

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87846; File No. SR-CBOE-2019-118)

December 23, 2019

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Correct Certain Erroneous Cross-References, Add Inadvertently Omitted Rule Text, and Conform the Use of Certain Defined Terms

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 19, 2019, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“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 correct certain erroneous cross-references, add inadvertently omitted rule text, and conforms the use of certain defined terms. 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In 2016, the Exchange’s parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (“Cboe Global”), which is also the parent company of Cboe C2 Exchange, Inc. (“C2”), acquired Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX” or “EDGX Options”), Cboe BZX Exchange, Inc. (“BZX” or “BZX Options”), and Cboe BYX Exchange, Inc. (“BYX” and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the “Cboe Affiliated Exchanges”). On October 7, 2019, Cboe Options migrated its trading platform to the same system used by the Cboe Affiliated Exchanges. In connection with this technology migration, Cboe Options updated and reorganized its entire Rulebook (the “post-migration Rulebook”), which became effective upon the technology migration.

First, the proposed rule change corrects cross-reference errors in Rules 5.1, 5.4, 5.6, 5.33, 5.36, 5.37, 5.38, 5.50, 5.52, 5.54, 5.55, and 5.56 that inadvertently occurred as a result of the total restructuring of its Rulebook.

Second, the proposed rule change adds rule text that was unintentionally omitted from the post-migration Rulebook. The proposed rule change amends Rule 5.83(a)(2) to add Penny Cabinet and Sub-Penny Cabinet orders to the list of types of order instructions available for PAR routing for manual handling and open outcry trading on the Exchange. Currently, Rule 5.85(h) governs cabinet trading on the Exchange and states that cabinet orders (i.e. penny cabinet and sub-penny cabinet orders) may only execute on the Exchange’s trading floor in open outcry. Therefore, penny cabinet

and sub-penny cabinet orders are types of order instructions that are available for open outcry trading. However, when the Exchange proposed Rule 5.83(h) and incorporated it into the post-migration Rulebook,³ it inadvertently did not include these cabinet order instructions in Rule 5.83(a)(2), which the Exchange now proposes to include.

The proposed rule change also reinstates a provision from former Rule 8.14.01(c)⁴ that was inadvertently not included in the post-migration Rulebook.⁵ Specifically, the Exchange relocated the provision under former Rule 8.14 that allows the Exchange to determine to list SPX or VIX on a group basis to post-migration Rule 4.13(f), as well as removed other provisions under the former rule that had been previously moved to other rules as part of the migration.⁶ As a result of the restructuring, the Exchange inadvertently did not include former Rule 8.14.01(c) in the post-migration Rulebook, which required the Exchange to determine System trading parameters on a group basis to the extent the Rules otherwise provide for such parameters to be established on a class basis. The Exchange continues to establish such parameters on a group basis, and reinstating

³ See Securities and Exchange Act Release No. 86994 (September 17, 2019), 84 FR 49774 (September 23, 2019) (Proposed Rule Change To Amend the Exchange's Rules Regarding Cabinet Trading Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges) (SR-CBOE-2019-058); see also Securities and Exchange Act Release No. 87224 (October 4, 2019), 84 FR 54652 (October 10, 2019) (SR-CBOE-2019-081), which relocated the cabinet trading rule in the post-migration Rulebook from Rule 5.12 to Rule 5.85(h) where it is currently located.

⁴ Former Rule 8.14.01(c) provided that System trading parameters will be established by the Exchange on a group basis to the extent the Rules otherwise provide for such parameters to be established on a class basis.

⁵ See Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (Proposed Rule Change To Amend Certain Rules Relating To Market-Makers Upon Migration to the Trading System Used by Cboe Affiliated Exchanges) (SR-CBOE-2019-059), which removed Rule 8.14.01, but did not relocate it to the post-migration Rulebook.

