

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-102297; File No. SR-CBOE-2024-047)

January 28, 2025

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding the Types of Complex Orders Available for Flexible Exchange Options (“FLEX”) Trading on the Exchange

On October 11, 2024, Cboe Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to provide for the trading of complex flexible exchange options (“FLEX”) orders with both FLEX and non-FLEX components (“FLEX v. non-FLEX Orders”). The proposed rule change was published for comment in the Federal Register on October 30, 2024.<sup>3</sup> On December 10, 2024, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> The Commission received no comments regarding the proposal. On December 20, 2024, the Exchange filed Amendment No. 1 to the proposal, which superseded and replaced the original proposal in its entirety. On January 23, 2024, the Exchange filed Amendment No. 2 to the proposal, which supersedes and replaces Amendment No. 1 in its entirety.<sup>6</sup> The Commission is publishing this

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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> See Securities Exchange Act Release No. 101428 (Oct. 24, 2024), 89 FR 86393.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 101870 (Dec. 10, 2024), 89 FR 101673 (Dec.16, 2024). The Commission designated January 28, 2025, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>6</sup> Amendment No. 2 revises the proposal to: clarify and correct errors in the text of the proposed rules;

notice to solicit comments on Amendment No. 2 from interested persons and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

I. Description of the Proposed Rule Change, as Modified by Amendment No. 2

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Rules regarding the types of complex orders available for flexible exchange options (“FLEX”) trading at the Exchange. The Exchange initially submitted this rule filing SR-CBOE-2024-047 to the Commission on October 11, 2024 (the “Initial Rule Filing”). The Exchange submitted Amendment No. 1 to the Initial Rule Filing on December 20, 2024 (“Amendment No. 1”), which superseded the Initial Rule Filing and replaced it in its entirety. This Amendment No. 2 to the initial Rule Filing supersedes Amendment No. 1 and replaces it in its entirety. 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 at [https://www.cboe.com/us/options/regulation/rule\\_filings/](https://www.cboe.com/us/options/regulation/rule_filings/).

II. The Exchange’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

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provide an example of the application of the Exchange’s obvious error rules to complex FLEX v. non-FLEX Orders; provide additional discussion of the potential uses of FLEX v. non-FLEX Orders; revise the description of the proposal to make clear that the Exchange’s rules will continue to require that the component legs of FLEX complex orders, including FLEX v. Non-FLEX Orders, have the same underlying equity or index; and include additional information in the examples showing the pricing of FLEX v. non-FLEX Orders. Amendment No. 2 to the proposal is available at: <https://www.sec.gov/comments/sr-cboe-2024-047/srcboe2024047.htm>.

## 1. Purpose

The Exchange proposes to adopt rules to govern a new type of complex FLEX Order. Specifically, the Exchange proposes to amend Rules 4.21 (Series of FLEX Options), 5.70 (Availability of Orders), 5.72 (FLEX Trading), and 6.5 (Nullification and Adjustment of Options Transactions Including Obvious Errors).

FLEX Options are customized equity or index option contracts that allow investors to tailor contract terms for exchange-listed equity and index options. The Exchange may make simple FLEX Orders and complex FLEX Orders (see Rule 5.70(b)), including security future-option orders and stock-option orders, available for FLEX trading. Currently, the legs of a complex FLEX Order are limited to FLEX Option series only. An investor wishing to trade a complex strategy containing both FLEX Option series and non-FLEX Option series must execute such strategy using two or more separate orders. The Exchange now proposes to amend its rules to allow for the legs of a complex FLEX Order to include a combination of FLEX Option series and non-FLEX Option series (“FLEX v. Non-FLEX Order”).

The Exchange notes that, with exception of the rules proposed in this rule filing, FLEX v. Non-FLEX Orders will be subject to the same trading rules and procedures that currently govern the trading of other complex FLEX Orders on the Exchange. To permit the trading of FLEX v. Non-FLEX Orders, the Exchange proposes to amend its rules as follows.

First, the Exchange proposes to amend Rule 5.70 (Availability of Orders) to add FLEX v. Non-FLEX Orders to the types of complex orders available for FLEX trading.<sup>7</sup> Specifically, the

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<sup>7</sup> As part of the proposed rule change, the Exchange proposes to amend Rule 5.70(b) to add a cite to the definition of complex order in Rule 1.1; this is not a substantive change, but rather merely adds a cross-reference to the defined term for purposes of clarity. Per Rule 1.1, the term “complex order” means an order involving the concurrent execution of two or more different series in the same underlying security or

