

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93059; File No. SR-CBOE-2021-054)

September 20, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Make Certain Corrections and Other Clarifying Changes to the Rules

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 September 16, 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 make certain corrections and other clarifying changes to the Rules. 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 make non-substantive changes to its Cboe Exchange Rulebook (“Rulebook”) in order to correct certain errors and make certain clarifications throughout the Rules.

The proposed rule change corrects cross-reference errors in Rules 1.1, 5.5, 5.6, 5.50, 5.51, 5.80 and 5.91 that are currently inaccurate, as follows:

Rule Location of Current Inaccurate Cross-Reference	Current Cross-Reference	Revised/Accurate Cross-Reference
5.5 (System Access and Connectivity) paragraph (b)(2)	5.9	5.10
5.6 (Order Types, Order Instructions, and Times-in-Force) paragraph (c) (definition of “Compression or Position Compression Cross (“PCC”) Order”)	5.88	5.85
5.50 (Market-Maker Appointments) paragraph (h)(1)	Paragraph (g)	Paragraph (h)

5.50 (Market-Maker Appointments) paragraphs (i), (i)(1), (i)(2) and (i)(3)	Paragraph (g) and paragraph (h)	Incorrect cross-references to paragraph (g) should be paragraph (h) and incorrect cross reference to paragraph (h) should be paragraph (i)
5.51 (Market-Maker Obligations) paragraph (c)	8.26	8.19
5.80 (Admission to and Conduct on the Trading Floor) paragraph (c)(1)(C)	Chapter 3	Chapter 13
5.91 (Floor Broker Responsibilities) paragraph (d)(2)	8.26	8.19

The proposed rule change also corrects paragraph numbering and lettering in Rules 5.34 and 6.22. Current Rule 5.34(a)(4) jumps from subparagraph (C) to (E), Rule 5.34(c) jumps from subparagraph (10) to (12), and Rule 6.22 jumps from paragraph (c) to (e). The proposed rule change corrects these paragraph formatting errors by updating Rule 5.34(a)(4)(E) to (D), Rule 5.34(c)(12) to (11), and Rule 6.22(e) to (d).

The proposed rule change removes extraneous rule text from Rule 5.81(h). Specifically, the proposed rule change removes an extraneous “or” at the end of the first sentence in that paragraph. The proposed rule change also amends Rule 6.5 to remove the term Voluntary Professional Customer as the Exchange no longer recognizes the concept of Voluntary Professional Customers and no longer uses the term in its Rules.⁵ Additionally, the proposed rule change replaces the term “TPH Department” with the term “Exchange” in Rules 3.7, 3.8, 3.10, 3.11, 3.13, 3.15, 3.50, 3.59, 3.60, and 3.61. In 2018, the Exchange renamed its “TPH Department” to be called “Membership Services.” The proposed rule change removes reference

⁵ See Securities Exchange Act Release No. 86173 (June 20, 2019), 84 FR 30267 (June 26, 2019) (SR-CBOE-2019-027).

to a “summary fine under Rule 13.15” in Rule 6.1(a)(1), which governs late transaction reports, as a pattern and practice of late reporting without exceptional circumstances may no longer be subject to a summary fine under 13.15.⁶ The proposed rule change seeks to use the term the “Exchange” as it does throughout the Rulebook when referring to actions taken by the Exchange or information that market participants needs to send to the Exchange. The Exchange prefers to use the term “Exchange” rather than reference a specific department to permit internal reorganization or changing of department names without the need for a rule filing. Pursuant to Rule 1.5, the Exchange will communicate to TPHs through notices, regulatory circulars, or other communication where to send information to the Exchange (including to which department such information should be directed).

The proposed rule change relocates Rule 8.43(j) to Rule 8.35(d). The Exchange previously restructured its Rulebook in connection with a 2019 technology migration. Prior to restructuring, the provision currently in Rule 8.43(j) (former Rule 24A.7(d)), which specifically governs FLEX reporting requirements, was a part of former Rule 24A.7, which governed FLEX position limits and general requirements, including reporting. Former Rule 24A.7 was relocated to current Rule 8.35.⁷ Current Rule 8.43 (former Rule 4.13), instead, governs reports related to non-FLEX position limits. The provision in Rule 8.43(j) (former 24A.7(d)) was not previously included in the Rule governing reports related to non-FLEX position limits (current Rule 8.43/former Rule 4.13) nor did the Exchange intend for this provision to become a part of the Rule governing non-FLEX reports related to position limits (current Rule 8.43, former Rule 4.13). However, upon

⁶ See Securities Exchange Act Release No. 92702 (August 18, 2021), 86 FR 47346 (August 24, 2021) (SR-CBOE-2021-045).

