

## OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 35

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No.\* SR - 2016 - \* 008

Amendment No. (req. for Amendments \*)

Filing by Chicago Board Options Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant  
to the Securities Exchange Act of 1934

Section 806(e)(1) \*

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Section 806(e)(2) \*

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Section 3C(b)(2) \*

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Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed rule change to amend the Fees Schedule.

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Corinne Last Name \* Klott  
 Title \* Senior Counsel  
 E-mail \* klott@cboe.com  
 Telephone \* (312) 786-7793 Fax

### Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 02/04/2016

By Corinne Klott

(Name \*)

Attorney

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Persona Not Validated - 1439308854429,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**Item 1.        Text of the Proposed Rule Change**

(a)     Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

(b)     Not applicable.

(c)     Not applicable.

**Item 2.        Procedures of the Self-Regulatory Organization**

(a)     The Exchange’s President pursuant to delegated authority approved the proposed rule change on December 31, 2015.

(b)     Please refer questions and comments on the proposed rule change to Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7462, or Corinne Klott, (312) 786-7793, Chicago Board Options Exchange, Incorporated, 400 South LaSalle, Chicago, Illinois 60605.

**Item 3.        Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a)     Purpose

The Exchange proposes to amend its Fees Schedule.<sup>1</sup>

**CBOE Proprietary Products Sliding Scale**

The CBOE Proprietary Products Sliding Scale table provides that Clearing Trading Permit Holder Proprietary transaction fees and transaction fees for Non-Clearing

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<sup>1</sup>     The Exchange initially filed the proposed fee changes on January 4, 2016 (SR-CBOE-2016-001). On January 27, 2016, the Exchange withdrew that filing and replaced it with SR-CBOE-2016-006. On February 4, 2016, the Exchange withdrew that filing and submitted this filing.

Trading Permit Holder Affiliates in Underlying Symbol List A<sup>2</sup> are reduced provided a Clearing Trading Permit Holder (“Clearing TPH”) (including its Non-Trading Permit Holder affiliates) reaches certain average daily volume (“ADV”) thresholds in all underlying symbols excluding Underlying Symbol List A and mini-options on the Exchange in a month. The Exchange proposes to implement changes to the CBOE Proprietary Products Sliding Scale (“Proprietary Sliding Scale”). First, the Exchange proposes to amend the current qualifying ADV thresholds. Specifically, the threshold 20,000 ADV to 79,999 ADV would be changed to 25,000 ADV to 69,999 ADV, and the threshold 80,000 ADV and above would be changed to 70,000 ADV and above. The Exchange also proposes to increase the rates set forth in Tiers B1 through B3, as well as in Tiers A1 and A2. Specifically, the Exchange proposes to increase the rate in Tier B3 to \$0.22 from \$0.20, in Tier B2 to \$0.12 from \$0.10, in Tier B1 to \$0.05 from \$0.02, in Tier A2 to \$0.18 from \$0.16 and in Tier A1 to \$0.02 from \$0.01. The proposed changes are further detailed below.

Current			Proposed		
Tier	Proprietary Product Volume Thresholds	Transaction Fee Per Contract	Tier	Proprietary Product Volume Thresholds	Transaction Fee Per Contract
$\geq 20,000$ ADV $\leq 79,999$ ADV in multi list products			$\geq 25,000$ ADV $\leq 69,999$ ADV in multi list products		
<b>B3</b>	0.00% - 6.50%	\$0.20	<b>B3</b>	0.00% - 6.50%	\$0.22
<b>B2</b>	6.51% - 8.50%	\$0.10	<b>B2</b>	6.51% - 8.50%	\$0.12
<b>B1</b>	Above 8.50%	\$0.02	<b>B1</b>	Above 8.50%	\$0.05
$\geq 80,000$ ADV in multi list products			$\geq 70,000$ ADV in multi list products		
<b>A2</b>	0.00% - 6.50%	\$0.16	<b>A2</b>	0.00% - 6.50%	\$0.18
<b>A1</b>	Above 6.50%	\$0.01	<b>A1</b>	Above 6.50%	\$0.02

<sup>2</sup> As of December 31, 2015, Underlying Symbol List A includes the following products: OEX, XEO, RUT, RLV, RLG, RUI, SPX (including SPXw), SPXpm, SRO, VIX, VXST, VOLATILITY INDEXES and binary options.

The purpose of amending the tier volume thresholds is to adjust for current volume trends and demographics across the Clearing TPH proprietary population and to rationalize fees across that population. The purpose of increasing the transaction Fee Per Contract rates (and thereby reducing the amount of the discount Clearing TPHs may receive on proprietary products) is to moderate the discount levels for these products in view of their growth and performance. Particularly, the Exchange does not believe it's necessary to maintain the existing discounted rates for these tiers, but still seeks to maintain an incremental incentive for Clearing TPHs to strive for the highest tier level.

#### VIX Sliding Scale

The Exchange proposes to adopt a new Clearing Trading Permit Holder Proprietary VIX Sliding Scale (the "VIX Sliding Scale"). The VIX Sliding Scale allows VIX volatility index options ("VIX options") transaction fees for Clearing TPH (including its Non-Trading Permit Holder affiliates) proprietary orders to be reduced provided a Clearing TPH (including its Non-Trading Permit Holder affiliates) reaches certain proprietary VIX options volume thresholds during a month. The proposed applicable transaction fees for the different volume tiers on the VIX Sliding Scale are as follows:

<b>Tier</b>	<b>Percentage thresholds of total VIX volume</b>	<b>Transaction Fee Per Contract</b>
1	0.00% - 1.00%	\$0.25
2	1.01% - 5.50%	\$0.17
3	5.51% - 8.00%	\$0.05
4	Above 8.00%	\$0.01

The VIX Sliding Scale applies to orders bearing the origin codes “F” and “L”. The purpose of the VIX Sliding Scale is to encourage greater Clearing TPH proprietary trading of VIX options.