Exchange proposes to amend Rule 5.70(b) to state that the legs of a complex FLEX Order may be for FLEX Option series only or a combination of FLEX Option series and non-FLEX Option series (“FLEX v. Non-FLEX Order”).<sup>8</sup> As noted above, FLEX v. Non-FLEX Orders will be considered complex FLEX instruments, which will be subject to the same trading rules and procedures that govern the trading of other FLEX Orders on the Exchange (unless otherwise noted herein). The Exchange also proposes to amend Rule 5.70(b) to remove the requirements set forth in subparagraphs (1) and (2).<sup>9</sup> Rule 5.70(b)(1) provides that each leg(s) of a complex FLEX Order must be for a FLEX Option series authorized for FLEX trading with the same underlying equity security or index. The Exchange proposes to delete this requirement, as such requirement is already contained within the definition of complex order set forth in Rule 1.1. Rule 5.70(b)(2) [sic] provides that each leg(s) of a complex FLEX Order must have the same exercise style. The Exchange proposes to delete this requirement to allow for the trading of the proposed FLEX v. Non-FLEX Orders and will, in general, provide FLEX Traders with more flexibility and opportunities for customization via FLEX trading. Further, deletion of this requirement that each leg of a complex FLEX Order (whether comprised of all FLEX Option legs or FLEX and non-FLEX Option legs) must have the same exercise style will expand investors’ choices and flexibility, and provide FLEX Traders with a mechanism by which to manage the positions and associated risk in their portfolios more precisely, based on exercise style.

The Exchange also proposes to add Rule 5.70(d), which states that, in classes determined

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index (the “legs” or “components” of the complex order), for the same account, occurring at or near the same time and for the purpose of executing a particular investment strategy with no more than the applicable number of legs (which number the Exchange determines on a class-by-class basis).

<sup>8</sup> Under the proposed rule change, complex FLEX Orders could include both listed instruments as well as FLEX instruments (if at least one leg is for a FLEX Option series), with an optional stock leg. Per the definition of complex order, the legs of all complex FLEX Orders (including FLEX v. Non-FLEX options) must have the same underlying security or index. See Rule 1.1 (definition of complex order).

<sup>9</sup> See *supra* note 1. [sic]

by the Exchange, a nonconforming FLEX v. Non-FLEX Order is not eligible for electronic processing, in which case the nonconforming FLEX v. Non-FLEX Order may only be submitted for manual handling and open outcry trading. For reference, a “nonconforming complex order” is defined as a complex order with a ratio on the options legs less than one-to-three (.333) or greater than three-to-one (3.00).<sup>10</sup> The proposed language is the same as language currently included in the definition of “complex order” in Rule 5.33(a), the intent of which is to permit the Exchange to determine in which classes nonconforming complex orders (including stock-option orders) may be submitted for electronic processing on the Exchange pursuant to Rule 5.33.

The Exchange also proposes to add Rule 5.70(e), which states that the non-FLEX Option leg(s) of a FLEX v. Non-FLEX Order may not Leg into the Simple Book, to provide for more efficient execution and processing of FLEX v. Non-FLEX Orders. The series that would comprise a FLEX v. Non-FLEX Order are parts of different classes and thus are subject to different trading setting and parameters (e.g., allocation, entitlements) pursuant to the Rules. Non-FLEX classes also have separate market data inputs, as the System must read market data for each class in connection with potential executions in non-FLEX classes.<sup>11</sup> If the System receives a FLEX v. Non-FLEX Order, it would need to trade the Non-FLEX leg against the appropriate leg in the book; however, there is no book with resting simple FLEX orders against which the FLEX leg could execute. If this were to occur, execution opportunities for FLEX v. Non-FLEX Orders may be prevented, as while the Non-FLEX leg(s) of the FLEX v. Non-FLEX Order would execute against interest in the book, there would be no execution opportunities for

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<sup>10</sup> See Rule 1.1.

<sup>11</sup> This proposed change is consistent with current Rules that do not permit legging of complex orders consisting of legs in different groups of series in a class, as the System handles groups of series as different classes. See Rule 5.33(g)(6). The proposed change is also consistent with the Exchange’s handling of stock-option orders. See Rule 5.33(g)(5).

the FLEX leg(s) of the FLEX v. Non-FLEX Order. As discussed below, the Non-FLEX legs of FLEX v. Non-FLEX Orders will protect Priority Customer orders in the simple book for the Non-FLEX classes.

The Exchange proposes to amend Rule 5.72 (FLEX Trading) to distinguish criteria for a complex order with only FLEX Option legs and to add criteria for FLEX and non-FLEX Option legs of a FLEX v. Non-FLEX Order. First, the Exchange proposes to amend Rule 5.72(b)(2) to specify that each FLEX Option leg of the FLEX Option complex strategy must include all terms for a FLEX Option series set forth in Rule 4.21 (including that a non-FLEX Option series with identical terms is not listed for trading), subject to the order entry requirements set forth in Rule 5.7.

