

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92581; File No. SR-CBOE-2021-029)

August 5, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Increase Position Limits for Options on Certain Exchange-Traded Funds and an Exchange-Traded Note

I. Introduction

On April 21, 2021, Cboe Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend Interpretation and Policy .07 of Exchange Rule 8.30, Position Limits, to increase the position limits for options on the following exchange traded funds (“ETFs”) and exchange traded note (“ETN”) (collectively, “Exchange Traded Products” or “ETP(s)”): SPDR Gold Shares (“GLD”), iShares iBoxx \$ Investment Grade Corporate Bond ETF (“LQD”), iShares Silver Trust (“SLV”), iPath S&P 500 VIX Short-Term Futures ETN (“VXX”), ProShares Ultra VIX Short-Term Futures ETF (“UVXY”), and VanEck Vectors Gold Miners ETF (“GDX”). The proposed rule change was published for comment in the Federal Register on May 10, 2021.<sup>3</sup> On June 17, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On July

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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> See Securities Exchange Act Release No. 91767 (May 4, 2021), 86 FR 25026.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 92204, 86 FR 33395 (June 24, 2021). The Commission designated August 8, 2021, as the date by which the Commission shall

27, 2021, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.<sup>6</sup> The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal, as Modified by Amendment No. 1

Currently, position limits for options on ETFs and ETNs traded on the Exchange, such as those subject to this proposal, as amended, are determined pursuant to Exchange Rule 8.30, and generally vary according to the number of outstanding shares and past six-month trading volume of the underlying security. Options on the securities with the largest numbers of outstanding shares and trading volume have a standard option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.<sup>8</sup> In addition, Interpretation and Policy .07 of Exchange Rule 8.30 currently sets forth separate position limits for options on certain ETFs that range from 300,000 to 3.6 million contracts.

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approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

<sup>6</sup> In Amendment No. 1, the Exchange: (1) reduced the proposed position limit for GLD options from 1,000,000 contracts to 500,000 contracts; and (2) provided additional justification and analysis in support of the proposal. The additional justification and analysis provided by Amendment No. 1 is included in the description below of the proposal as amended. The full text of Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2021-029/srcboe2021029-9094584-246812.pdf>.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Interpretation and Policy .02(e) to Exchange Rule 8.30.

Options on GLD, SLV, LQD, GDX, VXX, and UVXY are currently subject to the standard position limit of 250,000 contracts as set forth in Exchange Rule 8.30.<sup>9</sup> The purpose of the proposed rule change, as modified by Amendment No.1, is to amend Interpretation and Policy .07 to Exchange Rule 8.30 to increase the position limits for options on GLD, SLV, LQD, GDX, VXX, and UVXY from 250,000 contracts to 500,000 contracts.<sup>10</sup> The Exchange believes that the proposed position limit increases will lead to a more liquid and competitive market environment for these options that will benefit customers interested in trading these products.<sup>11</sup> The Exchange states that, to support the proposed position limit increases, it has considered, and provided statistics regarding, the liquidity of the underlying ETPs, the value of the underlying securities or index components and relevant marketplace, the share and option volume for the underlying ETPs, and, where applicable, the availability or comparison of economically equivalent products to options on the underlying ETPs.

Specifically, in support of its proposal to increase the position limits for options on GLD and SLV from 250,000 contracts to 500,000 contracts, the Exchange, among other things, compares the trading characteristics of GLD and SLV to those of the iShares MSCI Brazil Capped ETF (“EWZ”), the iShares 20+ Year Treasury Bond Fund ETF (“TLT”), the iShares MSCI Japan ETF (“EWJ”), and the iShares iBoxx High Yield Corporate Bond Fund (“HYG”),

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<sup>9</sup> See Amendment No. 1, supra note 6, at 6; see also id. at 10, 12, 16, 17, 19, for descriptions provided by the Exchange regarding the composition, design, and investment objectives of the ETPs underlying each of the options subject to this proposal.

