

SECURITIES AND EXCHANGE COMMISSION
(Release No 34-86224; File No. SR-CBOE-2019-030)

June 27, 2019

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Use Cboe Exchange's Affiliate, Cboe Trading, as an Inbound and Outbound Router for Cboe Options

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 June 25, 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, 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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to adopt rules related to the inbound and outbound router for Cboe Options, as well as seek approval from the Securities and Exchange Commission ("Commission") for affiliate, [sic] Trading, Inc. ("Cboe Trading"), to become a Trading Permit Holder of the Exchange. 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.

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 (1) seek approval from the Commission pursuant to current Rule 3.32(b) for affiliate, Cboe Trading, to become a Trading Permit Holder of the Exchange; (2) relocate and amend Rule 3.32(b) related to exchange affiliations to Rule 3.11; (3) adopt Rule 3.12 to govern the Exchange’s use of Cboe Trading as an outbound router; (4) adopt Rule 3.13 to govern the Exchange’s receipt of inbound orders from Cboe Trading, on behalf of the Exchange’s affiliate options exchanges, Cboe EDGX Exchange, Inc. (“EDGX”), Cboe BZX Exchange, Inc. (“BZX”) and Cboe C2 Exchange, Inc. (“C2”); and (5) make non-substantive changes to Rule 6.14B regarding non-affiliated routing brokers. The Exchange notes that proposed Rules 3.11, 3.12 and 3.13 and current Rule 6.14B are substantively identical in all material respects to EDGX Rules 2.10, 2.11, 2.12, and 21.9(e), as well as C2 Rules 3.16, 3.17, 3.18 and 6.15(e).

Commission Approval under Current Rule 3.32(b)

Current Rule 3.32(b) provides that without prior Commission approval, no Trading Permit Holder may be or become affiliated with the Exchange. The Exchange seeks Commission approval for Exchange affiliate Cboe Trading to become a Trading Permit Holder

of the Exchange pursuant to Rule 3.32(b). The Exchange also seeks Commission approval to transfer and amend current Rule 3.32(b) to proposed Rule 3.11, as described below.

Relocation and Amendment of Rule 3.32(b)

The Exchange seeks the Commission's approval to relocate Rule 3.32(b)³ to proposed new Rule 3.11 and add to proposed Rule 3.11 similar exclusions from the affiliation prohibition contained in its affiliated options exchanges, EDGX Rule 2.10 and C2 Rule 3.16. Current Rule 3.32(b) prohibits the Exchange from acquiring or maintaining an ownership interest in a Trading Permit Holder, as well as prohibits Trading Permit Holder affiliations with the Exchange or an affiliate of the Exchange without prior Commission approval. Current exceptions include equity interests in CBSX LLC and the Exchange's parent company, Cboe Global Markets, Inc., and affiliations with OneChicago, LLC. EDGX Rule 2.10 and C2 Rule 3.16 contain similar restrictions on Exchange affiliations with EDGX Members and C2 Trading Permit Holders, but also contains additional exceptions, including (a) affiliations solely by reason of a Member (or any officer, director, manager, managing member, partner, or affiliate of such Member) becoming a director of the Exchange or Cboe Global Markets, Inc., or (b) affiliations with Cboe Trading or of Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe C2 Exchange, Inc., or Cboe Futures Exchange, LLC (each, a "Cboe Exchange"). The Exchange proposes to include these two additional exceptions in proposed Rule 3.11 as the same affiliate restrictions apply to all three exchanges and are consistent with governing documents of Cboe Options and Cboe Global Markets, Inc., previously filed with the Commission.

³ And, as a result, update the subsequent lettering under Rule 3.32.

Proposed Rule 3.12 (Cboe Trading as Outbound Router)

The proposed rule change also adopts Rule 3.12 to govern the Exchange's use of Cboe Trading as an outbound router. Proposed Rule 3.12 is based on EDGX Rule 2.11 and C2 Rule 3.17. As long as Cboe Trading is affiliated with Cboe Options and is providing outbound routing of orders from Cboe Options to other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks or other brokers or dealers ("Trading Centers" and, such function of Cboe Trading is referred to as the "Outbound Router"), Cboe Trading's outbound routing services would be subject to the following conditions and limitations:

- Cboe Options will regulate the Outbound Router function of Cboe Trading as a facility (subject to Section 6 of the Act), and will, among other things, be responsible for filing with the Commission rule changes and fees relating to the Cboe Trading Outbound Router function and Cboe Trading will be subject to exchange non-discrimination requirements;
- FINRA, a self-regulatory organization unaffiliated with the Exchange or any of its affiliates, will carry out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Rule 17d-1 of the Act with the responsibility for examining Cboe Trading for compliance with applicable financial responsibility rules.
- A Trading Permit Holder's use of Cboe Trading to route orders to another Trading Center will be optional. Any Trading Permit Holder that does not want to use Cboe Trading may use other routers to route orders to other Trading Centers.

