

**SECURITIES AND EXCHANGE COMMISSION**  
(Release No. 34-89494; File No. SR-CBOE-2020-070)

August 6, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Introduce a New Data Product to be Known as Intraday Open-Close Data

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 29, 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, 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<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to introduce a new data product to be known as Intraday Open-Close Data.

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.

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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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 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 introduce a new data product on Cboe to be known as Intraday Open-Close Data, which will be available for purchase to Cboe Trading Permit Holders (“TPHs”) and non-TPHs.<sup>5</sup> Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., will make the Intraday Open-Close Data available for purchase to TPHs and non-TPHs on the LiveVol DataShop website.<sup>6</sup>

Currently, the Exchange offers Open-Close Data, which is an end-of-day volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), price, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Open-Close Data is proprietary Cboe trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data

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<sup>5</sup> The Exchange intends to submit a separate rule filing to establish fees for Open-Close Data.

<sup>6</sup> See <https://datashop.cboe.com/>.

feed.

Now, the Exchange is proposing to offer an additional product, the Intraday Open-Close Data. The Intraday Open-Close Data will provide similar information to that of Open-Close Data, but will be produced and updated every 10 minutes during the trading day. Data is captured in "snapshots" taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10 minute period. For example, subscribers to the intraday product will receive the first calculation of intraday data by approximately 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update by 9:55 a.m., representing the data previously provided aggregated with data captured up to 9:50 a.m., and so forth. Each update will represent combined data captured from the current "snapshot" and all previous "snapshots" and thus will provide open-close data on an aggregate basis. The Intraday Open-Close Data will provide a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume will be further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Intraday Open-Close Data is proprietary Cboe trade data and does not include trade data from any other exchange. In contrast to the existing Open-Close Data product, the Intraday Open-Close Data will not provide execution price.<sup>7</sup>

The Exchange will establish a monthly subscriber fee for Intraday Open-Close Data by way of a separate proposed rule change, which the Exchange will submit in connection with the launch of the Intraday Open-Close market data product.

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<sup>7</sup> Price information is not included in Intraday Open-Close Data because it cannot be provided within the time parameters necessary to generate the file.

The Exchange anticipates a wide variety of market participants to purchase Intraday Open-Close Data, including, but not limited to, individual customers, buy-side investors, and investment banks. The Exchange believes the proposed Open-Close Data product may also provide helpful trading information regarding investor sentiment that may allow market participants to make better trading decisions throughout the day and may be used to create and test trading models and analytical strategies and provides comprehensive insight into trading on Cboe. For example, intraday open data may allow a market participant to identify new interest or possible risks throughout the trading day, while intraday closing data may allow a market participant to identify fading interests in a security. The proposal is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange notes that other exchanges offer a similar data product.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is 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 market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers.

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<sup>8</sup> See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); See also Securities Exchange Act Release No. 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed Intraday Open-Close Data would further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of Intraday Open-Close Data. The proposed rule change would benefit investors by providing access to the Intraday Open-Close Data, which may promote better informed trading throughout the trading day. Moreover, other exchanges offer a similar data product.<sup>11</sup>

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed Intraday Open-Close Data would further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of Intraday Open-Close Data. The proposed rule change would benefit investors by providing access to the Intraday Open-Close Data, which as noted above, may promote better informed trading. Particularly, information regarding opening and closing activity across different option series may indicate investor sentiment, which can be helpful trading information. Subscribers to the data may be able to enhance their ability to analyze option trade and volume data on an intraday

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<sup>11</sup> See supra note 8.

basis, and create and test trading models and analytical strategies. The Exchange believes Intraday Open-Close Data provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading.

Moreover, other exchanges also offer a substantially identical data product.<sup>12</sup> Specifically, NASDAQ OMX PHLX (“PHLX”) and the NASDAQ Stock Market LLC (“NASDAQ”) offer the PHLX Options Trade Outline (“PHOTO”) and NASDAQ Options Trade Outline (“NOTO”), respectively. PHOTO and NOTO provide substantially the same information as that included in the proposed Intraday Open-Close Data product. Further, like the proposed product, the data is provided to subscribers cumulatively every 10 minutes and is available to subscribers within five minutes of the conclusion of each 10 minute period.

**B. Self-Regulatory Organization’s Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to offer a data product similar to those offered by other competitor options exchanges.<sup>13</sup> The Exchange is proposing to introduce Intraday Open-Close Data in order to keep pace with changes in the industry and evolving customer needs, and believes this proposed rule change would contribute to robust competition among national securities exchanges. As noted, at least two other U.S. options exchanges offer a market data product that is similar to the Intraday Open-Close Data.<sup>14</sup> As a result, the Exchange believes this proposed rule change permits fair

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<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

competition among national securities exchanges. Therefore, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

Because the foregoing 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6)<sup>16</sup> thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay.<sup>17</sup> The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Specifically, waiver of the operative delay will allow the Exchange to offer to investors without delay an optional historical data product that is substantially similar to products offered by other options exchanges. The proposal therefore does not present any novel issues and, accordingly, the Commission designates the proposal

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

operative upon filing.<sup>18</sup>

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2020-070 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-2020-070. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).



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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2020-070 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.<sup>19</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).