Additionally, the Exchange proposes changes to distinguish the criteria for a complex order with only FLEX Option leg(s) from that proposed for FLEX v. Non-FLEX Orders, noting that there are no changes to the criteria to those FLEX Orders containing only FLEX Option leg(s) as a result of the proposed rule change. The Exchange proposes to amend Rule 5.72(b)(2)(A) to specifically reference the pricing requirements for complex FLEX Orders with FLEX Option legs only. As proposed Rule 5.72(b)(2)(A)(i) contains the requirements for a complex FLEX Order with only FLEX Option legs submitted into the System for an electronic FLEX Auction pursuant to Rule 5.72(c) or Rules 5.73 or 5.74, which must include a bid or offer price for each leg, which leg prices must add together to equal the net price. Proposed Rule 5.72(b)(2)(A)(ii) sets forth the requirements for a complex FLEX Order with only FLEX Option legs submitted into the System prior to representation in an open outcry FLEX Auction pursuant to Rule 5.72(d), namely that the order may include a bid or offer price on one or more of the legs (subject to a FLEX Trader's responsibilities pursuant to Rule 5.91 and Chapter 9). The execution leg prices must be entered or modified, as

necessary, via PAR following execution of the order, which prices must add together to equal the net execution price.

The Exchange proposes to add Rule 5.72(b)(2)(B) containing certain requirements for a FLEX v. Non-FLEX Order. Under the proposed rule, a FLEX v. Non-FLEX Order submitted in the System for an electronic FLEX Auction pursuant to Rule 5.72(c) must include a bid or offer price for each FLEX Option leg but no bid or offer price for each non-FLEX Option leg, and a net price. By allowing the System the ability to adjust the price of the legs, FLEX Traders may achieve their desired net price for the order, while ensuring the non-FLEX Option legs fit within pricing requirements of the non-FLEX markets. A FLEX v. Non-FLEX Order submitted into the System prior to representation in an open outcry FLEX Auction pursuant to Rule 5.72(d) below may include a bid or offer price for any FLEX Option leg but no bid or offer price for each non-FLEX Option leg, and a net price. By allowing flexibility in open outcry trading, FLEX Traders may achieve their desired net price for the order.

To achieve the desired net execution price for a FLEX v. Non-FLEX Order (1) the execution leg price of each non-FLEX Option leg may not be worse than the NBBO,<sup>12</sup> worse than the BBO,<sup>13</sup> or equal to the BBO if there is a Priority Customer order(s) on the Simple Book; and (2) the execution leg price of each FLEX Option leg(s) may be adjusted so that the prices of the FLEX Option legs combined with the prices of the non-FLEX Option legs add together to equal the net price. Thus, the non-FLEX Option legs of a FLEX v. Non-FLEX Order would be able to trade at the same price as non-Priority Customer interest at the BBO, which is consistent with complex orders

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<sup>12</sup> See Rule 1.1. The term “NBBO” means the national best bid or offer the Exchange calculates based on market information it receives from OPRA.

<sup>13</sup> See Rule 1.1. The term “BBO” means the best bid or offer disseminated on the Exchange.

comprised of solely non-FLEX Options.<sup>14</sup> In addition, no non-FLEX component of a FLEX v. Non-FLEX Order would be able to trade at the same price as resting Priority Customer interest at the BBO.<sup>15</sup> If a non-FLEX Option leg of a FLEX v. Non-FLEX Order cannot execute at a price permissible that meets the requirements set forth in proposed Rule 5.72(b)(2)(B)(i), the entire FLEX v. Non-FLEX Order will be cancelled.

The below examples are designed to illustrate the pricing of a FLEX v. Non-FLEX Order. Assume for each example a FLEX Trader wishes to execute a complex FLEX Order with two legs (one FLEX Option leg and one non-FLEX Option leg).

**Example 1:** *Listed (i.e., non-FLEX) legs are adjusted to their NBBO first, FLEX Option leg is then adjusted residually to meet net execution price.*

Instrument ID	Legs	Symbol	Side	Ratio	Expiration	Strike	Type
CI0001	Leg 1 Leg 2	XYZ 1XYZ	Buy Sell	1 1	December November	10 10.01	Call Call

#### Market for Non-FLEX Leg

Away BBO: 2.15 x 2.35

BBO: 2.20 x 2.30

NBBO: 2.20 x 2.30

FLEX Order Auction (“FOA”): Buy 10 CI0001 @ 1.25.

Leg 1 (Non-FLEX Option Leg) Price: N/A

Leg 1 Market: (Exchange Market-Maker) 2.20 x 2.30 (Exchange Market-Maker)

Leg 2 (FLEX Option Leg) Price: 1.00

Response 1: Sell 5 CI0001 @ 1.19

Response 2: Sell 5 CI0001 @ 1.25

FOA trades 5 CI0001 with Response 1 at 1.19. The legs print at 2.20 and 1.01.

<sup>14</sup> See Rule 5.33(f)(2)(A)(ii).

<sup>15</sup> See proposed Rule 5.72(b)(2)(B)(i). This is consistent with nonconforming complex orders comprised of solely non-FLEX Options. See Rule 5.33(f)(2)(A)(iv)(B).



FOA trades 5 CI0001 with Response 2 at 1.25. The legs print at 2.25 and 1.00.

**Example 2:** Listed (i.e., Non-FLEX) legs are adjusted up/down to their NBBO first, FLEX

Option leg retains specified price, as no further adjustment is needed to meet net price.

