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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78907; File No. SR-CBOE-2016-068)

September 22, 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 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 13, 2016, 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 Frequent Trader Program. 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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

The Exchange proposes to amend its Fees Schedule.[3] Specifically, the Exchange proposes to expand its Frequent Trader Program. By way of background, on April 1, 2016, the Exchange adopted a program that offers transaction fee rebates to Customers (origin code "C") that meet certain volume thresholds in CBOE VIX Volatility Index options ("VIX options") and S&P 500 Index options ("SPX"), weekly S&P 500 options ("SPXW") and p.m.-settled SPX Index options ("SPXpm") (collectively referred to as "SPX options") provided the Customer registers for the program (the "Frequent Trader Program" or "Program").[4]

To participate in the Frequent Trader Program, Customers register with the Exchange. Once registered, the Customer is provided a unique 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 during both the Regular Trading Hours and Extended Trading Hours sessions 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

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3 The Exchange initially filed the proposed change on September 1, 2016 (SR-CBOE-2016-065). On September 13, 2016, the Exchange withdrew that filing and submitted this filing.

4 See Securities Exchange Act Release No. 77554 (April 7, 2016), 81 FR 21928 (April 13, 2016) (SR-CBOE-2016-023).

"executing TPH") and that executing TPH would have to enter the Customer's FTID on each of that Customer's orders.

The Exchange first proposes to expand the program to allow Professional Customers and Voluntary Professionals ("W" origin code) ("Professionals") to qualify for the Program. The same terms and conditions would apply to Professionals as currently does to Customers. The Exchange believes this proposed change would provide additional incentive to direct Professional order flow to the Exchange, which benefits all market participants through increased liquidity and enhanced price discovery. The Exchange next proposes to provide that, in addition to SPX and VIX options, the Program would apply to Russell 2000 Index ("RUT") options. As with SPX and VIX, the Exchange would aggregate a Customer's (or Professional's) volume (for which their FTID was entered) on a monthly basis for RUT options. If the Customer or Professional meets the thresholds proposed below, it would receive a rebate on its RUT options transaction fees, also indicated below.[5] Also, as is currently the case with SPX and VIX, although all executed contracts with an FTID will count towards the qualifying volume thresholds, the rebates will be based on the actual amount of fees assessed in accordance with the Fees Schedule (e.g., if a Customer submits a RUT order for 10,000 contracts, pursuant to the current Fees Schedule, that customer would be assessed fees for only the first 5,000 contracts under the Customer Large Trade Discount Program. Therefore, while all 10,000 contracts would count when determining the tier, the Customer's rebate would be based on the amount of the fees assessed for 5,000 contracts, not on the value of the total 10,000 contracts executed). The thresholds and rebates are as follows:

5 The Exchange notes that only transaction fees would be discounted (i.e., no other surcharges, such as the Index License Surcharge Fee, would be rebated or discounted).

RUT		
Tier	**Monthly RUT Contracts Traded**	**RUT Fee Rebate**
1	4,000-7,9999	5%
2	8,000-14,999	10%
3	15,000 and above	15%

The Exchange notes that the highest achieved threshold rebate rate will apply from the first executed contract (e.g., if a Customer or Professional executes 10,000 RUT contracts in a month, the Tier 2 10% rebate rate would apply to all 10,000 RUT contracts). The Exchange believes the tiered program incentivizes the sending of Customer and Professional orders to the Exchange while maintaining an incremental incentive for Customers and Professionals to strive for the highest tier level**.** The Exchange also notes that the volume thresholds for SPX options and VIX options are higher than for RUT in light of their more mature and established positions in the industry.

Next, the Exchange proposes to make some clarifying, non-substantive and organizational changes to the Frequent Trader table and Notes section in light of the proposed changes described above. First, the Exchange proposes to add a reference to Professional Customers and Voluntary Professionals in the Notes section and define “customer” as including both Customers (“C” origin) and Professional Customers and Voluntary Professionals (“W” origin). Additionally, the Exchange proposes to eliminate from the definition of “customer” in the Notes section the reference to “non-Professionals”, as reference to “customer” will include both Customers and Professionals going forward. The Exchange also proposes to change the last reference to customer in the Notes section to lower case to avoid confusion as to which "customer" is being referenced. The Exchange also proposes to eliminate obsolete language pertaining to the handling of the Frequent Trader Program – Volume Corrections Form for the month of April 2016, as such language is unnecessary to maintain. Additionally, the Exchange proposes to relocate the language of the Notes section to below the Frequent Trader Program table in order to accommodate the new RUT scale. Lastly, the Exchange proposes to amend the Frequent Trader Program – Volume Corrections Form ("Form") to reflect that the Program also applies to RUT.[6]

2. <u>Statutory Basis</u>

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 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. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which provides that Exchange rules may provide for

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6 The updated Frequent Trader Program – Volume Corrections Form, which will replace the current Frequent Trader Program – Volume Corrections Form, is attached as Exhibit 3.