- Cboe Trading will not engage in any business other than (i) its Outbound Router function, (ii) its Inbound Router function as described in Rule 3.13, (iii) its usage of an error account in compliance with proposed paragraph (a)(7) (regarding Cboe Trading maintenance of an error account described below), and (iv) any other activities it may engage in as approved by the Commission.
- The Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including Cboe Trading), and any other entity, including any affiliate of Cboe Trading, and, if Cboe Trading or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of Cboe Trading or its affiliate that provides the other business activities and the routing services.
- The Exchange or Cboe Trading may cancel orders as either deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, Cboe Trading, or a routing destination. The Exchange or Cboe Trading will provide notice of the cancellation to affected Trading Permit Holders as soon as practicable.
- Proposed Rule 3.12(a)(7) provides that Cboe Trading will maintain an error account for the purpose of addressing positions that are the result of an execution or executions that are not clearly erroneous under Rule 6.25 and result from a technical or systems issue at Cboe Trading, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders (“Error Positions”).

- For purposes of proposed Rule 3.12(a)(7), an Error Position will not include any position that results from an order submitted by a Trading Permit Holder to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis.
- Except as provided in proposed subparagraph (7)(C) (described in the next bullet), Cboe Trading does not accept any positions in its error account of a Trading Permit Holder or permit any Trading Permit Holder to transfer any positions from the Trading Permit Holder's account to Cboe Trading's error account.
- If a technical or systems issue results in the Exchange not having valid clearing instructions for a Trading Permit Holder to a trade, Cboe Trading may assume the Trading Permit Holder's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.
- In connection with a particular technical or systems issue, Cboe Trading or the Exchange will either assign all resulting Error Positions to the Trading Permit Holders in accordance with proposed subparagraph (D)(i),⁴ or have

⁴ Proposed subparagraph (a)(7)(D)(i) states Cboe Trading or the Exchange will assign all Error Positions resulting from a particular technical or systems issue to the Trading Permit Holders affected by that technical or systems issue if Cboe Trading or the Exchange (a) determines it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the Trading Permit Holders affected by that technical or systems issue; (b) determines it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the Trading Permit Holders affected by that technical or systems issue; and (c) has not determined to cancel all orders affected by that technical or systems issue in accordance with proposed subparagraph (a)(6).

all resulting Error Positions liquidated in accordance with proposed subparagraph (D)(ii).⁵ Any determination to assign or liquidate Error Positions, as well as any resulting assignments, will be made in a nondiscriminatory fashion.

- Cboe Trading and the Exchange will make and keep records to document all determinations to treat positions as Error Positions and all determinations for the assignment of Error Positions to Trading Permit Holders or the liquidation of Error Positions, as well as records associated with the liquidation of Error Positions through the third-party broker-dealer.
- The books, records, premises, officers, agents, directors, and employees of Cboe Trading as a facility of the Exchange are deemed to be the books, records, premises, officers, agents, directors, and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Exchange Act. The books and records of Cboe Trading as a facility of the Exchange are subject at all times to inspection and copying by the Exchange and the Commission. Nothing in the Rules precludes officers, agents,

⁵ Proposed subparagraph (a)(7)(D)(ii) states if Cboe Trading or the Exchange is unable to assign all Error Positions resulting from a particular technical or systems issue to all of the affected Trading Permit Holders in accordance with proposed subparagraph (D), or if Cboe Trading or the Exchange determines to cancel all orders affected by the technical or systems issue in accordance with proposed subparagraph (a)(6), then Cboe Trading will liquidate any applicable Error Positions as soon as practicable. In liquidating such Error Positions, Cboe Trading will (a) provide complete time and price discretion for the trading to liquidate the Error Positions to a third-party broker-dealer and not attempt to exercise any influence or control over the timing or methods of such trading; and (b) establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and Cboe Trading/the Exchange associated with the liquidation of the Error Positions.

directors, or employees of the Exchange from also serving as officers, agents, directors, and employees of Cboe Trading.