⁷ See Securities Exchange Act Release No. 87261 (October 9, 2019), 84 FR 55351 (October 16, 2019) (SR-CBOE-2019-096).

restructuring its Rulebook and relocating its Rules related to position and exercise limits, the Exchange inadvertently relocated the provision in regarding FLEX reporting requirements to Rule 8.43.⁸ Therefore, the proposed rule change corrects this inadvertent relocation by moving the provision in Rule 8.43(j) back to Rule 8.35 (as Rule 8.35(d)), the appropriate location for FLEX reporting requirements.⁹

The proposed rule change also makes a non-substantive clarification in Rules 5.54, 5.55 and 5.56 in connection with Designated Primary Market-Makers (“DPMs”), Lead Market-Makers (“LMMs”), and Primary Market-Makers (“PMMs”) continuous quoting requirements, respectively. Specifically, the Exchange proposes to add clarity to these Rules by making the definition of continuous electronic quoting explicit in each. All Market Makers, including DPMs, PMMs, and LMMs, are required to provide continuous electronic quotes by submitting continuous bids and offers for 90% of the time during Regular Trading Hours. The definition of continuous quoting requirements is explicit in Rule 5.52(d)(2), which provides for a 90% timing requirement for a Market-Maker’s continuous electronic quotes.¹⁰ The proposed rule change merely proposes to make the same requirement explicit, thus providing additional clarity in the Rules governing electronic quoting requirements for DPMs, LMMs and PMMs. This is the continuous electronic quoting requirement to which DPMs, LMM and PMMs are currently subject.

⁸ See id.

⁹ In light of the proposed rule change to relocate Rule 8.43(j) to Rule 8.35(d), the proposed rule change also updates cross-references within this provision.

¹⁰ The Exchange notes that the 90% timing requirement for a Market-Maker applies while the Market-Maker is “required to provide electronic quotes in an appointed option class on a given trading day” as provided in Rule 5.52(d)(2), while the 90% timing requirement for a DPM, LMM and PMM applies “during Regular Trading Hours”, as provided in Rules 5.54(a)(1), 5.55(a)(1), and 5.56(a), respectively.

Finally, the proposed rule change also makes a non-substantive clarification in Rule 1.1 under the definition of Capacity. The definition of “L” Capacity code provides that it is for the account of a non-Trading Permit Holder affiliate. The Exchange notes that the “L” Capacity code is specifically defined in and for the purposes described in the Cboe Options Fees Schedule. Therefore, the proposed rule change adds language to the definition of “L” Capacity code to make this explicit, thereby providing additional clarity in the Rule.

(a) 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. Additionally, 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.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ Id.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, will protect investors and the public interest by correcting errors and inaccuracies and clarifying text within the Rules. Specifically, by correcting inaccurate cross-references, errors in certain Rule text and in Rule numbering and lettering, updating a defined term, relocating an inadvertently moved Rule to its original and appropriate location and adding clarifying language regarding the timing requirement for continuous quoting requirements, which is the same for all Market-Makers,¹⁴ in the Rules governing quoting requirements for DPMs, LMMs, PMMs, as well as clarifying language in regarding the application of the L Capacity code (i.e., for purposes of the Fees Schedule), the proposed rule change is designed to protect investors by making the Rulebook more accurate and adding clarity to the Rules, thereby mitigating any potential investor confusion. The proposed rule change will have no impact on trading on the Exchange, as all the proposed rule changes are nonsubstantive in nature.

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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended as a competitive filing, but rather simply updates the Rules to correct certain errors and add clarity. The proposed rule change makes no substantive changes to the Rules, and thus will have no impact on trading on the Exchange.

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 proposal.

¹⁴ See supra note 6.

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 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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁸ 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. The Exchange notes that the proposed rule change will have no impact on trading on the Exchange, as it does not make any substantive changes to the Rules. Rather, the proposal corrects minor errors and makes non-substantive clarifications to mitigate any potential investor confusion. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is non-substantive in nature as it corrects outdated or incorrect cross references and paragraph numbering, relocates some text, and makes non-substantive clarifications to add

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 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.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

clarity to avoid any potential for confusion. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.¹⁹

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-2021-054 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-2021-054. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁹ 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).

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, 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-CBOE-2021-054 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).