<sup>10</sup> Pursuant to Exchange Rule 8.42, Interpretation and Policy .02, the text of which is not being amended by this proposal, the exercise limits for GLD, SLV, LQD, GDX, VXX, and UVXY options would be similarly increased as a result of this proposal.

<sup>11</sup> See Amendment No. 1, supra note 6, at 24.

all of which currently have a position limit of 500,000 contracts.<sup>12</sup> The Exchange states that the average daily trading volume (“ADV”) in calendar year 2020 for GLD was 12.3 million shares and SLV was 33.1 million shares compared to 29.2 million shares for EWZ, 11.5 million shares for TLT, 8.2 million shares for EWJ, and 30.5 million shares for HYG;<sup>13</sup> the total shares outstanding as of April 5, 2021 for GLD was 354.3 million and SLV was 619.3 million compared to 173.8 million for EWZ, 103.7 million for TLT, 185.3 million for EWJ, and 254.5 million for HYG;<sup>14</sup> and the fund market cap as of January 14, 2021 for GLD was \$70,195.7 million and SLV was \$14,228.4 million compared to \$6,506.8 million for EWZ, \$17,121.3 million for TLT, \$13,860.7 million for EWJ, and \$24,067.5 million for HYG.<sup>15</sup>

In addition, the Exchange states that it recognizes that the spot metal markets underlying SLV and GLD differ from the equities markets underlying EWZ, EWJ, TLT, and HYG, but that it does not believe that position limit increases for options on GLD and SLV will have any adverse impact on the underlying spot gold and silver markets.<sup>16</sup> Specifically, the Exchange states that gold futures currently have a value of approximately \$93.2 billion in open interest, have experienced an ADV of approximately 264,000 contracts (equivalent to approximately 264 million GLD contracts) from January through May 2021, and currently are subject to a position

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<sup>12</sup> See id. at 9-13. See also Exchange Rule 8.30, Interpretation and Policy .07. Prior to the submission of Amendment No. 1, the Exchange originally proposed to increase the position limit for options on GLD to 1,000,000 contracts.

<sup>13</sup> See Amendment No. 1, supra note 6, at 11-12.

<sup>14</sup> See id. at 9-10.

<sup>15</sup> See id. at 9-12. The Exchange also states that demand for trading GLD and SLV options has increased whereas the position limits for these products have remained the same, which may impact the ability of Trading Permit Holders (“TPHs”) to effectively hedge against exposure to physical gold and silver. See id. at 13.

<sup>16</sup> See id. at 14.

limit of 6,000 contracts, which is notionally equivalent to 6,000,000 GLD option contracts.<sup>17</sup> The Exchange similarly states that silver futures currently have a value of approximately \$25.7 billion in open interest, have experienced an ADV of approximately 93,000 contracts (equivalent to approximately 465 million SLV contracts) from January through May 2021, and currently are subject to a position limit of 3,000 contracts, which is notionally equivalent to 15,000,000 SLV option contracts.<sup>18</sup> The Exchange believes that the volume in and value of the gold and silver futures markets indicate that the underlying markets are sufficiently large and liquid enough to absorb potential price movements and large-sized trades as a result of position limit increases for options on GLD and SLV.<sup>19</sup>

The Exchange also provides data showing that the volume-weighted average of the absolute value of deltas for GLD and SLV options trades from March 2019 through June 2021 was approximately 0.34 per GLD options trade and approximately 0.28 per SLV options trade.<sup>20</sup> The Exchange believes these low absolute value deltas indicate that increases in GLD and SLV options trading would have minimal impact on the ability of the underlying metals markets to absorb any additional volume related to increased position limits and hedging activity.<sup>21</sup>

In support of its proposal to increase the position limits for options on VXX and UVXY from 250,000 contracts to 500,000 contracts, the Exchange, among other things, compares the

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<sup>17</sup> See id. The Exchange understands that its market-makers use both GLD and gold futures to hedge their GLD options positions, which the Exchange believes provides for a balance across the gold-related marketplaces, mitigating potential concerns that either the underlying or the futures market might experience additional pressure as a result of an increase in activity in the GLD options space. See id.