In conjunction with the adoption of the VIX Sliding Scale, the Exchange proposes to amend Footnote 11 of its Fees Schedule. Footnote 11 provides the details regarding the Clearing Trading Permit Holder Fee Cap (“Fee Cap”) in all products except Underlying Symbol List A (excluding binary options) and the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders, both of which apply to Clearing TPH proprietary orders. Because the VIX Sliding Scale also applies to Clearing TPH proprietary orders, and because many of the details regarding the Fee Cap and the Proprietary Products Sliding Scale will also apply to the VIX Sliding Scale, the Exchange proposes to reference the VIX Sliding Scale in Footnote 11 as well.

First, Footnote 11 defines the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders as the “Sliding Scale”. In order to avoid confusion that could arise due to the addition of the VIX Sliding Scale, the Exchange proposes to define CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders as the “Proprietary Products Sliding Scale”. As such, any references within Footnote 11 to the “Sliding Scale” will now be referred to as the “Proprietary Products Sliding Scale”. Any references to the Clearing Trading Permit Holder Proprietary VIX Sliding Scale within Footnote 11 will be referred to as the “VIX Sliding Scale.”

Like the Fee Cap and the Proprietary Sliding Scale, the VIX Sliding Scale will apply to (i) Clearing TPH proprietary orders (“F” origin code), and (ii) orders of Non-

Trading Permit Holder Affiliates of a Clearing TPH.<sup>3</sup> A “Non-Trading Permit Holder Affiliate” would be defined for the purposes of the VIX Sliding Scale the same way it is defined for the Fee Cap and Proprietary Sliding Scale: 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 Trading Permit Holder (“TPH”). As with the Fee Cap and the Proprietary Sliding Scale, only proprietary orders of the Non-Trading Permit Holder Affiliate (“L” origin code) effected for purposes of hedging the proprietary over-the-counter trading of the Clearing TPH or its affiliates will be included in calculating the VIX Sliding Scale, and such orders must be marked with a code approved by the Exchange identifying the orders as eligible for the VIX Sliding Scale. As with the Fee Cap and the Proprietary Sliding Scale, 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 for purposes of the VIX Sliding Scale and is required to certify the affiliate status of any Non-Trading Permit Holder Affiliate whose trading activity it seeks to aggregate. In addition, each Clearing TPH is required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate.

As with the Fee Cap and the Proprietary Sliding Scale, the Exchange will aggregate the fees and trading activity of separate Clearing TPHs for the purposes of the VIX Sliding Scale if there is at least 75% common ownership between the Clearing TPHs as reflected on each Clearing TPH’s Form BD, Schedule A. As with the Fee Cap and the Proprietary Sliding Scale, a Clearing TPH’s fees and contracts executed pursuant to a CMTA agreement (i.e., executed by another clearing firm and then transferred to the

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<sup>3</sup> See CBOE Fees Schedule, Footnote 11.

Clearing TPH's account at the OCC) are aggregated with the Clearing TPH's non-CMTA fees and contracts for purposes of the VIX Sliding Scale.

For calculating a Clearing TPH's total proprietary product transaction fees, CBOE will use the following methodology: if using the VIX Sliding Scale plus the Proprietary Sliding Scale (minus VIX options volume) results in lower total Clearing TPH proprietary transaction fees than just using the Proprietary Sliding Scale, CBOE will apply the new VIX Sliding Scale plus the Proprietary Sliding Scale (deducting the VIX options volume from the Proprietary Sliding Scale). If using the VIX Sliding Scale plus the Proprietary Sliding Scale (minus VIX options volume) results in higher total Clearing TPH proprietary transaction fees than just using the Proprietary Sliding Scale, CBOE will apply only the Proprietary Sliding Scale. The purpose of this methodology is to provide a Clearing TPH with the most beneficial fee arrangement (the lowest fees) without double-counting VIX options volume.

For example, consider a situation in which, in a month, a Clearing TPH has a combined total for both the Regular Trading Hours ("RTH") session and Extended Trading Hours ("ETH") session (i) qualifying ADV of 66,000 in all underlying symbols excluding Underlying Symbol List A and mini-options, (ii) qualifying proprietary VIX options volume of 500,000 contracts, and (iii) qualifying volume of other proprietary products of 350,000 contracts (totaling 850,000 contracts of proprietary products).<sup>4</sup> Total firm proprietary options contracts executed in the month was 15,298,000, including total VIX volume of 6,433,000. The Clearing TPH's total 850,000 proprietary contracts represent 5.56% of the total monthly firm proprietary option contracts volume (i.e.,

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<sup>4</sup> For this example, all volumes listed exclude volume in SROs, Mini-Options and contracts for which a strategy cap has been applied.



850,000/15,298,000). As such, the Clearing TPH's transaction fees for its proprietary volume under the Proprietary Sliding Scale (including the proposed rate change) would be \$0.22 per contract, or a total of \$187,000 (i.e.,  $850,000 \times \$0.22$ ).

Continuing with the example, the Clearing TPH's fees using the VIX Sliding Scale plus the Proprietary Sliding Scale (minus VIX options volume) would be calculated. Under the VIX Sliding Scale, the Clearing TPH total 500,000 VIX contracts represent 7.77% of the total monthly firm VIX option contracts volume (i.e.,  $500,000/6,433,000$ ). As such, the Clearing TPH would be assessed a \$0.25-per-contract fee for contracts 1-64,330 (totaling \$16,082.50), a \$0.17-per-contract fee for contracts 64,331 – 353,815 (totaling \$49,212.45), and a \$0.05-per-contract fee for contracts 353,816 – 500,000 (totaling \$7,309.25). Therefore, under the VIX Sliding Scale, the Clearing TPH's proprietary transaction fees are \$72,604.20 ( $\$16,082.50 + \$49,212.45 + \$7,309.25$ ). To this the Clearing TPH's proprietary fees under the Proprietary Sliding Scale (subtracting out the VIX options volume) would be added. Under the Proprietary Sliding Scale, the Clearing TPH's total non-VIX proprietary contracts represent 3.85% of the total monthly firm non-VIX proprietary option contracts volume (i.e.,  $350,000 \text{ non-VIX proprietary volume} / 8,865,000 \text{ total non-VIX proprietary volume}$  ( $15,298,000 \text{ total proprietary volume} - 6,433,000 \text{ VIX volume}$ )). The Clearing TPH's transaction fees for its non-VIX proprietary volume under the Proprietary Sliding Scale (including the proposed rate change) would be \$0.22 per contract, or a total of \$77,000 (i.e.,  $350,000 \times \$0.22$ ). The Clearing TPH's fees under the VIX Sliding Scale (\$72,604.20) added to the fees using the Proprietary Sliding Scale (minus VIX volume) (\$77,000), totals \$149,604.20. Because this amount is less than the Clearing TPH's fees using just the

Proprietary Sliding Scale (including the VIX options volume) of \$187,000, the Exchange would apply the VIX Sliding Scale plus the Proprietary Sliding Scale to determine the Clearing TPH's proprietary fees, and assess the lower fee of \$149,604.20.

