

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93887; File No. SR-C2-2021-019)

December 30, 2021

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Certain Fine Amounts in Rule 13.15, which Governs the Exchange's Minor Rule Violation Plan, and Non-substantive Clarifying Changes

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 December 16, 2021, Cboe C2 Exchange, Inc. (the "Exchange" or "C2") 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

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

The Exchange proposes to amend Rule 13.15, which governs the Exchange's Minor Rule Violation Plan ("MRVP"), in connection with applicable fines, as well as a clarifying, nonsubstantive change. 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://markets.cboe.com/us/options/regulation/rule_filings/ctwo/), 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.

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 III 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 its MRVP in Rule 13.15(g)(14) in connection with the fine schedule applicable for minor rule violations of a Market-Maker’s quoting obligations and proposes to update language in Chapter 13 to reflect recent changes to Cboe Exchange, Inc. (“Cboe Options”) MRVP. Chapter 13 of the C2 Rulebook incorporates Cboe Options Chapter 13, in most part, by reference. Rule 13.15 provides for disposition of specific violations through assessment of fines in lieu of conducting a formal disciplinary proceeding. Rule 13.15(g) sets forth the list of specific Exchange Rules under which a Trading Permit Holder (“TPH”) or person associated with or employed by a TPH may be subject to a fine for violations of such Rules and the applicable fines that may be imposed by the Exchange.

The proposed rule change amends the fine schedule applicable to Maker-Makers for failure to meet Exchange continuous quoting obligations. The Exchange notes that because Cboe Options Rule 13.15(g)(9)³ applies to violations of Cboe Options’ Market-Maker quoting obligations, this

³ Previously Cboe Options Rule 13.15(g)(14). The paragraphs in Cboe Options Rule 13.15(g) were recently renumbered. See Securities Exchange Release No. 92702 (August 18, 2021), 86 FR 47346 (August 24, 2021) (SR-CBOE-2021-045). As a result, the proposed rule change updates Rules 13.15(g)(6), (g)(14), and (g)(19) to Rules (g)(4),

subparagraph is inapplicable to Market-Makers on C2. Instead, the Exchange maintains its own Rule 13.15(g)(14),⁴ which governs minor rule violations of C2 Market-Makers' continuous quoting obligations. Specifically, Rule 13.15(g)(14) (13.15(g)(9), as amended)⁵ provides that a fine will be imposed upon a Market-Maker in accordance with the fine schedule set forth below for failure to meet its continuous quoting obligations (Rule 5.52(d)):

For the first offense during any rolling 24-month period, the fine schedule imposed by Rule 13.15(g)(14) currently permits the Exchange to apply a fine ranging between \$2,000 and \$4,000. For subsequent offenses during the same period, the fine schedule currently permits the Exchange to apply a fine ranging between \$4,000 and \$5,000. The proposed rule change updates the fine schedule to provide that, during any rolling 24-month period, the Exchange may give a Letter of Caution for a first offense, may apply a fine of \$1,500 for a second offense, may apply a fine of \$3,000 for a third offense,⁶ and may proceed with formal disciplinary action for subsequent offenses. As is the case for all rule violations covered under Rule 13.15(g), the Exchange may determine that a violation of Market-Maker quoting obligations is intentional, egregious, or otherwise not minor in nature and choose to proceed under the Exchange's formal disciplinary rules

(g)(9), and (g)(14), respectively, as well as references where applicable, to be consistent with the recently renumbered paragraphs in Cboe Options Rule 13.15(g).

⁴ See id.

⁵ See id.

⁶ The Exchange notes that Rule 13.15(a) authorizes the Exchange to impose a fine, not to exceed \$5,000, for minor rule violations in lieu of commencing a disciplinary proceeding. Additionally, any fine imposed pursuant to Rule 13.15 that (1) does not exceed \$2,500 and (2) is not contested, shall be reported by the Exchange to the Commission on a periodic, rather than a current, basis, except as may otherwise be required by Exchange Act Rule 19d-1 and by any other regulatory authority.

rather than its MRVP.⁷ The Exchange may continue to aggregate individual violations of particular rules and treat such violations as a single offense.⁸

The Exchange believes it is appropriate to remove the range of fines imposed for first and subsequent offenses and, instead, apply a letter of caution for a first offense, a specified fine amount for a second and a third offense, and formal disciplinary proceedings for subsequent offenses. Particularly, the Exchange believes that applying a lesser penalty (Letter of Caution) for a first offense and then providing a higher, itemized fine per second and third offenses and, ultimately, formal disciplinary proceedings for any subsequent offenses during a rolling 24-month period, will allow the Exchange to levy progressively larger fines and greater penalties against repeat-offenders (as opposed to a fine range for any offenses that may come after a first offense). The Exchange believes this fine structure may serve to more effectively deter repeat-offenders while providing reasonable warning for a first offense during a rolling 24-month period. The Exchange notes that the proposed fine schedule for violations of a Market Maker's continuous quoting obligation is identical to the fine schedule under Cboe Options' MRVP for market maker violations of continuous quoting obligations on Cboe Options. The Exchange further notes that the proposed change is intended to provide for consistency across the Exchange's MRVP and the MRVPs of its affiliated options exchanges, Cboe Options, Cboe BZX Exchange, Inc. ("BZX Options") and Cboe EDGX Exchange, Inc. ("EDGX"), as BZX Options and EDGX Options also intend to file proposals to update their minor rule violation fines for market maker violations of continuous quoting requirements on their exchanges in an identical manner.

⁷ See Rule 13.15(f).