<sup>18</sup> See id.

<sup>19</sup> See id. at 14-15.

<sup>20</sup> See id. at 15.

<sup>21</sup> See id. at 15-16.

trading characteristics of VXX and UVXY to those of EWZ, TLT, EWJ, and HYG, all of which currently have a position limit of 500,000 contracts.<sup>22</sup> The Exchange states that the ADV in calendar year 2020 for VXX was 39.3 million shares and UVXY was 29.3 million shares compared to 29.2 million shares for EWZ, 11.5 million shares for TLT, 8.2 million shares for EWJ, and 30.5 million shares for HYG;<sup>23</sup> the total shares outstanding as of April 14, 2021 for VXX was 110.8 million and UVXY was 228.7 million compared to 173.8 million for EWZ, 103.7 million for TLT, 185.3 million for EWJ, and 254.5 million for HYG;<sup>24</sup> and the fund market cap as of January 14, 2021 for VXX was \$1,023 million and UVXY was \$1,580.6 million compared to \$6,506.8 million for EWZ, \$17,121.3 million for TLT, \$13,860.7 million for EWJ, and \$24,067.5 million for HYG.<sup>25</sup> The Exchange also states that the 2020 ADV for trading in VIX futures was approximately 192,000 contracts and VIX futures currently have a value of approximately \$7.6 billion in open interest.<sup>26</sup> The Exchange believes that its proffered data indicates that the market for VXX and UVXY is sufficiently large and liquid enough to absorb price movements and large-sized trades.<sup>27</sup>

The Exchange further states that the VIX futures that comprise both VXX and UVXY are a perfect hedge to the underlying delta risk, but that such futures are not recognized as hedges for

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<sup>22</sup> See id. at 9-10, 19-20. See also Exchange Rule 8.30, Interpretation and Policy .07. The Exchange also states that, while VIX options share similar trading characteristics with options on VXX and UVXY, VIX options are not currently subject to position limits. See Amendment No. 1, supra note 6, at 20.

<sup>23</sup> See Amendment No. 1, supra note 6, at 19-20.

<sup>24</sup> See id. at 9-10.

<sup>25</sup> See id.

<sup>26</sup> See id. at 20.

<sup>27</sup> See id.

options contract equivalent of the net delta (“OCEND”) purposes.<sup>28</sup> A TPH that is not delta neutral must be hedged to the extent that the OCEND stays within the applicable position limit.<sup>29</sup> According to the Exchange, due to the OCEND limitations and current position limits for options on VXX and UVXY, heightened demand for liquidity in VXX and UVXY options can cause TPHs that are hedged via the component futures to approach position limits more rapidly.<sup>30</sup> In order to stay within the applicable position limit, TPHs may shift out of futures hedges into hedges with options or may purchase or create shares of the underlying ETPs. As a result, TPHs may be unable to provide the most concise pricing to customers participating in these ETPs due to increased costs associated with transacting in additional or alternative hedging vehicles, and risk may concentrate in the ETP issuer rather than being spread across multiple market participants, which may exacerbate an already volatile market.<sup>31</sup> The Exchange believes that increasing position limits for options on VXX and UVXY may assist in maintaining a fair and orderly market during times of higher market volatility, and may reduce any potential additional impact on the futures markets as a result of an increased demand (or, conversely, supply) for shares of the ETPs during periods of higher market volatility or illiquidity.<sup>32</sup>

The Exchange further believes that the VIX futures markets, including in the Trade at Settlement (“TAS”) VIX futures market, wherein VXX and UVXY are primarily rebalanced,

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<sup>28</sup> See id.

<sup>29</sup> See id.

<sup>30</sup> See id. at 20-21.

<sup>31</sup> See id. at 21.