⁶ See Securities Exchange Act Release No. 87337 (October 17, 2019), 84 FR 56879 (October 23, 2019) (SR-CBOE-2019-092).

this provision in Rule 1.5(c) ensures that the post-migration Rulebook accurately reflects the manner in which the Exchange applies System parameters to classes the Exchange lists on a group basis. The Exchange notes that groups of SPX and VIX series exhibit different trading characteristics from series listed by class, and the Exchange generally establishes market models for options classes and groups of SPX and VIX series based on the characteristics that most fit the product which benefits investors. As such, the proposed rule change is designed to make it explicit in the Rules that the Exchange will continue to establish System parameters on a group basis in order to tailor such parameters to fit the group product characteristics. Likewise, as a result of the restructuring, the Exchange also inadvertently did not include the former provision(s) that allowed the Exchange to make determinations on a group basis that differed between Global Trading Hours (“GTH”) and Regular Trading Hours (“RTH”).⁷ The proposed rule change thus incorporates Exchange determinations on a group basis among the list of other bases in Rule 1.5(b), which allows the Exchange to make determinations on different bases that differ between GTH and RTH, as SPX and VIX are available for trading during both sessions. The Exchange also notes that because trading characteristics during RTH may be different than those during GTH (such as lower trading levels, reduced liquidity, and fewer participants), the Exchange believes it is appropriate to continue this flexibility for determinations on a group basis.

⁷ Former Rule 6.1A(i) allowed the Exchange to make a determination, to the extent the Rules allowed, that differed between GTH and RTH, including on a class-by-class or series-by-series basis. Former Rule 8.14.01(c) allowed the Exchange to determine System trading parameters on a group basis to the extent the Rules otherwise provide for such parameters to be established on a class basis. Likewise, other former rules provided it could also make determinations on a group basis where it was permitted to make determinations on a class basis (e.g., former Rule 6.2.05 (for Exchange determinations related to the opening auction process), and former Rule 6.45 (for Exchange determinations related to order and quote priority and allocation). Therefore, as a whole, these provisions allowed the Exchange to make determinations on a group basis that differed between trading sessions.

In addition, the Exchange also notes that it inadvertently did not include the provision in former Rule 6.12(a)(3)⁸, which allowed it to determine the fat finger buffer amount on a class-by-class basis. The proposed rule change to Rule 5.34(c)(1), which governs the limit order fat finger check, reinstates the provision that allows the Exchange to continue to determine a default buffer amount for the fat finger check on a class-by-class basis. The Exchange notes that the fat finger check is designed to prevent limit orders from executing at potentially erroneous prices, and that the Exchange currently maintains the same class basis flexibility pursuant to certain other price protection and risk control rules. This flexibility allows the Exchange to apply different settings and parameters to address the specific characteristics of that class and its market. For example, Rule 5.34(a)(2) (market order NBBO width protection), (a)(4)(B) (drill-through protection for order that execute or post to the Book), and (c)(11) (buy-write/married put check) each allow the Exchange to determine the respective price check buffer amounts on a class basis. As such, the proposed rule change to reinstate the flexibility to determine of the fat finger default buffer on a class basis makes it explicit that the Exchange may continue to set the default buffer with the same flexibility in order to appropriately address different trading characteristics, market models, and investor base of each class. Because the different characteristics among classes may cause what would be considered a potentially erroneous price to differ among classes, the Exchange believes it is appropriate to continue to this class-based flexibility in determining the buffer amount for the fat finger check, as well as allow Users to establish class based buffer amounts that differ from the Exchange's class based default amounts. The Exchange notes that in prior Rule 6.12(a)(3), though it allowed the

⁸ Former Rule 6.12(a)(3) provided, in part, that an acceptable tick distance would be determined by the Exchange on a class-by-class basis (or a premium basis, which was intentionally removed from the rule to coincide with planned migration functionality). The Exchange notes that the fat finger buffer amount was referred to as the "acceptable tick distance" in this former provision.

