

Monday expirations. Finally, the Exchange does not believe the proposal would impose any burden on intra-market competition, as all market participants will be treated in the same manner under this proposal.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>20</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that it recently approved Phlx's substantially similar proposal to list and trade Monday SPY Expirations.<sup>21</sup> The Exchange has stated that waiver of the operative delay will allow the Exchange to list and trade Monday SPY Expirations as soon as possible, and therefore, promote competition among the option exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, and will allow the Exchange to remain competitive with other exchanges.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>21</sup> See *supra* note 4.

Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>22</sup>

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 shall institute proceedings to determine whether the proposed rule 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2018-08 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-NYSEAMER-2018-08. 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 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

<sup>22</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSEAMER-2018-08 and should be submitted on or before April 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

[FR Doc. 2018-05333 Filed 3-15-18; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-82854; File No. SR-CBOE-2018-012]

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Options That Overlie the S&P Select Sector Index Options**

**March 12, 2018.**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 1, 2018, 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 establish fees for options that overlie the S&P Select Sector Index options ("Sector Index options"). The text of the

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 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

On October 4, 2017, the Exchange submitted a proposed rule change to amend certain rules in connection with listing S&P Select Sector Index<sup>3</sup> options under generic narrow-based listing standards, which became effective on November 3, 2017.<sup>4</sup> The Exchange rules currently permit the Exchange to list and trade options overlying each S&P Select Sector Index ("Sector Index options"). The Exchange proposes to establish fees for Sector Index options.

By way of background, a specific set of proprietary products are commonly

included or excluded from a variety of programs, qualification calculations and transaction fees. In lieu of listing out these products in various sections of the Fees Schedule, the Exchange uses the term "Underlying Symbol List A" to represent these products.<sup>5</sup> The Exchange notes the reason the products in Underlying Symbol List A are often collectively included or excluded from certain programs, qualification calculations and transactions fees is because the Exchange has expended considerable resources developing and maintaining its proprietary, exclusively listed products. Similar to the products currently represented by "Underlying Symbol List A," Sector Index options are not listed on any other exchange. As such, the Exchange proposes to establish fees for Sector Index options similar to those applicable to options overlying the indexes in Underlying Symbol List A, as well as similarly exclude those options from several programs from products [sic] in Underlying Symbol List A are excluded. The Exchange does not propose to add Sector Index options to Underlying Symbol List A. In lieu of listing out these products in various sections of the Fees Schedule, the Exchange proposes to refer to Sector Indexes in the Fees Schedule (which is defined in proposed footnote 47).

Specifically, like products in Underlying Symbol List A, the Exchange proposes to except Sector Index options from the Volume Incentive Program ("VIP"),<sup>6</sup> the Marketing Fee,<sup>7</sup> the Clearing Trading Permit Holder Fee Cap ("Fee Cap"),<sup>8</sup> exemption from fees for facilitation orders,<sup>9</sup> the AIM Contra Execution Fee,<sup>10</sup> the CFLEX AIM Response Fee,<sup>11</sup> the Clearing Trading Permit Holder Proprietary and/or their Non-Trading

Permit Holder Affiliates transaction fee cap for all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction,<sup>12</sup> the Order Router Subsidy ("ORS") and Complex Order Router Subsidy ("CORS") Programs,<sup>13</sup> the per contract per side surcharge for noncustomer complex order executions that remove liquidity from the COB and auction response in the complex order auction and AIM,<sup>14</sup> and the calculation of qualifying volume for rebates for Floor Broker Trading Permit Holder Trading Permit Fees.<sup>15</sup>

The Exchange does intend to apply to Sector Index options the Liquidity Provider Sliding Scale.<sup>16</sup> Although the Exchange proposes fees for Sector Index options similar to those established for products in "Underlying Symbol List A," the Exchange proposes to apply to Sector Index options the Liquidity Provider Sliding Scale to encourage Market-Makers to provide liquidity in these classes and believes that including them in this sliding scale will provide such incentive.

