

## OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 20

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

File No.\* SR - 2016 - \* 038

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) \*

☐

Section 806(e)(2) \*

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Section 3C(b)(2) \*

☐

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 \*).

Proposal 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 04/12/2016

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**

Add Remove View

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 (or designee) pursuant to delegated authority approved the proposed rule change on April 1, 2016.

(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>

The Exchange first proposes to amend its Volume Incentive Program (“VIP”). By way of background, under VIP, the Exchange credits each Trading Permit Holder (“TPH”) the per contract amount set forth in the VIP table resulting from each public customer (“C” origin code) order transmitted by that TPH (with certain exceptions)

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<sup>1</sup>        The Exchange initially filed the proposed change on April 1 2016 (SR-CBOE-2016-033). On April 12, 2016, the Exchange withdrew that filing and replaced it with SR-CBOE-2016-038.

which is executed electronically on the Exchange, provided the TPH meets certain volume thresholds in a month.<sup>2</sup> The current qualification tiers are set to, in ascending order, 0%-0.75%, above 0.75%-1.50%, above 1.50%-3.00% and above 3%. The Exchange proposes to adjust the threshold percentages for Tiers 2 and 3. Specifically, the Exchange is proposing to amend Tier 2 to above 0.75% - 1.80% and Tier 3 to be above 1.80% - 3.00%. The purpose of this change is to incentivize the sending of both simple and complex orders to the Exchange and to adjust the incentive tiers accordingly as competition requires while maintaining an incremental incentive for TPH's to strive for the highest tier level.

The Exchange next proposes to amend its Affiliate Volume Plan ("AVP"). By way of background, under AVP if a TPH Affiliate<sup>3</sup> of a Market-Maker (including a Designated Primary Market-Maker ("DPM") or Lead Market-Maker ("LMM")) qualifies under VIP, that Market-Maker will also qualify for a discount on that Market-Maker's Liquidity Provider Sliding Scale ("Sliding Scale") transaction fees ("Sliding Scale Credit"). More specifically, if a Market-Maker's Affiliate reaches Tier 2, Tier 3 or Tier 4 of VIP, that Market-Maker will receive a discount on their Sliding Scale Market-Maker

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<sup>2</sup> Currently, qualification for the different fee rates at different tiers in the VIP is based on a TPH's percentage of national customer volume in all products, excluding Underlying Symbol List A, DJX, MXEA, MXEF, MNX, NDX, XSP, XSPAM and mini-options. Excluded from the VIP credit are options in Underlying Symbol List A, DJX, MXEA, MXEF, MNX, NDX, XSP, XSPAM, mini-options, QCC trades, public customer to public customer electronic complex order executions, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80 (see CBOE Fees Schedule, Volume Incentive Program).

<sup>3</sup> "Affiliate" is defined as having at least 75% common ownership between the two entities as reflected on each entity's Form BD, Schedule A.

transaction fees of 10%, 15% or 20%, respectively. The Exchange now proposes to increase the current discounts for Tiers 3 and 4 as follows:

<b>Tier</b>	<b>VIP Thresholds</b>	<b>Current AVP Transaction Fee Discount</b>	<b>Proposed AVP Transaction Fee Discount</b>
<b>1</b>	0.00% - 0.75%	0%	0%
<b>2</b>	Above 0.75% - 1.50%	10%	10%
<b>3</b>	Above 1.50% - 3.00%	15%	20%
<b>4</b>	Above 3.00%	20%	30%

The Exchange believes the increased credit rate will incentivize increased volume while also maintaining an incremental incentive for TPH's to strive for the highest tier level.

(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>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>5</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

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

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

Section 6(b)(4) of the Act,<sup>6</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.

In particular, the Exchange believes it's reasonable to increase the lower threshold in the third tier of VIP (and thus the corresponding upper threshold in the second tier) because the change is designed to adjust the incentive tiers accordingly as competition requires while maintaining an incremental incentive for TPH's to strive for the highest tier level to reach the highest credits available. This change is also equitable and not unfairly discriminatory because it will be applied to all TPHs uniformly. The Exchange believes the proposed change will incentivize the sending of more simple and complex orders to the Exchange. The greater liquidity and trading opportunities should benefit not just public customers (whose orders are the only ones that qualify for the VIP) but all market participants.

The Exchange believes that increasing the Tier 3 and Tier 4 Sliding Scale Credits from 15% to 20% and 20% to 30%, respectively, is reasonable because it is increasing available credits. Additionally, enhancing the incentives under the Sliding Scale Credit further incentivizes a Market-Maker Affiliate to achieve the highest tier on the VIP so that the Market-Maker can achieve those higher credits, which thereby can result in greater customer liquidity. The resulting increased volume benefits all market participants (including Market-Makers or their affiliates who do not achieve the higher tiers on the VIP; indeed, this increased volume may allow them to reach these tiers).