<sup>32</sup> See id. at 21-22. In contrast, the Exchange believes that the current position limits for VXX and UVXY options may, at times in which there is higher volatility and, thus, higher demand in connection with these options, reduce liquidity and create further volatility. See id. at 21.

maintain robust, liquid markets such that they can sufficiently handle any additional options delta exposure and resulting increase in volatility options trading, including during the rebalancing period.<sup>33</sup> Specifically, the Exchange states that it has observed that the ADV in the VIX futures TAS market has grown from approximately 32,200 contracts in 2018 to approximately 42,200 contracts in 2021.<sup>34</sup>

In support of its proposal to increase the position limits for options on GDX from 250,000 contracts to 500,000 contracts, the Exchange, among other things, compares the trading characteristics of GDX to those of EWZ, TLT, EWJ, and HYG, all of which currently have a position limit of 500,000 contracts.<sup>35</sup> The Exchange states that the ADV in calendar year 2020 for GDX was 39.4 million shares compared to 29.2 million shares for EWZ, 11.5 million shares for TLT, 8.2 million shares for EWJ, and 30.5 million shares for HYG;<sup>36</sup> the total shares outstanding as of April 5, 2021 for GDX was 419.8 million compared to 173.8 million for EWZ, 103.7 million for TLT, 185.3 million for EWJ, and 254.5 million for HYG;<sup>37</sup> and the fund market cap as of January 14, 2021 for GDX was \$16,170.5 million compared to \$6,506.8 million for EWZ, \$17,121.3 million for TLT, \$13,860.7 million for EWJ, and \$24,067.5 million for HYG.<sup>38</sup> The Exchange also states that many of the Brazil-based gold mining constituents included in GDX are also included in EWZ, and that the Exchange has not identified any issues with the continued listing and trading of EWZ options or any adverse market impact on EWZ in

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<sup>33</sup> See id. at 22.

<sup>34</sup> See id.

<sup>35</sup> See id. at 9-10, 18. See also Exchange Rule 8.30, Interpretation and Policy .07.

<sup>36</sup> See Amendment No. 1, supra note 6, at 18.

<sup>37</sup> See id. at 9-10.

<sup>38</sup> See id. at 9-10, 18.



connection with the current 500,000 position limit in place for EWZ options.<sup>39</sup> Further, the Exchange states that the components of the NYSE Arca Gold Miners Index – the price and yield performance of which GDX seeks to replicate as closely as possible – can be used to create the GDX ETF, and currently must each have a market capitalization greater than \$750 million, an ADV of at least 50,000 shares, and an average daily value traded of at least \$1 million in order to be eligible for inclusion in the index.<sup>40</sup>

In support of its proposal to increase the position limit for LQD from 250,000 contracts to 500,000 contracts, the Exchange, among other things, compared the trading characteristics of LQD to those of EWZ, TLT, and EWJ, all of which currently have a position limit of 500,000 contracts.<sup>41</sup> The Exchange provides data demonstrating that the ADV in calendar year 2020 for LQD was 14.1 million shares compared to 29.2 million shares for EWZ, 11.5 million shares for TLT, and 8.2 million shares for EWJ;<sup>42</sup> the total shares outstanding as of April 5, 2021 for LQD was 308.1 million compared to 173.8 million for EWZ, 103.7 million for TLT, and 185.3 million for EWJ;<sup>43</sup> and the fund market cap as of January 14, 2021 for LQD was \$54,113.7 million compared to \$6,506.8 million for EWZ, \$17,121.3 million for TLT, and \$13,860.7 million for EWJ.<sup>44</sup> The Exchange also states that LQD tracks the performance of the Markit iBoxx USD Liquid Investment Grade Index, which is an index designed as a subset of the broader U.S. dollar-denominated corporate bond market and can be used in creating a basket of securities that

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<sup>39</sup> See id. at 18.

<sup>40</sup> See id. at 17-18.

<sup>41</sup> See id. at 9-10, 16-17. See also Exchange Rule 8.30, Interpretation and Policy .07.

