify for the discount, the entire order quantity must be tied to a single order ID (unless the order is a complex order with a number of legs that exceeds system limitations) either within the Cboe Command system or PULSe or in the front end system used to enter and/or transmit the order (provided the Exchange is granted access to effectively audit such front end system) (the order must be entered in its entirety on one system so that the Exchange can clearly identify the total size of the order). Currently, for an order entered via PULSe or another front end system, or a complex order with multiple order IDs, a large trade discount request must be submitted to the Exchange within 3 business days of the transactions and must identify all necessary information, including the order ID and related trade details. The Exchange proposes to eliminate the ability to submit a form for

orders entered via PULSe or another front end system or a complex order with multiple order IDs. Particularly, the Exchange notes that TPHs should be able to identify such orders on each order thus eliminating the need to support a rebate request and documentation post-trade.

Additionally, the Exchange notes that it has received less than a handful of forms over the past year. As such, the Exchange believes the impact of the proposed change to be de minimis.

Lastly, the Exchange proposes to amend Footnote 41 to eliminate the requirement that TPHs must submit a rebate request to receive rebates for compression trades. By way of background, the Exchange rebates transaction fees, including the Index License Surcharge, for SPX and SPXW transactions if the transaction: (i) involves a complex order with at least five (5) different series in S&P 500 Index (SPX) options, SPX Weeklys (SPXW) options, (ii) is a closing-only transaction or, if the transaction involves a Firm order (origin code "F"), is an opening transaction executed to facilitate a compression of option positions for a market-maker or joint-back office ("JBO") account executed as a cross pursuant to and in accordance with Cboe Options Rule 6.74(b) or (d); (iii) is a position with a required capital charge equal to the minimum capital charge under Option Clearing Corporation's ("OCC") rules RBH Calculator or is a position comprised of option series with a delta of ten (10) or less and (iv) is entered on any of the final three (3) trading days of any calendar month. The Exchange also rebates transaction fees, including the Index License Surcharge, for closing transactions involving SPX and SPXW compression-list positions executed in a compression forum. Currently, to receive either rebate, a rebate request with supporting documentation must be submitted to the Exchange within 3 business days of the transactions. The Exchange notes that upon migration, TPHs will be able to mark their orders to identify them as eligible for the compression rebates which would enable the Exchange to validate and process the rebates without the submission of a request and supporting

documentation. As such, the Exchange believes the need to submit rebate requests and supporting documentation to receive compression rebates are no longer necessary.

## 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>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</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 the Section 6(b)(5)<sup>11</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the Exchange notes that eliminating the ability to submit FTID information after the trade date is reasonable as the Exchange will no longer be able to apply rebates to any trades that were not marked or updated on the trade date. The Exchange further believes that all TPHs should be able to prepare and submit FTID information electronically to the Exchange on the trade date. The proposed change continues to ensure timely processing and finality. Additionally,

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> Id.



it has been approximately 3 years since the original FT Form was adopted and as such, TPHs should be familiar with the Frequent Trader Program and should have systems and procedures in place to process to provide the required FTID information on the trade date. The Exchange also notes that the ability to provide FTID information electronically to the Exchange post-trade is merely an additional means to ensure FTID information is relayed to the Exchange. TPHs still have the option of affixing FTIDs on the orders or may add or modify FTID information on post-trade records on the trade date via the Clearing Editor (formerly the CTM terminal). As such, the Exchange believes notwithstanding the proposed changes, that TPHs still are provided a variety of means to ensure FTID information is relayed to the Exchange in a timely, efficient manner, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and protecting investors and the public interest.

The Exchange also believes eliminating the requirement to submit a written rebate request with supporting documentation in order to (i) qualify for strategy orders fee caps, (ii) to receive the discounts under the customer and non-customer Large Trade Discount programs for certain orders and (iii) to qualify for compression rebates is reasonable as TPHs are still eligible to receive all available caps, discounts and rebates. Specifically, post-migration, TPHs must merely mark inbound orders appropriately by populating the appropriate FIX or BOE field or make same-day changes in the Clearing Editor, in lieu of submitting documentation post-trade. The proposed changes also streamline and simplify the Exchange's billing processes, as the system will be able to identify marked orders and apply fee caps, rebates and discounts without TPHs having to submit, and the Exchange having to manually review, additional documentation. Lastly, the Exchange notes the proposed rule change is not intended to have a significant impact

or address any competitive issues. Rather it is precipitated by the transition of its billing system to a new system that is automated and will not process post-trade rebate requests.

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 of the Act because the proposed changes applies uniformly to all TPHs and still provide for TPHs an opportunity to receive the above described caps, rebates, and discounts notwithstanding the elimination of various form submissions. 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 Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options 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 foregoing 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 Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

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

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>14</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>15</sup> 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 requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange asserts that waiver of the delay will allow the Exchange to implement the proposed changes on October 7, 2019, the day the Exchange's billing system is migrated to a new system. In addition, CBOE notes that the Exchange provided TPHs notice of the proposed changes and implementation on September 4, 2019.<sup>16</sup> The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>17</sup>

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

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change, along with a brief description and 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. The Exchange has requested that the Commission waive the five-day pre-filing requirement. The Commission hereby grants the request.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> See supra note 6.

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2019-094 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-2019-094. 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-2019-094 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>18</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).