

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90990; File No. SR-CBOE-2021-006)

January 26, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend the Definition of “Current Market Value” for Purposes of Calculating Margin Requirements for Certain 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 14, 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 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 definition of “current market value” for purposes of calculating margin requirements for certain options. The text of the proposed rule change is provided below.

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).

(additions are underlined; deletions are [bracketed])

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Rules of Cboe Exchange, Inc.

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Rule 10.3. Margin Requirements

(a) *Definitions.* For purposes of this Rule, the following terms shall have the meanings specified below.

(1) No change.

(2) The term “current market value” is as defined in Section 220.[3]2 of Regulation T of the Board of Governors of the Federal Reserve System. At any other time, in the case of options, stock index warrants, currency index warrants and currency warrants, it shall mean the closing price of that series of options or warrants on the Exchange on any day with respect to which a determination of current market value is made, except in the case of certain index and ETF options determined by the Exchange, it shall be based on quotes for that series of options on the Exchange 15 minutes prior to the close of trading on any day with respect to which a determination of current market value is made. In the case of other securities, it shall mean the preceding business day’s closing price as shown by any regularly published reporting or quotation service. If there is no closing price or quotes, as applicable, on the option or on another security, a TPH organization may use a reasonable estimate of the current market value of the security as of the close of business or as of 15 minutes prior to the closing of trading, respectively, on the preceding business day.

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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 Exchange proposes to amend the definition of “current market value” with respect to certain ETF options for purposes of calculating margin requirements. Rule 10.3(a)(2) currently defines the term “current market value” as follows:

The term “current market value” is as defined in Section 220.3 of Regulation T of the Board of Governors of the Federal Reserve System. At any other time, in the case of options, stock index warrants, currency index warrants and currency warrants, it shall mean the closing price of that series of options or warrants on the Exchange on any day with respect to which a determination of current market value is made, except in the case of certain index options determined by the Exchange, it shall be based on quotes for that series of options on the Exchange 15 minutes prior to the close of trading on any day with respect to which a determination of current market value is made. In the case of other securities, it shall mean the preceding business day’s closing price as shown by any regularly published reporting or quotation service. If there is no closing price or quotes, as applicable, on the option or on another security, a TPH organization may use a reasonable estimate of the current market value of the security as of the close of business or as of 15 minutes prior to the closing of trading, respectively, on the preceding business day.⁵

⁵ Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System defines “current market value” of a security as (1) throughout the day of the purchase or sale of a security, the security’s total cost of purchase or the net proceeds of its sale including any commissions charged; or (2) at any other time, the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing sale price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.” See 12 CFR § 220.2. The term “marking” value is often used to refer to the current market value for capital and margin purposes. The proposed rule change corrects the reference to Section 220.3 in the definition of current market value in Rule 10.3(a)(2) to be Section 220.2.

Rule 10.3 and other Rules in Chapter 10 of the Exchange’s Rulebook describe how margin requirements are calculated for market participants’ positions in options (and certain other securities), including strategy-based margin and customer portfolio margin requirements, which requirements are generally based on the current market value of the option series. These requirements are determined on a daily basis for market participants’ securities accounts that hold options positions.⁶ Currently, 43 ETF options that are listed for trading on the Exchange close for trading at 4:15 p.m. Eastern time.⁷ Therefore, daily margin requirements for those options are currently based on the closing trade prices of those options series at that time.⁸

A number of options overlie exchange-traded funds (“ETFs”) that track the same indexes on which the Exchange lists index options.⁹ These options are complementary investment tools available to market participants. The Exchange understands that market participants generally use the same information when pricing an index option and an ETF

⁶ The Exchange notes the Options Clearing Corporation (“OCC”) calculates the daily margin requirements for Clearing Members’ options positions at OCC. The Exchange understands OCC intends to incorporate a corresponding change regarding the time at which the value of a series is determined into its procedures for calculating margin requirements.

⁷ See Rule 5.1(b)(2); see also closing times for ETF options, available at https://www.cboe.com/us/options/market_statistics/symbol_reference/?mkt=cone&underlying=1.