The Exchange will comply with the above-listed conditions prior to offering outbound routing from Cboe Trading. In meeting the conditions, the Exchange will have mechanisms in place to protect the independence of the Exchange's regulatory responsibility with respect to Cboe Trading, as well as demonstrate the Cboe Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage. Current Rule 3.32(b) and proposed Rule 3.11 provide that without prior Commission approval, no Trading Permit Holder may be or become affiliated with the Exchange.

Proposed Rule 3.13 (Cboe Trading as Inbound Router)

The Exchange also proposes to adopt Rule 3.13, which is based on EDGX Rule 2.12 and C2 Rule 3.18. Pursuant to proposed Rule 3.13, Cboe Trading's inbound routing services from EDGX Options, BZX Options and C2 to the Exchange would be subject to the following conditions and limitations:

- The Exchange must enter into a plan pursuant to Rule 17d-2 under the Exchange Act with a non-affiliated self-regulatory organization and a regulatory services contract with a non-affiliated SRO to perform regulatory responsibilities for Cboe Trading for unique Exchange rules.
- The regulatory services contract must require the Exchange to provide the non-affiliated self-regulatory organization with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively, "Exceptions") in which Cboe Trading is identified as a participant that has potentially violated Exchange or

Commission rules, and shall require that the non-affiliated self-regulatory organization provide a report to the Exchange quantifying all such exception reports, alerts, complaints, trading errors, cancellations, investigations and enforcement matters on not less than a quarterly basis.

- The Exchange, on behalf of its parent company, Cboe Global Markets, must establish and maintain procedures and internal controls reasonably designed to ensure that Cboe Trading does not develop or implement changes to its systems on the basis of nonpublic information obtained as a result of its affiliation with the Exchange until such information is available generally to similarly situated Trading Permit Holders of the Exchange.

If the Exchange complies with the above-listed conditions and if Cboe Trading operates as an Outbound Router on behalf of each Cboe Exchange in accordance with the rules of each Cboe Exchange, Cboe Trading may provide inbound routing services to the Exchange from each Cboe Exchange.

Proposed Change to Rule 6.14B

Additionally, the Exchange proposes to amend Rule 6.14B to account for its use of affiliate Cboe Trading as an outbound router, as proposed, by specifying that the rule applies to the Exchange's non-affiliated routing brokers. Current Rule 6.14B describes the procedures and requirements for routing brokers that automatically route intermarket sweep orders to other Exchanges ("Routing Services"). The introductory paragraph under Rule 6.14B states that the Exchange may automatically route intermarket sweep orders to other exchanges under certain circumstances, and that certain requirements (provided in subparagraphs (a) through (h)) apply in connection with such services. Current paragraph (a) states that Routing Services will be provided

in conjunction with one or more routing brokers that are not affiliated with the Exchange. Therefore, this rule is currently applicable to non-affiliated routing brokers and the Exchange now proposes to merely provide additional clarity regarding its application to non-affiliated routing brokers in light of proposed use of affiliate Cboe Trading as an outbound router. The Exchange proposes to move language in paragraph (a), stated above, to the introductory provision under 6.14B and amend such language to provide that Routing Services may be provided in conjunction with one or more routing brokers that are not affiliated with the Exchange. This proposed change accounts for proposed Rule 3.12 in which affiliate Cboe Trading may also provide outbound routing. The Exchange also proposes to specify in the introductory rule text under Rule 6.14B that the conditions in the following subparagraphs apply to non-affiliated routing brokers, as well as update the rule heading accordingly. The Exchange notes that this proposed change does not substantively alter any of the conditions listed which are already applicable to non-affiliated routing brokers and that C2 Rule 6.15(e) and EDGX Options Rule 21.9(e), provide the same conditions for their non-affiliated routing brokers.⁶

The Exchange also proposes to add the definition of “Cboe Trading” to mean Cboe Trading, Inc. to Rule 1.1.