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<sup>6</sup> 15 U.S.C. 78f(b)(4).

The Exchange believes that limiting the Sliding Scale Credit to Market-Makers is equitable and not unfairly discriminatory because Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. For example, Market-Makers have a number of obligations, including quoting obligations that other market participants do not have.

The Exchange also believes that it's equitable and not unfairly discriminatory to limit the discounts under the Sliding Scale Credit to Market-Makers with Affiliates that reach certain tiers under VIP. The Exchange notes that in the options industry, many options orders are routed by consolidators, which are firms that have both order router and Market-Maker operations. The Exchange is aware not only of the importance of providing credits on the order routing side in order to encourage the submission of orders (which is currently does via VIP), but also of the operations costs on the Market-Maker side. The Exchange believes the Sliding Scale Credit allows the Exchange to provide further relief to the Market-Maker side via the discount, which incents these Market-Makers to tighten market widths due to the reduced costs the incentives provide. Additionally, the Exchange believes the discount attracts more volume and liquidity to the Exchange, which benefits all Exchange participants through increased opportunities to trade as well as enhancing price discovery. The Exchange also notes that incentivizing a Market-Maker Affiliate to achieve higher tiers on the VIP, so that the Market-Maker can achieve higher tiers under the Sliding Scale Credit, can result in greater customer liquidity, and the resulting increased volume also benefits all market participants (including Market-Makers that do not have Affiliates or whose Affiliates do not achieve the higher tiers on the VIP; indeed, this increased volume may allow them to reach these

tiers). Lastly, other options exchanges also provide credits to Market-Makers if a Market-Maker's affiliate adds a certain amount of customer liquidity to that exchange.<sup>7</sup>

**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 are not necessary or appropriate in furtherance of the purposes of the Act. In particular, the Exchange believes the proposed change to amend certain tier thresholds in VIP does not impose a burden on intramarket competition because it applies uniformly to all TPHs and incentivizes the sending of more simple and complex orders to the Exchange, which provides greater liquidity and trading opportunities. Additionally, the Exchange does not believe increasing credits under Tiers 3 and 4 of the Liquidity Provider Sliding Scale Credit imposes a burden on intramarket competition because, although it applies only to Market-Makers, Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market-Makers also have a number of obligations, including quoting obligations that other market participants do not have. Additionally, the Exchange notes that although the Sliding Scale Credit is limited to Market-Makers with an Affiliate, incentivizing a Market-Maker Affiliate to achieve higher tiers on the VIP, so that the affiliated Market-Maker can achieve higher tiers under the Sliding Scale Credit, can result in greater liquidity (including customer liquidity), and the resulting increased volume benefits all market participants.

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<sup>7</sup> See e.g., NYSE Arca, Inc. ("Arca") Options Fees and Charges, specifically the table describing the Market Maker Monthly Posting Credit Super Tier, under which transaction volume from a Market Maker's affiliates count towards the Market Maker's ability to qualify for higher credit tiers.



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 changes are intended to promote competition and better improve the Exchange's competitive position and make CBOE a more attractive marketplace in order to encourage market participants to bring increased volume to the Exchange (while still covering costs as necessary). Further, the proposed changes only affect trading on 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.

EXHIBIT 1

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CBOE-2016-038]

[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 its 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>

The Exchange first proposes to amend its Volume Incentive Program ("VIP"). By way of background, under VIP, the Exchange credits each Trading Permit Holder ("TPH") the per contract amount set forth in the VIP table resulting from each public customer ("C" origin code) order transmitted by that TPH (with certain exceptions) which is executed electronically on the Exchange, provided the TPH meets certain volume thresholds in a month.<sup>4</sup> The current qualification tiers are set to, in ascending order, 0%-0.75%, above 0.75%-1.50%, above 1.50%-3.00% and above 3%. The Exchange proposes to adjust the threshold percentages for Tiers 2 and 3. Specifically, the Exchange is proposing to amend Tier 2 to above 0.75% - 1.80% and Tier 3 to be above 1.80% - 3.00%. The purpose of this change is to incentivize the sending of both simple and complex orders to the Exchange and to adjust the incentive tiers accordingly as

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<sup>3</sup> The Exchange initially filed the proposed change on April 1 2016 (SR-CBOE-2016-033). On April 12, 2016, the Exchange withdrew that filing and replaced it with SR-CBOE-2016-038.

