

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87894; File No. SR-CBOE-2020-002)

January 6, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Opening Triggers for its Opening Rotation Process for Equity 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 January 2, 2020, 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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend the opening triggers for its opening rotation process for equity options. 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://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.31 (Opening Auction Process) in connection with the opening triggers for its opening rotation process for the Regular Trading Hours (“RTH”) trading session in equity options. Currently, Rule 5.31(d)(1) governs the RTH opening rotation triggers for equity options, as well as index options. Particularly, regarding equity options, Rule 5.31(d)(1) provides that the System⁵ 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 transaction on the primary market in the security underlying an equity option. In order to ensure a more orderly opening process, the Exchange proposes to amend the opening trigger process in order to contemplate the first disseminated quote (in addition to the already included first disseminated transaction) on the primary market in the underlying security in determining whether

⁵ See Cboe Options Rule 1.1, which defines the “System” as the Exchange’s hybrid trading platform that integrates electronic and open outcry trading of option contracts on the Exchange, and includes any connectivity to the foregoing trading platform that is administered by or on behalf of the Exchange, such as a communications hub.

to initiate the opening rotation, as well as to add an additional timing process following the System's observation of one, but not both, of the opening triggers.

Specifically, the Exchange proposes to include the System's observation of the first disseminated quote on the primary market in the security underlying the equity options as an additional opening trigger for equity options.⁶ The Exchange notes this trigger is intended to tie the Exchange's opening process to quoting in the underlying security. The Exchange believes that quoting activity in the underlying market is an additional trigger that generally indicates the presence of post-open price discovery and liquidity in the primary market for the underlying, and, therefore, that the market for the underlying is adequately situated for the commencement of options trading on the underlying. This additional trigger is also consistent with general practice in the industry, as other options exchanges use the first disseminated quote, as well as first disseminated transaction, as an opening trigger for their opening auction processes.⁷ As a result, the proposed additional trigger is an industry practice to which market participants are generally already accustomed and will provide for greater consistency in the opening process across the industry. In light of this additional opening trigger, the Exchange also proposes to adopt additional timing specifications prior to the initiation of the opening rotation and contingent upon the System's observation of the first disseminated transaction and/or quote, as proposed, on the primary market in the underlying security. Specifically, under proposed Rule 5.31(d)(1)(A),⁸ the System would initiate

⁶ The quote must be a two-sided quote.

⁷ See Nasdaq PHLX LLC ("PHLX") Rule 1017(d)(i); Nasdaq ISE LLC ("ISE") Options 3 Section 8(c)(1); Nasdaq GEMX LLC ("GEMX") Options 3 Section 8(c)(1); Nasdaq MRX LLC ("MRX") Options 3 Section 8(c)(1); Miami International Securities Exchange, LLC ("MIAX") Rule 503(e); NYSE American, Inc. ("NYSE American") Rule 952NY; and NYSE Arca, Inc. ("NYSE Arca") Rule 6.64-O(b).

⁸ The Exchange also proposes to format current Rule 5.31(d)(1) into three subparagraphs; subparagraph (d)(1)(A), governing the RTH opening rotation triggers for equity options, subparagraph (d)(1)(B), governing such for index options, and subparagraph (d)(1)(C),

the opening rotation after an Exchange-determined time period (which it currently does) upon the earlier occurrence of either: (i) the passage of two minutes (or such shorter time as determined by the Exchange) after the System's observation after 9:30 a.m. of either the first disseminated transaction or the first disseminated quote on the primary market in the security underlying an equity option; or (ii) the System's observation after 9:30 a.m. of both the first disseminated transaction and the first disseminated quote on the primary market in the security underlying an equity option.

The proposed additional timing steps in connection with the opening triggers are intended to ensure that the market for the underlying security has had sufficient time to open prior to the initiation of the opening rotation where there is not both a two-sided quote and an execution in the underlying security. By waiting a requisite amount of time after the System observes one of the opening triggers, the proposed process pursuant to proposed Rule 5.31(d)(1)(A)(i) is intended to permit post-opening price discovery to occur in the underlying security prior to the opening of options on the security. Similarly, by initiating the opening rotation upon the System's observation of both opening triggers prior to the passage of two minutes, proposed Rule 5.31(d)(1)(A)(ii) ties the Exchange's opening process to specific market conditions in the underlying security that generally indicate that sufficient post-opening price discovery has occurred prior to the opening of options on the security. To illustrate, if the System were to observe a disseminated quote (or transaction) in the primary market for the underlying security, it would begin the two-minute (or shorter) timer pursuant to proposed Rule 5.31(d)(1)(A)(i). If two minutes then passed without the System's observation of a disseminated transaction (or quote) on the primary market for the

governing such for VIX Index options. This proposed formatting change will make the rule better organized and easier to follow and understand.

underlying security (which would cause the scenario in Rule 5.31(d)(1)(A)(ii) to occur) then it would initiate the opening rotation after a time period determined by the Exchange, as it currently does today. Conversely, if the System were to observe a disseminated quote (or transaction) in the primary market and begin the two minute (or shorter) timer, but then observe a disseminated transaction (or quote) in the primary market before the passage of two minutes (or shorter), it would then, at the time it observed the disseminated transaction (or quote) prior to the passage of two minutes (or shorter), initiate the opening rotation after a period of time determined by the Exchange.