In conjunction with the proposed changes, the Exchange proposes to make a number of related non-substantive clarifying and reorganizational changes to its Fees Schedule. First, the Exchange proposes to rename the CBOE Proprietary Products Sliding Scale rate table to the "Clearing Trading Permit Holder Proprietary Products Sliding Scales." The Exchange also proposes to specify that Table A represents the Proprietary Products Sliding Scale and Table B represents the VIX Sliding Scale. Additionally, in light of renaming the table and adding the VIX Sliding Scale, the Exchange proposes to update the corresponding reference to the "CBOE Proprietary Products Sliding Scale" in the Specified Proprietary Index Options Rate Table to "CBOE Clearing Trading Permit Holder Proprietary Products Sliding Scales". The Exchange also proposes to eliminate Footnote 23 (which footnote relates to the CBOE Proprietary Sliding Scale) and consolidate the notes currently located within Footnote 23 with the notes currently located within the Notes section of the CBOE Proprietary Products Sliding Scale table, as well as update the Notes section with a description of how the sliding scales will work. The Exchange believes maintaining both a Notes section and a footnote is unnecessary and that the proposed change will alleviate potential confusion and make the Fees Schedule easier to read. Lastly, in light of the additional language that is being added regarding the VIX Sliding Scale, the Exchange proposes a few non-substantive and clarifying changes to the language contained within the Notes section of the CBOE Proprietary Products Sliding Scales table, which the Exchange believes will

enhance the section's readability. For example, the Exchange has eliminated the sentence "Mini-options and SROs are excluded from the CBOE Proprietary Products Sliding Scale" and instead clarified where and when those products are excluded (i.e., SROs are not eligible for the reduce transaction fee discounts and Mini-Options are not counted towards the ADV volume thresholds). Additionally, the Exchange is amending the last sentence of the Notes section relating to ETH and RTH volume, which the Exchange believes will make the sentence easier to read and avoid potential confusion. For example, the Exchange proposes to eliminate the reference to "VIX and SPX/SPXW" volume and "Underlying Symbol List A". The Exchange notes that these changes are not substantive and do not change the applicability of the sliding scales to ETH or make any other changes as to how the sliding scales apply.

(b) 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>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</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

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</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.

The Exchange believes the proposal to change the qualifying volume thresholds for the reduced fees in the Proprietary Sliding Scale is reasonable because it adjusts for current volume trends and demographics across the Clearing TPH proprietary population and rationalizes fees across that population. The Exchange notes that the rebalance of tiers also still allows the Exchange to maintain an incremental incentive for Clearing TPHs to strive for the highest tier level. The Exchange believes it is equitable and not unfairly discriminatory because the proposed changes to the qualifying volume thresholds apply to all Clearing TPHs.

The Exchange believes increasing the rates in each of the tiers of the Proprietary Sliding Scale (and thereby reducing the overall discount) is reasonable because it still provides Clearing TPHs an opportunity to receive notable discounted rates on classes in Underlying Symbol list A for reaching certain qualifying volume thresholds that they would not otherwise receive (now just a smaller discount). Additionally, the Exchange notes that lower fees for executing more contracts is equitable and not unfairly discriminatory because it provides market participants with an incentive to execute more contracts on the Exchange. This brings greater liquidity and trading opportunity, which benefits all market participants. The Exchange believes that the proposed change is not unfairly discriminatory because it will apply to all Clearing TPHs that meet the

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<sup>7</sup> 15 U.S.C. 78f(b)(4).

qualifying volume thresholds. The Exchange also believes offering lower fees under the Proprietary Sliding Scale to Clearing TPHs and not other CBOE market participants is equitable and not unfairly discriminatory because Clearing TPHs must take on certain obligations and responsibilities, such as clearing and membership with the Options Clearing Corporation, as well as significant regulatory burdens and financial obligations, that other market participants are not required to undertake.

The adoption of the VIX Sliding Scale is reasonable because it will allow Clearing TPHs who engage in VIX options trading the opportunity to pay lower fees for such transactions. Similarly, aggregating the fees and trading activity of separate Clearing TPHs for the purposes of the VIX Sliding Scale if there is at least 75% common ownership between the Clearing TPHs and aggregating a Clearing TPH's fees and contracts executed pursuant to a CMTA agreement with the Clearing TPH's non-CMTA fees and contracts for the purpose of the VIX Sliding Scale is reasonable because this will allow more Clearing TPHs to qualify for the lowered fees at the higher volume tiers in the VIX Sliding Scale.

The proposed methodology to be used in calculating a Clearing TPH's total proprietary product transaction fees is reasonable because it provides Clearing TPHs who engage in VIX options trading with a second way to maximize their ability to reduce their proprietary products transaction fees. Subtracting VIX options volume from the Proprietary Sliding Scale when taking into account the VIX Sliding Scale to calculate proprietary product transaction fees is reasonable because it would be illogical (and not financially viable) to count VIX options volume twice (once in the VIX Sliding Scale and once in the Proprietary Sliding Scale) to allow a Clearing TPH to qualify for a lowered

fee rate when the VIX options transactions (and volume such transactions created) only occurred once and fees were therefore only assessed on such transactions once.

