

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83909; File No. SR-CBOE-2018-061)

August 22, 2018

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 5.5A, Select Provisions of Options Listing Procedures Plan, 5.8, Long-Term Equity Option Series (LEAPS) and Rule 24.9, Terms of Index Option Contracts

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 August 20, 2018, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rules 5.5A, 5.8, and 24.9.

(additions are underlined; deletions are [bracketed])

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Rules of Cboe Exchange, Inc.

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Rule 5.5A. Select Provisions of Options Listing Procedures Plan

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).

(a) No change.

(b) The exercise price of each option series listed by the Exchange shall be fixed at a price per share which is reasonably close to the price of the underlying equity security, Exchange Traded Fund (“ETF” and referred to as a “Unit” in Rule 5.3) or Trust Issued Receipt (“TIR”) at or about the time the Exchange determines to list such series. Additionally,

(i) Exercise Price Range Limitations - Except as provided in subparagraphs (ii) through (iv) below, if the price of the underlying security is less than or equal to \$20, the Exchange shall not list new option series with an exercise price more than 100% above or below the price of the underlying security. However, the foregoing restriction shall not prohibit the listing of at least three exercise prices per expiration month in an option class. Except as provided in Rule 5.5(d) (4), if the price of the underlying security is greater than \$20, the Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security.

The price of the underlying security is measured by:

(1) for intra-day add-on series and next-day series additions, the daily high and low of all prices reported by all national securities exchanges;

(2) for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines its preliminary notification of new series; [and]

(3) for option series to be added as a result of pre-market trading, the most recent share price reported by all national securities exchanges between 7:45 a.m. and 8:30 a.m. (Chicago time)[.]; and

(4) for option series to be added based on trading following regular trading hours, the most recent share price reported by all national securities exchanges between 3:15 p.m. and 5:00 p.m. (Chicago time).

(ii) – (vi) No change.

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Rule 5.8. Long-Term Equity Option Series (LEAPS)

(a) No change.

(b) [When a new equity LEAPS series is listed, such series will be opened for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for such option series until they are opened for trading.

(c) [With regard to the listing of new January LEAPS series on equity option classes, options on Exchange Traded Funds (“ETFs” and referred to as “Units” in Rule 5.3), or options on Trust Issued Receipts (“TIRs”), the Exchange shall not add new LEAP series on a currently listed and

traded option class earlier than the Monday prior to the September expiration (which is 28 months before the expiration)[:

- (i) Earlier than September (which is 28 months before the expiration), for an option class on the January expiration cycle;
- (ii) Earlier than October (which is 27 months before expiration), for an option class on the February expiration cycle; and
- (iii) Earlier than November (which is 26 months before expiration), for an option class on the March expiration cycle].

Pursuant to the Options Listing Procedures Plan, exchanges that list and trade the same equity option class, ETF option class, or TIR option class are authorized to jointly determine and coordinate with the Clearing Corporation on the date of introduction of new LEAP series for that option class consistent with this paragraph ([c]b).

[(d)c] The Exchange shall not list new LEAP series on equity option classes, options on ETFs, or options on TIRs in a new expiration year if the national average daily contract volume, excluding LEAP and FLEX series, for that option class during the preceding three calendar months is less than 1,000 contracts, unless the new LEAP series has an expiration year that has already been listed on another exchange for that option class. The preceding volume threshold does not apply during the first six months an equity option class, option on an ETF, or option on a TIR is listed on any exchange.

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Rule 24.9. Terms of Index Option Contracts

(a) No change.

(b) Long-Term Index Option Series (“LEAPS”).

(1) Notwithstanding the provisions of Paragraph (a)(2) above, the Exchange may list long-term index option series that expire from 12 to 180 months from the date of issuance.

(A) Index LEAPS may be based on either the full or reduced value of the underlying index.

(B) There may be up to 10 expiration months, none further out than one-hundred eighty (180) months.

[(B) When a new Index LEAPS series is listed, such series will be opened for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for such option series until they are opened for trading.]

(2) No change.

(c) – (e) No change.

. . . *Interpretations and Policies:*

.01 – .14 No change.

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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 purpose of this proposed rule change is to amend Rules 5.5A, 5.8, and 24.9 to conform to recently approved changes to the Options Listing Procedures Plan (“OLPP”).⁵ The Exchange, which is one of the Participant Exchanges⁶ to the OLPP, currently has rules that are designed to

⁵ See Securities Exchange Act Release Nos. 82235 (December 7, 2017), 82 FR 58668 (December 13, 2017) (order approving the Fourth Amendment to the OLPP); 81893 (October 18, 2017), 82 FR 49249 (“OLPP Notice”).

⁶ In addition to the Exchange, the “Participant Exchanges” are: Box Options Exchange,

incorporate the requirements of the OLPP. All Participant Exchanges have similar such (essentially uniform) rules to ensure consistency and compliance with the OLPP. The Exchange proposes to modify such rules to reflect the recent updates as described below.

