

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79279; File No. SR-CBOE-2016-074]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

November 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 27, 2016, Chicago Board Options Exchange, Incorporated (“CBOE” or the “Exchange”) filed with the Securities and Exchange Commission (“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 text of the proposed rule change is available on the Exchange’s Web site (<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 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. Specifically, the Exchange proposes to amend its Fees Schedule with respect to waiving

transaction fees incurred as a result of transactions that compress or reduce certain Clearing Trading Permit Holder (“TPH”) open positions.

By way of background, SEC Rule 15c3-1, Net Capital Requirements for Brokers or Dealers (“Net Capital Rules”), requires that every registered broker-dealer maintain certain specified minimum levels of capital. The primary purpose of these rules is to regulate the ability of broker-dealers to meet their financial obligations to customers and other creditors. All of the broker-dealers that are clearing members of the Options Clearing Corporation (“OCC”) are subject to the Net Capital Rules. However, a subset of OCC’s clearing members are subsidiaries of U.S. bank holding companies and these broker-dealers, through their affiliation with their parent U.S. bank holding companies, must also comply with bank regulatory capital requirements pursuant to rule-making required under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”). Recent rule-making enacted under Dodd-Frank now requires U.S. bank holding companies to hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules. Additionally, due to the large contract size of S&P 500 Index (“SPX”) options, open interest in certain SPX series can result in extremely large bank regulatory capital requirements, even though the positions incur minimal requirements under the Net Capital Rules. As such, transactions that would result in the closing of this open interest have a beneficial impact on the bank regulatory capital requirements of the Clearing TPH’s parent company with a minimal impact on regulatory capital required under the capital rules. The Exchange notes that most of these open positions are in out-of-the-money options and certain spread positions that are essentially riskless strategies because they have little or no market exposure. Particularly, the Exchange notes that given the nature of these options, there is minimal chance for large losses to occur, yet these positions are still subject to large bank regulatory capital requirements. Exchange transaction fees, however, if not waived, could discourage market participants from closing these positions out even though those market participants may also prefer to close them rather than carry them to expiration.³ Accordingly, in

order to encourage the compression of certain out-of-the-money and riskless option positions, the Exchange previously adopted a rebate of all transactions fees for transactions that close these positions, provided they meet certain criteria, as described more fully below.⁴

The rebate of transaction fees⁵ is currently limited to those transactions that the Exchange believes would have the greatest impact on bank regulatory capital requirements but are also constrained to those positions that have little economic risk associated with them. Specifically, to be eligible for a rebate, a transaction must be: (i) For a complex order with at least five (5) different series in S&P 500 Index (SPX) options, SPX Weeklys (SPXW) options or p.m.-settled SPX options (SPXPM), (ii) a closing-only transaction or, if the transaction involves a Firm order (origin code “F”), an opening transaction executed to facilitate a compression of option positions for a market-maker or joint-back office (“JBO”) account; (iii) for a position with a required capital charge equal to the minimum capital charge under OCC rules RBH Calculator or a position comprised of option series with a delta of ten (10) or less and (iv) entered between the first business day following a quarterly expiration through the last business day of that quarter.⁶ To receive a rebate, a rebate request with supporting documentation must also be submitted to the Exchange within 3 business days of the transactions. The Exchange proposes to amend the last criteria (*i.e.*, the time period for which a Trading Permit Holder can enter these transactions and be eligible for the rebate). Specifically, the Exchange proposes to provide that in addition to meeting the first three criteria described above, the transaction would be eligible for a rebate if entered on any of the final three (3) trading days of any calendar month. The proposed rule change allows TPHs to mitigate their regulatory capital requirements on a monthly basis, instead of quarterly.

\$0.33 per contract (\$0.20 transaction fee plus \$0.13 SPX Index License Surcharge) to close out.

⁴ See Securities Exchange Act Release No. 76842 (January 6, 2016) 81 FR 1455 (January 12, 2016) (SR-CBOE-2015-117).

⁵ Rebate of transaction fees would include the transaction fee assessed along with any other surcharges assessed per contract (*e.g.*, the Index License Surcharge).

⁶ For example, the third quarter of 2016 standard-Friday expiration occurred on September 16, 2016. For that quarter, qualifying transactions needed to be entered no earlier than September 19, 2016 and no later than September 30, 2016.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For example, an out-of-the-money SPX option market-maker transaction may be worth only a few pennies per contract, but would cost approximately

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.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 facilitation 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,⁹ 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 providing a rebate of fees for transactions that compress certain out-of-the-money and riskless options positions is reasonable, equitable and not unfairly discriminatory because these positions would result in extremely large bank regulatory capital requirements for Clearing TPHs even though there is minimal chance for large losses to occur. Additionally, these positions have little or no economic benefit to the TPHs that hold the positions, who would likely prefer to close them but for the associated transaction fees. The fee rebate therefore allows TPHs to close out of these positions that are needlessly burdensome on themselves and Clearing TPHs.

