

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82622; File No. SR-CBOE-2018-008)

February 2, 2018

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Flexibly Structured Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 19, 2018, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 seeks to amend its rules related to flexibly structured options (“FLEX Options”). The text of the proposed rule change is 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make certain revisions to Rules 24A.4.02, which contains certain requirements for a FLEX Option that has the exact same terms as a Non-FLEX Option.

FLEX Options with quarterly expirations, short term expirations, weekly expirations,³ and End of Month ("EOM") expirations are not currently fungible with Non-FLEX Options with identical terms. Such expirations were not originally intended to be fungible.⁴ The Exchange now proposes to add paragraph (a) to Interpretation and Policy .02 of Rule 24A.4⁵ in order to

³ The Exchange notes that Rule 24.9(e) no longer uses the term End of Week (EOW) expirations. The Exchange added Monday and Wednesday expirations to Rule 24.9(e), and Monday, Wednesday, and Friday expirations are termed weekly expirations in Rule 24.9(e). See Rule 24.9(e).

⁴ See e.g., Securities Exchange Act Release Nos. 59060 (December 5, 2008), 73 FR 76075 (December 15, 2008)(SR-CBOE-2008-115 proposal notice); 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009)(SR-CBOE-2008-115 approval order); and Securities Exchange Act Release 59675 (April 1, 2009), 74 FR 15794 (April 7, 2009) (SR-OCC-2009-05). FLEX Options with non-Expiration Friday expiration dates that coincide with other Non-FLEX option expiration dates and with terms identical to those Non-FLEX Options were permitted before, and were not originally intended by the Exchange to become subject to, the fungibility provisions adopted through SR-CBOE-2008-115 (e.g., a FLEX Option that expires on the last day of a quarter and that has terms identical to a Non-FLEX Option series is not fungible with that Non-FLEX Option series; however, certain position limit aggregation requirements apply under Rules 24A.7(d)(1)-(2) and 24B.7(d)(1)-(2)). See also, e.g., Securities Exchange Release Act Nos. 62658 (August 5, 2010), 75 FR 49010 (August 12, 2010)(SR-CBOE-2009-075 proposal notice) and 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010)(SR-CBOE-2009-075 approval order)(footnote 8 of the proposal notice indicates that FLEX Options do not become fungible with subsequently introduced Non-FLEX structured quarterly and short term options and that, because of the similarities between EOW and EOM expirations and existing Non-FLEX structured quarterly and short term options, FLEX Options will similarly not become fungible with EOW and EOM expirations listed for trading). As previously noted, Rule 24.9(e) was amended to include Monday and Wednesday expirations, and the term EOW was removed. All expirations listed pursuant to Rule 24.9(e) (i.e., Monday, Wednesday, Friday, and EOM expirations) are currently not fungible.

⁵ Chapter XXIVA contains the rules governing the execution of FLEX Options on the

make all FLEX Options fungible with Non-FLEX options with identical terms, including quarterly expirations, short term expirations, weekly expirations, and EOM expirations.

The effect of the proposed rule change is that once an option series with identical terms is listed for trading as a Non-FLEX Option series, (i) all existing open positions established under the FLEX trading procedures will be fully fungible with transactions in the identical Non-FLEX Option series, and (ii) any further trading in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures and rules. The Exchange believes the proposed application of Rule 24A.4.02 to all FLEX Options will have the effect of more FLEX Options becoming fungible with Non-Flex Options, which will potentially increase the liquidity available to traders of FLEX Options.

Second, the Exchange proposes to codify existing practice by including rule text in paragraph (a) to Rule 24A.4.02 to specify the applicability of Interpretation and Policy .02 in the event the relevant expiration is an Exchange holiday. The proposed text is as follows:

In the event the relevant expiration is an Exchange holiday, this Interpretation and Policy shall be applicable to options with an expiration date that is the business day immediately preceding the Exchange holiday. Except, in the case of Monday expiring Weekly Expirations (Rule 24.9(e)(1)), this Interpretation and Policy shall be applicable to options with an expiration date that is the business day immediately following the Exchange Holiday.

Generally, if an expiration were to fall on an Exchange holiday, the expiration becomes the business day immediately preceding the Exchange holiday—except in the case of Monday expiring Weekly Expirations pursuant to Rule 24.9(e)(1), whereby the expiration becomes the business day

Hybrid Trading System. Prior to SR-CBOE-2018-003 Chapter XXIVA contained the rules governing the execution of FLEX Options in open outcry, and Chapter XXIVB contained the rules governing the execution of FLEX Options on the Hybrid Trading System. Pursuant to SR-CBOE-2018-003 Chapter XXIVB replaced Chapter XXIVA such that Chapter XXIVA now contains the rules governing the execution of FLEX Options on the Hybrid Trading System, and the rules governing the execution of FLEX Options in open outcry have been removed from the Exchange's rulebook.

immediately following the Exchange holiday.⁶ Proposed paragraph (a) makes it clear that when the expiration of a Non-FLEX Option is moved to the immediately preceding (or following) business day the FLEX Option that also expires on the preceding (or following) business day will be fungible with the Non-FLEX Option (assuming all other terms are identical).

