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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82548; File No. SR-CBOE-2018-005)

January 19, 2018

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule Concerning Firm Incentive Programs

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 12, 2017, 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

The Exchange 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. Particularly, the Exchange proposes to amend Footnote 11 of its Fees Schedule, which governs the Clearing Trading Permit Holder Fee Cap, Proprietary Products Sliding Scale, Proprietary VIX Sliding Scale, and Supplemental VIX Total Firm Discount (collectively, "Firm Incentive Programs") which applies to (i) Clearing Trading Permit Holder proprietary orders ("F" origin code), and (ii) orders of Non-Trading Permit Holder Affiliates ("Non-TPH Affiliates") of a Clearing Trading Permit Holder ("Clearing TPH") orders ("L" origin code). Footnote 11 currently defines a "Non-Trading Permit Holder Affiliate" for this purpose as a 100% wholly-owned affiliate or subsidiary of a Clearing TPH that is registered as a United States or foreign broker-dealer and that is not a Cboe Options Trading Permit Holder ("TPH"). It also provides that only proprietary orders of the Non-TPH Affiliate effected for purposes of hedging the proprietary over-the-counter trading of the Clearing TPH or its affiliates will be included in calculating the Firm Incentive Programs. Additionally, Footnote 11 provides that the Exchange will aggregate the fees and trading activity of separate Clearing TPHs for the purposes of the Firm Incentive Programs if there is at least 75% common ownership between the Clearing TPHs as reflected on each Clearing TPH's Form BD, Schedule A. Footnote 11 further states that each Clearing TPH is responsible for notifying the TPH Department of all of its affiliations so that fees and contracts of the Clearing TPH and its affiliates may be aggregated and each Clearing TPH is required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate. A Clearing TPH is also

required to certify the affiliate status of any Non-TPH Affiliate whose trading activity it seeks to aggregate.

The Exchange first proposes to modify which "L" orders may be included in calculating the Firm Incentive Programs. Particularly, the Exchange proposes to eliminate the requirement that to be included in calculating the Firm Incentive Programs, "L" orders must be proprietary orders of a Non-TPH Affiliate effected for purposes of hedging the proprietary over-the-counter trading of the Clearing TPH or its affiliates. In its place, the Exchange proposes to provide that all proprietary orders of a Non-TPH Affiliate may be included in the above-mentioned calculations. The Exchange wishes to encourage Non-TPH Affiliates to send all of their proprietary orders to the Exchange, not just transactions that are effected for purposes of hedging over-the-counter trading.

Next, the Exchange proposes to clarify that in order to provide "L" origin code rates to "L" origin code orders, the orders need to clear through an Exchange-registered OCC number. The Exchange notes that if an order marked with an "L" origin code uses a non-Exchange registered OCC clearing number, the orders would not be aggregated with any "F" orders, as the clearing number is not known to the Exchange's billing system. In order to avoid confusion, the Exchange proposes to make clear that only proprietary orders of a Non-TPH Affiliate that clears through a Cboe Options-registered OCC clearing number(s) will be included in calculating the Firm Incentive Programs. Similarly, the Exchange wishes to further clarify Footnote 16 and add a reference to "L" origin codes to Footnote 16. Footnote 16 currently provides that Broker-Dealer transaction fees (i.e., fees assessed for orders with a "B" origin code) will apply to certain orders with an "F" origin code if those orders are from OCC members that are not Cboe Options TPHs. As noted above, if an order uses a non-Exchange registered OCC clearing number, the

clearing number is not known to the Exchange's billing system. This is true regardless of if the order came from an OCC member that is or is not a Cboe Options TPH. As such, the Exchange proposes to also clarify that "F" and "L" orders will be billed as "B" orders if the orders are from OCC numbers that are not from Cboe Options TPHs or are not registered with the Exchange.

The Exchange next proposes to eliminate the requirement that each Clearing TPH certify the affiliate status of any Non-TPH Affiliate who's trading activity it seeks to aggregate. The Exchange believes that it is incumbent on any TPH marking an order with any origin code to ensure that it is marking the order appropriately and meeting any stated criteria. Orders should only be marked with an "L" origin code if it meets the definition provided for in Footnote 11, which, as noted above, requires that the order be from a 100% wholly-owned affiliate or subsidiary of a Clearing TPH that is registered as a United States or foreign broker-dealer and that is not a Cboe Options TPH. Accordingly, the Exchange does not believe it's necessary for further certification and therefore does not believe this language is necessary to maintain in the Fees Schedule.