Instrument ID	Legs	Symbol	Side	Ratio	Expiration	Strike	Type
CI0001	Leg 1	XYZ	Buy	1	December	10	Call
	Leg 2	1XYZ	Sell	1	November	10.01	Call

Market for Non-FLEX Leg

Away BBO: 2.10 x 2.35

BBO: 2.15 x 2.30

NBBO: 2.15 x 2.30

FOA: Buy 10 CI0001 @ 1.25.

Leg 1 (Non-FLEX Option Leg) Price: N/A

Leg 1 Market: (Exchange Market-Maker) 2.15 x 2.30 (Exchange Market-Maker)

Leg 2 (FLEX Option Leg) Price: 1.00

Response 1: Sell 5 CI0001 @ 1.19

Response 2: Sell 5 CI0001 @ 1.25

FOA trades 5 CI0001 with Response 1 at 1.19. The legs print at 2.19 and 1.00.

FOA trades 5 CI0001 with Response 2 at 1.25. The legs print at 2.25 and 1.00.

While the System followed the same process in both examples to price the non-FLEX legs first, because the leg market was wider in the second example, the System was able to execute the non-FLEX leg in that example at a price within that market without the need to adjust the entered price of the FLEX leg.

The Exchange proposes to amend Rule 4.21 (Series of FLEX Options).<sup>16</sup> The Exchange

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<sup>16</sup> As part of the proposed changes, the Exchange proposes to add a “FLEX Option series” as a defined term in Rule 4.21(a). Further, to enhance comprehension, the Exchange proposes to amend Rule 4.21(a)(2) to add a missing word (“be”), as well as clarify that a FLEX Order for a *new* FLEX Option series may be

proposes to add Rule 4.21(a)(4) to state that the Exchange may halt trading in a FLEX complex strategy (whether comprised of all FLEX Option legs or FLEX and non-FLEX Option legs) if any leg of the strategy is halted. The System does not accept a FLEX complex order for a series while trading in the class is halted. A FLEX complex strategy may not execute until all legs are no longer halted.

Finally, the Exchange proposes to amend Rule 6.5 (Nullification and Adjustment of Option Transactions Including Obvious Errors), Interpretation and Policy .07. Specifically, the Exchange proposes to add Rule 6.5, Interpretation and Policy. 07(d), to state that if a non-FLEX Option leg of a FLEX v. Non-FLEX Order qualifies as an Obvious Error under Rule 6.5(c)(1) or a Catastrophic Error under Rule 6.5(d)(1), then the non-FLEX Option leg that is an Obvious or Catastrophic Error will be adjusted in accordance with Rules 6.5(c)(4)(A) or (d)(3), respectively, regardless of whether one of the parties is a Customer. However, the non-FLEX Option leg of any Customer order subject to proposed Rule 6.5, Interpretation and Policy. 07(d) will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's net execution price for the non-FLEX Option leg. If any leg of a FLEX v. Non-FLEX Order is nullified, the entire transaction is nullified. This is consistent with the Exchange's handling of other complex orders, including stock-option orders, and ensures protections in the event of an Obvious or Catastrophic error. The below example is designed to illustrate how a FLEX v. Non-FLEX Order will be processed in the event of an Obvious Error. Assume for the example a FLEX Trader wishes to execute a complex FLEX Order with three legs (one FLEX Option leg and two non-FLEX Option leg).

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submitted on any trading day prior to the expiration date. Such changes are non-substantive, clarifying changes.

**Example 3:** Listed Leg 1 qualifies as Obvious Error.

Leg 1: Buy 1 Call 1.00 x 1.20

Leg 2: Buy 1 Call 2.00 x 2.25

Leg 3: Buy 1 FLEX Call (Note: the FLEX leg is not considered in determining obvious error adjustments)

SNBBO of listed legs: 3.00 x 3.45

Assume Leg 1 updates to 1.00 x 4.00; Listed Leg SNBBO updates to 3.00 x 6.25

*1 millisecond later*

Complex Order trades at 5.45

Leg 1 trades @ 2.25

Leg 2 trades @ 2.20

FLEX leg trades @ 1.00

This order, specifically the execution on Leg 1, qualifies as Obvious Error, based on prices prior to Leg 1 market going wide.<sup>17</sup>

Obvious error adjustment: Leg 1 is adjusted to trade at 1.60

Theoretical price ("TP") = 1.10

Theoretical offer = 1.45

Theoretical Offer + 0.15 adjustment<sup>18</sup> = 1.60.

The Exchanges notes that the counterparties to an execution of a FLEX v. Non-FLEX Order trade all of the component legs of the order.

The Exchange believes that its existing surveillance and reporting safeguards in place are adequate to deter and detect possible manipulative behavior which might arise from trading FLEX v. Non-FLEX Orders and will support the protection of investors and the public interest. The

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<sup>17</sup> See proposed Rule 6.5, Interpretation and Policy .07(d). See also Rule 6.5(c)(1).

<sup>18</sup> See proposed Rule 6.5, Interpretation and Policy .07(d). See also Rule 6.5(c)(4)(A).

