

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-87682; File No. SR-CBOE-2019-110)

December 9, 2019

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend Rule 5.31, Opening Auction Process

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 2, 2019, Cboe Exchange, Inc. (“Cboe Options” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II 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 amend Rule 5.31.

(additions are in *italics*; deletions are [bracketed])

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Rules of Cboe Exchange, Inc.

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**Rule 5.31. Opening Auction Process**

(a) – (c) No change.

(d) *Opening Rotation Triggers.* Upon the occurrence of one of the following triggers for a class, the System initiates the opening rotation for the series in that class, and the Exchange disseminates a message to market participants indicating the initiation of the opening rotation.

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

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

(1) Regular Trading Hours. The System initiates the opening rotation (A) [A] after a time period (which the Exchange determines for all classes) following the System’s observation after 9:30 a.m. of the first disseminated ([A]i) transaction on the primary market in the security underlying an equity option or ([B]ii) index value for the index underlying an index option (except for VIX Index options)[, the System initiates the opening rotation] or (B) at 9:30 a.m. for VIX Index options.

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

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

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

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

1. Purpose

Prior to the Exchange’s technology migration, which occurred on October 7, 2019, the Exchange’s System initiated the opening rotation procedure for index options either at a specified time or at the time the Exchange received a disseminated index value (determined on a class-by-class basis).<sup>3</sup> The Exchange determined that options on the Cboe Volatility Index (the “VIX

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<sup>3</sup> See Securities Exchange Act Release No. 86879 (September 5, 2019), 84 FR 47984 (September 11, 2019) (SR-CBOE-2019-034) (which proposed rule filing amended and relocated the Exchange’s rule regarding the opening process, included former Rule 6.2(b)(i)(A)(2), which stated that with respect to index options, at 8:30 a.m. Central time, or at the later of 8:30 a.m. Central time and the time the Exchange receives a

Index”) would be one of the classes to open at a specified time rather than after it received the first disseminated VIX Index value. The Exchange proposes to revert to opening VIX options at a specified time. Specifically, the Exchange proposes to amend Rule 5.31(d)(1) to provide that the System will initiate the opening rotation for VIX options at 9:30 a.m. Eastern time, rather than after the System’s observation after 9:30 a.m. Eastern time of the first disseminated value of the VIX Index.<sup>4</sup>

The System generally does not receive the first disseminated value of the VIX Index until approximately 9:31 a.m., which means the System cannot initiate the opening rotation procedure for VIX options until after that time. This delay prevents investors from being able to effect trades in VIX options while trading in other products, which may prevent investors from being able to engage in their standard trading, hedging, and volatility risk management activities during that time.

The value of the VIX Index is calculated using the bid and ask quotes of SPX options listed on the Exchange. Pursuant to Rule 5.31(d)(1), the System will initiate the opening rotation procedure for SPX options following the receipt of the first disseminated SPX value after 9:30 a.m., which as noted above, generally occurs at 9:30:01. Therefore, the opening rotation for SPX options will generally begin a few seconds after 9:30 a.m. The VIX Index value cannot be calculated, and thus disseminated, until the SPX option series used to calculate the value are all open for trading. Once that occurs, and the VIX Index value is disseminated, the Exchange can then initiate the opening rotation for VIX Index options. As a result, VIX Index options are not eligible to open for trading for a longer amount of time than other index options. The Exchange

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disseminated index value for classes determined by the Exchange, the System initiated the opening rotation procedure for regular trading hours).

<sup>4</sup> The proposed rule change also makes nonsubstantive changes to the structure of Rule 5.31(d)(1).

understands that market participants generally do not use the spot value of the VIX Index for pricing VIX options but rather use the pricing of VIX Index futures (“VX futures”) that trade on the Cboe Futures Exchange (“CFE”), which are trading at 9:30 a.m. Thus, the Exchange does not believe it is necessary to delay the opening of trading of VIX Index options until the Exchange receives a disseminated value of the VIX Index.<sup>5</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>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 the Section 6(b)(5)<sup>8</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>5</sup> The Exchange notes the opening rotation for VIX Index options during the Global Trading Hours session begins at a specified time, rather than after dissemination of the VIX Index value. See Rule 5.31(d)(2).

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

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

<sup>8</sup> Id.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and protect investors, because it will permit VIX Index options to open, and thus permit market participants to begin trading these options, at an earlier time. The Exchange believes opening VIX Index options earlier will permit investors to begin effecting trades in these options at a similar time as they may begin effecting trades in other options. Investors will therefore be able to use VIX Index options as part of their trading, hedging, and portfolio risk management activities during that time, which ultimately benefits investors. The Exchange notes the opening rotation for VIX Index options during the Global Trading Hours session begins at a specified time, rather than after dissemination of the VIX Index value.<sup>9</sup> Additionally, the rules of another options exchange permit index options to open at 9:30 a.m., rather than wait for the dissemination of the underlying index value.<sup>10</sup>

The proposed rule change does not modify the opening auction process, but rather makes it possible for it to begin in a timelier manner for one option class. Therefore, the Exchange believes its opening process will continue to contribute to a fair and orderly opening of VIX options.

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 that the proposed rule change will impose any burden on intramarket competition, because the proposed rule change will apply in the same manner to all Users. Trading in VIX Index options will open and be available to all Users at the same time; the

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<sup>9</sup> See Rule 5.31(d)(2).

<sup>10</sup> See BOX Exchange LLC ("BOX") Rule 6080(b).

proposed rule change merely makes it possible for trading in these options to open earlier. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition, because the rules of another options exchange permit index options to open at 9:30 a.m., rather than wait to open until the exchange receives the first disseminated value of the underlying index value.<sup>11</sup> The Exchange notes the opening rotation for VIX Index options during the Global Trading Hours session begins at a specified time, rather than after dissemination of the VIX Index value.<sup>12</sup>

The proposed rule change relates solely to the time at which trading in VIX Index options (which are a proprietary product that only trades on the Exchange) may begin. To the extent that the proposed changes make the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Exchange 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> Because the 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

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<sup>11</sup> Id.

<sup>12</sup> See Rule 5.31(d)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>18</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange states that it believes the proposed rule change will protect investors by permitting investors to begin trading VIX Index options at a similar time at which they may begin to trade other options, thus allowing investors to use VIX Index options as part of their trading, hedging, and portfolio risk management activities. The Exchange also represents that the proposed rule change does not modify the opening auction process, but rather makes it possible for this process to begin in a timelier manner for one option class. Therefore, the Exchange believes its opening process will continue to contribute to a fair and orderly opening of VIX options. The Exchange further notes that initiating the opening process for an index option at a specified time, rather than following dissemination of the first value of the underlying index, is not novel or unique.

The Exchange represents that prior to October 7, 2019, VIX Index options opened at a specified

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

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

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

time, rather than after dissemination of the VIX Index value. The opening rotation for VIX Index options during the Global Trading Hours session also begins at a specified time, rather than after dissemination of the VIX Index value.<sup>19</sup> Additionally, the Exchange notes that the rules of another options exchange permit index options to open at 9:30 a.m., rather than waiting for the dissemination of the underlying index value.<sup>20</sup> For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>21</sup>

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

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<sup>19</sup> See Cboe Options Rule 5.31(d)(2).

<sup>20</sup> See BOX Rule 6080(b).

<sup>21</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



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-2019-110 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-2019-110. 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-2019-110, 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>22</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12), (59).