

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86784; File No. SR–NYSE–2019–45]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Remove and Adding Liquidity Tiers for Tape B and C Securities

#### Correction

In notice document 2019–18999 beginning on page 46588 in the issue of Wednesday, September 4, 2019, make the following correction:

On page 46593, in the third column, in the first paragraph, starting in the two last lines “September 24, 2019” should read “September 25, 2019”.

[FR Doc. C1–2019–18999 Filed 9–13–19; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

#### Extension:

Regulation S–AM, SEC File No. 270–548, OMB Control No. 3235–0609

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Regulation S–AM (17 CFR part 248, subpart B), under the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) (“FCRA”), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), and the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Regulation S–AM implements the requirements of Section 624 of the FCRA (15 U.S.C. 1681s–3) with respect to investment advisers and transfer agents registered with the Commission, as well as brokers, dealers and investment companies (collectively, “Covered Persons”). Section 624 and Regulation S–AM limit a Covered

Person’s use of certain consumer financial information received from an affiliate to solicit a consumer for marketing purposes, unless the consumer has been given notice and a reasonable opportunity and a reasonable and simple method to opt out of such solicitations. Regulation S–AM potentially applies to all of the approximately 20,195 Covered Persons registered with the Commission, although only approximately 11,309 of them have one or more corporate affiliates, and the regulation requires only approximately 2,020 to provide consumers with an affiliate marketing notice and an opt-out opportunity.

The Commission staff estimates that there are approximately 11,309 Covered Persons having one or more affiliates, and that they each spend an average of 0.20 hours per year to review affiliate marketing practices, for, collectively, an estimated annual time burden of 2,262 hours at an annual internal compliance cost of approximately \$1,203,384. The staff also estimates that approximately 2,020 Covered Persons provide notice and opt-out opportunities to consumers, and that they each spend an average of 7.6 hours per year creating notices, providing notices and opt-out opportunities, monitoring the opt-out notice process, making and updating records of opt-out elections, and addressing consumer questions and concerns about opt-out notices, for, collectively, an estimated annual time burden of 15,352 hours at an annual internal compliance cost of approximately \$2,999,296. Thus, the staff estimates that the collection of information requires a total of approximately 11,309 respondents to incur an estimated annual time burden of a total of 17,614 hours at a total annual internal cost of compliance of approximately \$4,202,680.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: September 11, 2019.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–19971 Filed 9–13–19; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86923; File No. SR–CBOE–2019–057]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Price Protections and Risk Controls

September 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on September 5, 2019, 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 Act<sup>3</sup> and Rule 19b–4(f)(6) thereunder.<sup>4</sup> 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 the Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend the Exchange’s Rules regarding price protections and risk controls, and moves those Rules from the currently effective Rulebook (“current Rulebook”) to the shell structure for the Exchange’s Rulebook that will become effective upon the migration of the Exchange’s trading platform to the same system

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b–4(f)(6).

used by the Cboe Affiliated Exchanges (as defined below) (“shell Rulebook”). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

**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

In 2016, the Exchange’s parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.)

(“Cboe Global”), which is also the parent company of Cboe C2 Exchange, Inc. (“C2”), acquired Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX” or “EDGX Options”), Cboe BZX Exchange, Inc. (“BZX” or “BZX Options”), and Cboe BYX Exchange, Inc. (“BYX” and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the “Cboe Affiliated Exchanges”). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The Exchange proposes to harmonize its rules in connection with the risk control and price protection functions on the Exchange to that of its affiliated Exchanges. Specifically, the Exchange proposes to consolidate all order and quote price protection mechanisms and risk controls into a single rule, proposed Rule 5.34 (and subsequently delete the relevant price protection mechanism and risk control provisions in current

Rules 6.12, 6.13, 6.14, 6.23C, and 6.53C.08 upon migration). Proposed Rule 5.34 is substantively identical to C2 Rule 6.14, as well as substantially the same as corresponding EDGX Options Rules 21.16, 21.17 and 22.11. In line with C2 Rule 6.14, proposed Rule 5.34 categorizes these mechanisms and controls as ones applicable to simple orders (proposed paragraph (a)), complex orders (proposed paragraph (b)), and all (i.e. simple and complex) orders (proposed paragraph (c)). The following table identifies the Exchange’s current price protection mechanisms and risk controls, the current Exchange Rule, the proposed Exchange Rule, the corresponding C2 Rule and EDGX rule, where applicable, and any proposed changes, if any. The Exchange notes that much of the proposed functionality is substantially similar to the current price protections and risk controls functionality. The Exchange also proposes to make non-substantive changes by updating cross-references to rules in the shell Rulebook and rules not yet in the shell Rulebook but that in the Exchange intends to move to the shell Rulebook, updating Exchange-specific references for consistency throughout the rules, and, as a result of consolidating and conforming the proposed rule to the rules of affiliated options exchanges, simplifies, clarifies, and updates the rule text to read in plain English, and reformats the paragraph lettering and/or numbering.