Exchange to determine a fat finger buffer amount on a class-by-class basis, it had been silent as to User-established buffer amounts. The Exchange adopted language, that a User may establish a higher or lower amount than the Exchange default, for the migration in order to make the Exchange's fat finger rule consistent with the corresponding fat finger rules of the Affiliated Exchanges.⁹Therefore, the Exchange believes that the proposed rule change to mirror Users' ability to establish buffer amounts that differ from the Exchange's default buffer on a class basis would provide consistency in manner in which a User may establish buffer amounts around the Exchange-established default buffer amounts.

Finally, the proposed rule change conforms the use of certain defined terms in the post-migration Rulebook. The proposed rule change removes the term "Hybrid System" from Rule 8.20, and replaces it with the term "System," which is the correct defined term in the post-migration Rulebook for the Exchange's trading System.¹⁰ The proposed rule change also capitalizes the terms "Penny Cabinet" orders, "Sub-Penny Cabinet" orders, and "Reporting Authority" throughout the post-migration Rulebook. The proposed change makes these terms uniformly formatted in the post-migration Rulebook, as they are currently defined terms in the Rules and are capitalized in some Rules but not in others.¹¹

⁹ See Securities Exchange Act Release No. 86923 (September 10, 2019), 84 FR 48664 (September 16, 2019) (SR-CBOE-2019-057); see also C2 Rule 6.14(c)(1); and EDGX Options Rule 21.17(b)(7).

¹⁰ See Rule 1.1. The Exchange also notes that the term "Hybrid class" is no longer a relevant distinction because, as of 2018, all classes listed for trading on the Exchange now trade on the same platform (prior to that, certain classes traded on the Exchange's Hybrid 3.0 platform, while most classes traded on the Exchange's Hybrid platform).

¹¹ See 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 Exchange and, in particular, the requirements of Section 6(b) of the Act.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ 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)¹⁴ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is generally intended to correct inaccuracies that resulted from the recent restructuring of the Exchange’s Rulebook. The proposed corrections to correct inaccurate cross-references within various Rules, reinstating rule text that was inadvertently omitted from the post-migration Rulebook (majority of which will allow the Exchange to continue to tailor certain settings to address different product characteristics and market conditions, thereby protecting investors), updating a Rule to provide consistency in connection with functionality available pre-migration (and being reinstated in the Rules) that is directly

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ Id.

associated with functionality now available as of post-migration, and updating or uniformly formatting certain defined terms are designed to protect investors by ensuring that these Rules accurately reference and reflect the current, post-migration Rules in place, thereby mitigating any potential investor confusion. The proposed rule change will have no impact on trading on the Exchange, as almost all of the proposed rule changes are non-substantive in nature (as stated above, one proposed change merely updates a Rule to provide consistency in connection functionality now correlated with it as of post-migration).

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 proposed rule change is not intended as a competitive filing, as it merely updates the Rules to accurately reference the current, post-migration Rules. The proposed rule change is corrective in nature. The proposed rule change generally makes no substantive changes to the rules (one change merely updates a Rule to provide consistency between inadvertently omitted functionality now being reinstated and correlated functionality which had been adopted post-migration), and thus will have no impact on trading on the Exchange.

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 after the date of the filing, or such shorter time as the

Commission may designate, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6)¹⁶ thereunder.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii) under the Act¹⁸ permits the Commission to 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 proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would allow the Exchange to immediately correct inaccuracies that resulted from the recent restructuring of the Exchange's Rulebook, reinstate rule text that was inadvertently omitted from the post-migration Rulebook, and update and uniformly format certain defined terms. The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay to allow the Exchange to correct inaccuracies and inadvertent omissions from the rules, which may help prevent investor confusion. The Commission notes that the proposed change does not raise new or novel regulatory issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁹

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2019-118 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-2019-118. 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. 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-2019-118 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.²⁰

Eduardo A. Aleman
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).