⁸ See Rule 13.15(a).

The proposed rule change also makes a nonsubstantive, clarifying change to Chapter 13 by removing the provision which currently provides that Cboe Options Rules 13.15(g)(4), 13.15(g)(5) and 13.15(g)(7) do not apply to C2.⁹ Cboe Options recently eliminated these provisions from its MRVP; therefore, this provision is no longer applicable.¹⁰

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.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² 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. The Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

⁹ As a result of removing this provision, the proposed rule change also makes a nonsubstantive change to the subsequent provision by updating the reference to multiple above paragraphs to instead reference a single above paragraph.

¹⁰ See Securities Exchange Release No. 92702 (August 18, 2021), 86 FR 47346 (August 24, 2021) (SR-CBOE-2021-045).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ Id.

The Exchange believes that the proposed rule change to remove the range of fines imposed for first and subsequent Market-Maker quoting offenses and, instead, apply a letter of caution for a first offense, a specified fine amount for a second and a third offense, and formal disciplinary proceedings for subsequent offenses will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Particularly, the Exchange believes that applying a lesser penalty (Letter of Caution) for a first offense and then providing an itemized fine per second and third offenses and, ultimately, formal disciplinary proceedings for any subsequent offenses during a rolling 24-month period, will allow the Exchange to levy greater penalties (i.e., formal disciplinary proceedings) against repeat-offenders (as opposed to a fine range for any offenses that may come after a first offense) which may serve to more effectively deter repeat-offenders while providing reasonable warning for a first offense during a rolling 24-month period. The Exchange believes that more effectively deterring repeat-offenders and making first instance offenders aware of their quoting obligation violations and the subsequent consequences for continued failure, will, in turn, further motivate Market-Makers to continue to uphold their quoting obligations, providing liquid markets to the benefit of all investors. The Exchange again notes that the proposed fine schedule is consistent with the fine schedule under Cboe Options' MRVP applicable to marker maker violations of continuous quoting requirements on Cboe Options. As described above, BZX Options and EDGX Options intend to file proposals to update their minor rule violation fines applicable to violations of market maker continuous quoting obligations in the same manner as Cboe Options and as proposed herein. As such, the proposed rule change is also

designed to benefit investors by providing from consistent penalties across the MRVPs of the Exchange and its affiliated options exchanges.

Additionally, the proposed clarification in Chapter 13 will benefit investors by providing for Rules that accurately reflect current Cboe Options Rule 13.15, which Chapter 13 incorporates, in most part, by reference.

The Exchange further believes that the proposed rule changes to Rule 13.15(g) are consistent with Section 6(b)(6) of the Act,¹⁴ which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change amends the fine schedule applicable to Market-Maker failures to meet their quoting obligations in a manner that appropriately sanctions such failures.

The Exchange also believes that the proposed change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.¹⁵ Rule 13.15, currently and as amended, does not preclude a TPH or person associated with or employed by a TPH from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

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

¹⁴ 15 U.S.C. 78f(b)(6).

¹⁵ 15 U.S.C. 78f(b)(7) and 78f(d).

proposed rule change is not intended to address competitive issues but rather is concerned solely with amending its MRVP in connection with the fine schedule for Market-Maker failures to meet quoting obligations. The Exchange believes the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

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. 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-C2-2021-019 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-C2-2021-019. 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-C2-2021-019 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁷ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and

¹⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

6(b)(6) of the Act¹⁸ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹⁹ which governs minor rule violation plans.

As stated above, generally the Exchange proposes to: (1) amend the fine amounts applicable to a Maker-Maker's failure to meet the Exchange's continuous quoting obligations, and (2) make non-substantive and clarifying changes to Chapter 13. Specifically, the Exchange proposes to amend the fine amounts in proposed Rule 13.15(g)(9) to provide that, during any rolling 24-month period, the Exchange may give a Letter of Caution for a first offense, may apply a fine of \$1,500 for a second offense, may apply a fine of \$3,000 for a third offense, and may proceed with formal disciplinary action for subsequent offenses.

The Commission believes that Rule 13.15, as incorporated by reference, is an effective way to discipline a member for a minor violation of a rule. The Commission finds that the Exchange's proposal to amend the fine amounts related to a Market-Maker's failure to meet the Exchange's quoting obligations as required by Rule 5.52(d), as set forth in proposed Rule 13.15(g)(9), is consistent with the Act because it may help the Exchange's ability to better carry out its oversight and enforcement responsibilities. The Commission also believes that the Exchange's proposal to make non-substantive changes that reflect updated rule numbers is consistent with the Act because such changes will add clarity and accuracy to the Exchange's rules.

¹⁸ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

¹⁹ 17 CFR 240.19d-1(c)(2).

In approving the propose rule change, the Commission in no way minimizes the importance of compliance with the Exchange’s rules and all other rules subject to fines under Rule 13.15. The Commission believes that a violation of any self-regulatory organization’s rules, as well as Commission rules, is a serious matter. However, Rule 13.15 provides a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under Rule 13.15 or whether a violation requires formal disciplinary action.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁰ for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the Federal Register. The proposal will assist the Exchange in preventing fraudulent and manipulative practices by allowing the Exchange to adequately enforce compliance with, and provide appropriate discipline for, violations of Exchange rules. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

²⁰ 15 U.S.C. 78s(b)(2).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act²¹ and Rule 19d-1(c)(2) thereunder,²² that the proposed rule change (SR-C2-2021-019) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Eduardo A. Aleman
Assistant Secretary

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 240.19d-1(c)(2).

²³ 17 CFR 200.30-3(a)(12).