<sup>4</sup> Currently, qualification for the different fee rates at different tiers in the VIP is based on a TPH's percentage of national customer volume in all products, excluding Underlying Symbol List A, DJX, MXEA, MXEF, MNX, NDX, XSP, XSPAM and mini-options. Excluded from the VIP credit are options in Underlying Symbol List A, DJX, MXEA, MXEF, MNX, NDX, XSP, XSPAM, mini-options, QCC trades, public customer to public customer electronic complex order executions, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80 (see CBOE Fees Schedule, Volume Incentive Program).

competition requires while maintaining an incremental incentive for TPH's to strive for the highest tier level.

The Exchange next proposes to amend its Affiliate Volume Plan ("AVP"). By way of background, under AVP if a TPH Affiliate<sup>5</sup> of a Market-Maker (including a Designated Primary Market-Maker ("DPM") or Lead Market-Maker ("LMM")) qualifies under VIP, that Market-Maker will also qualify for a discount on that Market-Maker's Liquidity Provider Sliding Scale ("Sliding Scale") transaction fees ("Sliding Scale Credit"). More specifically, if a Market-Maker's Affiliate reaches Tier 2, Tier 3 or Tier 4 of VIP, that Market-Maker will receive a discount on their Sliding Scale Market-Maker transaction fees of 10%, 15% or 20%, respectively. The Exchange now proposes to increase the current discounts for Tiers 3 and 4 as follows:

<b>Tier</b>	<b>VIP Thresholds</b>	<b>Current AVP Transaction Fee Discount</b>	<b>Proposed AVP Transaction Fee Discount</b>
<b>1</b>	0.00% - 0.75%	0%	0%
<b>2</b>	Above 0.75% - 1.50%	10%	10%
<b>3</b>	Above 1.50% - 3.00%	15%	20%
<b>4</b>	Above 3.00%	20%	30%

The Exchange believes the increased credit rate will incentivize increased volume while also maintaining an incremental incentive for TPH's to strive for the highest tier level.

## 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

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<sup>5</sup> "Affiliate" is defined as having at least 75% common ownership between the two entities as reflected on each entity's Form BD, Schedule A.

the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</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>8</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.

In particular, the Exchange believes it's reasonable to increase the lower threshold in the third tier of VIP (and thus the corresponding upper threshold in the second tier) because the change is designed to adjust the incentive tiers accordingly as competition requires while maintaining an incremental incentive for TPH's to strive for the highest tier level to reach the highest credits available. This change is also equitable and not unfairly discriminatory because it will be applied to all TPHs uniformly. The Exchange believes the proposed change will incentivize the sending of more simple and complex orders to the Exchange. The greater liquidity and trading opportunities should benefit not

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

just public customers (whose orders are the only ones that qualify for the VIP) but all market participants.

The Exchange believes that increasing the Tier 3 and Tier 4 Sliding Scale Credits from 15% to 20% and 20% to 30%, respectively, is reasonable because it is increasing available credits. Additionally, enhancing the incentives under the Sliding Scale Credit further incentivizes a Market-Maker Affiliate to achieve the highest tier on the VIP so that the Market-Maker can achieve those higher credits, which thereby can result in greater customer liquidity. The resulting increased volume benefits all market participants (including Market-Makers or their affiliates who do not achieve the higher tiers on the VIP; indeed, this increased volume may allow them to reach these tiers).

The Exchange believes that limiting the Sliding Scale Credit to Market-Makers is equitable and not unfairly discriminatory because Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. For example, Market-Makers have a number of obligations, including quoting obligations that other market participants do not have.

The Exchange also believes that it's equitable and not unfairly discriminatory to limit the discounts under the Sliding Scale Credit to Market-Makers with Affiliates that reach certain tiers under VIP. The Exchange notes that in the options industry, many options orders are routed by consolidators, which are firms that have both order router and Market-Maker operations. The Exchange is aware not only of the importance of providing credits on the order routing side in order to encourage the submission of orders (which is currently does via VIP), but also of the operations costs on the Market-Maker side. The Exchange believes the Sliding Scale Credit allows the Exchange to provide

further relief to the Market-Maker side via the discount, which incents these Market-Makers to tighten market widths due to the reduced costs the incentives provide. Additionally, the Exchange believes the discount attracts more volume and liquidity to the Exchange, which benefits all Exchange participants through increased opportunities to trade as well as enhancing price discovery. The Exchange also notes that incentivizing a Market-Maker Affiliate to achieve higher tiers on the VIP, so that the Market-Maker can achieve higher tiers under the Sliding Scale Credit, can result in greater customer liquidity, and the resulting increased volume also benefits all market participants (including Market-Makers that do not have Affiliates or whose Affiliates do not achieve the higher tiers on the VIP; indeed, this increased volume may allow them to reach these tiers). Lastly, other options exchanges also provide credits to Market-Makers if a Market-Maker's affiliate adds a certain amount of customer liquidity to that exchange.<sup>9</sup>