⁸ The Exchange notes the daily margin requirements for all other ETF options that close at 4:00 p.m. Eastern time are based on the closing trade at that time.

⁹ For example, the SPDR S&P 500 ETF Trust (“SPY”) tracks the S&P 500 Index. The Exchange (as well as other options exchanges) list SPY options for trading, and the Exchange lists options on the S&P 500 Index as well (“SPX”). Additional examples of ETF options (which may trade on any options exchange) with an underlying ETF that tracks an index on which the Exchange lists an option include the iShares Russell 2000 ETF (“IWM”) (which tracks the Russell 2000 Index, as do RUT options) and the SPDR Dow Jones Industrial Average ETF Trust (“DIA”) (which tracks the Dow Jones Industrial Average, as do DJX options).

option with an underlying ETF that tracks the same index. Additionally, market participants' investment and hedging strategies often involve index options and related products, including ETF options. For example, market participants often engage in hedging strategies that involve options on the S&P 500 Index ("SPX options"), which trade exclusively on the Exchange, and SPY options, which may trade on any options exchange.

The Exchange recently amended the definition of "current market value" to provide that, for certain index options determined by the Exchange, it would be based on quotes for a series of options on the Exchange 15 minutes prior to the close of trading rather than the closing price.¹⁰ The purpose of that change was to maintain alignment between the times at which the current market value of index options and the daily settlement price of related futures (*i.e.*, futures that overlie the same indexes as the index options) is determined for purposes of calculating daily margin requirements.¹¹ Currently, the Exchange has determined to determine the current market value for margin requirements 15 minutes prior to the closing time for the following index options: DJX options, MXEA options, MXEF options, OEX options, RUT options, SPESG options, SPX options, VIX options, XEO options, and XSP options.¹²

Currently, the Exchange determines the daily settlement price for all ETF options at the time at which they close for trading, which as noted above, is at 4:15 p.m. for a

¹⁰ See Securities Exchange Act Release No. 90195 (October 15, 2020), 85 FR 67041 (October 21, 2020) (SR-CBOE-2020-090).

¹¹ See *id.* As described in that proposed rule change, the Chicago Mercantile Exchange ("CME"), on which index futures products trade, intended to change the daily settlement price for index futures from 4:15 p.m. Eastern time to 4:00 p.m. Eastern time.

¹² See Exchange Notice C2020113000, *Schedule Update – Cboe Proprietary Index Products MXEA and MXEF to be Added to 3:00 p.m. Marking Price Files*. These index options close for trading at 4:15 p.m. Eastern time.

number of ETF options. Several of these ETF options overlie an ETF that tracks an index on which the Exchange lists index options, including index options for which the Exchange determines the current market value for margin requirements 15 minutes prior to the closing time. The Exchange has received numerous requests from market participants to determine the current market value for such ETF options at the same time at which it determines the current market value for corresponding index options. Therefore, to permit the Exchange to align the times at which the current market value of index options and options overlying ETFs that track the same indexes is determined for purposes of calculating daily margin requirements, the Exchange proposes to amend the definition of current market value with respect to certain Exchange-designated ETF options¹³ to be based on quotes of that series of options on the Exchange 15 minutes prior to the close of trading on any day with respect to which a determination of current market value is made.¹⁴ The Exchange intends to apply an indicator to the quotes disseminated to the Options Price Reporting Authority (“OPRA”) that will be the daily mark for a series on the applicable trading day. The Exchange anticipates initially applying this proposed definition to SPY options. The proposed flexibility will permit the Exchange to

¹³ Pursuant to Rule 1.5, the Exchange announces to Trading Permit Holders all determinations it makes pursuant to the Rules (which would include the determination of ETF options subject to the proposed rule change) via specifications, notices, or regulatory circulars with appropriate advanced notice, which are posted on the Exchange’s website, or as otherwise provided in the Rules (among other methods).

¹⁴ Fifteen minutes prior to the close of trading will generally equate to 4:00 p.m. Eastern time. The Exchange notes the proposed rule change does not change the time at which trading in the applicable ETF options will close. In other words, on a regular trading day, while the current market value for these ETF options will be determined at 4:00 p.m. Eastern time, those ETF options will continue to trade until 4:15 p.m. Eastern time (any options trades that occur between 4:00 and 4:15 on that trading day would use the 4:00 current market value for margin calculation purposes).

respond in a timely manner to any requests from industry participants and maintain alignment between those times as appropriate.