The Exchange next proposes to establish transaction fees for Sector Index options. Particularly, the Exchange proposes to assess the same fees for Sector Index options as apply to OEX Weekly and XEO Weekly options, except for Market-Maker transaction fees, which will be subject to the Liquidity Provider Sliding Scale as described above, and except for Clearing Trading Permit Holder Proprietary transactions, which will be \$0.25 rather than subject to the Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders. Transaction fees for Sector Index options will be as follows (all listed rates are per contract):<sup>17</sup>

Customer (origin code C) .....	\$0.30.
Clearing Trading Permit Holder Proprietary (origin codes F and L) .....	\$0.25. <sup>18</sup>
Market-Maker (origin code M) .....	Liquidity Provider Sliding Scale.
Joint Back-Office, Broker-Dealer, Non-Trading Permit Holder Market-Maker, Professional/Voluntary Professional (origin codes BNWJ) .....	\$0.40.

<sup>3</sup> There are ten S&P Select Sector Indexes: S&P Financial Select Sector Index (IXM), S&P Energy Select Sector Index (IXE), S&P Technology Select Sector Index (IXT), S&P Health Care Select Sector Index (IXV), S&P Utilities Select Sector Index (IXU), S&P Consumer Staples Select Sector Index (IXR), S&P Industrials Select Sector Index (IXI), S&P Consumer Discretionary Select Sector Index (IXY), S&P Materials Select Sector Index (IXB), and S&P Real Estate Select Sector Index (IXRE). The options listing symbols for options overlying these indexes will be: SIXM, SIXE, SIXT, SIXV, SIXU, SIXR, SIXI, SIXY, SIXB, and SIXRE, respectively.

<sup>4</sup> Securities Exchange Act Release No. 81879 (October 16, 2017), 82 FR 48858 (October 20, 2017) (SR-CBOE-2017-065).

<sup>5</sup> Currently, Underlying Symbol List A is defined in Footnote 34 and represents the following proprietary products: OEX, XEO, RUT, RLG, RLV, RUI, AWDE, FTEM, FXTM, UKXM, SPX (including SPXW), VIX, VOLATILITY INDEXES and binary options.

<sup>6</sup> See Cboe Options Fees Schedule, Volume Incentive Program (VIP) table and Footnote 36.

<sup>7</sup> See Cboe Options Fees Schedule, Footnote 6.

<sup>8</sup> See Cboe Options Fees Schedule, Footnote 11.

<sup>9</sup> See Cboe Options Fees Schedule, Footnotes 11 and 12.

<sup>10</sup> See Cboe Options Fees Schedule, Footnote 18.

<sup>11</sup> See Cboe Options Fees Schedule, Footnote 20.

<sup>12</sup> See Cboe Options Fees Schedule, Footnote 22.

<sup>13</sup> See Cboe Options Fees Schedule, Order Router Subsidy Program and Complex Order Router Subsidy Program table and Footnotes 29 and 30.

<sup>14</sup> See Cboe Options Fees Schedule, Footnote 35.

<sup>15</sup> See Cboe Options Fees Schedule, Footnote 25.

<sup>16</sup> See Cboe Options Fees Schedule, Specified Proprietary Index Options Rate Table—Underlying Symbol List A and Sector Indexes.

<sup>17</sup> See *id.*

The Exchange also proposes to apply to Sector Index options the CFLEX Surcharge Fee of \$0.10 per contract for all Sector Index option orders executed electronically on CFLEX, capped at \$250 per trade (*i.e.*, first 2,500 contracts per trade).<sup>19</sup> The CFLEX Surcharge Fee assists the Exchange in recouping the cost of developing and maintaining the CFLEX system. The Exchange notes that the CFLEX Surcharge Fee (and \$250 cap) also applies to other proprietary index options, including products in Underlying Symbol List A.