<sup>42</sup> See Amendment No. 1, supra note 6, at 16.

<sup>43</sup> See id. at 9-10.

<sup>44</sup> See id. at 9-10, 16.

equate to the LQD ETF, and which is comprised of over 8,000 bonds for which the outstanding face value of each must be greater than or equal to \$2 billion.<sup>45</sup>

The Exchange states that the current position limits for the options subject to the proposal may have impeded the ability of market makers to make markets on the Exchange.<sup>46</sup>

Specifically, the Exchange avers, the proposal is designed to encourage liquidity providers to provide additional liquidity to the Exchange and other market participants to shift liquidity from over-the-counter markets onto the Exchange, which, it believes, would enhance the process of price discovery conducted on the Exchange through increased order flow.<sup>47</sup> The proposal also would benefit market participants, the Exchange maintains, by providing them with the ability to more effectively execute their trading and hedging activities.<sup>48</sup>

With regard to the concerns that position limits generally are meant to address, the Exchange represents that the structure of the underlying ETPs subject to this proposal, the considerable market capitalization of the ETPs and their underlying component securities, and the liquidity of the market for options on these ETPs and the underlying component securities mitigate concerns regarding potential manipulation of the products and disruption of the underlying markets due to the increased position limits.<sup>49</sup> The Exchange also describes: (i) the creation and redemption process for ETFs (and a similar process for the ETN to which the proposal relates);<sup>50</sup> (ii) the arbitrage activity that ensues when such instruments are overpriced or

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<sup>45</sup> See id. at 16-17.

<sup>46</sup> See id. at 5.

<sup>47</sup> See id. at 5, 27-28.

<sup>48</sup> See id. at 5, 28.

<sup>49</sup> See id.

<sup>50</sup> With regard to the ETN option included in the proposal – VXX – the Exchange stated that there is no direct analogue to ETF “creation,” but observed that the ETN issuer may

are trading at a discount to the securities on which they are based and helps to keep the instrument's price in line with the value of its underlying portfolio; and (iii) how these processes, in the Exchange's view, serve to mitigate the potential price impact of the ETF or ETN shares that might otherwise result from increased position limits.<sup>51</sup>

In addition, the Exchange states that the options reporting requirements of Exchange Rule 8.43 would continue to be applicable to the options subject to this proposal.<sup>52</sup> As set forth in Exchange Rule 8.43(a), each TPH must report to the Exchange certain information in relation to any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts in any single class of option contracts dealt in on the Exchange.<sup>53</sup> Further, Exchange Rule 8.43(b) requires each TPH (other than an Exchange market-maker or designated primary market-maker)<sup>54</sup> that maintains a position in excess of 10,000 non-FLEX equity option contracts on the same side of the market, on behalf of its own account or for the account of a customer, to

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sell additional VXX shares from its inventory. Regardless of whether VXX shares are redeemed or new VXX shares are issued, the Exchange stated, an issuer may transact in VIX futures in order to hedge its exposure, resulting in an arbitrage process similar to the one described for ETFs described above, thereby helping to keep an ETN's price in line with the value of its underlying index. See id. at 23.

<sup>51</sup> See id. at 22-24.

<sup>52</sup> See id. at 24-25.

<sup>53</sup> The report must include, for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered. See Exchange Rule 8.43(a).

<sup>54</sup> According to the Exchange, market-makers (including designated primary market-makers) are exempt from the referenced reporting requirement because market-maker information can be accessed through the Exchange's market surveillance systems. See Amendment No. 1, supra note 6, at 25.

report to the Exchange information as to whether such positions are hedged, and provide documentation as to how such contracts are hedged.<sup>55</sup>

The Exchange also represents that the existing surveillance procedures and reporting requirements at the Exchange and other self-regulatory organizations are capable of properly identifying disruptive and/or manipulative trading activity.<sup>56</sup> According to the Exchange, its surveillance procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlying products.<sup>57</sup> In addition, the Exchange states that its surveillance procedures have been effective for the surveillance of trading in the options subject to this proposal, and will continue to be employed.<sup>58</sup>