Addition of Long-Term Equity Options (“LEAPS”)

First, the OLPP has been amended to change the earliest date on which new January LEAPS on equity options, options on Exchange Traded Funds (“ETF”), or options on Trust Issued Receipts (“TIR”) may be added to a single date (from three separate months). As noted in the OLPP Notice, in the past, there were operational concerns related to adding new January LEAPs series for all options classes on which LEAPs were listed on a single trading day.⁷ And, the addition of new series in a pre-electronic trading environment was a manual process. To accommodate this, the addition of new January LEAPs series was spread across three months (September, October, and November). Today, however, these operational concerns related to January LEAPs have been alleviated as new series can be added in bulk electronically. The Plan Participants, including the Exchange, believe that moving the addition of new January LEAPs series to no earlier than the Monday prior to the September expiration would reduce marketplace confusion about available January LEAPs series. Where previously January LEAPs series for options classes on the February or March expiration cycles would not have been available as early as January LEAPs series for options classes on the January expiration cycle, under the proposed change, all January LEAPs series will be available concurrently. Accordingly, to conform to this change, the Exchange proposes to modify current Rule 5.8(c) to reflect that new January LEAPS series on equity options

LLC; Cboe BZX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe EDGX Exchange, Inc.; Miami International Securities Exchange, LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq Options Market, LLC; Nasdaq PHLX, LLC; NYSE American, LLC; and NYSE Arca, Inc.

⁷ See OLPP Notice at 49249.

classes, options on ETFs, or options on TIRs, may not be added on a currently listed and traded option class earlier than the Monday prior to the September expiration (which is 28 months before the expiration).⁸

Addition of Equity, ETF, and TIR Option Series After Regular Trading Hours

Second, the OLPP has been amended to allow equity, ETF, and TIR option series to be added based on trading after regular trading hours (i.e., after-market). As noted in the OLPP Notice, the prior version of the OLPP did not allow for option series to be added based on trading following regular trading hours.⁹ As such, the Exchange Participants were unable to add new option series that may result from trading following regular trading hours until the next morning, depending on the range of prices in pre-market trading, which is significant because events that occur after regular trading hours, such as earnings releases, often have an important impact on the price of an underlying security. In addition, there are operational difficulties for market participants throughout the industry adding series after system startup. To avoid the potential burden that would result from the inability to add series as a result of trading following regular trading hours, the OLPP was amended to allow an additional category by which the price of an underlying security may be measured. Specifically, to conform to the amended OLPP, the Exchange proposes to add subparagraph (b)(i)(4) to Rule 5.5A to provide that “for option series to be added based on trading following regular trading hours,” the price of the underlying security is measured by “the most recent share price reported by all national securities exchanges between 3:15 p.m. and 5:00 p.m. (Chicago time).”¹⁰

⁸ See proposed Rule 5.8(b).

⁹ See OLPP Notice at 49250.

¹⁰ See proposed Rule 5.5A(b)(i)(4). The Exchange proposes to relocate “and” from subparagraph (2) to (3) to conform to the change. See proposed Rule 5.5A(b)(i)(2) and (3).

Technical Changes

The Exchange proposes to modify Rules to delete now obsolete operational language, which dates back to when LEAPs were first adopted. This language provides that when a new equity or index LEAPS series, as applicable, is listed, such series will be opened for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for such option series until they are opened for trading. The Exchange proposes to delete this language because when this language was adopted, LEAPs were not opened for trading until late in the trading day unless there was buying or selling interest.¹¹ Today, however, technological improvements allow the Exchange to open all LEAP series at the same time as all other series in an option class.

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.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ 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

¹¹ See current Rules 5.8(b) and 24.9(b)(1)(B). The proposed rule change amends a cross-reference to current Rule 5.8(c) (proposed Rule 5.8(b)), and changes current Rule 5.8(d) to proposed Rule 5.8(c), to conform to the deletion of current Rule 5.8(b). See proposed Rule 5.8(b) and (c). The proposed rule change splits current Rule 24.9(b)(1)(A) into two provisions (proposed Rule 24.9(b)(1)(A) and (B)) to separate two different rule provisions. See proposed Rule 24.9(b)(1).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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)¹⁴ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change, which conforms to the recently adopted provisions of the OLPP, as amended, allows the Exchange to continue to list extended far term option series that have been viewed as beneficial to traders, investors and public customers. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to list all January 2021 expiration series on the Monday prior to the September 2018 expiration. Moreover, this change would simplify the process for adding new January LEAP options series and reduce potential for investor confusion because all new January LEAP options would be made available beginning at the same time, consistent with the amended OLPP. The Exchange notes that this proposal does not propose any new provisions that have not already been approved by the Commission in the amended OLPP, but instead maintains series listing rules that conform to the amended OLPP.

The proposal to permit series to be added based on after-market trading is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by allowing the Exchange to make series available for trading with reduced operational difficulties. The Exchange notes that this proposed change, which is consistent with the amended OLPP should

¹⁴

Id.

provide market participants with earlier notice regarding what options series will be available for trading the following day, and should help to enhance investors' ability to plan their options trading. The Exchange also believes that the proposed technical changes, including deleting obsolete language and reorganizing and consolidating the rule, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options 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. Specifically, the Exchange believes that by conforming Exchange rules to the amended OLPP, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Exchange believes that adopting rules, which it anticipates will likewise be adopted by Participant Exchanges, would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues.

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 filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ Because the proposed rule change does not: (i)

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ 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 proposal may become operative immediately upon filing. The Commission notes that the Exchange's proposal would conform the Exchange's rules to the amended OLPP, which the Commission previously approved.²⁰ Accordingly, the Commission believes that the proposal raises no new or novel regulatory issues and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates the proposed rule

¹⁶ 17 CFR 240.19b-4(f)(6).

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

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ See OLPP Notice, supra note 5.

change to be operative upon filing.²¹

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)²² 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-2018-061 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-2018-061. 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

²¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²² 15 U.S.C. 78s(b)(2)(B).

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 Number SR-SR-CBOE-2018-061 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.²³

Eduardo A. Aleman
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).