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.¹⁵

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ 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)¹⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change furthers the objectives of Section 6(c)(3) of the Act,¹⁸ which authorizes the Exchange to, among other things, prescribe standards of financial responsibility or operational capability and standards of training, experience and

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ Id.

¹⁸ 15 U.S.C. 78f(c)(3).

competence for its Trading Permit Holders and person associated with Trading Permit Holders.

In particular, the Exchange believes alignment between the times at which related options prices are used to calculate daily margin requirements will protect investors. In fact, the Exchange has received numerous requests from market participants to make this change. Among other things, the Exchange believes this alignment will prevent increased risk to market participants that hold positions across related options products due to potential disparities that could occur in relation to factors such as margin requirements, pay-collect obligations, the synchronization of existing hedges, and the level of end-of-day risk. Differing daily valuation times for these products may cause offset relationships between options positions to be lost, which may distort the true status of risk within a market participant's portfolio. Use of the same determination time for margin calculations reduces risk of a disconnect between the values used in a market participant's securities account for related securities. For example, if the Exchange continues to use the closing prices of ETF options as the current market value of those options while the marking time of related index options uses prices 15 minutes prior to the close, there could be a significant misalignment between these values, particularly if there were to be a large price move in the equity markets during that 15-minute time period.¹⁹

The Exchange believes the proposed rule change will also promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a

¹⁹ The Exchange is unaware of market participants who have been significantly negatively impacted by this lack of alignment since the marking time for index options changed in October. However, the proposed rule change would eliminate the potential risk associated with misalignment going forward.

free and open market by permitting alignment of daily marks for related products that market participants often use in a complementary manner as part of their investment and hedging strategies. The Act authorizes the Exchange to prescribe standards of financial responsibility for Trading Permit Holders, and the proposed rule change regarding the daily value to be used for calculation of daily margin requirements for options positions is consistent with that authority.

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 primary purpose of the proposed rule change is to align margin calculations for related products in the securities industries. The Exchange does not believe 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 the proposed change related to margin requirements for the designated options will apply in the same manner to all market participants that hold positions in those options. The Exchange does not believe 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 the proposed rule change relates to margin requirements the Exchange imposes on its Trading Permit Holders. As noted above, the Exchange recently made a similar rule change to permit it to align the time at which it determines current market value for index options with the time at which a futures exchange determined the daily settlement value for related futures products for substantially similar purposes. Other options exchanges may choose to similarly change the time at which current market value will be determined for purposes of their margin rules.

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 foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. 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 Act²⁰ and Rule 19b-4(f)(6)²¹ thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that it believes waiver of the operative delay will protect investors by permitting the Exchange to align the times at which the current market value of ETF options with the times at which the current market value of related index options in securities accounts are determined as soon as practicable. The Exchange also stated that it believes this will benefit market participants by preventing potential price distortions between related options and reduce pricing risks to market participants that hold positions in ETF options

²⁰ 15 U.S.C. 78s(b)(3)(A).

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

and related index options that may occur if the time at which the current market value of options was determined differed from the time at which the daily settlement value of related futures was determined. The Exchange also noted the proposed rule change is not novel, because the Exchange recently made a similar rule change to permit it to align the time at which it determines current market value for index options with the time at which a futures exchange determined the daily settlement value for related futures products for substantially similar purposes. The Exchange stated it will announce to Trading Permit Holders the date on which the change will be implemented in accordance with Rule 1.5 (i.e., the date will be announced via specifications, notices, or regulatory circulars with appropriate advanced notice, which are posted on the Exchange's website, or as otherwise provided in the Rules (among other methods)). The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because waiver of the operative delay will permit the Exchange to eliminate the potential pricing disparities that may occur as a result of continued misalignment as soon as possible. For this reason, the Commission designates the proposed rule change to be 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

²² 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).

Commission takes such action, the Commission will 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-2021-006 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-2021-006. 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-2021-006 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).