SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93326; File No. SR-CBOE-2021-059)

October 14, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend Rule 5.54 and Rule 5.55 in Connection with a Designated Primary Market-Maker's and a Lead Market-Maker's Obligation to Submit Opening Quotes for the Regular Trading Hours Session in Index Options

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 October 8, 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, II, and III 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 Act[3] 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 5.54 and Rule 5.55 in connection with a Designated Primary Market-Maker's ("DPM") and a Lead Market-Maker's ("LMM") obligation to submit opening quotes for the Regular Trading Hours session in index options, and to make a clarifying, nonsubstantive change. The text of the proposed rule change is provided in Exhibit 5.

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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 Exchange proposes to amend Rule 5.54 and Rule 5.55 in connection with a DPM's and an LMM's obligation, respectively, to submit opening quotes for the Regular Trading Hours trading session in index options.

Current Rule 5.54(a)(6) requires each DPM to enter opening quotes for the Regular Trading Hours trading[5] session within one minute of the initiation of an opening rotation in any series that is not open due to the lack of a quote pursuant to Rule 5.31. Likewise, current Rule 5.55(a)(2) requires each LMM to enter opening quotes for the Regular Trading Hours trading session within one minute of the initiation of an opening rotation in any series that is not open

5 The proposed rule change makes a nonsubstantive change by updating "Regular Trading session" to "Regular Trading Hours trading session", which is more in line with the defined term and the corresponding language that governs the opening quote requirement for LMMs. See Rule 1.1, definition of Regular Trading Hours and RTH; and Rule 5.55(a)(3).

due to the lack of a quote pursuant to Rule 5.31. Pursuant to Rule 5.31(e)(1), the System initiates an opening rotation for an option series following the occurrence of an opening rotation trigger pursuant to Rule 5.31(d). Specifically, Rule 5.31(d)(1)(B) governs the opening rotation trigger for index options and provides that the System initiates the opening rotation for index options after a time period (which the Exchange determines for all classes) following the System's observation after 9:30 a.m.[6] of the first disseminated index value for the index underlying an index option.[7] The Exchange has observed that index reporting authorities generally disseminate the first index value beginning at 9:30 a.m., regardless of whether all of the underlying index components have opened. The System then initiates the opening rotation in an index option one second[8] after the first index value publication and then determines if a series is eligible to open pursuant to Rule 5.31(e)(1). If there is no Composite Market (which is comprised of the better of Market-Maker bulk messages on the Exchange or any away market quotes),[9] a series is ineligible to open until certain conditions are met.[10] Because the System is unable to open a series due to a lack of a quote, the DPM or LMM in that index class is then obligated to enter opening quotes within the same minute of the initiation of the opening rotation pursuant to Rule 5.54(a)(6) or

6 Unless otherwise specified, all times in the Rules are Eastern Time. See Rule 1.6.

7 For VIX Index options, the System initiates the opening rotation at 9:30 a.m. See Rule 5.31(d)(1)(C).

8 The current delay period following the first disseminated index value, as determined by the Exchange, is one second.

9 See Rule 5.31(a), which provides that the term "Composite Market" means the market for a series comprised of (1) the higher of the then current best appointed Market-Maker bulk message bid on the Exchange and the away best bid ("ABB") (if there is an ABB) and (2) the lower of the then-current best appointed Market-Maker bulk message offer on the Exchange and the away best offer ("ABO") (if there is an ABO).

10 Specifically, until one of the conditions in Rule 5.31(e)(1)(A) or (B) for the series is satisfied, until the series opens pursuant to a forced opening as set forth in Rule 5.31(e)(4), or the Exchange opens the series pursuant to Rule 5.31(h).

Rule 5.55(a)(2), respectively.

As stated, index reporting authorities generally disseminate the first index value at 9:30 a.m., which is usually before all of the underlying index components are opened. While underlying index components usually begin opening at 9:30 a.m., for some indexes, a substantial portion of the underlying components may not regularly open within the 9:30 a.m. minute -- that is, within one minute of the first disseminated index value (i.e., the initiation of an opening rotation), in which a DPM or LMM must provide opening quotes for a series not open due to the lack of quote. The Exchange understands that DPMs and LMMs often use the pricing of the related index futures products, which are already trading at 9:30 a.m., rather than the index spot value to price the index options. However, some indexes do not have a related futures product, and DPMs in these index options must rely on the index spot value to price the options. DPMs and LMMs in such index options have expressed to the Exchange that, for purposes of their quoting risk profiles, they do not wish to begin quoting before a substantial number of the underlying index components have opened (which may not necessarily be within the 9:30 a.m. minute).[11]. Without the opening prices for a substantial number of the underlying index components available, DPMs and LMMs that may use the index spot value to the options (particularly those without a related index futures) may not be able to provide quotes that reflect then-current market conditions for the series in those options in the same manner as they would be able to for an index series in which all or a substantial number of the underlying index components have opened. Therefore, the Exchange proposes to amend the DPM and LMM

11 The Exchange notes it is possible that some DPMs and LMMs may also rely on spot values as input in their option pricing models for index options for which a related index futures product is available. However, the Exchange understands from DPMs and LMMs that the spot values are generally not the primary source of information used for pricing for such index options.

opening quote requirement to provide the Exchange with the flexibility to specify the period of time from the initiation of the opening rotation in certain index options before a DPM or LMM is required to provide opening quotes.