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

⁶ The Exchange notes that the corresponding rules on EDGX Options and C2 treat their non-affiliated routing brokers as “back-up” routing brokers to their affiliate, Cboe Trading. The Exchange, however, does not propose to add that its non-affiliated routing brokers will function as back-up routing brokers, as the Exchange currently has Routing Service agreements in place today with non-affiliated and such non-affiliated routing brokers will continue to function on the Exchange as they have prior to this proposed rule change.

Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes proposed Rules 3.12 and 3.13 promote the maintenance of a fair and orderly market, the protection of investors and the public interest, and is in the best interests of the Exchange and its Trading Permit Holders as it will allow the routing of orders to and from Trading Centers (including affiliated exchanges BZX Options, EDGX Options and C2) and the Exchange in the same manner as each Cboe Exchange currently routes orders. Moreover, in meeting the requirements of Rule 3.13 (i.e., the 17d-2 plan, the regulatory services contract, and procedures and internal controls) the Exchange believes it will have mechanisms in place that protect the independence of the Exchange's regulatory responsibility with respect to Cboe Trading, as well as demonstrates that Cboe Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ Id.

Similarly, in meeting the requirements of Rule 3.12 (i.e., regulation as a facility, FINRA acting as the designated examining authority, optional use of Cboe Trading as an outbound router, restrictions on business of Cboe Trading, procedures and internal controls, cancellation of orders, maintenance of error account), the Exchange believes it will have mechanisms in place that protect the independence of the Exchange's regulatory responsibility with respect to Cboe Trading. It also serves to ensure that Cboe Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage, thus preventing an unfair burden on competition and unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed definition of Cboe Trading will provide additional clarity of its Rules for investors.

Additionally, proposed Rule 3.11 incorporates the provisions in current Rule 3.32(b) related to restrictions on Exchange affiliations with Trading Permit Holders. As noted above, the provisions related to Exchange affiliations with Trading Permit Holders (including exceptions to any restrictions in the Rules) are consistent with the governing documents of Cboe Options and Cboe Global Markets, Inc. Proposed Rule 3.11 also mirrors EDGX Rule 2.10 and C2 Rule 3.16.

Further, the Exchange believes that the proposed changes to Rule 6.14B provide additional clarity of its Rules for investors, particularly in connection with the proposed use of affiliate Cboe Trading as an outbound router. The Exchange notes that Rule 6.14B is currently applicable to non-affiliated routing brokers and the proposed change merely seeks to provide specificity regarding its application. The Exchange also notes that it does not alter any of the conditions already applicable to non-affiliated routing brokers under Rule 6.14B, therefore the proposed change does not present any new obligations or novel issues for non-affiliated routing brokers. The Exchange also notes that proposed Rules 3.11, 3.12, 3.13, and 6.14B are

substantially similar to corresponding EDGX and C2 rules,¹⁰ previously approved or filed with the Exchange. Therefore, the proposed rule will provide consistent rules and functionality with that of its affiliated options exchange, thereby benefiting participants across the affiliated exchanges.

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

The Exchange does not believe that the proposed rule change 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 the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of Act as the proposed rules are based on the corresponding rules of its affiliated exchanges which allow Cboe Trading to become a member of the Exchange. Additionally, the proposed rule change is based on EDGX Options Rule 2.12 and C2 Rule 3.18, which allow EDGX Options and C2 to receive options orders from affiliate Cboe Trading on behalf of affiliate exchanges. The Exchange notes that use of Cboe Trading as an outbound router is voluntary and available to all participants and also notes that the proposed changes to Rule 6.14B do not substantively alter any requirements for non-affiliated routing brokers. Further, the Exchange does not believe Cboe Trading as an inbound router will impose any burden on intramarket competition as it does not affect incoming orders which will continue to be prioritized and allocated pursuant to Rule 6.45 (Order and Quote Priority Allocation). Moreover, the requirements of Rule 3.13 (i.e., the 17d-2 plan, the regulatory services contract, and procedures and internal controls) help to prevent an unfair burden on competition and unfair discrimination between customers, issuers, brokers, or dealers.

¹⁰ See supra note 6.

The Exchange does not believe that the proposed change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of Act as the Exchange's affiliated options exchanges have the same rules in place and already route orders using their affiliate, Cboe Trading, to and from Trading Centers. As stated above, the Exchange also notes that the proposed rule change ensures that Cboe Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage, thus preventing an unfair burden on competition.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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-2019-030 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-2019-030. 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, 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-2019-030 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.¹¹

Eduardo A. Aleman
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).