

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89075; File No. SR-CBOE-2020-054)

June 16, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 5.4 to Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options and Add New Rule 5.4(d)

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 11, 2020, 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, 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 Rule 5.4 to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the “OLPP”) and add new Rule 5.4(d). The text of the proposed rule change is provided in Exhibit 5.

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).

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

The purpose of this rule change is to amend Rule 5.4 (Minimum Increments for Bids and Offers) to align the rule with the recently approved amendment to the OLPP.

Background

On January 23, 2007, the Commission approved on a limited basis a Penny Pilot in option classes in certain issues ("Penny Pilot"). The Penny Pilot was designed to determine whether investors would benefit from options being quoted in penny increments, and in which classes the benefits were most significant. The Penny Pilot was expanded and extended numerous times over the last 13 years.⁵ In each instance, these approvals relied upon the consideration of data

⁵ See Securities Exchange Act Release Nos. Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR-CBOE-2006-92); 56565 (September 27, 2007), 72 FR 56403 (October 3, 2007) (SR-CBOE-2007-98); 60864 (October 22, 2009), 74 FR 55876 (October 29, 2009) (SR-CBOE-2009-076); 63386 (November 29, 2010), 75 FR 75713 (December 6, 2010) (SR-CBOE-2010-102); 65967 (December 15, 2011), 76 FR 79243 (December 21, 2011) (SR-CBOE-2011-118); 67322

periodically provided by the Exchanges that analyzed how quoting options in penny increments affects spreads, liquidity, quote traffic, and volume. Today, the Penny Pilot includes 363 option classes, which are among the most actively traded, multiply listed option classes. The Penny Pilot is scheduled to expire by its own terms on June 30, 2020.⁶

In light of the imminent expiration of the Penny Pilot on June 30, 2020, the Exchange, together with other participating exchanges, filed, on July 18, 2019 a proposal to amend the OLPP.⁷ On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the “OLPP Program”).⁸

The OLPP Program replaces the Penny Pilot by instituting a permanent program that would permit quoting in penny increments for certain option classes. Under the terms of the OLPP Program, designated option classes would continue to be quoted in \$0.01 and \$0.05 increments according to the same parameters for the Penny Pilot. In addition, the OLPP Program would: (i)

(June 29, 2012), 77 FR 40120 (July 6, 2012) (SR-CBOE-2012-059); 68550 (December 31, 2012), 78 FR 971 (January 7, 2013) (SR-CBOE-2012-127); 69775 (June 17, 2013), 78 FR 37642 (June 21, 2013) (SR-CBOE-2013-061); 71103 (December 17, 2013), 78 FR 77526 (December 23, 2013) (SR-CBOE-2013-124); 72277 (May 29, 2014), 79 FR 32347 (June 4, 2014) (SR-CBOE-2014-047); 73624 (November 18, 2014), 79 FR 69903 (November 24, 2014) (SR-CBOE-2014-086); 75287 (June 24, 2015), 80 FR 37337 (June 30, 2015) (SR-CBOE-2015-060); 78013 (June 8, 2016), 81 FR 38758 (June 14, 2016) (SR-CBOE-2016-048); 79442 (December 1, 2016), 81 FR 88293 (December 7, 2016) (SR-CBOE-2016-083); 82375 (December 21, 2017), 82 FR 61615 (December 28, 2017) (SR-CBOE-2017-078); 83567 (June 28, 2018), FR 83 31592 (July 6, 2018) (SR-CBOE-2018-047); 84940 (December 21, 2018), 83 FR 67759 (December 31, 2018) (SR-CBOE-2018-076); 86148 (June 19, 2019), 84 FR 29906 (June 25, 2019) (SR-CBOE-2019-028); and 87739 (December 13, 2019), 84 FR 69801 (December 19, 2019) (SR-CBOE-2019-119).

⁶ See Securities Exchange Act Release No. 87739 (December 13, 2019), 84 FR 69801 (December 19, 2019) (SR-CBOE-2019-119).

⁷ See Securities Exchange Act Release No. 87681 (December 9, 2019), 84 FR 68960 (December 17, 2019) (“Notice”).

⁸ See Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4-443) (“Approval Order”).

establish an annual review process to add option classes to, or to remove option classes from, the OLPP Program; (ii) to allow an option class to be added to the OLPP Program if it is a newly listed option class and it meets certain criteria; (iii) to allow an option class to be added to the OLPP Program if it is an option class that has seen a significant growth in activity; (iv) to provide that if a corporate action involves one or more option classes in the OLPP Program, all adjusted and unadjusted series and classes emerging as a result of the corporate action will be included in the OLPP Program; and (v) to provide that any series in an option class participating in the OLPP Program that have been delisted, or are identified by OCC as ineligible for opening Customer transactions, will continue to trade pursuant to the OLPP Program until they expire.