Price protection/ risk control	Current Cboe options rule	Proposed rule	Affiliated exchange rule	Proposed changes
Handling of market orders received in no-bid series.	6.13(b)(vi) .....	5.34(a)(1) ...	C2 Rule 6.14(a)(1); EDGX Rule 21.17(a)(5).	Pursuant to the proposed rule change, the System cancels or rejects a market order if there is no-bid and the best offer is less than or equal to \$0.50. Under current functionality, the System would treat the sell order as a limit order with a price equal to the minimum increment in this situation. The proposed rule change also expands the same protection to market orders in no-offer series. The Exchange believes the proposed rule change will provide protection for these orders to prevent execution at potentially erroneous prices when a market order is entered in a series with no bid or offer.
Market order NBBO width protection.	6.13(b)(v)(A) ....	5.34(a)(2) ...	C2 Rule 6.14(a)(2); EDGX 21.17(a)(1).	The proposed functionality is generally the same as current functionality, except the acceptable amount away from NBBO that a market order may execute will be determined by a percentage away from the NBBO midpoint (subject to a minimum and maximum dollar amount) rather than specified dollar ranges based on premium, providing the Exchange with flexibility it believes is appropriate given previous experience with risk controls.
Buy order put check .....	6.14(a) .....	5.34(a)(3) ...	C2 6.14(a)(3); EDGX 21.17(a)(3).	The proposed rule change will apply to market order executions during the Opening Process, and deletes the call underlying value check in current Rule 6.17(a)(i)(B), as this functionality will not be available on the Exchange’s new system following the technology migration.
Drill-through protection (simple).	6.13(b)(v)(B) ....	5.34(a)(4) ...	C2 6.14(a)(4); EDGX 21.17(a)(4).	The proposed functionality is generally the same as current functionality, except the drill-through amount is a buffer amount determined by class and premium rather than a number ticks. The proposed rule change deletes the distinction between orders exposed via HAL, which is in line with current functionality on EDGX, which provides for the HAL equivalent, SUM. The proposed functionality applies to Day orders, as well as Good-til-Date (“GTD”) and Good-til-Cancel (“GTC”) orders that re-enter the Book from the prior trading day, but not an Immediate-or-Cancel (“IOC”) or Fill-or-Kill (“FOK”) order, as resting in the Book for a period of time is inconsistent with their purpose (which is to cancel if not executed immediately).