The Exchange currently assesses an Index License Surcharge of \$0.10 per contract for all non-customer orders for products in Underlying Symbol A except RUT and SPX. The Exchange proposes to assess a Surcharge of \$0.10 per contract in order to recoup the costs associated with the Sector Index license. In order to promote and encourage trading of Sector Index options, the Exchange proposes to waive the Index License Surcharge for Sector Index option transactions through June 30, 2018.<sup>20</sup>

## 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.<sup>21</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>22</sup> 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)<sup>23</sup> 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,<sup>24</sup> 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.

Particularly, the Exchange believes it is reasonable to charge different fee amounts to different user types in the manner proposed because the proposed fees are consistent with the price differentiation that exists today for other index products, including those in Underlying Symbol A. The Exchange also believes that the proposed fee amounts for Sector Index option orders are reasonable because the proposed fee amounts are the same already assessed for other proprietary products (*i.e.* OEX Weeklys and XEO Weeklys), as well as are within the range of amounts assessed for the Exchange's other proprietary products.<sup>25</sup>

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Customers as compared to certain other market participants except Market-Makers and Clearing Trading Permit Holders because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The fees offered to customers are intended to attract more customer trading volume to the Exchange. Moreover, the options industry has a long history of providing preferential pricing to Customers, and the Exchange's current Fees Schedule currently does so in many places, as do the fees structures of many other exchanges. Finally, all fee amounts listed as applying to Customers will be applied equally to all Customers (meaning that all Customers will be assessed the same amount).

The Exchange believes that it is equitable and not unfairly

discriminatory to, [sic] assess lower fees to Market-Makers pursuant to the Liquidity Provider Sliding Scale as compared to other market participants because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. Further, these lower fees offered to Market-Makers are intended to incent Market-Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. Additionally, the proposed fee for Market-Makers will be applied equally to all Market-Makers (meaning that all Market-Makers will be subject to the Liquidity Provider Sliding Scale). This concept also applies to orders from all other origins. It should also be noted that all fee amounts described herein are intended to attract greater order flow to the Exchange in Sector Index options, which should therefore serve to benefit all Exchange market participants.

Similarly, it is equitable and not unfairly discriminatory to assess lower fees to Clearing Trading Permit Holder Proprietary orders than those of other market participants (except Market-Makers) because Clearing Trading Permit Holders also have a number of obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that other market participants do not need to take on. The Exchange also notes that the Sector Index option fee amounts for each separate type of market participant will be assessed equally to all such market participants (*i.e.* all Broker-Dealer orders will be assessed the same amount, all Joint Back-Office orders will be assessed the same amount, etc.). The Exchange believes the proposed transaction fee of \$0.25 per contract for Clearing Trading Permit Holders is reasonable, equitable, and not unfairly discriminatory because is comparable to the amount of transaction fees for Clearing Trading Permit Holders in other proprietary products.<sup>26</sup>

The Exchange believes the proposed transaction fees for Brokers Dealers, Non-Trading Permit Holder Market-Makers, Professionals/Voluntary Professionals, JBOs and Customers are reasonable because they are the same as those assessed for transactions in certain other proprietary products.<sup>27</sup> The

<sup>18</sup> Currently, there is one line in the Specified Proprietary Index Options Rate Table for Clearing Trading Permit Holder Proprietary, pursuant to which all products subject to that table (Underlying Symbol List A) were [sic] subject to the Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders. The proposed rule change divides Clearing Trading Permit Holder Proprietary line in the transaction rate table into two, indicating that Underlying Symbol List A will continue to be subject to the sliding scale, and Sector Indexes will be \$0.25.

<sup>19</sup> See *id.* [sic].

<sup>20</sup> See *id.* [sic].

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> *Id.*

<sup>24</sup> 15 U.S.C. 78f(b)(4).

<sup>25</sup> See Cboe Options Fees Schedule, Specified Proprietary Index Options Rate Table—Underlying Symbol A and Sector Indexes.

<sup>26</sup> See Cboe Options Fee Schedule, Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scales Table. The maximum transaction fee per contract in the Table B (related to the VIX Sliding Scale) part of that table is \$0.25.

