



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96856; File No. SR-CBOE-2023-011]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Select Customer Options Reduction Program

February 9, 2023.

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 February 1, 2023, 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 the Select Customer Options Reduction program. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Select Customer Options Reduction program ("SCORE"), effective February 1, 2023.

By way of background, SCORE is a discount program for Retail, Non-FLEX Customer ("C" origin code) volume in the following options classes: SPX (including SPXW), VIX, RUT, MXEA, MXEF & XSP ("Qualifying Classes"). The SCORE program is available to any Trading Permit Holder ("TPH") Originating Clearing Firm or non-TPH Originating Clearing Firm that sign up for the program³.

Currently, SCORE currently utilizes two measures for participation and discounts: 1) the Qualifying Tiers, which determine whether a firm qualifies for the discounts in either Tier A or Tier B and 2) the Discount Tiers, which determine the Originating Firm's applicable discount tiers and corresponding discounts. Under the current program, to determine an Originating Firm's Qualifying Tier, the Originating Firm's total Retail volume in the Qualifying Classes will be divided by the Originating Firm's total Customer volume, Retail and non-Retail, in the Qualifying Classes. Based on the

³ For this program, an "Originating Clearing Firm" is defined as either (a) the executing clearing Options Clearing Corporation ("OCC") number on any transaction which does not also include a Clearing Member Trading Agreement ("CMTA") OCC clearing number or (b) the CMTA in the case of any transaction which does include a CMTA OCC clearing number.

percentage result, an Originating Firm qualifies for Tier A or Tier B discounts. To determine the Discount Tier, an Originating Firm's Retail volume in the Qualifying Classes will be divided by total Retail volume in the Qualifying Classes executed on the Exchange. The program then provides a discount per retail contract, based on the determined Qualifying Tier and Discount Tier thereunder. Currently, the program sets forth three discount tiers for Qualifying Tier A, with applicable discounts ranging from \$0 to \$0.08 per retail contract, and five discount tiers for Qualifying Tier B, with applicable discounts ranging from \$0 to \$0.25 per retail contract.

The Exchange proposes to streamline the program by eliminating the Qualifying Tiers construct. As amended, SCORE would utilize only one measure for participation and discount (i.e., the Discount Tiers). All Originating Firms would be subject to the same discount tier structure, which determines the corresponding applicable discounts.

The Exchange next proposes to amend the discount tier structure for the Discount Tiers. Specifically, the Exchange proposes to consolidate the program into four discount tiers based on qualifying volume, i.e. Discount Tiers 1 – 4, with corresponding discounts, as set forth below.

Tier	Retail Volume Percentage in Qualifying Classes	Discount Per Retail Contract
1	0.00% - 5.00%	\$0.00
2	Above 5.00% - 21.00%	\$0.04
3	Above 21.00% - 31.00%	\$0.05
4	Above 31.00% - 100.00%	\$0.14

The discount tier structure for the Discount Tiers will continue to be based on the same calculation, i.e., to determine the Discount Tier, an Originating Firm's Retail

volume in the Qualifying Classes will be divided by total Retail volume in the Qualifying Classes executed on the Exchange.

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 the Section 6(b)(5)⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ 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.

First, the Exchange believes the proposal to eliminate the utilization of Qualifying Tiers as a measure for its SCORe program is reasonable because it no longer wishes to consider this metric as part of the program’s participation and discounts, and it is not

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ Id.

⁷ 15 U.S.C. 78f(b)(4).

required to do so. The Exchange also notes that the Qualifying Tier measure was only one part of SCORE and believes the intention of the program will continue to be achieved through utilization of the Discount Tiers measure. The Exchange believes the proposed changes to eliminate the utilization of Qualifying Tiers as a measure for its SCORE program and to consolidate the discount tier structure into four Discount Tiers are reasonable because it eliminates potential program complexity and provides for a simpler calculation in determining qualifying thresholds and applicable discounts. Further, the Exchange believes the amended discount tier structure, including qualifying thresholds for the proposed four Discount Tiers and corresponding applicable discounts, remain equitable and reasonable by adequately considering the elimination of the Qualifying Tier and not materially changing the program.

The Exchange believes SCORE, currently and as amended, continues to provide an incremental incentive for Originating Firms to strive for the highest tier level, which provides increasingly higher discounts. As such, the changes are designed to encourage increased Retail volume in the Qualifying Classes, which provides increased volume and greater trading opportunities for all market participants. The Exchange believes the proposed change is equitable and not unfairly discriminatory because the qualifying volume thresholds apply to all registered Originating Firms uniformly. Additionally, while the Exchange has no way of predicting with certainty how many and which Originating Firms will qualify for which Discount Tier, the Exchange anticipates at least two Originating Firms will qualify for Tier 2, one Originating Firm will qualify for Tier 3, and one Originating Firm will qualify for Tier 4, to receive the applicable discounts for each Tier. The Exchange does not believe the proposed discount will adversely impact any Originating Firm's pricing. Rather, should an Originating Firm not meet the proposed criteria, the Originating Firm will merely not receive the proposed discount.

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. The Exchange does not believe that the proposed changes to the SCORE program will impose any burden on intramarket competition because the proposed changes apply to all registered Originating Firms uniformly, in that all Originating Firms will be subject to the same qualifying thresholds for the proposed four Discount Tiers and corresponding applicable discounts. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Qualifying Classes are products that only trade on the Exchange. To the extent that the proposed changes make the Exchange 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 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 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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(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. Please include File Number SR-CBOE-2023-011 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-2023-011. 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-2023-011 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

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-03161 Filed: 2/14/2023 8:45 am; Publication Date: 2/15/2023]

¹⁰ 17 CFR 200.30-3(a)(12).