The Exchange believes the proposed rule change is reasonable, equitable and not unfairly discriminatory because TPHs can now mitigate their regulatory capital requirements on a monthly basis, instead of quarterly. The proposed change would encourage the closing of positions at the end of each month that needlessly result in burdensome capital requirements that, once closed, would alleviate the capital requirement constraints on TPHs and improve overall market liquidity by freeing capital currently tied up in certain out-

of-the-money and riskless positions. The Exchange also notes that the proposed amended requirement would apply to all TPHs seeking a rebate for these transactions.

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

The Exchange does not believe that the proposed rule changes will impose any burden 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 Act because it applies to all market participants in the same manner with positions that meet the eligible criteria. The proposed change would encourage the closing of positions, on a monthly basis, that needlessly result in burdensome capital requirements that, once closed, would alleviate the capital requirement constraints on TPHs and improve overall market liquidity by freeing capital currently tied up in certain out-of-the-money and riskless positions. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change applies only to CBOE. To the extent that the proposed change makes 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 Act¹⁰ and paragraph (f) of Rule 19b-4¹¹ 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 email to rule-comments@sec.gov. Please include File Number SR-CBOE-2016-074 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2016-074. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 such 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-2016-074, and should be submitted on or before December 8, 2016.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79289; File No. SR-FINRA-2016-041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Implementation Date for Alternative Trading Systems To Report Sequence Numbers Under Rule 4554

November 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 8, 2016, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to delay implementation of Rule 4554(b)(8). The proposed rule change would not make any other changes to FINRA rules.

The proposed rule change does not make any changes to the text of FINRA rules.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

In May 2016, the SEC approved Rule 4554 to further enhance FINRA’s ability to reconstruct an ATS’s order book and better perform its order-based surveillance, which includes surveillance for layering, quote spoofing, and mid-point pricing manipulation. To accomplish this, Rule 4554 requires ATSS to report order information for each order they receive in an NMS stock beyond that set forth in the OATS rules, such as order re-pricing events (e.g., changes to an order that is pegged to the National Best Bid or Offer (“NBBO”)) and order display and reserve size information.⁴ Rule 4554 sets forth four categories of reporting requirements: (1) Data to be reported by all ATSS at the time of order receipt; (2) data to be reported by all ATSS at the time of order execution; (3) data to be reported by ATSS that display subscriber orders; and (4) data specific to ATSS that are registered as ADF Trading Centers.

Rule 4554(b) requires that all ATSS report eight categories of information at the time of order receipt, including the sequence number assigned to the order event by the ATS’s matching engine.⁵ When FINRA announced the SEC’s approval of Rule 4554, it established an implementation date of November 7, 2016; however, FINRA noted that it anticipated submitting a proposed rule change to the SEC that would require ATSS to provide a sequence number for

⁴ See Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (SR-FINRA-2016-010). Some of these requirements do not apply to all ATSS.

⁵ Rule 4554(b)(8). Rule 4554(b) also requires all ATSS, at the time of order receipt, to report: (1) Whether the ATS displays subscriber orders outside of the ATS and, if the ATS displays subscriber orders outside of the ATS, whether subscriber orders are displayed to subscribers only, or are distributed for publication in the consolidated quotation data; (2) whether the ATS is an ADF Trading Center as defined in FINRA Rule 6220; (3) whether the order can be routed away from the ATS for execution; (4) whether there are any counterparty restrictions on the order; (5) a unique identifier representing the specific order type other than market and limit orders that have no other special handling instructions; (6) the NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS captured the effective NBBO (or relevant reference price); and (7) the market data feed the ATS used to obtain the NBBO (or relevant reference price).

all OATS event types.⁶ FINRA noted that it “is deferring the implementation of this requirement to report a sequence number for new orders.”⁷ In this proposed rule change, FINRA is proposing that the requirement that ATSS report a sequence number when reporting new orders not be implemented on November 7, 2016.

FINRA anticipates filing a proposed rule change with the SEC in the near future to extend the requirement to report a sequence number beyond order receipt because, without a sequence number on all order events, FINRA is unable to properly sequence events when a single ATS MPID reports order events in the same symbol with identical timestamps. However, because a proposed rule change has not yet been filed, FINRA is filing this proposed rule change to delay the implementation of the requirement in Rule 4554(b)(8) that ATSS report the sequence number assigned to the order event by the ATS’s matching engine at the time of order receipt. FINRA will announce the implementation date for this requirement at the time it announces the implementation date for the extension of the requirement to all OATS order events.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change is consistent with the Act in that it will provide ATSS with additional time to implement the requirement in Rule 4554(b)(8) and will not require ATSS to begin reporting the sequence number assigned to the order event by the ATS’s matching engine at the time of order receipt until such time as sequence numbers are required for all OATS event types.

⁶ See *Regulatory Notice* 16-28, at n.3 (August 2016).

⁷ *Id.*

⁸ 15 U.S.C. 78o-3(b)(6).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).