7 15 U.S.C. 78f(b).

8 15 U.S.C. 78f(b)(5).

9 15 U.S.C. 78f(b)(4).

the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders.

The expansion of the Frequent Trader Program to Professionals is reasonable because it will allow Professionals who register for the program an opportunity to receive certain rebates for reaching certain trading volume thresholds. The Exchange notes that it is voluntary for Professionals to choose whether or not to register for the program and whether to request that their unique FTID be appended to their orders. The Program is also voluntary for executing TPHs who have the option of choosing not to participate (i.e., they may decline to append FTID numbers on Professional orders).

The Exchange believes it's equitable and not unfairly discriminatory to expand the program to Professionals because this is designed to attract a greater number of Professional VIX, SPX and RUT orders. This increased volume creates greater trading opportunities that benefit all market participants. Specifically, while only Customer and Professional orders qualify for the proposed rebates under the Frequent Trader Program, an increase in Customer and Professional order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Moreover, the options industry has a long history of providing preferential pricing to Customers. Like Customers, Professionals are non-TPH, non-broker dealers and have historically also been given preferential pricing. Indeed, the Exchange notes that incentive programs based on Customer and Professional volume already exist elsewhere within the industry.[10] In addition the Exchange

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[10] See e.g., NYSE Arca Options Fees and Charges, Customer and Professional Customer Incentive Program and Customer and Professional Customer Posting Credit Tiers in Penny and Non Penny Pilot Issues. See also NASDAQ Options Market ("NOM") Options Pricing, Sec. 2 NASDAQ Options Market—Fees and Rebates, Customer and Professional Penny Pilot Options Rebate to Add Liquidity.

believes the proposed program is equitable and not unfairly discriminatory because any Professional may avail itself of this program provided it registers with the Exchange and its executing TPH participates.

Expanding the Frequent Trader Program to RUT options is reasonable because it will allow Customers and Professionals who register for the program an opportunity to receive certain rebates for reaching certain trading volume thresholds in RUT, as well as VIX and SPX. The Exchange believes adding RUT options to the Program is equitable and not unfairly discriminatory because the Exchange has expended considerable time and resources in maintaining RUT, along with VIX and SPX. The proposed rule change is designed to encourage greater Customer and Professional RUT options trading, which, along with bringing greater RUT options trading opportunities to all market participants, would bring in more fees to the Exchange, and such fees can be used to recoup the Exchange's costs and expenditures from maintaining RUT options. The Exchange believes it's equitable and not unfairly discriminatory to establish lower threshold tiers for RUT than for the SPX product group and VIX because the SPX product group and VIX have reached a more mature and established level than RUT.

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to include all of a Customer's and Professional's RUT executed contracts with an FTID towards the respective qualifying thresholds because the Exchange wishes to support and encourage Customers and Professionals to provide greater order flow in this class, which allows for price improvement and has a number of positive impacts on the market system. The Exchange also believes however, that it's reasonable, equitable and not unfairly discriminatory to base the rebate off the amount of transaction fees that would be assessed pursuant to the Fees Schedule (as opposed to being based off the "theoretical" fee value of all contracts executed) because the

Exchange does not want to provide rebates on contracts for which it is not also collecting transaction fees.

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to provide Professionals a choice as to how their payment is delivered. Providing Professionals with the option of requesting to receive their rebates under the Frequent Trader Program as separate direct payments or via a distribution to one or more of its executing Clearing Trading Permit Holders will provide Professionals with a convenient manner in which to receive their rebates, which perfects the mechanism for a free and open market.

Lastly, the Exchange believes the proposed update to the Frequent Trader Program – Volume Corrections Form along with the clarifying, non-substantive and organizational changes maintains clarity in the Form and Fees Schedule, respectively, and avoids potential confusion given the proposed changes to expand the Frequent Trader Program. Alleviation of confusion removes impediments to, and perfects the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest of market participants.

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 because, while the rebates apply only to Customers and Professionals, the proposed change is designed to encourage increased Customer and Professional VIX, SPX and RUT options volume, which provides greater trading opportunities for all market participants. Additionally, the Exchange notes that incentive programs based on Customer and Professional volume already exist elsewhere within the industry.[11] The Exchange believes that the proposed rule change will

[11] Id.

not cause an unnecessary burden on intermarket competition because VIX and SPX products are only traded on CBOE and RUT products are only traded on CBOE and C2 Options Exchange, Incorporated. To the extent that the proposed changes make 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 Act[12] and paragraph (f) of Rule 19b-4[13] 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

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12 15 U.S.C. 78s(b)(3)(A).

13 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2016-068 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-2016-068. 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-2016-068, 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.[14]

Brent J. Fields
Secretary

[14] 17 CFR 200.30-3(a)(12).

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