Applying the VIX Sliding Scale to Clearing TPH (and their affiliates, in the manner described above) proprietary orders only is equitable and not unfairly discriminatory because, as noted above, Clearing TPHs take on a number of obligations and responsibilities (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations that other market participants are not required to undertake. Further, the VIX Sliding Scale is designed to encourage increased Clearing TPH proprietary VIX options volume, which provides increased VIX options volume and greater trading opportunities for all market participants. Similarly, applying lower fee rates for Clearing TPHs who hit the higher VIX options contract volume tiers on the VIX Sliding Scale is equitable and not unfairly discriminatory because this is designed to encourage increased TPH proprietary VIX options volume, which provides increased VIX options volume and greater trading opportunities for all Clearing TPHs, including those who are not able to reach the higher-volume tiers. Moreover, the Exchange already offers other fee-lowering programs (such as the Fee Cap and Proprietary Sliding Scale) which entail lower fees for Clearing TPHs (and their affiliates, in the manner described above) and are limited to Clearing TPHs (and their affiliates, in the manner described above).

Applying the VIX Sliding Scale to VIX options and not to other products is equitable and not unfairly discriminatory because the Exchange has expended considerable time and resources in developing VIX options.

The Exchange believes (i) redefining the Proprietary Sliding Scale and adding references to the VIX Sliding Scale in Footnote 11 of the Fees Schedule and (ii) updating the reference to the “CBOE Proprietary Products Sliding Scale” to “CBOE Clearing Trading Permit Holder Proprietary Products Sliding Scales” in the Specified Proprietary Index Options Rate Table alleviates potential confusion by investors reading the Fees Schedule in light of the proposed change. Additionally, the Exchange believes its proposal to make non-substantive clarifying language changes to the Notes section, as well as its proposal to eliminate Footnote 23 and consolidate the description set forth in Footnote 23 within the Notes section of the current CBOE Proprietary Products Sliding Scale table will alleviate potential confusion and make the Fees Schedule easier to read and more streamlined. This avoidance 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.

**Item 4. 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 is 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 it applies only to Clearing TPH proprietary orders, Clearing TPHs take on a number of obligations and responsibilities (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations that other market participants are not required to undertake. Further, the VIX Sliding Scale is designed to encourage increased Clearing TPH proprietary VIX options

volume, which provides increased VIX options volume and greater trading opportunities for all market participants. Therefore, the Exchange believes that any potential effects on intramarket competition that the proposed changes to the Proprietary Sliding Scale and adoption of the VIX Sliding Scale may cause are therefore justifiable. 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 proposed rule change applies only to CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

**Item 5. 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.

**Item 6. Extension of Time Period for Commission Action**

Not applicable.

**Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder.

(b) The Exchange designates that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, which renders the proposed rule change effective upon filing with the Securities and Exchange Commission (the

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).



“Commission”). At any time within 60 days of the filing of this 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.

(c) Not applicable.

(d) Not applicable.

**Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

**Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**Item 11. Exhibits**

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. Proposed rule text if not included under Item 1(a).

EXHIBIT 1

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CBOE-2016-008]

[Insert date]

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

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 [insert date], 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 amend the 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

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

<sup>2</sup> 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 its Fees Schedule.<sup>3</sup>

CBOE Proprietary Products Sliding Scale

The CBOE Proprietary Products Sliding Scale table provides that Clearing Trading Permit Holder Proprietary transaction fees and transaction fees for Non-Clearing Trading Permit Holder Affiliates in Underlying Symbol List A<sup>4</sup> are reduced provided a Clearing Trading Permit Holder (“Clearing TPH”) (including its Non-Trading Permit Holder affiliates) reaches certain average daily volume (“ADV”) thresholds in all underlying symbols excluding Underlying Symbol List A and mini-options on the Exchange in a month. The Exchange proposes to implement changes to the CBOE Proprietary Products Sliding Scale (“Proprietary Sliding Scale”). First, the Exchange proposes to amend the current qualifying ADV thresholds. Specifically, the threshold 20,000 ADV to 79,999 ADV would be changed to 25,000 ADV to 69,999 ADV, and the threshold 80,000 ADV and above would be changed to 70,000 ADV and above. The Exchange also proposes to increase the rates set forth in Tiers B1 through B3, as well as in Tiers A1 and A2. Specifically, the Exchange proposes to increase the rate in Tier B3

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<sup>3</sup> The Exchange initially filed the proposed fee changes on January 4, 2016 (SR-CBOE-2016-001). On January 27, 2016, the Exchange withdrew that filing and replaced it with SR-CBOE-2016-006. On February 4, 2016, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> As of December 31, 2015, Underlying Symbol List A includes the following products: OEX, XEO, RUT, RLV, RLG, RUI, SPX (including SPXw), SPXpm, SRO, VIX, VXST, VOLATILITY INDEXES and binary options.

to \$0.22 from \$0.20, in Tier B2 to \$0.12 from \$0.10, in Tier B1 to \$0.05 from \$0.02, in Tier A2 to \$0.18 from \$0.16 and in Tier A1 to \$0.02 from \$0.01. The proposed changes are further detailed below.

Current			Proposed		
Tier	Proprietary Product Volume Thresholds	Transaction Fee Per Contract	Tier	Proprietary Product Volume Thresholds	Transaction Fee Per Contract
$\geq 20,000$ ADV $\leq 79,999$ ADV in multi list products			$\geq 25,000$ ADV $\leq 69,999$ ADV in multi list products		
<b>B3</b>	0.00% - 6.50%	\$0.20	<b>B3</b>	0.00% - 6.50%	\$0.22
<b>B2</b>	6.51% - 8.50%	\$0.10	<b>B2</b>	6.51% - 8.50%	\$0.12
<b>B1</b>	Above 8.50%	\$0.02	<b>B1</b>	Above 8.50%	\$0.05
$\geq 80,000$ ADV in multi list products			$\geq 70,000$ ADV in multi list products		
<b>A2</b>	0.00% - 6.50%	\$0.16	<b>A2</b>	0.00% - 6.50%	\$0.18
<b>A1</b>	Above 6.50%	\$0.01	<b>A1</b>	Above 6.50%	\$0.02

The purpose of amending the tier volume thresholds is to adjust for current volume trends and demographics across the Clearing TPH proprietary population and to rationalize fees across that population. The purpose of increasing the transaction Fee Per Contract rates (and thereby reducing the amount of the discount Clearing TPHs may receive on proprietary products) is to moderate the discount levels for these products in view of their growth and performance. Particularly, the Exchange does not believe it's necessary to maintain the existing discounted rates for these tiers, but still seeks to maintain an incremental incentive for Clearing TPHs to strive for the highest tier level.

