

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69574; File No. SR-CBOE-2013-047)

May 14, 2013

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 May 1, 2013, 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 ament [sic] its Fees Schedule. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Footnote 24 of its Fees Schedule. Specifically, the Exchange would like to add to Footnote 24 the statement that, if a Market-Maker or its affiliate (“affiliate” defined as having at least 75% common ownership between the two entities as reflected on each entity’s Form BD, Schedule A) receives a credit under the Exchange’s Volume Incentive Program (“VIP”), that Market-Maker will receive a credit on its Market-Maker Trading Permit fees corresponding to the VIP tier reached (10% Market-Maker Trading Permit fee credit for reaching Tier 2 of the VIP, 20% Market-Maker Trading Permit fee credit for reaching Tier 3 of the VIP, and 30% Market-Maker Trading Permit fee credit for reaching Tier 4 of the VIP). This credit will not apply to Market-Maker Trading Permits used for appointments in SPX, SPXpm, VIX, OEX and XEO.

For example, consider a Market-Maker holds 23 Market-Maker Trading Permits (excluding those used with appointments in SPX, SPXpm, VIX, OEX and XEO) and has an affiliate that electronically transacts 2.50% of the national customer volume in multiply-listed options classes over the course of a month (putting that affiliate at Tier 3 on the VIP). Currently, that Market-Maker would be assessed a fee of \$102,500 for that month for the Market-Maker’s 23 Market-Maker Trading Permits (\$5,500 for each of the first ten permits, \$4,000 for each of the next ten permits, and \$2,500 for the final three

permits)³. However, under the proposed change, the Market-Maker would receive a 20% credit (\$20,500) on its Market-Maker Trading Permit fees (because its affiliate reached Tier 3 of the VIP), and therefore would only be assessed a fee of \$82,000 for the 23 Market-Maker Trading Permits (\$102,500 - \$20,500).

The purpose of the proposed change is to incentivize the sending of orders to CBOE by firms that have both Market-Maker and order-router arms. In the options industry, many options orders are routed by consolidators, which are firms that have both order router and Market-Maker arms. CBOE wants to be aware not only of the importance of providing credits on the order side in order to encourage the sending of orders to CBOE but also costs of operation on Market-Maker side. The Exchange has determined to address both sides by providing relief both on the order flow side (via the credits provided in the VIP) and the Market-Maker side (with the credits proposed herein). The resulting increased volume should benefit all CBOE market participants. Further, other options exchanges also provide credits to Market-Makers if a Market-Maker's affiliate's adds a certain amount of customer liquidity to that exchange.⁴ The Exchange proposes to exclude Market-Maker Trading Permits used for appointments in SPX, SPXpm, VIX, OEX and XEO from this credit because such permits are excluded

³ See CBOE Fees Schedule, Market-Maker Trading Permit Sliding Scale table.

⁴ See The NASDAQ Stock Market, LLC Options Market ("NOM") Options Pricing, specifically Tier 3 of the table describing The NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options. Under Tier 3, a NOM Market Maker receives a credit if that Market Maker and its affiliate under Common Ownership qualify for Tier 8 of NOM's Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. See also NYSE Arca, Inc. ("Arca") Fees and Charges, specifically the table describing the Market Maker Monthly Posting Credit Super Tier, under which transaction volume from a Market Maker's affiliates count towards the Market Maker's ability to qualify for higher credit tiers.

from the Market-Maker Trading Permit Sliding Scale, and because the Exchange expended considerable resources developing those products and therefore desires not to give a credit related to those products in order to recoup those expenditures.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ 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 the proposed change is reasonable because it will allow qualifying Market-Makers to receive a credit on their Market-Maker Trading Permit fees. The Exchange believes that this proposed change is equitable and not unfairly discriminatory because Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market-Makers have a number of obligations, including quoting obligations, that other market participants do not have. The purpose of the proposed change is to incentivize the sending of orders to CBOE by firms that have both Market-Maker and order-router arms. In the options industry, many options orders are routed by consolidators, which are firms that have both order router and Market-Maker arms. CBOE wants to be aware not only of the importance of providing credits on the order side in order to encourage the sending of orders to CBOE but also costs of operation on Market-Maker side. The Exchange has

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

determined to address both sides by providing relief both on the order flow side (via the credits provided in the VIP) and the Market-Maker side (with the credits proposed herein). By incentivizing a Market-Maker or its affiliate to achieve higher tiers on the VIP, the Exchange seeks to add greater Customer liquidity, and the resulting increased volume benefits all market participants (including Market-Makers or affiliates who do not achieve the higher tiers on the VIP; indeed, this increased volume may allow them to reach these tiers). This increased volume will also assist other Trading Permit Holders in achieving higher tiers on the VIP, including those that do not have affiliated Market-Makers. Further, other options exchanges also provide credits to Market-Makers if a Market-Maker's affiliate adds a certain amount of customer liquidity to that exchange.⁷ Finally, the proposed credit is available to all Market-Makers who qualify. The Exchange believes that it is equitable and not unfairly discriminatory to exclude Market-Maker Trading Permits used for appointments in SPX, SPXpm, VIX, OEX and XEO from this credit because such permits are excluded from the Market-Maker Trading Permit Sliding Scale, and because the Exchange expended considerable resources developing those products and therefore desires not to give a credit related to those products in order to recoup those expenditures.

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 change will impose an unnecessary or inappropriate burden on intramarket competition because Market-Makers are valuable

⁷ See Footnote 4.

market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market-Makers have a number of obligations, including quoting obligations, that other market participants do not have. By incentivizing a Market-Maker or its affiliate to achieve higher tiers on the VIP, the Exchange seeks to add greater Customer liquidity, and the resulting increased volume benefits all market participants (including Market-Makers or affiliates who do not achieve the higher tiers on the VIP; indeed, this increased volume may allow them to reach these tiers). This increased volume will also assist other Trading Permit Holders in achieving higher tiers on the VIP, including those that do not have affiliated Market-Makers. The Exchange does not believe that the proposed change will impose an unnecessary or inappropriate burden on intermarket competition because it only applies to CBOE. To the extent that this rebate, or the resulting increased volume, proves attractive to market participants on other options exchanges, such market participants may elect to become market participants at CBOE.

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 Act⁸ and paragraph (f) of Rule 19b-4⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f).

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-2013-047 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2013-047. 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-2013-047 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.¹⁰

Kevin M. O'Neill
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).