The Exchange notes that the proposed rule change in connection with initiating the opening rotation upon receipt of a trade and a quote in the underlying is consistent with the opening process rules of NYSE Arca.⁹ Additionally, the proposed rule change in connection with initiating the opening rotation following the receipt of either a quote or trade in the underlying and a timed pause is consistent with other options exchanges that have similar timers in place following the receipt of a transaction or quote in the primary market for the underlying security. For example, MIAX's opening process rule currently provides that its opening process may begin following a pause period (no longer than one half second) that, like the proposed rule change, begins upon the dissemination of either a quote or a trade in the underlying security.¹⁰ The Exchange notes that the MIAX opening process rule provides that following the dissemination of either a quote or a trade in the underlying security and the requisite pause period, its opening process will begin upon the occurrence of certain Market Maker quotes submitted on MIAX. The Exchange notes, however, that this is not consequential to the activity or status of the market for the underlying security or the use of an opening quote or trade in the

⁹ See NYSE Arca Rule 6.64-O(b).

¹⁰ See MIAX Rule 503(e).

underlying to trigger the initiation of an opening process on an options exchange. The Exchange further notes that the proposed two minute timer (or shorter) is consistent with the timer provided pursuant to the opening process rules on PHLX, ISE, GEMX, and MRX.¹¹

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 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.

The Exchange believes that the proposed rule change to include the first dissemination of a quote on the primary market for the underlying security as an additional opening trigger for equity

¹¹ See PHLX Options Rule 1017(d)(i); ISE Options 3 Section 8(c)(1); GEMX Options 3 Section 8(c)(1); and MRX Options 3 Section 8(c)(1), each of which begin their opening processes within two minutes (or such shorter time as determined by the Exchange) of the opening trade or quote on the market for the underlying security in the case of equity options (plus the occurrence of another condition as laid out in the exchanges’ rules).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ Id.

options would serve to remove impediments to and perfect the mechanism of a free and open market and national market system by incorporating an additional opening trigger into the Exchange's opening process which would help ensure that the primary market for the underlying is adequately situated with the appropriate liquidity and active price discovery in order to open for trading options on the underlying. Additionally, the proposed rule change would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities because it will align the triggers for its equity options opening rotation with the triggers used by most other options exchanges.¹⁵ The proposed change will benefit investors, as it will create consistency throughout the industry by implementing an additional opening rotation trigger already in place across much of the industry and, thus, already familiar to market participants.

In addition to this, the Exchange believes that the proposed rule change to implement additional timing procedures in connection with the System's observation of the first disseminated transaction and/or quote in the primary market for the underlying security prior to the initiation of the opening rotation would also serve to remove impediments to and perfect the mechanism of a free and open market and national market system by ensuring that stability is present in the underlying markets upon the initiation of the opening rotation to the benefits of investors. The proposed rule change is intended to promote the maintenance of a fair and orderly market and, in general, to protect investors and the public interest by either waiting a requisite amount of time after the System observes one opening trigger in order to allocate enough time to permit the price of the underlying security to stabilize after its opening, or by initiating the opening rotation upon the System's observation of both opening triggers (as proposed), thus

¹⁵ See supra note 7.

tying the Exchange's open to the existence of liquidity on the primary market which generally indicates that sufficient post-opening price discovery has occurred prior to the opening of options on the underlying security. Additionally, the Exchange does not believe that the proposed rule change in connection with initiating trading on Cboe Options when the System observes a quote and a trade in the underlying security, or observes either a quote or a trade in the underlying security followed by a pause, which, as proposed would be two minutes (or shorter) would significantly impact investors or the public interest because, as stated, these conditions are consistent with other options exchanges that have substantively the same conditions in place in connection with their opening processes.¹⁶

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

The Exchange does not believe that the proposed changes would 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 changes would impose any burden on intramarket competition that is not necessary in furtherance of the purposes of the Act, because the proposed additional opening trigger and steps in the opening trigger process would apply in the same manner to all equity options. The proposed rule change impacts a System process that occurs prior to the opening of trading, and merely modifies when the System will initiate an opening rotation. The Exchange also does not believe that the proposed change would impose any burden on intermarket competition that is not necessary in furtherance of the purposes of the Act, because use of the first disseminated quote from the primary market as a trigger for the opening rotation, as well as the combination of both opening triggers, or of one opening trigger

¹⁶ See supra notes 7, 9, 10, and 11.

plus a pause period of a two minutes (or shorter) prior to initiating the opening rotation, is consistent with the rules of other options exchanges.¹⁷

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 Act¹⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²¹ permits the Commission to 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 upon filing. The Exchange states that the waiver of the operative delay would serve to sooner protect investors by

¹⁷ See id.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 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.

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

implementing an additional opening trigger and additional timing steps in the Exchange's opening process. Based on the Exchange's representations, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.²²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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-2020-002 on the subject line.

²² For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2020-002. 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-CBOE-2020-002 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

J. Matthew DeLesDernier
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).