**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. In particular, the Exchange believes the proposed change to amend certain tier thresholds in VIP does not impose a burden on intramarket competition because it applies uniformly to all TPHs and incentivizes the sending of more simple and complex orders to the Exchange, which provides greater liquidity and trading opportunities. Additionally, the Exchange does not believe increasing credits under Tiers

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<sup>9</sup> See e.g., NYSE Arca, Inc. ("Arca") Options Fees and Charges, specifically the table describing the Market Maker Monthly Posting Credit Super Tier, under which transaction volume from a Market Maker's affiliates count towards the Market Maker's ability to qualify for higher credit tiers.



3 and 4 of the Liquidity Provider Sliding Scale Credit imposes a burden on intramarket competition because, although it applies only to Market-Makers, Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market-Makers also have a number of obligations, including quoting obligations that other market participants do not have. Additionally, the Exchange notes that although the Sliding Scale Credit is limited to Market-Makers with an Affiliate, incentivizing a Market-Maker Affiliate to achieve higher tiers on the VIP, so that the affiliated Market-Maker can achieve higher tiers under the Sliding Scale Credit, can result in greater liquidity (including customer liquidity), and the resulting increased volume benefits all market participants.

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 changes are intended to promote competition and better improve the Exchange's competitive position and make CBOE a more attractive marketplace in order to encourage market participants to bring increased volume to the Exchange (while still covering costs as necessary). Further, the proposed changes only affect trading on 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-2016-038 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-2016-038. 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-2016-038 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).

Changes are indicated by underlining additions and [bracketing] deletions.

## Chicago Board Options Exchange, Incorporated

*Fees Schedule - April 1[1] 2, 2016*

\* \* \* \* \*

Volume Incentive Program (VIP)(36)						
Origin	Tier	Percentage Thresholds of National Customer Volume in All Underlying Symbols Excluding Underlying Symbol List A (34), DJX, MXEA, MXEF, MNX, NDX, XSP, XSPAM and mini-options (Monthly)	Origin Code	Per Contract Credit		Notes
				Simple	Complex	
Customer	1	0% - 0.75%	C	\$0.00	\$0.00	Credits on orders executed electronically in AIM will be capped at 1,000 contracts per order for simple executions and 1,000 contracts per leg for complex executions. Credits on orders executed electronically in HAL will be capped at 1,000 contracts per auction quantity. All contracts executed in AIM and all contracts executed in HAL will continue to be counted towards the percentage thresholds even if they exceed the 1,000 contract cap for VIP credits. Additionally, multiple simple orders from the same affiliated TPH(s) in the same series on the same side of the market that are executed in AIM or HAL within a 300 second period will be aggregated for purposes of determining the order quantity subject to the cap. For this aggregation, activity in AIM and HAL will be aggregated separately. The AIM aggregation timer will begin with an order entered into AIM and continue for 300 seconds, aggregating any other orders entered into AIM in the same series on the same side of the market by the same affiliated TPH. The HAL aggregation timer will begin at the start of a HAL auction and continue for 300 seconds, aggregating any other orders executed in HAL in the same series on the same side of the market for the same affiliated TPH. Any portion of the original order quantity that is executed outside of HAL will not be part of the aggregation or counted towards the 1,000 contract threshold.
	2	Above 0.75% - [1.50]1.80%		\$0.10	\$0.21	
	3	Above [1.50]1.80% - 3.00%		\$0.12	\$0.24	
	4	Above 3.00%		\$0.15	\$0.25	

Affiliate Volume Plan (AVP)(24)					
Origin	Origin Code	VIP Tier Reached	MM Affiliate Access Credit	Liquidity Provider Sliding Scale Credit	Notes
CBOE Market-Maker/DPM/LMM (10)	M	1			If a Market-Maker affiliate ("affiliate" defined as having at least 75% common ownership between the two entities as reflected on each entity's Form BD, Schedule A) receives a credit under the Exchange's Volume Incentive Program ("VIP"), the affiliated Market-Maker will receive an access credit on their Market-Maker trading permit fees corresponding to the VIP tier reached. This credit will not apply to Market-Maker Trading Permits used for appointments in RUT, SPX, SPXpm, VIX, OEX and XEO. The affiliated Market-Maker will also receive a transaction fee credit on their sliding scale Market-Maker transaction fees. not
		2	10%	10%	
		3	20%	[15]20%	
		4	30%	[20]30%	