Price protection/ risk control	Current Cboe options rule	Proposed rule	Affiliated exchange rule	Proposed changes
Bulk message fat finger check.	N/A .....	5.34(a)(5) ...	C2 6.14(a)(5); EDGX 21.17(a)(6).	The proposed functionality adds a price protection mechanism for bulk messages similar to the fat finger check the Exchange currently provides for orders. The proposed rule states the System cancels or rejects any bulk message bid (offer) above (below) the NBO (NBB) by more than a specified amount determined by the Exchange. The proposed check also will not apply to bulk messages submitted prior to the conclusion of the Opening Process or when no NBBO is available, which is appropriate during the pre-open or opening rotation so that the check does not impact the determination of the opening price, and also when there is no NBBO, as the Exchange believes that it is the most reliable measure against which to compare the price of the bulk message to determine its reasonability.
Definitions of vertical spread, butterfly spread, and box spread.	6.53C.08 .....	5.34(b)(1) ...	C2 6.14(b)(1); EDGX 21.17(b)(1).	No substantive changes.
Credit-to-debit parameters.	6.53C.08(b) .....	5.34(b)(2) ...	C2 6.14(b)(2); EDGX 21.17(b)(2).	No substantive changes.
Debit/credit price reasonability checks.	6.53C.08(c) .....	5.34(b)(3) ...	C2 6.14(b)(3); EDGX 21.17(b)(3).	The proposed functionality is generally the same as current functionality, except the acceptable price is subject to a pre-set buffer amount, which flexibility is consistent with C2 and EDGX functionality. The proposed rule also adopts language that accounts for the stock component of a stock-option order, which is consistent with EDGX Rule 21.17 (and not found within C2 Rule 6.14 because C2 does not currently provide for this functionality). The check will apply to multi-class spreads because, upon migration, such orders will be routed to PAR to which the price protections and risk controls under the proposed rule will apply.
Buy strategy parameters	6.53C.08(d) .....	5.34(b)(4) ...	C2 6.14(b)(4); EDGX 21.17(b)(4).	The proposed functionality is generally the same as current functionality, except the net credit price is subject to a buffer amount (consistent with C2 and EDGX functionality). The proposed rule change deletes the mechanism's applicability to sell strategies, as that functionality will not be available on the Exchange following the technology migration. The Exchange also uses proposed term "minimum increment" as opposed to "\$0.01" as some classes move in increments that differ from a penny.
Maximum value acceptable price range.	6.53C.08(g) .....	5.34(b)(5) ...	C2 6.14(b)(5); EDGX 21.17(b)(5).	The proposed functionality is generally the same as current functionality, except the price range is calculated using a buffer amount (consistent with C2 and EDGX functionality) rather than a percentage amount.
Drill-through protection (complex).	N/A .....	5.34(b)(6) ...	C2 6.14(b)(6); EDGX 21.17(b)(6).	The proposed functionality is generally the same as current functionality that applies to simple orders, and expands it to complex orders. The proposed rule change replaces market width parameter protection and acceptable percentage range parameter in current Rule 6.53C.08(a) and (e), respectively, which currently protect Cboe Options complex orders from executing at potentially erroneous prices too far away from the order's price or the market's best price. The proposed rule is identical to the corresponding C2 and EDGX rules, which adds the concept that an order eligible for complex order request for responses auction process ("COA") would initiate a COA at the drill-through price as the prices for complex strategy executions may be subject to the drill-through protection, and the price of a COA may be impacted by the drill-through protection; and (2) describes how a change in the SBBO prior to the end of the time period but the complex order cannot Leg, and the new SBO (SBB) crosses the drill-through price, the System changes the displayed price of the complex order to the new SBO (SBB) minus (plus) \$0.01, and the order will not be cancelled at the end of the time period. The proposed rule change merely permits an order to remain on the complex order book ("COB") since the market reflects interest to trade (but not currently executable due to Legging Restrictions) that was not there at the beginning of the time period, providing additional execution opportunities prior to cancellation.
Limit Order Fat Finger Check.	6.12(a)(3) and 6.12(b).	5.34(c)(1) ....	C2 6.14(c)(1); EDGX 21.17(a)(2) & (b)(7).	The proposed functionality is generally the same as current functionality, except the amount away from the NBBO a limit order price may be is a buffer amount rather than a number of ticks with no minimum, and Exchange may determine whether the check applies to simple orders prior to the conclusion of the RTH opening auction process (current rules codify pre-open application), providing the Exchange with flexibility it believes appropriate given previous experience with risk controls. The proposed rule change does not apply to GTC or GTD orders that reenter the Book from the prior trading day, as this check only applies to orders when the System receives them. The proposed rule change provides Users with the ability to set a different buffer amount to accommodate its own risk modeling; does not apply to adjusted series prior to the RTH opening auction process, as prices may reflect the corporate action for the underlying but the previous day's NBBO would not reflect that action. If the check applies prior to the RTH opening auction process, the System compares the last disseminated NBBO on that trading day, or the midpoint of the prior trading day's closing NBBO, if no NBBO has been disseminated on that trading day, which the Exchange believes is another reasonable price comparison.
Maximum contract size	6.14(e) .....	5.34(c)(2) ....	C2 6.14(c)(2); EDGX 21.17(b)(8).	The proposed functionality is generally the same as current functionality, except the Exchange will set a default amount rather than permit User to set amount. The proposed rule change applies per port rather than acronym or login. The functionality to cancel a resting order or quote if replacement order or quote is entered will not be available on the Exchange following the technology migration (however, a User can enable cancel on reject functionality described below to receive same result).
Maximum notional value	N/A .....	5.34(c)(3) ....	C2 6.14(c)(3); EDGX Technical specifications.	Voluntary functionality similar to maximum contract size, except the System cancels or rejects an incoming order or quote with a notional value that exceeds the maximum notional value a User establishes for each of its ports. The proposed rule change provides an additional, voluntary control for Users to manage their order and execution risk on the Exchange.

