

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92057; File No. SR-CBOE-2021-034)

May 27, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 3.54 and Rule 3.10

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 May 20, 2021, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Rule 3.54 and Rule 3.10. The text of the proposed rule change is provided in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

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

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

1. Purpose

The Exchange proposes to amend Rule 3.54 in connection with a Designated Primary Market-Maker (“DPM”) Designee.

Pursuant to Rule 3.54(a), a DPM may act as a DPM solely through its DPM Designees. A “DPM Designee” is an individual who is approved by the Exchange to represent a DPM in its capacity as a DPM. An individual must satisfy various requirements, which are included in Rule 3.54(b), in order to be a DPM Designee of a DPM. Specifically, current Rule 3.54(b)(2) provides that, as one of the requirements, the individual must be a Responsible Person of the DPM. Additionally, pursuant to current Rule 3.9(a), each Trading Permit Holder (“TPH”) organization that is the holder of a Trading Permit that provides electronic access to the Exchange must designate at least one individual as the Responsible Person for that TPH organization. The Exchange notes that Off-Floor DPMs, which is a DPM authorized to function remotely away from the Exchange’s trading floor,⁵ must hold Trading Permits that provide electronic access to the Exchange. Rule 3.9(a) provides that a Responsible Person must represent the TPH

⁵ See Rule 1.1, Definition of “Designated Primary Market-Maker and DPM”.

organization with respect to a TPH organization's electronic Trading Permit(s) in all matters relating to the Exchange, and must be a U.S.-based officer, director or management-level employee of the TPH organization, who is responsible for the direct supervision and control of Associated Persons of that TPH organization. Rule 3.9(b) provides that each TPH organization must designate an individual nominee to represent the organization with respect to each Floor Broker Trading Permit or Market-Maker Floor Trading Permit in all matters relating to the Exchange. Thus, an On-Floor DPM, which operates on the Exchange's trading floor,⁶ is required to have a nominee for its Market-Maker Floor Trading Permit. Rule 3.9(b) provides, among other things, that each nominee of a TPH organization is required to be registered as a Market-Maker if holding a Market-Making Trading Permit, have authorized trading functions, and perform Exchange-approved trading functions only on behalf of one TPH organization. As a result, a nominee is required to be materially involved in the daily operation of the Exchange business activities of the TPH organization for which the person is a nominee.

Rule 3.10(a) requires, among other things, any individual designated to act as a Responsible Person or nominee desiring to act in one or more of the trading functions authorized by the Rules of the Exchange ("Rules", and individually, "Rule") to submit an application to the TPH Department in a form and manner prescribed by the Exchange. Additionally, Rule 3.10(d) provides that the TPH Department shall investigate, among other applicants, each applicant applying to be a Responsible Person or nominee (with the exception of any associated person applicant that is a current Trading Permit Holder, Responsible Person or nominee, any applicant that was a Trading Permit Holder, Responsible Person or nominee within 9 months prior to the date of receipt of that applicant's application by the TPH Department, and any Trading Permit

⁶ See id.

Holder, Responsible Person, nominee or associated person applicant that was investigated by the TPH Department within 9 months prior to the date of receipt of that applicant’s application by the TPH Department).

The Exchange previously restructured its Trading Permits and Rules regarding Trading Permits in connection with a 2019 technology migration.⁷ Prior to this restructuring and the above-described Rules in their current form, all TPH organizations (both electronic and floor-based) were required to designate an individual nominee to represent the organization with respect to that Trading Permit in all matters relating to the Exchange and a nominee could represent either an electronic or floor-based DPM as a DPM Designee. Now, only floor-based TPHs are required to designate a nominee while TPHs that hold a Trading Permit that provides electronic access to the Exchange (including those designated as Off-Floor DPMs only) are required to designate a Responsible Person. Upon the migration-related restructuring of its Rules, the Exchange intended to require a designation of a nominee only for floor-based Trading Permits and that TPH organizations holding electronic permits would be required to designate a Responsible Person and, as such, intended to reference “Responsible Person”, where appropriate in the Rules, alongside references to “nominees”.⁸ In the filing that revised the Rule governing DPM Designees for the migration,⁹ the Exchange inadvertently removed the reference to

⁷ See Securities Exchange Act Release No. 87377 (October 21, 2019), 84 FR 57500 (October 25, 2019) (SR-CBOE-2019-099).

⁸ See Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-CBOE-2019-059), which provided that, upon migration, a “DPM, like all member organizations, will continue to be required to maintain at least one nominee (or Responsible Person) and may choose to maintain multiple nominees (or Responsible Persons)”, and that the Exchange “will require a designation of a nominee only for floor-based Trading Permits. TPH organizations that hold electronic permits will be required to designate a “Responsible Person”, who must be affiliated with the TPH”.

⁹ See id.

nominee in the Rule governing DPM Designees, and the Rule now, unintentionally, provides that a DPM Designee must be a Responsible Person of the DPM, without regard to whether the DPM is an On-Floor or Off-Floor DPM. This poses an unnecessary regulatory burden for On-Floor DPMs, who would not otherwise be required to designate a Responsible Person as a DPM Designee if not for the inadvertent deletion of the reference to “nominee” in Rule 3.54.

Therefore, the proposed rule change amends the DPM Designee requirements in proposed Rules 3.54(b)(1) and (2) to be clear that, for an Off-Floor DPM, at least one individual must be a Responsible Person of the DPM, and, for an On-Floor DPM, the individual must be a nominee of the DPM or an affiliate of the DPM, as was the requirement for an On-Floor DPM up until the fourth quarter of 2019 when the Exchange inadvertently removed the reference to nominees in Rule 3.54(b). The proposed rule change also eliminates the DPM Designee requirement in current Rule 3.54(b)(1) that an individual must be approved to be a Trading Permit Holder. A Responsible Person is not required to be approved as a Trading Permit Holder and the Exchange did not intend upon the migration-related restructuring of its Rules for a Responsible Person that is a DPM Designee to otherwise be approved as a Trading Permit Holder. Nominees are already (and will continue to be) required to approved as Trading Permit Holders pursuant to Rule 3.9(b)(5). As a result, the Exchange believes that the elimination of this provision will mitigate any potential confusion regarding DPM Designee requirements.

