

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92562; File No. SR-CBOE-2021-043)

August 4, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rules 3.31, 3.33 and 3.34

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 22, 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 substantially 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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

The Exchange proposes to amend Rules 3.31, 3.34 and 3.33. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is 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.

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

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

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

<sup>4</sup> 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 certain registration rules including (i) Rule 3.31 to update an incorrect cross-reference, (ii) Rule 3.33 to update a Regulatory Element Program reference and (iii) Rule 3.34 to provide the option of filing an initial or a transfer electronic Form U4 filing and any amendments to the disclosure information on Form U4 based on a manually or an electronically signed copy of the form, each as described below.

Proposed Rule Change to Rule 3.31

Rule 3.31 (Registration Categories) currently sets forth registration requirements for principal and representative registration categories. In particular, Rule 3.31(a)(2) provides that each principal as defined in paragraph (a)(1) (of Rule 3.31) is required to register with the Exchange as a General Securities Principal, subject to certain exceptions. More specifically, Rule 3.31(a)(2) provides that if a principal’s activities include the functions of a Compliance Officer, a Financial and Operations Principal, a Securities Trader Principal, a Securities Trader Compliance Officer, or a Registered Options Principal “as specified in paragraphs (a)(3) through (a)(6) of . . . Rule [3.31],” then the principal must appropriately register in one or more of these categories. The Exchange notes however that the aforementioned categories are described under

paragraphs (a)(3) through (a)(7)<sup>5</sup> (instead of through (a)(6)) and that the Exchange inadvertently omitted to cross-reference subparagraph (a)(7). Accordingly, the Exchange proposes to update the reference to (a)(6) to (a)(7) in the rule text to accurately reflect the corresponding subparagraphs to the registration categories listed under Rule 3.31(a)(2)(A)(i).

### Proposed Rule Change to Rule 3.33

Existing Rule 3.33 (Continuing Education for Registered Persons) includes Regulatory Elements for Exchange registered persons. The Regulatory Elements are Continuing Education (“CE”) programs administered by the Financial Industry Regulatory Industry, Inc. (“FINRA”) and consist of periodic computer-based training on regulatory, compliance, ethical, and supervisory subjects, and sales practice standards. Pursuant to current Rule 3.33(a)(3), the Exchange offers the following Regulatory Elements for Exchange registered persons: the S201 for registered principals and supervisors; the S106 for persons registered only as Investment Company and Variable Contracts Representatives; and the S101 for all other registered persons. The Exchange proposes to amend Rule 3.33(a)(3), to be consistent with FINRA’s most current CE programs. Specifically, the Exchange proposes to remove the language in Rule 3.33(a)(3) that provides that the S106 Regulatory Element CE Program is offered for persons registered only as Investment Company and Variable Contracts Representatives. In December 2018, the content from S106 became part of the S101 Regulatory Element CE Program and was retired as a stand-alone program.<sup>6</sup> As a result, persons registered only as Investment Company and Variable Contracts Representatives who complete the S106 CE Program, pursuant to Rule

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<sup>5</sup> See Rule 3.31(a)(7), which describes the requirements to register as a Registered Options Principal.

<sup>6</sup> See FINRA Information Notice, Administrative Changes to the Continuing Education Regulatory Element Programs (December 2, 2018), available at: <https://www.finra.org/rules-guidance/notices/information-notice-100218>.

3.33(a)(3), are now required to complete the S101 CE Program, as is currently the case for all other registered persons. Therefore, the Exchange proposes to update Rule 3.33(a)(3) to reflect this CE Program change by removing the language in Rule 3.33(a)(3) that provides that the S106 is offered for persons registered only as Investment Company and Variable Contracts Representatives while maintaining the existing language that provides that the S101 is offered for all other registered persons.

#### Proposed Rule Change to Rule 3.34

Paragraph (c) of Rule 3.34 (Electronic Filing Requirements for Uniform Forms), currently sets forth Form U4 filing requirements. Specifically, Rule 3.34(c) provides that initial and transfer electronic Form U4 filings and any amendments to the disclosure information on Form U4 must be based on a manually signed Form U4 provided to the Trading Permit Holder (“TPH”) or applicant for membership by the person on whose behalf the Form U4 is being filed, consistent with FINRA Rule 1010(c). However, FINRA recently amended their Rule 1010(c) to permit firms to choose to rely on electronic signatures to satisfy the signature requirements when filing Form U4.<sup>7</sup> The Exchange proposes to amend Rule 3.34 to similarly allow firms to rely on electronic signatures when filing Form U4, consistent with FINRA Rule 1010(c).

Specifically, the Exchange proposes to amend Exchange Rule 3.34, similar to the amendments made by FINRA, to provide firms the option of filing an initial or a transfer Form U4 based on a manually or an electronically signed copy of the form provided to the TPH, or applicant for membership, by the individual on whose behalf the form is being filed. As such, the proposed rule change removes the term “manual” from manual signature and the term

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<sup>7</sup> See Securities Exchange Release No. 91262 (March 5, 2021), 86 FR 13935 (March 11, 2021) (SR-FINRA-2021-003).