Price protection/ risk control	Current Cboe options rule	Proposed rule	Affiliated exchange rule	Proposed changes
Daily risk limits .....	N/A .....	5.34(c)(4) ....	C2 6.14(c)(4); EDGX Technical specifications.	Voluntary functionality pursuant to which a User may establish limits for cumulative notional booked bid (“CBB”) or offer (“CBO”) value, and cumulative notional executed bid (“CEB”) or offer (“CEO”) value for each of its ports on a net or gross basis, or both, and may establish limits for market or limit orders (counting both simple and complex), or both. If a User exceeds a cutoff value (by aggregating amounts across the User’s ports), the System cancels or rejects incoming limit or market orders, or both, as applicable. <sup>6</sup>
Risk monitor mechanism	6.14(d) and 8.18.	5.34(c)(5) ....	C2 6.14(c)(5); EDGX 21.16.	Similar functionality to current quote risk monitor and order entry, execution, and price parameter rate checks on the Exchange, which will not be available on the Exchange following migration (discussed below).
Cancel on reject .....	N/A .....	5.34(c)(6) ....	C2 6.14(c)(6); EDGX 6.14(a)(7).	Additional, voluntary control for Users to manage their order and execution risk on the Exchange, pursuant to which the System cancels a resting order or quote if the System rejects a cancel or modification instruction (because, for example, it had an invalid instruction) for that resting order or quote. The proposed rule change is consistent with the purpose of a cancel or modification, which is to cancel the resting order or quote, and carries out this purpose despite an erroneous instruction on the cancel/modification message.
Kill switch .....	6.14(f) .....	5.34(c)(7) ....	C2 6.14(c)(7); EDGX 22.11.	The proposed functionality is generally the same as current functionality, except Users may apply it to different categories of orders by EFID rather than acronym or login (consistent with new System functionality for migration), and block of incoming orders or quotes is a separate request by Users.
Cancel on disconnect ....	6.23C .....	5.34(c)(8) ....	C2 6.14(c)(8); EDGX Technical Specifications.	The proposed functionality is generally the same as current technical disconnect functionality, except it is the same for both APIs on the new System. The proposed rule change will continue to protect Users against erroneous executions if it appears they are experiencing a system disruption. The proposed functionality will no longer provide TPHs with the ability to determine length of interval, but does provide additional flexibility with respect to which order types may be cancelled—current functionality permits a choice of market-maker quotes and day orders, while the proposed functionality permits a choice of day and GTC/GTD orders, or just day orders.
Block new orders .....	N/A .....	5.34(c)(9) ....	C2 6.14(c)(9); EDGX 22.11.	Similar to automatic functionality that occurs on the Exchange currently when a Trading Permit Holder uses kill switch functionality. The proposed rule change merely provides a separate way to achieve this result on the new System, providing Users with flexibility regarding how to manage their resting orders and quotes.
Duplicate order protection.	N/A .....	5.34(c)(10) ..	C2 6.14(c)(10); EDGX Technical specifications.	Additional, voluntary control for Users to manage their order and execution risk on the Exchange. The proposed rule change protects Users against execution of multiple orders that may have been erroneously entered.
Buy-Write/Married Put Check.	6.53C.08(a)(5)	5.34(c)(11) ..	EDGX 21.17(b)(9).	The proposed functionality is generally the same as current functionality, the acceptable price range is based on the price of the call (put) plus (minus) an Exchange-determined buffer amount.

The price protection mechanisms and risk controls under proposed Rule 5.34 are applicable to the System’s acceptance and execution of orders and quotes pursuant to the Rules, including Rules 5.31 through 5.33,<sup>7</sup> and to and orders routed to the Exchange’s Public Automated Routing System (“PAR”)

<sup>5</sup> See Rule 5.6 in the shell Rulebook. For an order designated as a GTD order, if after entry into the System, the order is not fully executed, the order (or unexecuted portion) remains available for potential display or execution (with the same timestamp) until a date and time specified by the entering User unless cancelled by the entering User. For an order designated as a GTC order, if after entry into the System, the order is not fully executed, the order (or unexecuted portion) remains available for potential display or execution (with the same timestamp) unless cancelled by the entering User, or until the option expires, whichever comes first.

<sup>6</sup> The System calculates a notional cutoff on a gross basis by summing CBB, CBO, CEB, and CEO. The System calculates a notional cutoff on a net basis by summing CEO and CBO, then subtracting the sum of CEB and CBB, and then taking the absolute value of the resulting amount.