Exchange also represents that it has the necessary system capacity to support the new complex FLEX Order type. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of this complex FLEX Order type. The Exchange currently allows for trading of several types of complex orders, including stock-option orders, and has not experienced any market disruptions or issues with capacity. Rather, the Exchange believes the introduction of this complex FLEX Order type may promote more efficient trading, as investors wishing to trade a complex strategy containing both FLEX Option series and non-FLEX Option series would no longer be required to execute such strategy using two or more separate orders.

## 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. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) 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) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes the proposed rule change will benefit investors by expanding investors’ choices and flexibility with respect to the trading of FLEX Options. The

Exchange believes that introducing FLEX v. Non-FLEX Orders will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market as FLEX v. Non-FLEX Orders would enable market participants to execute a complex strategy including a combination of FLEX Option series and non-FLEX Option series, which would, in turn, provide greater opportunities for market participants to manage risk through the use of a complex FLEX Order to the benefit of investors and the public interest. The proposed rule change will benefit TPHs by providing a more efficient mechanism for TPHs to provide and seek liquidity for customized or complex FLEX strategies which include a non-FLEX Option leg(s).

Further, trading FLEX Options, including FLEX v. Non-FLEX Orders, on an exchange is an alternative to trading customized options in OTC markets and carries with it the advantages of exchange markets such as transparency, parameters and procedures for clearance and settlement, and a centralized counterparty clearing agency. Therefore, the Exchange believes the proposed rule change will promote these same benefits for the market as a whole by providing an additional venue for market participants to seek liquidity for customized, large-sized, or complex FLEX option orders, including those with a non-FLEX Option leg(s). The Exchange believes that providing an additional venue for these FLEX orders, rather than potentially splitting the orders across OTC and exchange markets, will benefit investors by increasing competition for order flow and executions, and thereby potentially result in more competitive pricing related to FLEX Options.

The Exchange believes that the proposed changes to Rule 5.70(b), to add FLEX v. Non-

FLEX Orders to the list of complex orders available for FLEX trading, are consistent with the Act and remove impediments to and perfect the mechanism of a free and open market and a national market system because the changes will allow investors to trade in a more efficient manner, allowing investors to better customize their trading strategies and implement more precise trading strategies which are not available under current rules. Currently, a market participant is unable to trade a FLEX Option and a listed option as part of the same complex strategy; such user must submit an order containing the FLEX Option(s) and an order containing the listed option. This may introduce additional complexities such as price and legging risk, which would be eliminated under the proposed rule change. These complexities may unnecessarily limit market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability. These investors may have improved capability under the proposed rule change to execute strategies to meet their specific investment objectives by using a single order with customized FLEX Option legs with non-FLEX Option legs.

Similarly, the Exchange also believes the proposed changes to Rule 5.70(b), to remove the requirement that each leg of a complex FLEX Order must have the same exercise style, will remove impediments to and perfect the mechanism of a free and open market and benefit investors, because it will provide TPHs with additional flexibility and precision in their investment strategies, by allowing TPHs to trade complex strategies that would otherwise be required to split into multiple, separate orders.

The proposed changes to Rule 5.70(b) to add a cite to Rule 1.1 for the definition of complex orders and delete Rule 5.70(b)(1) provides further clarity within the Rules, to the benefit of investors.

The Exchange believes the proposed changes to Rule 4.21(a), which address when the Exchange may halt trading in a FLEX complex strategy (whether comprised of all FLEX Option legs or FLEX and non-FLEX Option legs), are consistent with the Act and promotes the public interest and the protection of investors by clarifying the Exchange's authority with respect to FLEX complex strategies comprised of all FLEX Option legs and providing a consistent and transparent procedure with respect to FLEX complex strategies comprised of FLEX and non-FLEX Option legs, that would be applied by the Exchange, similar to trading halt authority under current rules. Further, the proposed change to add the defined term "FLEX Option series" provides further clarity within the Rules and eliminates potential confusion by providing a definition of "FLEX Option series" to the benefit of investors.

The Exchange believes the proposed changes to Rule 5.72(b)(2)(A), which provide clarity with respect to the criteria required for complex FLEX Orders with FLEX Option legs only, helps will help promote a fair and orderly national options market system. As such, the changes proposed under Rule 5.72(b)(2)(A), to separate out the requirements for complex FLEX Orders with FLEX Option legs only, provide clarity regarding the requirements for complex FLEX Orders with FLEX Option legs only, as compared to the proposed requirements for complex FLEX Orders with FLEX and non-FLEX Option legs.

Additionally, the Exchange believes the proposed rule change to add Rule 5.70(d) will 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, because it will provide market participants with the same flexibility with respect to all their complex trading strategies. The proposed rule change eliminates confusion regarding what types of FLEX v. Non-FLEX Orders are permissible for electronic processing. As noted above, the proposed rule

changes regarding execution of nonconforming FLEX v. Non-FLEX Orders are consistent with the Exchange's previously adopted rules regarding execution of other nonconforming complex orders.