Third, we are proposing to change the text to clarify that the existing intra-day add provision only applies to FLEX Options that have an American-style exercise. Limiting the application of the intra-day add provision to American-style exercises was the Exchange's original intent when this provision was originally adopted.⁷

Finally, we are also proposing non-substantive, clarifying changes to simplify the text and make it easier to read. The changes are as follows:

(additions are underlined; deletions are [bracketed])

Provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options shall be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as Non-FLEX Options that are already available for trading on the same underlying security or index. FLEX Options shall also be permitted in series before [the options] series with identical terms are listed for trading as Non-FLEX Options. Once and if [the] an option series [are] with identical terms is listed for trading as Non-FLEX Options, (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the [respective]

⁶ See e.g., Rule 24.9(e)(1)(stating that if the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day, and if the Exchange is not open for business on a respective Wednesday or Friday, the normally Wednesday or Friday expiring Weekly Expirations will expire on the previous business day).

⁷ See Securities Exchange Act Release No. 62870 (September 8, 2010), 75 FR 56147 (September 15, 2010)(SR-CBOE-2010-078) (stating that there is assignment risk for American-style options only). In the event a Non-FLEX Option is listed with identical terms to an existing FLEX Option the Options Clearing Corporation ("OCC") cannot net the positions in the contracts until the next business day. Thus, if the Non-FLEX Option were listed intra-day, and an investor with a position in the FLEX Option attempted to close the position using the Non-FLEX Option, the investor would be technically long in one contract and short in the other contract, exposing the investor to assignment risk until the next day despite having offsetting positions.

identical Non-FLEX Option series and (ii) any further trading in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures and rules. However, in the event [the] a Non-FLEX American-style series is added intra-day, a position established under the FLEX trading procedures would be permitted to be closed using the FLEX trading procedures for the balance of the trading day on which the Non-FLEX series is added against another closing only FLEX position.

The Exchange believes these non-substantive changes more clearly provide that the fungibility provisions apply to FLEX Option series with terms that are identical to the terms of a Non-FLEX Option series.

The Exchange notes that when a FLEX Option is fungible with the Non-FLEX option OCC converts any open interest in the FLEX Option to the Non-FLEX option. However, OCC's By-laws currently provide that:

Once a series of non-flexibly structured options (other than a series of quarterly options or short term options) is opened for trading on an Exchange, any existing flexibly structured option contracts that have identical variable terms shall be fully fungible with options in such series, and shall cease to be flexibly structured options.⁸

The effect of "other than a series of quarterly options or short term options" in the above definition prevents OCC from carrying out the FLEX to Non-FLEX open interest conversion for options with quarterly expirations, short term expirations, weekly expirations, and EOM expirations. Thus, in order to give effect to the Cboe Options rule change, OCC will be amending its By-laws by removing "other than a series of quarterly options or short term options" from the definition. The Exchange notes that in situations where an OCC rule change is necessary to give effect to a Cboe Options rule change previous practice involved Cboe Options amending its rules and then OCC amending its rules.⁹

⁸ See definition of "flexibly structured option" in Article I of OCC By-laws.

⁹ See e.g., Securities Exchange Act Release 59675 (April 1, 2009), 74 FR 15794 (April 7, 2009) (SR-OCC-2009-05) and Securities Exchange Act Release 59417 (Feb. 18, 2009),

Implementation Date

In order to allow OCC the time necessary to amend its By-laws, the proposed rule text provides that the Exchange's current rule text will remain in effect until a date specified by the Exchange in a Regulatory Circular, which date shall be no later than July 31, 2018. The Regulatory Circular announcing the effective date shall be issued at least 30 days prior to the effective date. On the effective date specified by the Exchange in a Regulatory Circular, the rule text provisions amended by this filing will be in effect.

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.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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)¹² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

74 FR 8591 (Feb. 25, 2009) (SR-CBOE-2008-115).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² Id.

In particular, the Exchange believes the proposed application of Rule 24A.4.02 to all FLEX Options will have the effect of more FLEX Options becoming fungible with Non-Flex Options, which will potentially increase the liquidity available to traders of FLEX Options. The Exchange also believes the rule text regarding holidays will serve to make clear the Exchange's policies with regards to holidays. In addition, the Exchange believes that specifying that the intra-day add provision applies solely to American-style expirations will potentially provide more clarity regarding the manner in which the rules operate, which helps protect investors and the public interest. Finally, the non-substantive, clarifying changes of the proposed filing protect investors and the public interest by making the rule easier to read and understand.

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. Specifically, the Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because the rules will be applicable to all TPHs. The Exchange does not believe the proposal will negatively impact market participants because, importantly, more FLEX Options becoming fungible with Non-Flex Options will potentially increase the liquidity available to traders of FLEX Options (e.g., there are more market participants transacting in Non-FLEX Options; thus, there is potentially more liquidity available to market participants with FLEX Options that will be able to, pursuant to this proposal, exit their FLEX Options positions by transacting in Non-FLEX Options). To the extent that the proposed rule change will cause market participants to choose Cboe Options over other trading venues, market participants on other exchanges are welcome to become TPHs and trade at Cboe Options if they determine that this proposed rule change has made Cboe Options more attractive or favorable.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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-2018-008 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-2018-008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2018-008 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.¹³

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Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).