<sup>7</sup> Rules to be effective on October 7, 2019 and cover the opening auction process, order and quote book processing, display, priority, and execution, as well as complex orders.

pursuant to Rule 5.82.<sup>8</sup> The Exchange notes that the proposed rule’s inclusion of PAR orders is an intended difference made between its proposed rule and C2’s rule, as PAR is unique to the Exchange. Upon migration, all orders routed to PAR will also be subject to price protection mechanisms and risk controls. This will provide the same protections for User’s PAR routed order as for User’s order and quotes sent through and executed by the System. Currently, PAR functions outside of the System, therefore not all risk controls are currently applicable to PAR orders. Upon migration, PAR orders will be entered into the System in the same manner as all other orders, and will route to PAR per User instruction, after going through the System, therefore, the same price protection mechanisms and risk controls will apply.

The proposed rule change also deletes the mechanisms related to execution of quotes that lock or cross the NBBO and quotes inverting the NBBO (current Rule 6.14(b) and (c)). The Exchange’s current

<sup>8</sup> Rule to be effective on October 7, 2019 and governs the operation of the Exchange’s Public Automated Routing System (“PAR”).

quote functionality will be replaced with bulk message functionality<sup>9</sup> upon migration; however, orders and bulk messages (the equivalent of current quotes) submitted by Market-Makers will be subject to the same protections, except for those that do not apply to bulk messages (e.g., for market orders in no-bid (offer) series, market order NBBO width and drill-through protections, limit order fat finger checks, and daily risk limits) as described above.

Under the current C2 and EDGX debit/credit price reasonability check (see C2 Rule 6.14(b)(3) and EDGX Rule 21.17(b)(3)), the System only pairs calls (puts) if they have the same expiration date but different exercise prices or the same exercise price but different expiration dates. Under the Exchange’s

<sup>9</sup> See Rule 1.1 in shell Rulebook, which states that “bulk message” means a single electronic message a User submits to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. Upon migration the System will handle a bulk message bid or offer in the same manner as it handles an order or quote, unless the Rules specify otherwise. The proposed rule change accounts for bulk message functionality and makes explicit the price protections that will not apply to such messages. This is consistent with C2 Rule 6.14.

current debit/credit reasonability check, with respect to pairs with different expiration the System pairs of calls (puts) with different expiration dates if the exercise price for the call (put) with the farther expiration date is lower (higher) than the exercise price for the nearer expiration date in addition to those with different expiration dates and the same exercise price. The proposed rule change amends this check to pair orders in the same manner as C2 and EDGX, which is to pair calls (puts) if they have the same expiration date but different exercise prices or the same exercise price but different expiration dates. Additionally, the proposed rule change deletes the exception for complex orders with European-style exercise. This aligns with the corresponding rules of C2 and EDGX and the Exchange no longer believes this exception is necessary and will expand this check to index options with all exercise styles.

The proposed Risk Monitor Mechanism is identical to the current functionality on C2 and substantively the same as the functionality currently available on EDGX. Because there will no longer be separate order and quote functionality on the Exchange following the technology migration, there will no longer be separate mechanisms to monitor entry and execution rates, as there are on the Exchange today. Each User may establish limits for the following parameters in the Exchange's counting program. The System counts each of the following within a class ("class limit")<sup>10</sup> and across all classes for an EFID<sup>11</sup> ("firm limit") and/or across all classes for a group of EFIDs ("EFID Group") ("EFID Group limit") over a User-established time period ("interval") on an absolute basis for a trading day ("absolute limits"):

- (i) Number of contracts executed ("volume");
- (ii) notional value of executions ("notional");
- (iii) number of executions ("count");
- (iv) number of contracts executed as a percentage of number of contracts outstanding within an Exchange-designated time period or during the trading day, as applicable ("percentage"), which the System determines by calculating the percentage of a User's outstanding contracts that executed on each side of

the market during the time period or trading day, as applicable, and then summing the series percentages on each side in the class; and

(v) number of times the limits established by the parameters under the above-listed are reached ("risk trips").

Also, when the System determines the volume, notional, count, percentage, or risk trips limits have been reached:

(i) a User's class limit within the interval or the absolute limit for the class, the Risk Monitor Mechanism cancels or rejects such User's orders or quotes in all series of the class and cancels or rejects any additional orders or quotes from the User in the class until the counting program resets (as described below).

(ii) a User's firm limit within the interval or the absolute limit for the firm, the Risk Monitor Mechanism cancels or rejects such User's orders or quotes in all classes and cancels or rejects any additional orders or quotes from the User in all classes until the counting program resets (as described below).

(iii) a User's EFID Group limit within the interval or the absolute limit for the EFID Group, the Risk Monitor Mechanism cancels or rejects such User's orders or quotes in all classes and cancels or rejects any additional orders or quotes from any EFID within the EFID Group in all classes until the counting program resets (as described below).

