

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85419; File No. SR-CBOE-2019-016)

March 26, 2019

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Cboe Options Rule 6.2

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on March 14, 2019, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Cboe Options Rule 6.2. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to update Interpretation and Policy .06 of Rule 6.2 (Hybrid Opening (and Sometimes Closing) System (“HOSS”)). By way of background, Interpretation and Policy .06(a) of Rule 6.2 provides that on the last business day of each month, the Exchange will conduct special end-of-month non-trading rotations for each series of SPX options in order to determine the theoretical “fair value” of such series as of [sic] SPX as of the time of close of trading in the underlying cash market.⁵ Rule 6.2(.06)(a) also provides during such special non-trading closing rotation (“closing rotation”), a Lead Market-Maker (“LMM”) in the SPX options designated by the Exchange in each series of SPX options will provide bid and offer quotations. The Exchange notes that in connection with recently retiring the Hybrid 3.0 platform and transitioning trading of SPX options onto the Hybrid trading platform, the Exchange determined to no longer appoint LMMs in SPX.⁶ In lieu of LMMs, the Exchange established a financial incentive program for SPX Select Market-Makers (“SMMs”), which provides that any appointed

⁵ See Cboe Options Rule 6.2, Interpretation and Policy .06.(a) [sic]

⁶ See Securities and Exchange Act Release No. 83089 (April 23, 2018), 83 FR 18605 (April 27, 2018) (SR-CBOE-2018-029).

SPX SMM will receive a monthly waiver of the cost of one Market-Maker Trading Permit and one SPX Tier Appointment provided that the SMM satisfies the standard set forth in Footnote 49 of the Exchange’s Fees Schedule. While SMMs must still comply with continuous quoting obligations of Market-Makers, they are not otherwise obligated from a regulatory standpoint to satisfy any heightened quoting standard or meet additional obligations. Rather, SPX SMMs only receive a financial benefit (i.e., waiver of fees otherwise assessed for one Market-Maker Trading Permit and one SPX Tier Appointment) if they satisfy the standard set forth in Footnote 49. Accordingly, the Exchange proposes to add references to SMMs in Rule 6.2(.06)(a).

Additionally, the Exchange proposes to clarify that SMMs (and LMMs)⁷ “may”, and not “must”, participate in the closing rotation. Indeed, the Exchange notes that it recently submitted a rule change to amend the Fees Schedule to no longer require SMMs to meet the fourth prong of the standard set forth in Footnote 49 which provided that a designated SMM must provide quotes for the closing rotation on a rotating basis in order for SMMs to satisfy the fourth prong.⁸ In its place, the Exchange now requires that within 30 minutes from the initiation of the closing rotation, the Exchange must disseminate end-of-month closing quotations pursuant to Cboe Options Rule 6.2(.06)(a). The Exchange proposed the amendment to encourage all SMMs to provide end-of-month non-trading settlement pricing quotations in SPX and SPXW, which would increase the probability that the Exchange would be able to disseminate fair value quotes pursuant to Rule 6.2(.06)(a).⁹ The Exchange believes the proposed changes to Rule 6.2(.06)(a) will make the rule

⁷ As noted above, as there are no LMMs currently appointed in SPX during Regular Trading Hours, there is no requirement for LMMs to participate in the closing rotation. To the extent the Exchange determines to appoint LMMs in the future, it notes that LMMs would no longer be obligated to participate in the closing rotation.

⁸ See Securities and Exchange Act Release No. 85018 (January 31, 2019), 84 FR 1810 (February 5, 2019) (SR-CBOE-2018-075).

⁹ Id.

text consistent with the current standard set forth in Footnote 49 of the Fees Schedule. The Exchange lastly notes that although it currently does not appoint LMMs in SPX, it proposes to leave references to LMMs in Rule 6.2(.06)(a) in the event it determines to appoint LMMs in the future.

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.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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.

The Exchange believes updating Rule 6.2(.06)(a) with respect to references to SMMs and eliminating the language which provides the Exchange will designate a particular LMM each month, alleviates potential confusion as it more accurately describes the Exchange’s current end-of-month fair value closing rotation procedures. The proposed changes also make Rule 6.2(.06)(a) consistent with Footnote 49 of the Fees Schedule, which as described above, governs the financial incentive program relating to SMMs. The alleviation of potential confusion

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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 are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it merely updates outdated rule text and applies to all SPX SMMs (and potential LMMs). The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because SPX options are proprietary products that will only be traded on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

¹² 15 U.S.C. 78s(b)(3)(A).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2019-016 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-CBOE-2019-016. 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

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-016, and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Eduardo A. Aleman
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).