The Exchange believes the proposed pricing requirements for FLEX v. Non-FLEX Orders, set forth in proposed Rule 5.72(b)(2)(B), would remove impediments to and perfect the mechanism of a free and open market, as the proposed trading process for FLEX v. Non-FLEX Orders will provide the ability for investors to achieve the desired net package price for those orders while protecting customers with resting interest in the non-FLEX Simple Book. By requiring a FLEX v. Non-FLEX Order submitted into a FLEX Auction (whether electronically or in open outcry) to include a bid or offer price for each FLEX Option leg, but no bid or offer for each non-FLEX Option leg, and a net price, the requirements ensure that the non-FLEX Option leg will be subject to the same pricing requirements as they would if not part of a FLEX v. Non-FLEX Order. Specifically, the price of any non-FLEX Option leg that is part of a FLEX v. Non-FLEX Order may not be outside of the BBO or NBBO. The Exchange's proposal will continue to protect Priority Customer interest on the Exchange, as the non-FLEX Option legs of a FLEX v. Non-FLEX Order will always trade at a price better than BBO if there is a customer on a leg. Further, the price of a FLEX Option leg(s) that is part of a FLEX v. Non-FLEX Order must, following execution of the Non-FLEX Option leg(s), serve to achieve the net execution price (which may not be worse than the desired net price included at order submission), which the Exchange believes will protect investors by ensuring the price of the FLEX Option leg(s) adhere to the agreed upon execution prices and the order's limit price.

The Exchange believes this proposed trading process will ensure that a user who chooses to submit a listed (i.e., Non-FLEX) leg as part of a FLEX v. Non-FLEX Order is subject to the



same pricing requirements as they would be if the listed leg was not submitted with FLEX Option legs for execution. Ultimately, FLEX v. Non-FLEX Orders will trade in the same manner as FLEX complex orders do today, and execution of the non-FLEX Option legs of these orders will continue to comply with linkage requirements (by not permitting trade-throughs of the NBBO) and protect resting customer interest in the Simple Book. Further, the Exchange believes that the proposal to not permit the non-FLEX Option legs of a FLEX v. Non-FLEX Order to leg into the Simple Book is consistent with the Act and promotes the public interest and the protection of investors, because it will provide for more efficient execution and processing of FLEX v. Non-FLEX Orders, as legging would prevent execution opportunities for these orders (as discussed above).

Finally, the Exchange believes that the proposed rule change is designed to not permit unfair discrimination among market participants as all TPHs may, but are not required to, trade FLEX v. Non-FLEX Orders.

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 that 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, as all TPHs that are registered as FLEX Traders in accordance with the Exchange's Rules will be able to trade FLEX v. Non-FLEX Orders in the same manner.

The Exchange does not believe that 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, as the proposal is designed to increase competition for order flow on the Exchange in a manner

that is beneficial to investors because it is designed to provide investors seeking to execute both a FLEX Option(s) and a listed option(s) with a more effective method of executing the trades, which may result in trade efficiencies (i.e., pricing or reporting (e.g., position limits) efficiencies)<sup>19</sup> and reduced risk (i.e., pricing and legging risk). The Exchange believes the proposed rule change will encourage competition, as it may broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. The Exchange believes the proposed rule change may increase competition as it may lead to the migration of options currently trading in the OTC market to trading on the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency and thus increased price competition.

The Exchange further notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. All TPHs may, but are not required to, trade FLEX v. Non-FLEX Orders at the Exchange. 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, as other exchanges could adopt this order type if so desired.

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 written comments on the proposed rule change.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and

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<sup>19</sup> See, e.g., Rule 8.35.

regulations thereunder applicable to a national securities exchange,<sup>20</sup> and, in particular, the requirements of Section 6 of the Act.<sup>21</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>22</sup> which requires that an exchange have rules designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The proposal amends Exchange Rules 4.21, 5.70, 5.72, and 6.5 to provide for the trading of complex FLEX v. Non-FLEX Orders, which are comprised of a combination of FLEX Option series and non-FLEX option series.<sup>23</sup> Currently, market participants are unable to trade a FLEX Option and a listed option as part of the same complex strategy and, instead, must submit separate orders for the FLEX Option(s) and the listed option components, which may introduce price and legging risk.<sup>24</sup> The Exchange states that the proposal will eliminate these risks and allow market participants to execute strategies to meet their investment objectives by using a single order with customized FLEX Option legs and non-FLEX Option legs.<sup>25</sup> The Commission finds that the proposal could help investors achieve their investment objectives more efficiently by allowing them to trade complex FLEX Orders with FLEX and non-FLEX components as part of a single complex FLEX v. Non-FLEX Order. As discussed below, the proposal also adopts rules governing the trading of complex FLEX v. Non-FLEX Orders that are consistent with the

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<sup>20</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78f.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> Complex FLEX Orders also may be comprised solely of FLEX Option series. See proposed Exchange Rule 5.70(b).

<sup>24</sup> See Amendment No. 2 at 15.

<sup>25</sup> See id.

Exchange's existing rules.