The Risk Monitor Mechanism will also attempt to cancel or reject any orders routed away to other exchanges. The System processes messages in the order in which they are received. Therefore, it will execute any marketable orders or quotes that are executable against a User's order or quote and received by the System prior to the time the Risk Monitor Mechanism is triggered at the price up to the size of the User's order or quote, even if such execution results in executions in excess of the User's parameters. The System will not accept new orders or quotes from a User after a class limit is reached until the User submits an electronic instruction to the System to reset the counting program for the class. The System will not accept new orders or quotes from a User after an EFID limit or EFID Group limit is reached until the User manually notifies the Trade Desk to reset the counting program for the firm, unless the User instructs the Exchange to permit it to reset the counting program by submitting an electronic message to the System. The Exchange may restrict the number of User class and firm resets per second. The System counts executed COA

responses as part of the Risk Monitor Mechanism. The System counts individual trades executed as part of a complex order when determining whether the volume, notional, count, or risk trips limit has been reached. The System counts the percentage executed of a complex order when determining whether the percentage limit has been reached. In addition, a User may also engage the Risk Monitor Mechanism to cancel resting bids and offers, as well as order set forth in the kill switch protection provision. The Risk Monitor Mechanism provides Users with similar ability to manage their order and execution risk to the quote risk monitor and rate checks currently available on the Exchange, and merely uses different parameters and modifies the functionality to conform the new System to that of C2 and EDGX upon migration.

With respect to various price protections and risk controls in current Rules 6.12.01, 6.13, and 6.53C.08, the Exchange has the authority to provide intraday relief by widening or inactivating one or more of the parameter settings for the mechanisms in those rules. This authority is included in proposed Interpretation and Policy .01, to provide this flexibility for all price protections and risk controls for which the Exchange sets parameters, providing the Exchange with flexibility it believes appropriate given previous experience with risk controls. This is consistent with corresponding C2 Rule 6.14.01. The Exchange will continue to make and keep records to document all determinations to grant intraday relief, and periodically review these determinations for consistency with the interest of a fair and orderly market.

The proposed rule change makes a non-substantive change in moving the provision regarding the Exchange's ability to share User-designated risk settings in the System with a Clearing Trading Permit Holder that clears Exchange transactions on behalf of the User from the introduction of current Rule 6.14 to proposed Rule 5.34.02. Also, the proposed change makes non-substantive changes in that it updates all provisions to account for "User" as opposed to Trading Permit Holder ("TPH"), which is consistent with the definition under Rule 1.1 the shell Rulebook, and the use of the term throughout the Exchange Rules upon migration.

## 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

<sup>10</sup> The Exchange also changes the term "underlying" and "underlying limit" currently in the C2 rule to "class" and "class limit" which more accurately reflect this Risk Monitor Mechanism limit and the language in the current Exchange rule.

<sup>11</sup> The Exchange will use EFIDs (*i.e.*, Executing Firm IDs) upon migration. See Rule 1.1 in the shell Rulebook.

thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>12</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>13</sup> 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)<sup>14</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is generally intended to add or align certain System functionality in connection with price protection mechanisms and risk controls with functionality currently offered by C2 and EDGX in order to provide a consistent technology offering for the Cboe Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on Cboe Affiliated Exchanges. The proposed rule changes would also provide Users with access to functionality that is generally available on markets other than the Cboe Affiliated Exchanges and may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users. The proposed rule change seeks to provide greater harmonization between the rules of the Cboe Affiliated Exchanges, which would result in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange also believes that consistent rules will increase the understanding of the Exchange's operations for Trading Permit Holders that are also participants on the Cboe

Affiliated Exchanges, thereby contributing to the protection of investors and the public interest. The proposed rule change does not propose to implement new or unique functionality that has not been previously filed with the Commission or is not available on Cboe Affiliated Exchanges. The Exchange notes that the proposed rule text mirrors C2 Rules, save for intended differences that account for PAR (unique to the Exchange), Exchange-specific cross-references and references to certain terms (*i.e.* User throughout the proposed rule).

Overall, the Exchange believes the additional and enhanced price protection mechanisms and risk controls will protect investors and the public interest and maintain fair and orderly markets by mitigating potential risks associated with market participants entering orders and quotes at unintended prices, and risks associated with orders and quotes trading at prices that are extreme and potentially erroneous, which may likely have resulted from human or operational error. The Exchange notes that the proposed rule change is substantially similar to the current Cboe Options Rules, and, while the Exchange currently offers many similar protections and controls, as described above, the Exchange believes Users will benefit from the additional functionality that will be available following the technology migration.

