

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95228; File No. SR-CBOE-2022-035)

July 8, 2022

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 5.22 to Remove Certain References to the Market-Wide Circuit Breaker Program

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 June 30, 2022, 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”) is filing with the Securities and Exchange Commission (the “Commission”) a proposal to amend Rule 5.22 to remove certain references to the Market-Wide Circuit Breaker program. The text of the proposed rule change is provided in Exhibit 5.

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 Exchange proposes to amend Exchange Rule 5.22 to remove certain rule text that references the Market-Wide Circuit Breaker ("MWCB") program for equity securities. The proposed changes are intended to clarify the Exchange's rules regarding trading halts in options due to a MWCB. In addition, the Exchange proposes to make certain non-substantive changes to Rule 5.22 to delete references to individual stocks, which no longer trade on the Exchange.

MWCB Program

On March 16, 2022, the Commission approved a proposal by the New York Stock Exchange LLC ("NYSE") to make permanent the MWCB program.⁵ The Commission approved a proposal

⁵ See Securities Exchange Act Release No. 94441 (March 16, 2022), 87 FR 16286 (March 22, 2022) (SR-NYSE-2021-40) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers in Rule 7.12).

filed by the Exchange on April 12, 2022, to adopt on a permanent basis the MWCB pilot program.⁶

The Exchange's affiliated equities exchanges similarly received approval to make permanent the MWCB pilot program on April 12, 2022.⁷

The Exchange's current rule regarding MWCB halts can be found in Rule 5.22,⁸ which states, “[t]he Exchange shall halt trading in all stocks and stock options whenever a market-wide trading halt known as a circuit breaker is initiated in response to extraordinary market conditions.” Rules 5.22(a)⁹ and 5.22(b)¹⁰ describe the applicable Market Declines and associated trading halts applicable to

⁶ See Securities Exchange Act Release No. 94706 (April 12, 2022), 87 FR 22954 (April 18, 2022) (SR-CBOE-2022-018) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers, Currently Codified in Rule 5.22).

⁷ See Securities Exchange Act Release No. 94705 (April 12, 2022), 87 FR 22977 (April 18, 2022) (SR-CboeBYX-2022-011) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers, Currently Codified in Rule 11.18); Securities Exchange Act Release No. 94702 (April 12, 2022), 87 FR 23003 (April 18, 2022) (SR-CboeBZX-2022-027) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers, Currently Codified in Rule 11.18); Securities Exchange Act Release No. 94701 (April 12, 2022), 87 FR 22963 (April 18, 2022) (SR-CboeEDGA-2022-008) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers, Currently Codified in Rule 11.16); Securities Exchange Act Release No. 94699 (April 12, 2022), 87 FR 22967 (April 18, 2022) (SR-CboeEDGX-2022-023) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers, Currently Codified in Rule 11.16).

⁸ See Exchange Rule 5.22 (“Market-wide Trading Halts due to Extraordinary Market Volatility”).

⁹ See Exchange Rule 5.22(a) (“Definitions”). A Market Decline means a decline in price of the S&P 500 Index between 9:30 a.m. and 4:00 p.m. on a trading day as compared to the closing price of the S&P 500 Index for the immediately preceding trading day. A Level 1 Market Decline means a Market Decline of 7%, a Level 2 Market Decline means a Market Decline of 13%, and a Level 3 Market Decline means a Market Decline of 20%.

¹⁰ See Exchange Rule 5.22(b) (“Halts in Trading”). The Exchange shall halt trading in all stock or stock options for 15 minutes if a Level 1 or Level 2 Market Decline occurs after 9:30 a.m. and before 3:26 p.m. (or 12:26 p.m. in the case of an early scheduled close). The Exchange will not halt trading if a Level 1 or Level 2 Market Decline occurs at 3:26 p.m.

MWCB. The Exchange notes that the text in Rules 5.22(a) and 5.22(b) is identical to the MWCB language found in the Exchange’s affiliated equity exchanges’ rules.¹¹ Those rules are implemented exclusively by equities exchanges. While the Exchange previously operated a stock trading facility, this functionality is no longer supported by the Exchange and as such, the Exchange is proposing to remove the MWCB rules associated with equity securities. Rules 5.22(f) – (h) detail the MWCB testing requirements that were implemented as part of the adoption of the MWCB program on a permanent basis.¹² The Exchange is now proposing to remove the language in current Rules 5.22(a), 5.22(b), 5.22(d), 5.22(e), 5.22(f), 5.22(g), and 5.22(h), as this language applies specifically to equity securities, which do not trade on the Exchange. Given that the introductory language in Rule 5.22 specifically states that stock options will be halted in the event of a market-wide circuit breaker,¹³ the MWCB rules applicable to equity securities (currently housed in Rules 5.22(a) – (b), (d) – (h)) are not necessary. The Exchange believes that by removing this language its rules regarding stock option halts due to market-wide circuit breakers will provide clarity for Trading Permit Holders¹⁴ and others who may rely on the rule.

(12:26 p.m. on days with an early scheduled close) or later. The Exchange shall halt trading in all stocks and stock options until the next trading day if a Level 3 Market Decline occurs at any time during the trading day.