Lastly, the Exchange proposes to (i) relocate to a new Footnote and (2) modify, the language currently in Footnote 11 requiring each Clearing TPH to notify the TPH Department of all of its affiliations and of any event that causes an entity to cease to be an affiliate. Particularly, the Exchange notes that the definition of an "affiliate" as used in Footnote 11 (i.e., 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A) is also referenced numerous times throughout the Fees Schedule. Particularly, there are a number of other occasions for which the Exchange may aggregate activity between affiliates.[3] As such, the

[3] See e.g., Cboe Exchange, Inc. Fees Schedule, Footnote 10, which provides the Exchange will aggregate the trading activity of separate Liquidity Provider firms for purposes of the Liquidity Provider Sliding Scale if there is at least 75% common ownership between the

Exchange believes it would be more appropriate to relocate the notice requirement to its own footnote (proposed Footnote 39) and expand the scope of the notice requirement to apply to all TPHs (not just Clearing TPHs). Accordingly, the Fees Schedule will now provide that each TPH is responsible for notifying the Exchange of all its affiliates and is required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate, in a form and manner to be determined by the Exchange. As noted above, an "affiliate" is defined as having at least 75% common ownership between two entities as reflected on each entity's Form BD, Schedule A.

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.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] 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 Section 6(b)(4) of the Act,[6] which requires that Exchange rules provide for the

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firms as reflected on each firm's Form BD, Schedule A.

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

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

6 15 U.S.C. 78f(b)(4).

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

The Exchange believes allowing a Clearing TPH to aggregate its trading activity for purposes of the Firm Incentive Programs with its Non-TPH Affiliate(s) for all proprietary orders of the Non-TPH Affiliate(s) and not just those effected for purposes of hedging the proprietary over-the-counter trading of the Clearing TPH or its affiliates is equitable, reasonable and not unfairly discriminatory. Particularly, the Exchange notes that "L" orders will continue to get the benefit of "L" order rates (now just a wider universe of orders). The Exchange believes it's equitable and not unfairly discriminatory to expand the scope of allowable "L" orders, as it still requires Non-TPH Affiliate(s) to be registered as a United States or foreign broker-dealer and for there to be complete identity of common ownership between the Clearing TPH and Non-TPH Affiliate. The Exchange does not believe it's necessary to continue to require the Non-TPH Affiliate's orders be effected for purposes of hedging. The elimination of this requirement would encourage the sending of all Non-TPH Affiliate's proprietary orders, which thereby brings greater trading activity, volume and liquidity, benefitting all market participants.

The Exchange next believes that clarifying Footnote 11 to state that only proprietary orders of a Non-TPH Affiliate ("L" origin code) that clear through a Cboe Options-registered OCC clearing number(s) will be processed as an "L" order, maintains transparency in the Fees Schedule and reduces potential confusion. For the same reasons, the Exchange is further clarifying Footnote 16 to provide that both "F" and "L" orders will be processed as Broker-Dealer (origin code "B") orders if they are from an OCC number that does not belong to a Cboe Options TPH or is not registered with the Exchange. As noted above, orders marked with either an "F" or "L" origin code that clear through a non-Exchange registered OCC clearing number

are not processed as such, as the clearing number is not known to the Exchange's billing system. The Exchange believes that explicitly clarifying this requirement in both Footnote 11 and Footnote 16 will reduce potential confusion. The alleviation of confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

The Exchange next believes it's reasonable to eliminate the requirement that each Clearing TPH certify the affiliate status of any Non-TPH Affiliate who's trading activity it seeks to aggregate because the Exchange believes marking an order with an "L" origin code should serve as certification that the order meets the requirements described above. Therefore, the Exchange does not believe this current language is necessary to maintain in the Fees Schedule. Eliminating unnecessary language reduces potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Lastly, the Exchange believes its proposal to (i) relocate the language requiring each Clearing TPH to notify the TPH Department of all of its affiliations and of any event that causes an entity to cease to be an affiliate from Footnote 11 to a new Footnote and (ii) modify the language to expand the scope of the language such that the notice requirement applies to the entire Fees Schedule, and all TPHs generally, promotes transparency in the Fees Schedule and reduces confusion. As noted above, the definition of an affiliate (i.e., 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A) is referenced numerous times throughout the Fees Schedule and there are a number of other occasions for which the Exchange aggregates activity between such affiliates. As such, the Exchange believes it would be more appropriate for the language requiring notice of affiliations and termination of such

relationships to be applicable to all TPHs and therefore be relocated to its own footnote which would apply to the entire Fees Schedule. Additionally, clarifying that such information shall be communicated to the Exchange in a form and manner to be determined by the Exchange allows the Exchange to provide a uniform and orderly manner in which to receive the information.

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

The Exchange does not believe that the proposed rule changes will impose any burdens 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 to the extent Non-TPH Affiliates receive beneficial pricing, the Exchange notes that Non-TPH Affiliate(s) are required to have complete identity of common ownership between itself and its affiliated Clearing TPH, and Clearing TPHs have clearing obligations that other market participants do not have. Moreover, the proposed changes are intended to encourage market participants to bring increased volume to the Exchange (which benefits all market participants). Additionally, the clarifying rule changes are not intended to address any competitive issues but rather to provide more clarity and transparency regarding Non-TPH Affiliates and affiliates. The Exchange does not believe that the proposed change will cause any unnecessary burden on intermarket competition because the proposed change only affects 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f) of Rule 19b-4[8] 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-2018-005 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.

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7 15 U.S.C. 78s(b)(3)(A).

8 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2018-005. 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, D.C. 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-2018-005 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.[9]

Eduardo A. Aleman
Assistant Secretary

[9] 17 CFR 200.30-3(a)(12).

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