As indicated in the table above, the proposed price protection and risk control mechanisms no longer establish outer boundaries or limits to the levels at which mechanisms are set (save for the proposed no-bid provision, noted below), but instead, the proposed rule change amends the price protection mechanisms and risk controls to account for Exchange-determined and/or User-determined buffer or default amounts. The Exchange believes this removes impediments to and perfects the mechanism of a free and open market and national market system because it affords the Exchange and Users reasonable and necessary flexibility to establish and modify the default parameters, which, in turn, protects investors and the public interest, and maintains a fair and orderly market. The Exchange notes any Exchange-determined parameters will always be available on the Exchange's website via specification or Notice.<sup>15</sup> The Exchange also believes the proposed rule change to the no-bid provisions, that the System cancels or

rejects a market order if there is no-bid and the best offer is less than or equal to \$0.50, as well as a market order where there is no-offer, is designed to protect User's as it will provide protection for market orders to prevent execution at potentially erroneous prices when a market order is entered in a series with no bid or offer.

The proposed drill-through protections for complex orders removes impediments to and perfect the mechanism of a free and open market and national market system and facilitates transactions in securities by adding detail to the rules regarding complex order price protections. Particularly, by adding that a COA-eligible order would initiate a COA at the drill-through price because the prices for complex strategy executions may be subject to the drill-through protection and permitting an order that is not currently executable due to Legging restrictions to remain on the COB if the SBBO changes during the set time-period will provide additional execution opportunities, for Users' orders participating in the COA and/or prior to cancellation.

The proposed provision in connection with the Risk Monitor Mechanism will not alter the function of this mechanism for market participants as it provides Users with the ability to manage their order and execution risk to the quote risk monitor and rate checks similar to that which is currently available on the Exchange, and merely uses different parameters and modifies the functionality to conform the new System to that of C2 and EDGX upon migration. The Exchange also notes that this functionality is optional; it is User-enabled and the parameters are User-established.

The proposed rule change also removes functionality, and reference to such functionality, that will not exist upon migration in order to align the Exchange's System with that of its affiliated options exchanges, which will serve to remove impediments to and perfect the mechanism of a free and open market and national market system by providing market participants with rules that accurately reflect functionality post-migration and effectively harmonize Exchange functionality with that of C2 and EDGX. Moreover, the Exchange does not believe that the proposed change that removes functionality that will no longer be available upon migration will impact investors because the proposed change provides substantially similar alternative mechanisms and controls that result in the same protections as current Exchange functionality. The

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> *Id.*

<sup>15</sup> See Rule 1.5 in the shell Rulebook.

Exchange believes that the proposed rule provides a full suite of price protection mechanisms and risk controls, the same as those currently in effect on its affiliated options exchanges, which will sufficiently mitigate risks associated with market participants entering orders and quotes at unintended prices, and risks associated with orders and quotes trading at prices that are extreme and potentially erroneous, as a likely result of human or operational error. The Exchange also notes that a majority of the proposed price protection mechanisms and risks controls are voluntary and/or User-determined, which benefits market participants by providing Users with additional control and flexibility in connection with their orders.

As stated, the Exchange notes the proposed price protection mechanisms and risk controls provisions do not present any new or unique rules or functionality for market participants as the proposed rule is substantially similar to the Exchange's current rules, identical to C2 Rule 6.14, as well as substantively the same as corresponding EDGX rules and technical specifications, as discussed above. The proposed rule change makes various non-substantive changes throughout the rules by updating cross-references and Exchange-specific terms, and by means of conforming language to C2 Rule 6.14, as well as corresponding EDGX rules, that will protect investors and benefit market participants as these changes simplify or clarify rules, delete duplicative rule provisions, conform paragraph numbering and lettering throughout the rules, and use plain English.

#### *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 reiterates that the proposed rule change is being proposed in the context of the technology integration of the Cboe Affiliated Exchanges. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges.

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. Rather, the proposed rule change is designed to benefit Exchange participants in that it will provide a

consistent technology offering for Users by the Cboe Affiliated Exchanges. Following the technology migration, the Exchange's System, as described in this proposed rule change, will apply to all Users and order and quotes submitted by Users in the same manner. The Exchange also notes that many of the proposed price protections and risk controls are either User-determined or altogether voluntary.