“manually” from manually signed in Rule 3.34(c) and in Interpretation and Policy .03 to Rule 3.34.<sup>8</sup> The proposed rule change provides TPHs, and applicants for membership, with an opportunity to better manage operational challenges. Particularly, the COVID-19 pandemic amplified the need to better manage operational challenges like those that arose during the pandemic<sup>9</sup> and that may continue to arise in the future. The proposed rule change would not require the use of a particular type of technology to obtain a valid electronic signature from the associated person. The Exchange believes that some firms may be unable to obtain the manual signature of applicants for registration resulting in a significant operational backlog. By permitting these firms to rely on electronic signatures to satisfy the signature requirements of Exchange Rule 3.34, the proposed rule change may reduce or eliminate this backlog. For purposes of the proposed rule change, a valid electronic signature would be any electronic mark that clearly identifies the signatory and is otherwise in compliance with the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”) and the guidance issued by the Commission relating to the E-Sign Act.<sup>10</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

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<sup>8</sup> The proposed rule change also makes minor, nonsubstantive formatting changes, including: adding a period at the end of the heading for Rule 3.34(c), which is uniform with subparagraph headings throughout the Rulebook; and adding the phrase “of this Rule” following references to subparagraph (c)(3) to provide for additional clarity regarding rule references.

<sup>9</sup> See SR-FINRA-2021-003, 86 FR at 13937 (noting the same in connection with the FINRA filing).

<sup>10</sup> See accord Securities Exchange Act Release No. 85282 (March 11, 2019), 84 FR 9573 (March 15, 2019) (Order Approving File No. SR-FINRA-2018-040) (discussing valid electronic signatures under existing guidance).

Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</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.

In particular, the Exchange believes the proposed rule change promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest, by amending an incorrect cross-reference in Rule 3.31 and a reference to an obsolete CE Program to reflect the current CE Programs administered by FINRA. Moreover, the proposed rule change updates the Exchange Rules to be consistent with current CE Program requirements and is designed to protect investors by ensuring accuracy and clarity relating to cross references in its rules and regarding CE for TPHs in Rule 3.33. Furthermore, the proposed rule change provides firms with the flexibility to rely on electronic signatures to satisfy the signature requirements of Rule 3.34. Specifically, the Exchange proposes to amend Exchange Rule 3.34, similar to the amendments made by FINRA, to provide the option of filing an initial or a transfer Form U4 based on a manually or an electronically signed copy of the form provided to the TPH, or applicant for membership, by the individual on whose behalf the form is being filed.

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

Considering the technological advancements that provide for enhanced authentication and security of electronic signatures, the Exchange believes that it is appropriate to amend Rule 3.34 to provide such flexibility. The proposed rule change also addresses the ongoing public health risks stemming from the outbreak of COVID-19 and the operational challenges that firms continue to face as a result of pandemic repercussions.<sup>13</sup> By permitting these firms to rely on electronic signatures to satisfy the signature requirements of Rule 3.34, the proposed rule change may reduce or eliminate an operational backlog due to the difficulty firms may have faced in obtaining the manual signature of applicants for registration as a result of the impact of the pandemic on daily work environments.

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 as the proposed rule changes to update an incorrect cross-reference and delete an obsolete CE Program reference are merely clarifying in nature and are not meant to address any competitive issue. The proposed change relating to manual signatures is, in all material respects, substantively identical to recent rule changes adopted by FINRA. The Exchange believes the proposed change will reduce a regulatory burden for TPHs by allowing them to rely on Form U4 copies with an electronic signature. All TPHs will have the option to rely on such forms with an electronic signature (or continue to rely on forms with a manual signature). Also, all persons registered only as Investment Company and Variable Contracts Representatives Regulatory Element are

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<sup>13</sup> See supra note 9.

already required to complete the S101 CE Program, as FINRA replaced S106 with S101 in 2018; the proposed rule change just updates the Regulatory Element number in the Rules accordingly.

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 changes are based upon the same changes recently made to FINRA Rule 1010(c) and consistent with the current Regulatory Element CE Programs administered by FINRA, as well as updates an incorrect cross-reference in the rules.

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) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), 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 upon filing. As noted by the Exchange, correcting the cross-reference in Rule 3.31(a)(2)(A)(i) and updating the reference to

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

an obsolete CE Program in Rule 3.33(a)(3) would immediately alleviate potential confusion in connection with the Exchange's publicly available rulebook. The Exchange also states that the proposed rule changes will help ensure accuracy and clarity relating to cross references in its rules and regarding CE for TPHs. Additionally, the Exchange notes that the proposed rule change to Exchange Rule 3.34 is based on a similar rule change by FINRA that has already taken effect. Finally, as the Exchange notes above in regard to its proposed rule change allowing electronic signatures to satisfy the signature requirements of Rule 3.34, the COVID-19 pandemic amplified the need to better manage operational challenges like those that arose during the pandemic<sup>16</sup> and that may continue to arise in the future.

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>17</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.

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<sup>16</sup> See supra note 9 (where FINRA noted the same). In that filing, FINRA also requested and the Commission granted a waiver of the 30-day operative delay. See SR-FINRA-2021-003, 86 FR at 13938-9.

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2021-043 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-2021-043. 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 such 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 submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2021-043 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>18</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).