Specifically, the proposed rule change updates Rule 5.54(a)(6) and Rule 5.55(a)(2) to require each DPM and LMM, respectively, to enter opening quotes for the Regular Trading Hours trading session in any series that is not open due to the lack of a quote pursuant to Rule 5.31 within (i) a specified time period (determined by the Exchange on a class-by-class basis) for index options, and (ii) one minute for equity options, of the initiation of an opening rotation. The proposed rule change is designed to allow the Exchange to specify a period of time following the initiation of the opening rotation in index options long enough to allow a substantial portion of the underlying index components to open before a DPM or LMM is required to submit opening quotes in series that are ineligible to open given a lack of quote. The Exchange this will enable DPMs and LMMs to price those index options in a manner that may more closely reflect then-current market conditions at the open and provide a tighter market upon which a series may open.

As indicated above, different option classes may have different characteristics and trading models, and the proposed flexibility will permit the Exchange to apply different timing parameters in connection with a DPM's or LMM's opening quote obligation to address those differences, in much the same way the Exchange Rules already permit the Exchange to apply different parameters in many places. The Exchange notes that the Exchange Rules provide the Exchange with similar flexibility regarding timing in connection with the opening of trading on the Exchange,[12] as well as similar flexibility to apply different settings or designations on a class-by-class basis, including in connection with Market-Maker obligations.[13]

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

In particular, the Exchange believes the proposed rule change will remove impediments

12 See Rule 5.31(d)(1)(B), which provides that, for index options, the System initiates the opening rotation after a time period (which the Exchange determines for all classes) following the System's observation after 9:30 a.m. of the first disseminated index value for the index underlying an index option (except for VIX Index options).

13 See Rule 5.52(b), which allows the Exchange to determine the minimum size required for a Market-Maker's quotes on a class-by-class basis; and Rule 3.53, which permits the Exchange to authorize a DPM to function remotely away from the Exchange's trading floor on a class-by-class basis.

14 15 U.S.C. 78f(b).

15 15 U.S.C. 78f(b)(5).

16 Id.

to and perfect the mechanism of a free and open market and protect investors, because it is designed to allow the Exchange to specify a period of time following the initiation of the opening rotation in index options long enough to allow a substantial portion of the underlying index components to open before a DPM or LMM is required to submit opening quotes in series that are ineligible to open given a lack of quote.. The Exchange believes it will protect investors to not require DPMs and LMMs to submit quotes when index spot values may not be fully representative of the market due to the lack of a substantial portion of the components being open. As noted above, while DPMs and LMMs generally rely on futures pricing if there is a related index future trading, DPMs and LMMs will generally rely on index spot values when there is not such futures product. The Exchange believes it is reasonable and appropriate to not require DPMs and LMMs to quote in such an index option prior to the time when a substantial portion of the underlying index components have opened, particularly when DPMs' and LMMs' quoting risk profiles rely on index spot values, which may not regularly occur for some indexes within the 9:30 a.m. minute after the first index value is disseminated. By allowing the Exchange to specify a period of time following the initiation of an opening rotation in index options long enough to allow a substantial portion of the underlying index components to open before a DPM's or an LMM's opening quote obligation is triggered, the proposed rule change will enable DPMs and LMMs to provide pricing in those index options that may better reflect then-current market conditions at the open and a tighter market upon which the series may open, to the benefit of all investors. In addition to this, and as described above, the Exchange notes that, because different option classes may have different characteristics and trading models, the Exchange Rules currently permit the Exchange to apply different parameters in many places to address such differences; including in connection with the opening of trading on the Exchange[17] and in connection with Market-Maker obligations.

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 allowing different time periods during which DPMs and LMMs may have an opening quote obligation will reflect differing characteristics of index options listed on the Exchange. For some indexes, a substantial portion of the underlying components may not regularly open within a minute (i.e., 9:30 a.m.) of the first disseminated index value. As noted above, while some DPMs and LMMs quote options based on pricing of related index futures, DPMs and LMMs in options that do not have related index futures quote primarily based on these index values. If a DPM or LMM is required to submit opening quotes in such an index option prior to a substantial portion of the underlying components being open, the DPM's or LMM's quotes may not reflect then-current market conditions. The proposed rule change will allow for enough time to pass in order for a substantial portion of the underlying index components for certain indexes to open, particularly those in which the Exchange understands DPMs and LMMs may rely on the index spot values (e.g., because the index does not have a related futures product). Therefore, the Exchange believes the proposed rule change will impose the opening quoting requirement on DPMs and LMMs at a time when they can quote using information that more fully incorporates then-current market conditions, enabling DPMs and LMMs to more accurately price such

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17 See supra note 8.

options and provide for a tighter spread upon the opening of the series. An Exchange-determined period of time before a DPM's and LMM's opening quote obligations are triggered in an index option class will apply uniformly to any DPM and/or LMM that may be appointed in that class.

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 it relates solely to a quoting obligation applicable to DPMs and LMMs on the Exchange. The Exchange notes that other options exchanges that may have similar opening quote requirements for their market makers may, in their discretion, adopt similar flexibility regarding the timing of the opening quote requirements in connection with index options.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)[18] of the Act and Rule 19b-4(f)(6)[19] thereunder. Because the 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 and Rule 19b-4(f)(6) thereunder.

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

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[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b-4(f)(6).

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 under Section 19(b)(2)(B)[20] of the Act 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:

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-2021-059 on the subject line.

Paper Comments:

- Send paper comments in triplicate to the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2021-059. 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

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20 15 U.S.C. 78s(b)(2)(B).

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-2021-059 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.[21]

J. Matthew DeLesDernier
Assistant Secretary

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[21] 17 CFR 200.30-3(a)(12).