

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93721; File No. SR-CBOE-2021-070)

December 6, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Temporary Remote Inspection Relief for Trading Permit Holder’s Office Inspections for Calendar Years 2020 and 2021 to Include Calendar Year 2022 Through June 30, 2022

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 November 24, 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, 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 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 a rule change to extend the temporary remote inspection relief for Trading Permit Holder’s office inspections for calendar years 2020 and 2021 to include calendar year 2022 through June 30, 2022.

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).

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 COVID-19 pandemic has caused a host of operational disruptions to the securities industry and impacted Trading Permit Holders (“TPHs”), regulators, investors and other stakeholders. In response to the pandemic, the Exchange began providing temporary relief to TPHs from specified Exchange Rules and requirements, including Rule 9.2(d) (Annual Branch Inspections). In November 2020, the Exchange adopted a provision in Rule 8.16(f) (Office Inspections), which has expired by its terms, that extended the time by which TPHs must complete their calendar year 2020 inspection obligations under Rule 8.16(f) to March 31, 2021, but with the expectation that firms would conduct their inspections on-site.⁵ The Exchange also adopted Rule

⁵ See Securities Exchange Act Release No. 90583 (December 7, 2020), 85 FR 80207 (December 12, 2020) (SR-CBOE-2020-112).

9.2(d)(5), which automatically sunsets on December 31, 2021, to provide firms the option of satisfying their inspection obligations under Rule 8.16(f) and 9.2(d) remotely for calendar years 2020 and 2021, subject to specified conditions,⁶ due to the logistical challenges of going on-site while public health and safety concerns related to COVID-19 persisted. The Exchange notes that these temporary rules are substantively identical to the temporary inspection extension and remote relief rules filed by the Financial Industry Regulatory Authority (“FINRA”) in 2020.⁷

While there are signs of improvement, much uncertainty remains. The emergence of the Delta variant,⁸ dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID-19 remains an active and real public health concern.⁹ The Exchange understands that firms have delayed their return to office plans due to the

⁶ See id.

⁷ See Securities and Exchange Act Release Nos. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (SR-FINRA-2020-019); and 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-040).

⁸ See The Centers for Disease Control and Prevention (“CDC”), What You Need to Know about Variants (stating, in part, that “the Delta variant causes more infections and spreads faster than earlier forms of the virus that causes COVID19.”), <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html> (updated September 3, 2021). See also CDC, The Possibility of COVID-19 Illness after Vaccination: Breakthrough Infections (stating, in part, that “COVID-19 vaccines are effective at preventing infection, serious illness, and death. Most people who get COVID-19 are unvaccinated. However, since vaccines are not 100% effective at preventing infection, some people who are fully vaccinated will still get COVID-19. . . . People who get vaccine breakthrough infections can be contagious.”), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html> (updated August 23, 2021).

⁹ For example, President Joe Biden on July 29, 2021, announced several measures to increase the number of people vaccinated against COVID-19 and to slow the spread of the Delta variant, including strengthening safety protocols for federal government employees and contractors. See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/factsheet-president-biden-to-announce-new-actions-to-get-more-americansvaccinated-and-slow-the-spread-of-the-delta-variant/>. More recently, President Joe Biden on August 31, 2021, briefed the press on, among other things, the

continued pandemic and are considering implementing or have implemented hybrid work arrangements dependent on functions and regulatory requirements.¹⁰ To that end, in order to address ongoing industry-wide concerns regarding having to conduct in-person office inspections while safety concerns related to the pandemic persist and to align with pandemic-related regulatory relief provided by FINRA, which recently extended their substantively identical temporary remote inspection rules,¹¹ the Exchange proposes to extend Rule 9.2(d)(5) through June 30, 2022. The proposed extension would provide clarity to firms on regulatory requirements and account for the time needed for many firms to carefully assess when and how to have their employees safely return to their offices in light of vaccination coverage in the U.S. and transmission levels of the virus, including any emergent variants throughout the country.

By extending Rule 9.2(d)(5) to cover part of calendar year 2022 inspection obligations through June 30, 2022 only, the Exchange does not propose to amend the other conditions of the temporary rule. The proposed amendments to Rule 9.2(d)(5) simply provide that for calendar year 2022, a TPH has the option to conduct those inspections remotely through June 30, 2022. The current conditions of Rule 9.2(d)(5) for firms that elect to conduct remote inspections would remain unchanged: such firms must amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the

government's response to the COVID-19 surge, noting the government's continuing efforts to help states with Delta variant outbreaks. See <https://www.whitehouse.gov/briefing-room/press-briefings/2021/08/31/pressbriefing-by-white-house-covid-19-response-team-and-public-health-officials-53/>.

¹⁰ The Exchange notes that a majority of its TPHs are FINRA member firms as well, and that through FINRA's ongoing monitoring the Exchange has learned that many of its TPHs have delayed plans to require a full return to the office and that most continue to operate in a remote or hybrid environment.

¹¹ See Release No. 34-93002 (September 15, 2021), 86 FR 52508 (September 21, 2021) (File No. SR-FINRA-2021-023).

required documentation. The additional period of time would also enable the Exchange to further monitor the effectiveness of remote inspections and their impacts – positive or negative – on firms’ overall supervisory systems in the evolving workplace.

The Exchange continues to believe this temporary remote inspection option is a reasonable alternative to provide to firms to fulfill their Rule 8.16(f) and 9.2(d) obligations during the pandemic and is designed to achieve the investor protection objectives of the inspection requirements under these unique circumstances. Firms should consider whether, under their particular operating conditions, reliance on remote inspections would be reasonable under the circumstances. For example, firms with offices that are open to the public or that are otherwise doing business as usual should consider whether some form of in-person inspections would be feasible and appropriately contribute to a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules.

The Exchange again notes that FINRA recently filed for the same extension period of their remote relief rule,¹² which is substantively identical to Rule 9.2(d)(5).¹³ Like FINRA, the Exchange proposes to make the proposed rule change operative on January 1, 2022.

1. 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.¹⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁵ requirements

¹² See supra note 11.

¹³ See supra notes 5 and 7.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

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)¹⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that, in recognition of the ongoing impact of COVID 19 on performing the on-site inspection component of Rules 8.16(f) and 9.2(d), the proposed rule change is intended to provide firms a temporary regulatory option to conduct inspections of offices and locations remotely during the first half of calendar year 2022. This temporary remote relief rule and the proposed extension thereof does not relieve firms from meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules that directly serve investor protection. In a time when faced with ongoing challenges resulting from the COVID-19 pandemic, the Exchange believes that the proposed rule change provides sensibly tailored relief that will afford firms the ability to assess when and how to implement their work re-entry plans as measured against the health and safety of their personnel, while continuing to serve and promote the protection of investors and the public interest.

¹⁶ Id.

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 Exchange does not believe the proposed temporary rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act, because the proposed extension of the temporary remote inspection relief rule will apply equally to all TPHs required to conduct office and location inspections in calendar year 2022 through June 30, 2022. The Exchange further does not believe that the proposed extension to the temporary rule will impose any burden on intermarket competition because it relates only to the extension of the remote manner in which inspections for 2022 may be conducted. Additionally, and as stated above, FINRA has recently submitted a filing to extend its substantively identical temporary remote relief rule for its members in the same manner.

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 Act¹⁷ and Rule 19b-4(f)(6)¹⁸ thereunder.

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 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-2021-070 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-2021-070. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

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-2021-070 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.¹⁹

J. Matthew DeLesDernier

Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).