Additionally, as described above, a Responsible Person must be a U.S.-based officer, director or management-level employee of the TPH organization, who is responsible for the direct supervision and control of Associated Persons of that TPH organization. Unlike a nominee, a Responsible Person is not required to have authorized trading functions on behalf of the DPM. A Responsible Person at the executive or managerial level might not be involved in

the day-to-day trading activities of the DPM. Therefore, the Exchange proposes to update Rule 3.54(b)(1) so that an Off-Floor DPM may also designate individuals as DPM Designees that are involved in the performance of trading functions on behalf of the DPM, much like that of a nominee for an On-Floor DPM, as proposed. Specifically, the proposed rule change provides that, if at least one individual satisfies the Responsible Person requirement, then an Off-Floor DPM may designate additional individuals as DPM Designees that are not required to be Responsible Persons but must be involved in the day-to-day trading of the DPM's appointed classes and otherwise satisfy the DPM Designee requirements (in subparagraphs (b)(2) through (5)). As a result, an Off-Floor DPM will still be required to have a Responsible Person DPM Designee but will also be able to identify an additional DPM Designee that is more intimately involved in the actual daily trading in the DPM's appointed classes, which is more aligned with the role of a nominee of an On-Floor DPM.

Lastly, the proposed rule change amends Rules 3.10(a) and (d) to include the term DPM Designees among the list of individuals required to apply to the TPH Department of the Exchange and among the list of individual applicants that the TPH Department must investigate pursuant to the application process. The proposed rule change ensures that the Off-Floor DPM Designees that are not necessarily required to be Responsible Persons, as proposed, must still go through the Exchange's application process.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁰ Specifically, the

¹⁰ 15 U.S.C. 78f(b).

Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change removes impediments to and perfects the mechanism of a free and open market and national market system because it removes an unnecessary (and inadvertent) regulatory burden for On-Floor DPMs that are required, by nature of their on-floor Market-Maker position, to have a nominee pursuant to Rule 3.9 but do not hold Trading Permits that provide electronic access to the Exchange and are therefore not automatically required to designate a Responsible Person pursuant to Rule 3.9. As such, the proposed rule change allows an On-Floor DPM to designate a nominee as a DPM Designee, for which each On-Floor DPM must already have in place to represent its Market-Maker Floor Trading Permit(s), instead of having to take additional steps to identify and designate a Responsible Person just to qualify as a DPM Designee. The proposed rule change also reduces any potential confusion for investors by eliminating an unnecessary and redundant provision that DPM Designees must be approved as Trading Permit Holders, as this is not a requirement for

¹¹ 15 U.S.C. 78f(b)(5).

¹² Id.

Responsible Persons (nor did the Exchange otherwise intended to be a requirement for Off-Floor DPM Designees) and is already, and will continue to be, a requirement for all nominees pursuant to the Rule governing nominee requirements. The Exchange believes that nominees and Responsible Persons are qualified, pursuant to the Rules, to respectively represent an On-Floor DPM or Off Floor DPM. Additionally, the Exchange believes that the proposed rule change does not raise any new or novel issues nor affect the protection of investors because the Rules in effect prior the fourth quarter of 2019 provided that DPM Designees were required to be nominees, and TPH organizations with Floor Trading Permits Trading are still required to designate nominees pursuant to Rule 3.9.

The Exchange further believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and national market system because it allows for an Off-Floor DPM to designate as a DPM Designee an individual who is more intimately involved in the daily trading functions and performance of the DPM in its appointed classes, while also still having a DPM Designee that is a Responsible Person. Although a Responsible Person is qualified to represent the DPM in all Exchange matters, given the more managerial and supervisory level requirements to be a Responsible Person, such an individual might not operate day-to-day trading functions in a DPM's appointed classes. As such, an Off-Floor DPM will be able to have a DPM Designee that is more materially involved in the daily trading operation of the DPM and have authorized trading functions and perform those functions on behalf of the DPM. The Exchange believes this will provide additional assurance that a DPM may meets its quoting requirements and other Market-Maker obligations in its appointed classes and better align the level of operational responsibility required for an Off-Floor DPM Designee with that of an On-Floor DPM Designee, as proposed. For this reason, too, the Exchange also

believes that proposed rule change furthers the objectives of Section 6(c)(3) of the Act,¹³ which authorizes the Exchange to, among other things, prescribe standards of financial responsibility or operational capability and standards of training, experience and competence for its Trading Permit Holders and person associated with Trading Permit Holders. The proposed rule change also ensures that every individual designated to represent a DPM pursuant to the Rules must continue to go through the Exchange's application and investigation process.

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 that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change requiring a DPM Designee to be a nominee applies equally to all On-Floor DPMs equally, and the proposed rule change allowing an Off-Floor DPM to have additional DPM Designees required to be involved in the day-to-day operation of the DPM in its appointed classes applies equally to all Off-Floor DPMs.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change only affects DPMs of the Exchange and the requirements and process regarding their designees. The proposed rule change is not intended to address any competitive issues, but rather to more appropriately align the requirements for individuals acting on behalf of DPMs with respect to their activity on the Exchange.

¹³ 15 U.S.C. 78f(c)(3).

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

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

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵

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 will 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:

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

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

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-2021-034 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-2021-034. 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-2021-034 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).