In addition to this, 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 because the basis for the majority of the proposed rule changes in this filing are the rules of C2 and EDGX, which have previously been filed with the Commission. The Exchange also notes that market participants on other exchanges are welcome to become participants on the Exchange if they determine that this proposed rule change has made Cboe Options a more attractive or favorable venue. As stated, the proposed changes to the rules that accurately reflect functionality that will be in place come October 7, 2019, will not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act but rather provide clear, consistent rules for market participants surrounding the completion of migration.

#### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and paragraph (f) of Rule 19b-4<sup>17</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2019-057 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-2019-057. 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 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 such 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-2019-057, and should be submitted on or before October 7, 2019.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-19902 Filed 9-13-19; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Investment Company Act Release No. 33622; File No. 812-15031 ETFis Series Trust I, et al.; Notice of Application

September 11, 2019.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice.

Notice of an application for an order under section 12(d)(1)(f) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act. The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies (each an “Unaffiliated Open-End Investment Company”), registered closed-end investment companies and “business development companies,” as defined in section 2(a)(48) of the Act (each registered closed-end management and each business development company, an “Unaffiliated Closed-End Investment Company” and, together with the Unaffiliated Open-End Investment Companies, the “Unaffiliated Investment Companies”), and registered unit investment trusts (the “Unaffiliated Trusts,” and together with the Unaffiliated Investment Companies, the “Unaffiliated Funds”) that are within the same group of investment companies (collectively, the “Affiliated Funds”) and outside the same group of investment companies as the acquiring investment companies (collectively, the Affiliated Funds and, together with the Unaffiliated Funds, the “Underlying Funds”), in excess of the limits in section 12(d)(1) of the Act.

**APPLICANTS:** ETFis Series Trust I and Virtus ETF Trust II, Delaware statutory trusts that are registered under the Act as open-end management investment companies and intend to introduce multiple series, and Virtus ETF Advisers LLC, a Delaware limited liability company registered as an

investment adviser under the Investment Advisers Act of 1940.

**FILING DATES:** The application was filed on May 9, 2019.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 7, 2019 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

Applicants: William J. Smalley, Virtus ETF Advisers LLC, 1540 Broadway, New York, NY 10036; and Michael W. Mundt, Esq., Stradley Ronon Stevens & Young, LLP, 1250 Connecticut Avenue NW, Suite 500, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Rochelle Kauffman Plesset, Senior Counsel, or David J. Marcinkus, Branch Chief, at (202) 551–6825, (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission’s website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551–8090.

### Summary of the Application

1. Applicants request an order to permit (a) a Fund<sup>1</sup> (each a “Fund of

<sup>1</sup> Applicants request that the order apply to each existing and future series of ETFis Series Trust I and Virtus ETF Trust II and to each existing and future registered open-end investment company or series thereof that is advised by Virtus ETF Advisers LLC or its successor or by any other investment adviser controlling, controlled by or under common control with Virtus ETF Advisers LLC or its successor and is part of the same “group of investment companies” as ETFis Series Trust I and Virtus ETF Trust II (each, a “Fund”). For purposes of the requested order, “successor” is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. For purposes of the request for relief, the term “group of

Funds”) to acquire shares of Underlying Funds<sup>2</sup> in excess of the limits in sections 12(d)(1)(A) and (C) of the Act and (b) the Underlying Funds that are registered open-end investment companies or series thereof, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 to sell shares of the Underlying Fund to the Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.<sup>3</sup> Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Funds of Funds.<sup>4</sup> Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential

investment companies” means any two or more registered investment companies, including closed-end investment companies and business development companies, that hold themselves out to investors as related companies for purposes of investment and investor services.

<sup>2</sup> Certain of the Underlying Funds have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as an exchange-traded fund (“ETF”).

<sup>3</sup> Applicants do not request relief for Funds of Funds to invest in reliance on the order in business development companies and registered closed-end investment companies that are not listed and traded on a national securities exchange.

<sup>4</sup> A Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF or closed-end fund through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from sections 17(a)(1) and (2) to permit each ETF or Unaffiliated Closed-End Investment Company that is an affiliated person, or an affiliated person of an affiliated person, as defined in section 2(a)(3) of the 1940 Act, of a Fund of Funds to sell shares to or redeem shares from the Fund of Funds. This includes, in the case of sales and redemptions of shares of ETFs, the in-kind transactions that accompany such sales and redemptions. The Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ETF, business development company, or closed-end fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the ETF, business development company, or closed-end fund or an entity controlling, controlled by or under common control with the investment adviser to the ETF, business development company, or closed-end fund, is also an investment adviser to the Fund of Funds.

<sup>18</sup> 17 CFR 200.30-3(a)(12).