To conform its Rules to the OLPP Program, the Exchange proposes to delete Interpretation and Policy .03 to Rule 5.4 (the “Penny Pilot Rule”) and replace it with new Rule 5.4(d) (Requirements for Penny Interval Program), which is described below, and to replace references to “Penny Pilot” in the Exchange rules with “Penny Interval Program.” The Exchange also proposes to delete the superfluous operational language in Interpretation and Policy .02 to Rule 5.4 regarding the a change to the minimum increment as a stated policy, practice, or interpretation within the meaning of the Act and the process for modifying trading differential by rule filing because such meaning and requirement remains the case today, as the Exchange must submit proposed rule changes -- including for Rule 5.4-- to the Commission.⁹ The Exchange notes, too, that this proposal is based on and substantially identical to a rule filing recently submitted by NYSE Arca, Inc.¹⁰

⁹ See current Interpretation and Policy .02 to Rule 5.4, which provides that “[w]hen the Exchange determines to change the minimum increment for a class, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of this Rule 5.4 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Act and will file a rule change for effectiveness upon filing with the Commission.”

¹⁰ See Securities Exchange Act Release No. 88943 (May 26, 2020), 85 FR 33255 (June 1,

Penny Interval Program

The Exchange proposes to codify the OLPP Program in new paragraph (d) to Rule 5.4 (Requirements for Penny Interval Program) (the “Penny Program”), which will replace the Penny Pilot Rule and permanently permit the Exchange to quote certain option classes in minimum increments of one cent (\$0.01) and five cents (\$0.05) (“penny increments”). The penny increments that currently apply under the Penny Pilot will continue to apply for option classes included in the Penny Program. Specifically, (i) the minimum quoting increment for all series in the QQQ, SPY, and IWM would continue to be \$0.01, regardless of price;¹¹ (ii) all series of an option class included in the Penny Program with a price of less than \$3.00 would be quoted in \$0.01 increments; and (iii) all series of an option class included in the Penny Program with a price of \$3.00 or higher would be quoted in \$0.05 increments.

The Penny Program would initially apply to the 363 most actively traded multiply listed option classes, based on National Cleared Volume at The Options Clearing Corporation (“OCC”) in the six full calendar months ending in the month of approval (i.e., November 2019 - April 2020) that currently quote in penny increments, or overlie securities priced below \$200, or any index at an index level below \$200. Eligibility for inclusion in the Penny Program will be determined at the close of trading on the monthly Expiration Friday of the second full month following April 1, 2020 (i.e., June 19, 2020).

Once in the Penny Program, an option class will remain included until it is no longer among the 425 most actively traded option classes at the time the annual review is conducted (described below), at which point it will be removed from the Penny Program. As described in more detail

2020) (SR-NYSEArca-2020-50).

¹¹ As well as Mini-SPX Index Options (XSP) (as long as SPDR options (SPY) participate in the Penny Interval Program). See Rule 5.4(a).

below, the removed class will be replaced by the next most actively traded multiply listed option class overlying securities priced below \$200 per share, or any index at an index level below \$200, and not yet in the Penny Program. Advanced notice regarding the option classes included, added, or removed from the Penny Program will be provided to the Exchange's Trading Permit Holders ("TPHs") pursuant to Rule 1.5¹² and published by the Exchange on its website.

Annual Review

The Penny Program would include an annual review process that applies objective criteria to determine option classes to be added to, or removed from, the Penny Program. Specifically, on an annual basis beginning in December 2020 and occurring ever December thereafter, the Exchange will review and rank all multiply listed option classes based on National Cleared Volume at OCC for the six full calendar months from June 1st through November 30th for determination of the most actively traded option classes. Any option classes not yet in the Penny Program may be added to the Penny Program if the class is among the 300 most actively traded multiply listed option classes and priced below \$200 per share or any index at an index level below \$200.

Following the annual review, option classes to be added to the Penny Program would begin quoting in penny increments (i.e., \$0.01 if trading at less than \$3; and \$0.05 if trading at \$3 and above) on the first trading day of January.¹³ In addition, following the annual review, any option class in the Penny Program that falls outside of the 425 most actively traded option classes would be removed from the Penny Program. After the annual review, option classes that are removed from

¹² Rule 1.5 provides that the Exchange announces to Trading Permit Holders all determinations it makes pursuant to the Rules via: (1) specifications, Notices, or Regulatory Circulars with appropriate advanced notice, which are posted on the Exchange's website, or as otherwise provided in the Rules; (2) electronic message; or (3) other communication method as provided in the Rules.

¹³ See supra note 11. (providing that the minimum quoting increment for all series in the QQQ, SPY, and IWM would continue to be \$0.01, regardless of price).

the Penny Program will be subject to the minimum trading increments set forth in Rule 5.4, effective on the first trading day of April.

Changes to the Composition of the Penny Program Outside of the Annual Review

Newly Listed Option Classes and Option Classes with Significant Growth in Activity

The Penny Program would specify a process and parameters for including option classes in the Program outside the annual review process in two circumstances. These provisions are designed to provide objective criteria to add to the Penny Program new option classes in issues with the most demonstrated trading interest from market participants and investors on an expedited basis prior to the annual review, with the benefit that market participants and investors will then be able to trade these new option classes based upon quotes expressed in finer trading increments.