#### VIX Sliding Scale

The Exchange proposes to adopt a new Clearing Trading Permit Holder Proprietary VIX Sliding Scale (the "VIX Sliding Scale"). The VIX Sliding Scale allows VIX volatility index options ("VIX options") transaction fees for Clearing TPH

(including its Non-Trading Permit Holder affiliates) proprietary orders to be reduced provided a Clearing TPH (including its Non-Trading Permit Holder affiliates) reaches certain proprietary VIX options volume thresholds during a month. The proposed applicable transaction fees for the different volume tiers on the VIX Sliding Scale are as follows:

<b>Tier</b>	<b>Percentage thresholds of total VIX volume</b>	<b>Transaction Fee Per Contract</b>
1	0.00% - 1.00%	\$0.25
2	1.01% - 5.50%	\$0.17
3	5.51% - 8.00%	\$0.05
4	Above 8.00%	\$0.01

The VIX Sliding Scale applies to orders bearing the origin codes “F” and “L”. The purpose of the VIX Sliding Scale is to encourage greater Clearing TPH proprietary trading of VIX options.

In conjunction with the adoption of the VIX Sliding Scale, the Exchange proposes to amend Footnote 11 of its Fees Schedule. Footnote 11 provides the details regarding the Clearing Trading Permit Holder Fee Cap (“Fee Cap”) in all products except Underlying Symbol List A (excluding binary options) and the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders, both of which apply to Clearing TPH proprietary orders. Because the VIX Sliding Scale also applies to Clearing TPH proprietary orders, and because many of the details regarding the Fee Cap and the Proprietary Products Sliding Scale will also apply to the VIX Sliding Scale, the Exchange proposes to reference the VIX Sliding Scale in Footnote 11 as well.

First, Footnote 11 defines the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders as the “Sliding Scale”. In order to avoid confusion that could arise due to the addition of the VIX Sliding Scale, the

Exchange proposes to define CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders as the “Proprietary Products Sliding Scale”. As such, any references within Footnote 11 to the “Sliding Scale” will now be referred to as the “Proprietary Products Sliding Scale”. Any references to the Clearing Trading Permit Holder Proprietary VIX Sliding Scale within Footnote 11 will be referred to as the “VIX Sliding Scale.”

Like the Fee Cap and the Proprietary Sliding Scale, the VIX Sliding Scale will apply to (i) Clearing TPH proprietary orders (“F” origin code), and (ii) orders of Non-Trading Permit Holder Affiliates of a Clearing TPH.<sup>5</sup> A “Non-Trading Permit Holder Affiliate” would be defined for the purposes of the VIX Sliding Scale the same way it is defined for the Fee Cap and Proprietary Sliding Scale: 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 Trading Permit Holder (“TPH”). As with the Fee Cap and the Proprietary Sliding Scale, only proprietary orders of the Non-Trading Permit Holder Affiliate (“L” origin code) effected for purposes of hedging the proprietary over-the-counter trading of the Clearing TPH or its affiliates will be included in calculating the VIX Sliding Scale, and such orders must be marked with a code approved by the Exchange identifying the orders as eligible for the VIX Sliding Scale. As with the Fee Cap and the Proprietary Sliding Scale, 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 for purposes of the VIX Sliding Scale and is required to certify the affiliate status of any Non-Trading Permit Holder Affiliate whose trading

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<sup>5</sup> See CBOE Fees Schedule, Footnote 11.

activity it seeks to aggregate. In addition, each Clearing TPH is required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate.

As with the Fee Cap and the Proprietary Sliding Scale, the Exchange will aggregate the fees and trading activity of separate Clearing TPHs for the purposes of the VIX Sliding Scale if there is at least 75% common ownership between the Clearing TPHs as reflected on each Clearing TPH's Form BD, Schedule A. As with the Fee Cap and the Proprietary Sliding Scale, a Clearing TPH's fees and contracts executed pursuant to a CMTA agreement (i.e., executed by another clearing firm and then transferred to the Clearing TPH's account at the OCC) are aggregated with the Clearing TPH's non-CMTA fees and contracts for purposes of the VIX Sliding Scale.

For calculating a Clearing TPH's total proprietary product transaction fees, CBOE will use the following methodology: if using the VIX Sliding Scale plus the Proprietary Sliding Scale (minus VIX options volume) results in lower total Clearing TPH proprietary transaction fees than just using the Proprietary Sliding Scale, CBOE will apply the new VIX Sliding Scale plus the Proprietary Sliding Scale (deducting the VIX options volume from the Proprietary Sliding Scale). If using the VIX Sliding Scale plus the Proprietary Sliding Scale (minus VIX options volume) results in higher total Clearing TPH proprietary transaction fees than just using the Proprietary Sliding Scale, CBOE will apply only the Proprietary Sliding Scale. The purpose of this methodology is to provide a Clearing TPH with the most beneficial fee arrangement (the lowest fees) without double-counting VIX options volume.

For example, consider a situation in which, in a month, a Clearing TPH has a combined total for both the Regular Trading Hours ("RTH") session and Extended

Trading Hours (“ETH”) session (i) qualifying ADV of 66,000 in all underlying symbols excluding Underlying Symbol List A and mini-options, (ii) qualifying proprietary VIX options volume of 500,000 contracts, and (iii) qualifying volume of other proprietary products of 350,000 contracts (totaling 850,000 contracts of proprietary products).<sup>6</sup> Total firm proprietary options contracts executed in the month was 15,298,000, including total VIX volume of 6,433,000. The Clearing TPH’s total 850,000 proprietary contracts represent 5.56% of the total monthly firm proprietary option contracts volume (i.e.,  $850,000/15,298,000$ ). As such, the Clearing TPH’s transaction fees for its proprietary volume under the Proprietary Sliding Scale (including the proposed rate change) would be \$0.22 per contract, or a total of \$187,000 (i.e.,  $850,000 \times \$0.22$ ).