The proposal deletes Exchange Rule 5.70(b)(1), which provides that each leg(s) of a complex FLEX Order must be for a FLEX Option series authorized for FLEX trading with the same underlying equity security or index. However, complex FLEX v. Non-FLEX Orders are complex orders, as defined in Exchange Rule 1.1, and the definition of complex order requires, among other things, that the component legs of a complex order have the same underlying security or index.<sup>26</sup> Accordingly, the deletion of Exchange Rule 5.70(b)(1) is a non-substantive change,<sup>27</sup> and Exchange Rule 5.70(b), as amended, will continue to require that the component legs of a complex FLEX Order, including a complex FLEX v. Non-FLEX Order, have the same underlying security or index.<sup>28</sup> The proposal also amends Exchange Rule 5.70(b) to allow the component legs of complex FLEX Orders to have different exercise styles. The Exchange states that removing the requirement that all component legs of a complex FLEX Order have the same exercise style will expand investors' choices and flexibility and provide them with a mechanism to more precisely manage the positions and associated risk in their portfolios.<sup>29</sup>

The proposal adopts Exchange Rule 5.70(d) to provide that, in classes determined by the Exchange, a nonconforming FLEX v. Non-FLEX Order is not eligible for electronic

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<sup>26</sup> See proposed Exchange Rule 5.70(b). Exchange Rule 1.1 defines a complex order as “an order involving the concurrent execution of two or more different series in the same underlying security or index (the “legs” or “components” of the complex order), for the same account, occurring at or near the same time and for the purpose of executing a particular investment strategy with no more than the applicable number of legs (which number the Exchange determines on a class-by-class basis). The Exchange determines in which classes complex orders are eligible for processing. The Exchange determines on a class-by-class basis whether non-conforming complex orders are eligible for electronic processing. Unless the context otherwise requires, the term complex order includes Index Combo orders, stock-option orders and security future-option orders.”

<sup>27</sup> See Amendment No. 2 at footnote 1.

<sup>28</sup> See *id.* at 5.

<sup>29</sup> See *id.* “

processing.<sup>30</sup> The Exchange states that this provision is consistent the flexibility provided in the definition of “complex order” in Exchange Rule 5.33(a), which provides, in part, that “In classes determined by the Exchange, a nonconforming complex order is not eligible for electronic processing, including COA, COB, C-AIM, and C-SAM.” Thus, Exchange Rule 5.33(a) allows the Exchange to determine in which classes nonconforming complex orders (including stock-option orders) may be submitted for electronic processing on the Exchange pursuant to Exchange Rule 5.33.<sup>31</sup> The proposal also adopts new Exchange Rule 5.70(e), which provides that the non-FLEX Option leg(s) of a FLEX v. Non-FLEX Order may not leg into the Simple Book. The Exchange states that not allowing the non-FLEX Option leg(s) to leg into the Simple Book will provide for more efficient execution and processing of FLEX v. Non-FLEX Orders and is consistent with the Exchange’s handling of stock-option orders, which also do not leg into the Simple Book.<sup>32</sup> Accordingly, proposed Exchange Rules 5.70(d) and (e) are consistent with existing Exchange rules applicable to the trading of complex orders.

The proposal amends Exchange Rule 5.72(b) to establish pricing requirements for

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<sup>30</sup> Exchange Rule 1.1 defines a non-conforming complex order as “s (a) a complex order with a ratio on the options legs less than one-to-three (.333) or greater than three-to-one (3.00) (except for Index Combo orders) and (b) a stock-option order with a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg(s) to the total number of units of the underlying stock or convertible security in the stock leg. For the purpose of applying these ratios to complex orders comprised of legs for both mini-options and standard options, ten mini-option contracts represent one standard option contract. For the purpose of applying these ratios to complex orders comprised of legs for both micro-options and standard options, 100 micro-option contracts represent one standard option contract.”

<sup>31</sup> See Amendment No. 2 at 6.

<sup>32</sup> See Amendment No. 2 at 6-7 and footnote 5. See also Exchange Rule 5.33(g)(5). The Exchange states that not legging complex FLEX v. Non-FLEX Orders will provide for more efficient execution and processing of FLEX v. Non-FLEX Orders. The Exchange states that if the System receives a FLEX v. Non-FLEX Order, it would need to trade the Non-FLEX leg against the appropriate leg in the book; however, there is no book with resting simple FLEX orders against which the FLEX leg could execute. The Exchange states that if this were to occur, execution opportunities for FLEX v. Non-FLEX Orders could be prevented, because although the non-FLEX leg(s) of the FLEX v. Non-FLEX Order would execute against interest in the book, there would be no execution opportunities for the FLEX leg(s) of the FLEX v. Non-FLEX Order. See Amendment No. 2 at 6-7.