<sup>27</sup> *Id.*

Exchange also notes that the Sector Index option fee amounts for each separate type of market participant will be assessed equally to all such market participants (*i.e.* all Broker-Dealer orders will be assessed the same amount, all Joint Back-Office orders will be assessed the same amount, etc.).

The Exchange believes that assessing an Index License Surcharge Fee of \$0.10 per contract to Sector Index option transactions is reasonable because the Surcharge helps recoup some of the costs associated with the license for Sector Index options. Additionally, the Exchange notes that the Surcharge amount is the same as, and in some cases lower than, the amount assessed as an Index License Surcharge to other index products. The proposed Surcharge is also equitable and not unfairly discriminatory because the amount will be assessed to all market participants to whom the Surcharge applies. Not applying the Sector Index License Surcharge Fee to Customer orders is equitable and not unfairly discriminatory because this is designed to attract Customer Sector Index option orders, which increases liquidity and provides greater trading opportunities to all market participants. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to waive the Index License Surcharge because it promotes and encourages trading of these new products and applies to all Trading Permit Holders.

Similarly, the Exchange believes assessing a CFLEX Surcharge Fee of \$0.10 per contract for all Sector Index option orders executed electronically on CFLEX and capping it at \$250 (*i.e.*, first 2,500 contracts per trade) is reasonable because it is the same amount currently charged to other proprietary index products for the same transactions.<sup>28</sup>

The proposed Surcharge is also equitable and not unfairly discriminatory because the amount will be assessed to all market participants to whom the CFLEX Surcharge applies.

Excepting VIP, the Marketing Fee, the Fee Cap, exemption from fees for facilitation orders, the AIM Contra Execution Fee, the CFLEX AIM Response Fee, the Clearing Trading Permit Holder Proprietary and/or their Non-Trading Permit Holder Affiliates transaction fee cap for all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction, the ORS and CORS

Programs,<sup>29</sup> the per contract per side surcharge for noncustomer complex order executions that remove liquidity from the COB and auction response in the complex order auction and AIM,<sup>30</sup> and the calculation of qualifying volume for rebates for Floor Broker Trading Permit Holder Trading Permit Fees is reasonable because other proprietary products are excepted from those same items. This is equitable and not unfairly discriminatory for the same reason; it seems equitable to except Sector Index options from items on the Fees Schedule from which other proprietary products are also excepted.

#### *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 purposes of the Act because, while different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market-Makers have quoting obligations that other market participants do not have. The Exchange does not believe the proposed rule change to waive the Index License Surcharge through June 30, 2018 will impose any burden on intramarket competition because it applies to all Trading Permit Holders and encourages trading in these new products.

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 Sector Index options will be exclusively listed 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<sup>31</sup> and paragraph (f) of Rule 19b-4<sup>32</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2018-012 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-2018-012. 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 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

<sup>28</sup> See Cboe Options Fees Schedule, Index Options Rate Table—All Index Products Excluding Underlying Symbol List A and Sector Indexes, CFLEX Surcharge Fee and Specified Proprietary Index Options Rate Table—Underlying Symbol List A and Sector Indexes, CFLEX Surcharge Fee.

<sup>29</sup> See Cboe Options Fees Schedule, Order Router Subsidy Program and Complex Order Router Subsidy Program table and Footnotes 29 and 30.

<sup>30</sup> See Cboe Options Fees Schedule, Footnote 22.

<sup>31</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>32</sup> 17 CFR 240.19b-4(f).

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-2018-012, and should be submitted on or before April 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018-05329 Filed 3-15-18; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82856; File No. SR-OCC-2018-001]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Related to The Options Clearing Corporation's Fee Policy

March 12, 2018.

On January 18, 2018, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposed rule change SR-OCC-2018-001. The proposed rule change was published for comment in the **Federal Register** on January 30, 2018,<sup>3</sup> and the Commission did not receive any comments. This order approves the proposed rule change.