First, the Penny Program provides for certain newly listed option classes to be added to the Penny Program outside of the annual review process, provided that (i) the class is among the 300 most actively traded, multiply listed option classes, as ranked by National Cleared Volume at OCC, in its first full calendar month of trading; and (ii) the underlying security is priced below \$200 or the underlying index is at an index level below \$200. Such newly listed option classes added to the Penny Program pursuant to this process would remain in the Penny Program for one full calendar year and then would be subject to the annual review process.

Second, the Penny Program would allow an option class to be added to the Penny Program outside of the annual review process if it is an option class that meets certain specific criteria. Specifically, new option classes may be added to the Penny Program if: (i) the option class is among the 75 most actively traded multiply listed option classes, as ranked by National Cleared Volume at OCC, in the prior six full calendar months of trading and (ii) the underlying security is priced below \$200 or the underlying index is at an index level below \$200. Any option class added under this

provision will be added on the first trading day of the second full month after it qualifies and will remain in the Penny Program for the rest of the calendar year, after which it will be subject to the annual review process.

Corporate Actions

The Penny Program would also specify a process to address option classes in the Penny Program that undergo a corporate action and is designed to ensure continuous liquidity in the affected option classes. Specifically, if a corporate action involves one or more option classes in the Penny Program, all adjusted and unadjusted series of an option class would continue to be included in the Penny Program.¹⁴ Furthermore, neither the trading volume threshold, nor the initial price test would apply to option classes added to the Penny Program as a result of the corporate action. Finally, the newly added adjusted and unadjusted series of the option class would remain in the Penny Program for one full calendar year and then would become subject to the annual review process.

Delisted or Ineligible Option Classes

Finally, the Penny Program would provide a mechanism to address option classes that have been delisted or those that are no longer eligible for listing. Specifically, any series in an option class participating in the Penny Program in which the underlying has been delisted, or is identified by OCC as ineligible for opening customer transactions, would continue to quote pursuant to the terms of the Penny Program until all options series have expired.

Technical Changes

¹⁴ For example, if Company A acquires Company B and Company A is not in the Penny Program but Company B is in the Penny Program, once the merger is consummated and an options contract adjustment is effective, then Company A would be added to the Penny Program and remain in the Penny Program for one calendar year.

The Exchange proposes to replace reference to the Penny Pilot with reference to the Penny Interval Program in Rule 5.4(a) and Interpretation and Policy .18 to Rule 4.5. The Exchange believes these technical changes would add clarity, transparency and internal consistency to Exchange rules making them easier to navigate.

Implementation

The Exchange proposes to implement the Penny Program on July 1, 2020, which is the first trading day of the third month following the Approval Order issued on April 1, 2020 -- i.e., July 1, 2020.

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.¹⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ 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)¹⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ Id.

In particular, the proposed rule change, which conforms the Exchange rules to the recently adopted OLPP Program, allows the Exchange to provide market participants with a permanent Penny Program for quoting options in penny increments, which maximizes the benefit of quoting in a finer quoting increment to investors while minimizing the burden that a finer quoting increment places on quote traffic.

Accordingly, the Exchange believes that the proposal is consistent with the Act because, in conforming the Exchange rules to the OLPP Program, the Penny Program would employ processes, based upon objective criteria, that would rebalance the composition of the Penny Program, thereby helping to ensure that the most actively traded option classes are included in the Penny Program, which helps facilitate the maintenance of a fair and orderly market.

Technical Changes

The Exchange notes that the proposed change to Rule 5.4(a) and Interpretation and Policy .18 to Rule 4.5 to replace references to the Penny Pilot with references to the Penny Interval Program would provide clarity and transparency to the Exchange rules and would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule changes would also provide internal consistency within Exchange rules and operate to protect investors and the investing public by making the Exchange rules easier to navigate and comprehend.

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 Penny Program, which modifies the exchange's rules to align them with the Commission approved OLPP Program, is not designed to be a competitive filing nor does it impose an undue burden on intermarket competition as the Exchange anticipates that the options

exchanges will adopt substantially identical rules. Moreover, the Exchange believes that by conforming Exchange rules to the OLPP Program, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. To the extent that there is a competitive burden on those option classes that do not qualify for the Penny Program, the Exchange believes that it is appropriate because the proposal should benefit all market participants and investors by maximizing the benefit of a finer quoting increment in those option classes with the most trading interest while minimizing the burden of greater quote traffic in option classes with less trading interest. The Exchange believes that adopting rules, which have been adopted by another options exchange¹⁸ and, as the Exchange anticipates, will likewise be adopted by all option exchanges that are participants in the OLPP, would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges.

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, it has become effective pursuant to 19(b)(3)(A) of the Act¹⁹ and

¹⁸ See supra note 10.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

Rule 19b-4(f)(6)²⁰ thereunder. The Exchange has proposed to implement the Penny Program on July 1, 2020 and has asked the Commission to waive the 30-day operative delay for this filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to modify its rules to conform to the OLPP Program and implement the Penny Program on July 1, 2020, consistent with the Commission's approval of the OLPP Amendment. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.²¹

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:

²⁰ 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.

²¹ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- 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:to-rule-comments@sec.gov). Please include File Number SR-CBOE-2020-54 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-2020-54. 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-2020-54 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.²²

J. Matthew DeLesDernier
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).