¹¹ See Cboe BYX Exchange Rules 11.18(a)(1)-(4) and 11.18(b); Cboe BZX Exchange Rules 11.18(a)(1)-(4) and 11.18(b); Cboe EDGA Exchange Rules 11.16(a)(1)-(4) and 11.16(b); Cboe EDGX Exchange Rules 11.16(a)(1)-(4) and 11.16(b).

¹² See Exchange Rule 5.22(f) (“Market-Wide Circuit Breaker Testing”).

¹³ Supra note 8.

¹⁴ A Trading Permit Holder means “any individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit.” See Eleventh Amended and Restated Bylaws of Cboe Exchange, Inc. Section 1.1 (“Definitions”). A Trading Permit “means a license issued by the Exchange that grants the holder or the holder’s nominee the right to access one or more facilities of the Exchange for the purpose of effecting transactions in securities traded on the Exchange without the services of another person acting as broker, and otherwise to access the facilities of the Exchange for purposes of trading or reporting transactions or transmitting orders or quotations in

As a result of the proposed changes described above, the remaining provisions of Rule 5.22 have been renumbered. In addition, the Exchange has proposed a non-substantive change to current Rule 5.22(c) in order to remove outdated reopening procedures and reference current Rule 5.31, which describes the reopening process for all halts.¹⁵ The Exchange notes that these changes are non-substantive and are being proposed to better organize the Exchange's rules regarding halts due to MWCB and provide a more accurate description of the Exchange's reopening process following a MWCB halt.

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.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ 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,

securities traded on the Exchange, or to engage in other activities that, under the Rules, may only be engaged in by Trading Permit Holders, provided that the holder or the holder's nominee, as applicable, satisfies any applicable qualification requirements to exercise those rights." See Exchange Rule 1.1 ("Definitions").

¹⁵ See Rule 5.31(g) ("Opening Auction Process Following Trading Halts").

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ 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 removing the text in current Rules 5.22(a) – (b), (d) – (h) will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because the text being removed applies to equity securities, which do not currently trade on the Exchange. The language in Rules 5.22(a) – (b), (d) – (h) describes the applicable Market Declines, trading halts, reopening processes, and MWCB testing requirements that are identical to the corresponding MWCB rules in the Exchange’s affiliated equities exchanges. Those rules are implemented exclusively by equities exchanges. As the Exchange does not trade equity securities, the Exchange believes it is confusing to have rule text that describes the MWCB program within its rules and believes that limiting the text in Rule 5.22 to describe that stock options will be halted in the event of a MWCB will eliminate potential confusion amongst Trading Permit Holders. The Exchange notes that competing exchanges have similar rule text regarding trading halts in options when a MWCB commences in equity securities.¹⁹ In addition, the Exchange believes that the proposed non-substantive change to remove the current, outdated rule text in Rule 5.22 regarding the reopening procedures for halts due to a MWCB promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free

¹⁸

Id.

¹⁹

See NYSE Arca Options Rule 6.65-O(e), which states “[t]he Exchange shall halt trading in all options whenever the equities markets initiate a market-wide trading halt commonly known as a circuit breaker in response to extraordinary market conditions.” See also MIAX Options Exchange Rule 504.03, which states “[t]he Exchange shall halt trading in all securities whenever a market-wide trading halt commonly known as a circuit breaker is initiated on the New York Stock Exchange in response to extraordinary market conditions.”

and open market and a national market system, and protects investors and the public interest because it seeks to clarify that any reopening due to a MWCB halt will be conducted under the provisions of Rule 5.31. By providing a reference to Rule 5.31, the Exchange believes Trading Permit Holders will be directed to the most relevant reopening procedures and any potential confusion regarding the reopening process for halts due to MWCBs will be eliminated.

Similarly, the Exchange believes that removing language that references the trading of stocks on the Exchange will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest as it is inapplicable to the Exchange. Equity securities are not eligible for trading on the Exchange and the rules are applicable only to the securities which currently trade on the Exchange. Therefore, deletion of this language will eliminate any potential confusion from the Rules.

For the foregoing reasons, the Exchange believes that the proposed change is consistent with the Act.

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 proposed change is not intended to address competition, but rather, makes clarifying changes to Rule 5.22 in order to benefit all Trading Permit Holders equally. The Exchange does not believe that removing the MWCB rule text that is applicable to equity securities would have any impact on competition as the revised rule text will look substantively similar to the rules of other competing options exchanges. The Exchange seeks to ensure consistency amongst exchanges with respect to this industry-wide program without implicating any competitive issues.

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: (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)(iii) of the Act²⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.²¹

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. The proposed rule change simply removes rule text that does not apply to stock options exchanges and would clarify the MWCB halt process. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 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.

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

filing.²⁴

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 under Section 19(b)(2)(B)²⁵ of the Act 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-2022-035 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-2022-035. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

²⁴ 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).

²⁵ 15 U.S.C. 78s(b)(2)(B).

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-2022-035 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.²⁶

J. Matthew DeLesDernier,
Assistant Secretary.

²⁶ 17 CFR 200.30-3(a)(12).