Continuing with the example, the Clearing TPH’s fees using the VIX Sliding Scale plus the Proprietary Sliding Scale (minus VIX options volume) would be calculated. Under the VIX Sliding Scale, the Clearing TPH total 500,000 VIX contracts represent 7.77% of the total monthly firm VIX option contracts volume (i.e.,  $500,000/6,433,000$ ). As such, the Clearing TPH would be assessed a \$0.25-per-contract fee for contracts 1-64,330 (totaling \$16,082.50), a \$0.17-per-contract fee for contracts 64,331 – 353,815 (totaling \$49,212.45), and a \$0.05-per-contract fee for contracts 353,816 – 500,000 (totaling \$7,309.25). Therefore, under the VIX Sliding Scale, the Clearing TPH’s proprietary transaction fees are \$72,604.20 ( $\$16,082.50 + \$49,212.45 + \$7,309.25$ ). To this the Clearing TPH’s proprietary fees under the Proprietary Sliding Scale (subtracting out the VIX options volume) would be added. Under the Proprietary Sliding Scale, the Clearing TPH’s total non-VIX proprietary contracts represent 3.85% of

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<sup>6</sup> For this example, all volumes listed exclude volume in SROs, Mini-Options and contracts for which a strategy cap has been applied.



the total monthly firm non-VIX proprietary option contracts volume (i.e., 350,000 non-VIX proprietary volume / 8,865,000 total non-VIX proprietary volume (15,298,000 total proprietary volume - 6,433,000 VIX volume)). The Clearing TPH's transaction fees for its non-VIX proprietary volume under the Proprietary Sliding Scale (including the proposed rate change) would be \$0.22 per contract, or a total of \$77,000 (i.e., 350,000 x \$0.22). The Clearing TPH's fees under the VIX Sliding Scale (\$72,604.20) added to the fees using the Proprietary Sliding Scale (minus VIX volume) (\$77,000), totals \$149,604.20. Because this amount is less than the Clearing TPH's fees using just the Proprietary Sliding Scale (including the VIX options volume) of \$187,000, the Exchange would apply the VIX Sliding Scale plus the Proprietary Sliding Scale to determine the Clearing TPH's proprietary fees, and assess the lower fee of \$149,604.20.

In conjunction with the proposed changes, the Exchange proposes to make a number of related non-substantive clarifying and reorganizational changes to its Fees Schedule. First, the Exchange proposes to rename the CBOE Proprietary Products Sliding Scale rate table to the "Clearing Trading Permit Holder Proprietary Products Sliding Scales." The Exchange also proposes to specify that Table A represents the Proprietary Products Sliding Scale and Table B represents the VIX Sliding Scale. Additionally, in light of renaming the table and adding the VIX Sliding Scale, the Exchange proposes to update the corresponding reference to the "CBOE Proprietary Products Sliding Scale" in the Specified Proprietary Index Options Rate Table to "CBOE Clearing Trading Permit Holder Proprietary Products Sliding Scales". The Exchange also proposes to eliminate Footnote 23 (which footnote relates to the CBOE Proprietary Sliding Scale) and consolidate the notes currently located within Footnote 23 with the

notes currently located within the Notes section of the CBOE Proprietary Products Sliding Scale table, as well as update the Notes section with a description of how the sliding scales will work. The Exchange believes maintaining both a Notes section and a footnote is unnecessary and that the proposed change will alleviate potential confusion and make the Fees Schedule easier to read. Lastly, in light of the additional language that is being added regarding the VIX Sliding Scale, the Exchange proposes a few non-substantive and clarifying changes to the language contained within the Notes section of the CBOE Proprietary Products Sliding Scales table, which the Exchange believes will enhance the section's readability. For example, the Exchange has eliminated the sentence "Mini-options and SROs are excluded from the CBOE Proprietary Products Sliding Scale" and instead clarified where and when those products are excluded (i.e., SROs are not eligible for the reduce transaction fee discounts and Mini-Options are not counted towards the ADV volume thresholds). Additionally, the Exchange is amending the last sentence of the Notes section relating to ETH and RTH volume, which the Exchange believes will make the sentence easier to read and avoid potential confusion. For example, the Exchange proposes to eliminate the reference to "VIX and SPX/SPXW" volume and "Underlying Symbol List A". The Exchange notes that these changes are not substantive and do not change the applicability of the sliding scales to ETH or make any other changes as to how the sliding scales apply.

## 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>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</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 Section 6(b)(4) of the Act,<sup>9</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.

The Exchange believes the proposal to change the qualifying volume thresholds for the reduced fees in the Proprietary Sliding Scale is reasonable because it adjusts for current volume trends and demographics across the Clearing TPH proprietary population and rationalizes fees across that population. The Exchange notes that the rebalance of tiers also still allows the Exchange to maintain an incremental incentive for Clearing TPHs to strive for the highest tier level. The Exchange believes it is equitable and not unfairly discriminatory because the proposed changes to the qualifying volume thresholds apply to all Clearing TPHs.

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

The Exchange believes increasing the rates in each of the tiers of the Proprietary Sliding Scale (and thereby reducing the overall discount) is reasonable because it still provides Clearing TPHs an opportunity to receive notable discounted rates on classes in Underlying Symbol list A for reaching certain qualifying volume thresholds that they would not otherwise receive (now just a smaller discount). Additionally, the Exchange notes that lower fees for executing more contracts is equitable and not unfairly discriminatory because it provides market participants with an incentive to execute more contracts on the Exchange. This brings greater liquidity and trading opportunity, which benefits all market participants. The Exchange believes that the proposed change is not unfairly discriminatory because it will apply to all Clearing TPHs that meet the qualifying volume thresholds. The Exchange also believes offering lower fees under the Proprietary Sliding Scale to Clearing TPHs and not other CBOE market participants is equitable and not unfairly discriminatory because Clearing TPHs must take on certain obligations and responsibilities, such as clearing and membership with the Options Clearing Corporation, as well as significant regulatory burdens and financial obligations, that other market participants are not required to undertake.

The adoption of the VIX Sliding Scale is reasonable because it will allow Clearing TPHs who engage in VIX options trading the opportunity to pay lower fees for such transactions. Similarly, aggregating the fees and trading activity of separate Clearing TPHs for the purposes of the VIX Sliding Scale if there is at least 75% common ownership between the Clearing TPHs and aggregating a Clearing TPH's fees and contracts executed pursuant to a CMTA agreement with the Clearing TPH's non-CMTA fees and contracts for the purpose of the VIX Sliding Scale is reasonable because this will

allow more Clearing TPHs to qualify for the lowered fees at the higher volume tiers in the VIX Sliding Scale.