The Exchange further states its belief that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a TPH or its customer may try to maintain an inordinately large unhedged position in the options subject to this proposal.<sup>59</sup> Current margin and risk-based haircut methodologies, the Exchange states, serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a TPH must maintain for a large position held by itself or by its customer.<sup>60</sup> In addition, the

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<sup>55</sup> According to the Exchange, this information would include, but would not be limited to, the option position, whether such position is hedged and, if so, a description of the hedge. See id. at 24-25.

<sup>56</sup> See id. at 25.

<sup>57</sup> See id. at 25-26.

<sup>58</sup> See id. at 26 n.36. The Exchange represents that non-U.S. component securities that are not subject to a comprehensive surveillance agreement do not, in the aggregate, represent more than 50% of the weight of any of the underlying ETPs that are ETFs. See id. at 7.

<sup>59</sup> See id. at 26.

<sup>60</sup> See id.

Exchange notes that the Commission's net capital rule, Rule 15c3-1 under the Act,<sup>61</sup> imposes a capital charge on TPHs to the extent of any margin deficiency resulting from the higher margin requirement.<sup>62</sup>

III. Proceedings to Determine Whether to Approve or Disapprove SR-CBOE-2021-029, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>63</sup> to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comment on the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>64</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposed rule change, as modified by Amendment No. 1, with the Act and, in particular, Section 6(b)(5) of the Act,<sup>65</sup> which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open

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<sup>61</sup> 17 CFR 240.15c3-1.

<sup>62</sup> See Amendment No. 1, supra note 6, at 26.

<sup>63</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>64</sup> Id.

<sup>65</sup> 15 U.S.C. 78f(b)(5).

market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."<sup>66</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>67</sup> and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>68</sup>

Position and exercise limits serve as a regulatory tool designed to address manipulative schemes and adverse market impact surrounding the use of options.<sup>69</sup> As discussed above, the Exchange has proposed to increase the position and exercise limits for options on GLD, SLV, LQD, GDX, VXX, and UVXY from 250,000 contracts to 500,000 contracts. The proposed doubling of the position and exercise limits for these options would be a substantial increase from current levels, and raises the potential for adverse impacts in the underlying markets implicated by this proposal. The initial proposal did not provide sufficient information to

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<sup>66</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>67</sup> See id.

<sup>68</sup> See id.

<sup>69</sup> See, e.g., Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR-CBOE-2012-066).

explain why all of these underlying markets are sufficiently comparable to the markets underlying the option products currently subject to a 500,000 contract position limit or sufficient information to independently support a finding that all of the proposed position limit increases would not have an adverse market impact. Accordingly, the initial proposal did not provide an adequate basis for the Commission to conclude that the proposal would be consistent with Section 6(b)(5) of the Act.

The Exchange recently provided additional analysis and justification for its proposal in Amendment No. 1. Amendment No. 1 was submitted shortly before the expiration of the statutory deadline for the Commission to act on the Exchange's proposal, leaving the Commission, as well as any potential commenters, with insufficient time to carefully consider the new data and analysis before the deadline. In the proceedings that the Commission is instituting today, the Commission will be evaluating, among other things, the Exchange's amended statements, and invites comment on the extent to which they justify approval of the proposal.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of data, views, and

arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,<sup>70</sup> any request for an opportunity to make an oral presentation.<sup>71</sup>

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, as modified by Amendment No. 1, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on whether the position and exercise limit for each option as proposed could impact markets adversely.

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. 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 No. SR-CBOE-2021-029 on the subject line.

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<sup>70</sup> 17 CFR 240.19b-4.

<sup>71</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).



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 No. SR-CBOE-2021-029. The 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 No. SR-CBOE-2021-029 and should be submitted by [insert date 21 days from the date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>72</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>72</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).