## I. Description of the Proposed Rule Change

### A. Background

As stated in the Notice, OCC filed the proposed Fee Policy to reduce the permitted implementation time for proposed changes to its Schedule of Fees.<sup>4</sup> Under the current Fee Policy, any change to the Schedule of Fees resulting from a review by OCC's Board of Directors ("Board")<sup>5</sup> will be implemented no sooner than 60 days after filing the revised Schedule of Fees with the Commission as a proposed rule change.

### B. The Proposed Rule Change to OCC's Fee Policy

OCC's By-Laws require OCC to set its fee structure so that it is sufficient to: (1) Cover OCC's operating expenses plus a Business Risk Buffer ("Buffer");<sup>6</sup> (2) maintain reserves deemed reasonably necessary by OCC's Board; and (3) accumulate an additional surplus deemed advisable by the Board to permit OCC to meet its obligations to its Clearing Members and the public.<sup>7</sup> As part of the Fee Policy, OCC sets fees at a level that will cover its estimated operating expenses plus the additional 25% Buffer, with OCC conducting quarterly reviews to manage revenues as close to the Buffer as possible. OCC stated that the Board may rely on recommendations of OCC staff based on analyses of year-to-date revenue and operating expenses, as well as projected clearing volume and operating expenses to determine the proper level of fees to achieve the Buffer.<sup>8</sup>

As stated in the Notice, OCC believes that the current 60-day implementation period under the Fee Policy: (i) Increases the difficulty of projecting appropriate fee levels needed to cover its operating expenses and the Buffer because of the amount of time that passes between OCC's analysis of the data supporting the fee change and the

<sup>4</sup> See Notice at 4324.

<sup>5</sup> See Notice at 4325 (stating that the authority to review and approve changes to OCC's fees pursuant to the Capital Plan has been delegated to the Compensation and Performance Committee of the Board). See also OCC Compensation and Performance Committee Charter, available at: [http://www.optionsclearing.com/components/docs/about/corporate-information/performance\\_committee\\_charter.pdf](http://www.optionsclearing.com/components/docs/about/corporate-information/performance_committee_charter.pdf).

<sup>6</sup> The Buffer is an amount of fee revenue that OCC targets above its anticipated operating expenses to allow for unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements.

<sup>7</sup> See OCC's By-Laws, Art. IX, Sec. 9. In the Notice at 4325, OCC noted that clauses two and three above would be invoked only at the discretion of OCC's Board and in extraordinary circumstances.

<sup>8</sup> See Notice at 4325.

subsequent implementation of the fee change; (ii) increases the risk that by the time the fee change is implemented, the extended delay in implementation may result in revenues that diverge (either higher or lower) further from the target Buffer; and (iii) increases the impact of fee changes on participants due to the delayed implementation timing.<sup>9</sup> OCC states that the effects of delayed implementation described above may result in OCC needing to make more frequent and/or more dramatic changes to its Schedule of Fees in order to maintain its target Buffer, resulting in less stability in fees for OCC's participants.<sup>10</sup> OCC states that reducing the 60-day implementation period to thirty days would allow for fee adjustments that are based on revenue and expense data that is more current, and therefore projections that are more accurate.<sup>11</sup> OCC further states that it believes the proposed Fee Policy would improve its ability to set fees at the level required by the Fee Policy while still providing adequate notice to its participants of any proposed fee changes.<sup>12</sup>

## II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act<sup>13</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission finds that the proposed Fee Policy is consistent with Section 17A(b)(3)(F) of the Act<sup>14</sup> and Rule 17Ad-22(e)(21)<sup>15</sup> thereunder, as described in detail below.

### A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and the protection of investors and the public interest.<sup>16</sup> As described above,

<sup>9</sup> See *id.* OCC further stated that, because it generally implements fee changes on the first of the month, the actual delay in implementing a proposed fee change may be significantly longer than 60 days depending on the timing of Board approval of any fee change and subsequent filing of the associated proposed rule change.

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

<sup>13</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>15</sup> 17 CFR 240.17Ad-22(e)(21).

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>33</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 82576 (January 24, 2018), 83 FR 4324 (January 30, 2018) (SR-OCC-2018-001) ("Notice").