complex FLEX v. Non-FLEX Orders that are designed to protect interest on the Exchange's Simple Order Book and ensure that the non-FLEX components do not trade through the NBBO.<sup>33</sup> Proposed Exchange Rule 5.72(b)(2)(B)(i) protects the priority of Priority Customer orders on the Simple Book by requiring each non-FLEX leg of a complex FLEX v. Non-FLEX Order to trade at a price that is better than the price of resting Priority Customer orders on the Simple Book. This requirement is consistent with the Exchange's pricing requirements for the component legs of nonconforming complex orders.<sup>34</sup> The proposed rules also prohibit the non-FLEX component legs of a complex FLEX v. Non-FLEX Order from trading at a price that is worse than the BBO, which is consistent with the Exchange's pricing requirements for the component legs of complex orders.<sup>35</sup> In addition, proposed rules prohibit the non-FLEX component legs of a complex FLEX v. Non-FLEX Order from trading at a price that is worse than the NBBO, which is consistent with the pricing requirements for nonconforming complex orders.<sup>36</sup>

Proposed Exchange Rule 6.5, Interpretation and Policy .07(d), which applies the Exchange's Obvious Error and Catastrophic Error provisions to the non-FLEX leg(s) of a complex FLEX v. Non-FLEX Order, is consistent with Exchange Rules 6.5, Interpretation and Policy .07(a) and (c), which apply the Exchange's Obvious Error and Catastrophic Error

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<sup>33</sup> See proposed Exchange Rule 5.72(b)(2)(B). The proposal makes no substantive changes to the pricing requirements for complex FLEX Orders with only FLEX Option legs.

<sup>34</sup> See Exchange Rule 5.33(f)(2)(A)(iv)(b). If a complex FLEX v. Non-FLEX Order cannot execute at a price that satisfies this requirement, the complex FLEX v. Non-FLEX Order is cancelled. See proposed Exchange Rule 5.72(b)(2)(B).

<sup>35</sup> See proposed Exchange Rule 5.72(b)(2)(B)(i) and Exchange Rule 5.33(f)(2)(A)(ii). The BBO is the best bid or offer disseminated on the Exchange. See Exchange Rule 1.1.

<sup>36</sup> See proposed Exchange Rule 5.72(b)(2)(B)(i). See also Exchange Rule 5.66(b)(7) (permitting the component legs of a Complex Trade, as defined in Exchange Rule 5.65(d), to trade through a Protected Bid or Protected Offer). The NBBO is the national best bid or offer the Exchange calculates based on market information it receives from the Options Price Reporting Authority. See Exchange Rule 1.1.

provisions to, respectively, complex orders that executes against leg market interest and stock-option orders. Proposed Exchange Rule 4.21(a)(4) regarding the Exchange's authority to halt trading in a FLEX complex strategy, whether comprised solely of FLEX Options or FLEX and non-FLEX Options, when any leg of the strategy is halted, is similar to the Exchange's authority under Exchange Rule 4.21(a)(3) and will provide clarity with respect to the Exchange's handling of FLEX complex strategies when trading in any leg of the strategy is halted.<sup>37</sup>

#### IV. Solicitation of Comments on Amendment No1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CBOE-2024-047 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-2024-04 7. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post

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<sup>37</sup> Exchange Rule 4.21(a)(3) provides that "The Exchange may halt trading in a FLEX Option class pursuant to Rule 5.20, and always halts trading in a FLEX Option class when trading in a non-FLEX Option class with the same underlying equity security or index is halted on the Exchange. The System does not accept a FLEX Order for a FLEX Option series while trading in a FLEX Option class is halted."

all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2024-047 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. Accelerated Approval of Amendment No. 2

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving Amendment No. 2 prior to the 30<sup>th</sup> day after the date of publication of notice of Amendment No. 1 in the Federal Register. Amendment No. 2 revises the proposal to: clarify and correct errors in the text of the proposed rules; provide an example of the application of the Exchange's obvious error rules to complex FLEX v. non-FLEX Orders; provide additional discussion of the potential uses of FLEX v. non-FLEX Orders; revise the description of the proposal to make clear that the Exchange's rules will continue to require that the component legs of FLEX complex orders, including FLEX v. Non-FLEX Orders, have the same underlying equity or index; and include



additional information in the examples showing the pricing of FLEX v. non-FLEX Orders. The proposed changes to clarify and correct errors in the text of the proposed rules will help to ensure the accuracy of the Exchange's rules. The proposed change in the description of the proposal to make clear that the Exchange's rules will continue to require that the component legs of FLEX complex orders have the same underlying equity or index will help to ensure that the proposal accurately describes the rules being adopted. The example showing the application of the obvious error rules to complex FLEX v. Non-FLEX Order demonstrates the operation of these rules in the context of complex FLEX v. Non-FLEX orders, and the additions to the pricing examples help to clarify those examples. The changes in Amendment No. 2 assist the Commission in evaluating the proposal and determining that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, as discussed above. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>38</sup> to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

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<sup>38</sup> 15 U.S.C. 78s(b)(2).

VI. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>39</sup>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>40</sup> that the proposed rule change (SR-CBOE-2024-047), as modified by Amendment No. 2, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>39</sup> 15 U.S.C. 78f(b)(5).

<sup>40</sup> 15 U.S.C. 78s(b)(2)

<sup>41</sup> 17 CFR 200.30-3(a)(12).