The proposed methodology to be used in calculating a Clearing TPH's total proprietary product transaction fees is reasonable because it provides Clearing TPHs who engage in VIX options trading with a second way to maximize their ability to reduce their proprietary products transaction fees. Subtracting VIX options volume from the Proprietary Sliding Scale when taking into account the VIX Sliding Scale to calculate proprietary product transaction fees is reasonable because it would be illogical (and not financially viable) to count VIX options volume twice (once in the VIX Sliding Scale and once in the Proprietary Sliding Scale) to allow a Clearing TPH to qualify for a lowered fee rate when the VIX options transactions (and volume such transactions created) only occurred once and fees were therefore only assessed on such transactions once.

Applying the VIX Sliding Scale to Clearing TPH (and their affiliates, in the manner described above) proprietary orders only is equitable and not unfairly discriminatory because, as noted above, Clearing TPHs take on a number of obligations and responsibilities (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations that other market participants are not required to undertake. Further, the VIX Sliding Scale is designed to encourage increased Clearing TPH proprietary VIX options volume, which provides increased VIX options volume and greater trading opportunities for all market participants. Similarly, applying lower fee rates for Clearing TPHs who hit the higher VIX options contract volume tiers on the VIX Sliding Scale is equitable and not unfairly discriminatory because this is designed to encourage increased TPH proprietary VIX options volume,

which provides increased VIX options volume and greater trading opportunities for all Clearing TPHs, including those who are not able to reach the higher-volume tiers. Moreover, the Exchange already offers other fee-lowering programs (such as the Fee Cap and Proprietary Sliding Scale) which entail lower fees for Clearing TPHs (and their affiliates, in the manner described above) and are limited to Clearing TPHs (and their affiliates, in the manner described above).

Applying the VIX Sliding Scale to VIX options and not to other products is equitable and not unfairly discriminatory because the Exchange has expended considerable time and resources in developing VIX options.

The Exchange believes (i) redefining the Proprietary Sliding Scale and adding references to the VIX Sliding Scale in Footnote 11 of the Fees Schedule and (ii) updating the reference to the “CBOE Proprietary Products Sliding Scale” to “CBOE Clearing Trading Permit Holder Proprietary Products Sliding Scales” in the Specified Proprietary Index Options Rate Table alleviates potential confusion by investors reading the Fees Schedule in light of the proposed change. Additionally, the Exchange believes its proposal to make non-substantive clarifying language changes to the Notes section, as well as its proposal to eliminate Footnote 23 and consolidate the description set forth in Footnote 23 within the Notes section of the current CBOE Proprietary Products Sliding Scale table will alleviate potential confusion and make the Fees Schedule easier to read and more streamlined. This avoidance 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.

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 is 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 it applies only to Clearing TPH proprietary orders, Clearing TPHs take on a number of obligations and responsibilities (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations that other market participants are not required to undertake. Further, the VIX Sliding Scale is designed to encourage increased Clearing TPH proprietary VIX options volume, which provides increased VIX options volume and greater trading opportunities for all market participants. Therefore, the Exchange believes that any potential effects on intramarket competition that the proposed changes to the Proprietary Sliding Scale and adoption of the VIX Sliding Scale may cause are therefore justifiable. 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 proposed rule change applies only to CBOE. To the extent that the proposed changes make 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 Act<sup>10</sup> and paragraph (f) of Rule 19b-4<sup>11</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2016-008 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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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f).



All submissions should refer to File Number SR-CBOE-2016-008. 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; 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-2016-008 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.<sup>12</sup>

Secretary

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

Chicago Board Options Exchange, Incorporated

Fees Schedule - [January 27] February 4, 2016

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Specified Proprietary Index Options Rate Table - Underlying Symbol List A (34)(41) (Also applies to ETH)(37)			Options Transaction Fees (1)(3)(4)(7)(15)(32)				
Origin	Products	Origin Code	Transaction Fee Per Contract by Premium Price			SPXpm and VIX SPX (incl SPXw) in ETH Only	
			\$0.00 - \$0.10	\$0.11 - \$0.99	\$1.00+	AIM Agency/Primary (19)	AIM Contra (18)

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Clearing Trading Permit Holder Proprietary (11)(12)(16)(40)	F L	\$0.25 - See CBOE <u>Clearing Trading Permit Holder Proprietary Products Sliding Scales</u>
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CBOE Clearing Trading Permit Holder Proprietary Products Sliding Scales (11)(23)(32)(Also applies to ETH)(37)						
TABLE A - Proprietary Products Sliding Scale						
Origin	Tier	Proprietary Product Volume Thresholds	Origin Code	Transaction Fee Per Contract	Notes	
Clearing Trading Permit Holder Proprietary		≥ 2[0]5,000 ADV ≤ [7]69,999 ADV in all underlying symbols excluding Underlying Symbol List A (34) and mini-options			Clearing Trading Permit Holder Proprietary transaction fees and transaction fees for Non-Trading Permit Holder Affiliates (as defined in footnote 11) in Underlying Symbol List A (34) (excluding SROs) will be eligible for reduced rates using the sliding scales identified in Table A and Table B as follows. For each Clearing Trading Permit Holder, CBOE will assess the lesser amount of transaction fees calculated from either: A) the Proprietary Products Sliding Scale identified in Table A, for all activity in Underlying Symbol List A (34)(excluding SROs) during a calendar month, [in a month will be reduced ]provided a Clearing Trading Permit Holder reaches certain ADV thresholds in all underlying symbols, excluding 1) Underlying Symbol List A (34), 2)[ and] any contracts for which a strategy cap has been applied (as defined in Footnote 13), and 3) Mini-options; or B) the sum of the Transaction fees from the application of the Proprietary Products Sliding Scale to all activity in Underlying Symbol List A (34)(excluding SROs) during a calendar[ on the Exchange in a] month[,], excluding activity in VIX options, PLUS the transaction fees in VIX options as derived from Table B. For each, [ Mini-options and SROs are excluded from the CBOE Proprietary Products Sliding Scale. Transaction fees in Underlying Symbol List A (34) will be reduced based on reaching the percentage thresholds in Underlying Symbol List A (34) listed in the table. B]percentages are calculated by accounting for all volume in the respective products for each Table[ Underlying Symbol List A (34)] executed with an “F” or “L” Origin Code[,], with[VIX and SPX/SPXW] volume in ETH [will be] aggregated with RTH volume[ in Underlying Symbol List A in] for the same calendar month included for purposes of calculating the proprietary product volume thresholds and the reduced transaction fees per contract.	
	B3	0.00% - 6.50%	F L	\$0.2[0]2		
	B2	6.51% - 8.50%		\$0.1[0]2		
	B1	Above 8.50%		\$0.0[2]5		
		≥ [8]70,000 ADV in all underlying symbols excluding Underlying Symbol List A (34) and mini-options				
	A2	0.00% - 6.50%		\$0.1[6]8		
	A1	Above 6.50%		\$0.0[1]2		
	TABLE B - VIX Sliding Scale					
	Tier	VIX Volume Thresholds	Origin Code	Transaction Fee Per Contract		
	1	0.00% - 1.00%	F L	\$0.25		
2	1.01% - 5.50%	\$0.17				
3	5.51% - 8.00%	\$0.05				
4	Above 8.00%	\$0.01				

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Footnotes (Continued):	
Footnote Number	Description

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11	<p>The Clearing Trading Permit Holder Fee Cap in all products except Underlying Symbol List A (34) excluding binary options (the "Fee Cap"),[and] the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders (the "<u>Proprietary Products Sliding Scale</u>") and the <u>Clearing Trading Permit Holder Proprietary VIX Sliding Scale</u> (the "<u>VIX Sliding Scale</u>") apply to (i) Clearing Trading Permit Holder proprietary orders ("F" origin code), and (ii) orders of Non-Trading Permit Holder Affiliates of a Clearing Trading Permit Holder. A "Non-Trading Permit Holder Affiliate" for this purpose is a 100% wholly-owned affiliate or subsidiary of a Clearing Trading Permit Holder that is registered as a United States or foreign broker-dealer and that is not a CBOE Trading Permit Holder. Only proprietary orders of the Non-Trading Permit Holder Affiliate ("L" origin code) effected for purposes of hedging the proprietary over-the-counter trading of the Clearing Trading Permit Holder or its affiliates will be included in calculating the Fee Cap, [and ]<u>Proprietary Products Sliding Scale and VIX Sliding Scale</u>. Such orders must be marked with a code approved by the Exchange identifying the orders as eligible for the Fee Cap, [and ]<u>Proprietary Products Sliding Scale and VIX Sliding Scale</u>. Each Clearing Trading Permit Holder is responsible for notifying the TPH Department of all of its affiliations so that fees and contracts of the Clearing Trading Permit Holder and its affiliates may be aggregated for purposes of the Fee Cap, [and ]<u>Proprietary Products Sliding Scale and VIX Sliding Scale</u>. A Clearing Trading Permit Holder is required to certify the affiliate status of any Non-Trading Permit Holder Affiliate whose trading activity it seeks to aggregate. In addition, each Clearing Trading Permit Holder is required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate. The Exchange will aggregate the fees and trading activity of separate Clearing Trading Permit Holders for the purposes of the Fee Cap, [and ]<u>Proprietary Products Sliding Scale and VIX Sliding Scale</u> if there is at least 75% common ownership between the Clearing Trading Permit Holders as reflected on each Clearing Trading Permit Holder's Form BD, Schedule A. A Clearing Trading Permit Holder's fees and contracts executed pursuant to a CMTA agreement (i.e., executed by another clearing firm and then transferred to the Clearing Trading Permit Holder's account at the OCC) are aggregated with the Clearing Trading Permit Holder's non-CMTA fees and contracts for purposes of the Fee Cap,[and ]<u>Proprietary Products Sliding Scale and VIX Sliding Scale</u>. The actual transaction fees resulting from any of the strategies defined in Footnote 13, after relevant caps are applied, will apply towards reaching the Fee Cap. However, contract volume from any such strategies for which the strategy cap is applied will not apply towards reaching the multi-list qualifying tiers for the <u>Proprietary Products Sliding Scale</u>. For facilitation orders (other than Underlying Symbol List A (34) excluding binary options) executed in open outcry, or electronically via AIM or as a QCC or CFLEX transaction, CBOE will assess no Clearing Trading Permit Holder Proprietary transaction fees. "Facilitation orders" for this purpose to be defined as any order in which a Clearing Trading Permit Holder (F) origin code or Non-Trading Permit Holder Affiliate ("L" origin code) is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the transaction (for open outcry) or both sides of a paired order (for orders executed electronically).</p>
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23	<p>[Clearing Trading Permit Holder Proprietary transaction fees and transaction fees for Non-Trading Permit Holder Affiliates (as defined in footnote 11) in all underlying symbols excluding Underlying Symbol List A (34) and SRO in a month will be reduced provided a Clearing Trading Permit Holder reaches certain volume thresholds in all underlying symbols excluding Underlying Symbol List A (34) and mini-options on the Exchange in a month as described in the CBOE Proprietary Products Sliding Scale. The standard Clearing Trading Permit Holder Proprietary transaction fee and transaction fees for Non-Trading Permit Holder Affiliates (as defined in footnote 11) in CBOE Proprietary Products will be reduced to the fees shown in the table for Clearing Trading Permit Holders that execute an average of 20,000 contracts per day but less than an average of 80,000 contracts per day in all underlying symbols excluding Underlying Symbol List A (34) and mini-options on the Exchange. The standard Clearing Trading Permit Holder Proprietary transaction fee and transaction fees for Non-Trading Permit Holder Affiliates (as defined in footnote 11) in CBOE Proprietary Products will be further reduced to the fees shown in the table for Clearing Trading Permit Holders that execute an average of 80,000 or more contracts in all underlying symbols excluding Underlying Symbol List A (34) and mini-options on the Exchange per day.]<u>Reserved</u></p>
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