

procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. To facilitate compliance with this requirement, the proposed amendments to the F&O Risk Procedures more clearly define the ICE Clear Europe departments responsible for review of back-testing results, data quality checks, breach management and exception handling.

*(B) Clearing Agency's Statement on Burden on Competition*

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments on the EMIR add-on would apply to those F&O Contracts that are margined using a one-business day MPOR and are intended to strengthen risk management relating to these products and to ensure compliance with EMIR requirements relating to the EMIR add-on. The amendments would apply to all F&O Clearing Members that trade contracts in the relevant category. ICE Clear Europe does not believe the amendments would generally affect the overall cost of clearing for F&O Clearing Members or other market participants or otherwise affect access to clearing generally. To the extent the amendments relating to the EMIR add-on may impose certain additional costs on F&O Clearing Members, these result from requirement imposed by EMIR and are generally applicable to F&O Clearing Members. As a result, any additional burdens placed on F&O Clearing Members would be appropriate in furtherance of enhancing risk management, and are not intended to disadvantage any particular Clearing Member. As a result, ICE Clear Europe believes that any impact on competition would be appropriate in furtherance of the purposes of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to 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 and paragraph (f) of Rule 19b-4 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.

**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-ICEEU-2019-021 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-ICEEU-2019-021. 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 Section, 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 filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>.

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-ICEEU-2019-021 and should be submitted on or before November 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019-23053 Filed 10-22-19; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-87338; File No. SR-CBOE-2019-094]

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fees Schedule To Modify Certain Processes and Requirements Relating to the Submission of Rebate Requests**

October 17, 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 October 4, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the 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 Substance of the Proposed Rule Change**

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its Fees schedule to modify certain processes and requirements relating to the submission of rebate requests. 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

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<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).

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 the 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"). Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, and also migrate its current billing system to a new billing system, on October 7, 2019 (the "migration"). In connection with the migration, the Exchange proposes to modify certain processes and requirements relating to the submission of rebate requests, effective October 7, 2019.

Particularly, the Exchange proposes to modify the process relating to Frequent Trader ID updates and eliminate the ability for TPHs to submit certain forms and written requests relating to: (i) Strategy order rebates, (ii) customer and non-customer large trade discounts and (iii) compression order rebates. Instead, TPHs will be required to mark inbound orders appropriately or make same-day changes in the Clearing Editor.

The Exchange first proposes to amend its fee schedule with respect to the Frequent Trader Program. By way of background, through the Frequent

Trader Program, the Exchange offers transaction fee rebates to Customers and Professional Customers and Voluntary Professionals (origin codes "C" and "W", respectively) (collectively "Customers") that meet certain volume thresholds in VIX, SPX (including SPXW) and RUT options, provided the Customer registers for the program. Once registered, the Customer is provided a unique Frequent Trader identification number ("FTID") that can be affixed to each of its orders. The FTID allows the Exchange to identify and aggregate all electronic and manual trades from that Customer for purposes of determining whether the Customer meets any of the various volume thresholds. The Customer has to provide its FTID to the Trading Permit Holder ("TPH") submitting that Customer's order to the Exchange ("executing agent" or "executing TPH") and that executing TPH would have to enter the Customer's FTID on each of that Customer's orders.<sup>5</sup>

The Exchange notes that there are instances however, in which a Customer's FTID was not or could not be, affixed to an order. For example, an executing TPH may receive an order with multiple contra parties, including parties that are also customers with their own unique FTIDs. The executing TPH's front end system however, may only allow it to input only one FTID on the order. Thus the other Customers to the trade would not have their FTID represented at the time of submission. Additionally, it is possible that an executing TPH inadvertently enters an incorrect FTID number on an order. Accordingly, the Exchange currently allows TPHs to add or modify FTID information on post-trade records using a Cboe Trade Match (CTM) terminal for changes on the trade date or submit such FTID information electronically to the Exchange in a form and manner prescribed by the Exchange.<sup>6</sup> Such electronic submission must be received no later than 6:00 p.m. CT on the trade date. The Exchange currently allows, in extenuating circumstances as determined by the Exchange, the

deadline to be extended until 6:00 p.m. CT on the business day following the trade date.

The Exchange notes that post-migration, in connection with the transition of the Exchange's billing system, the Exchange will no longer be able to apply rebates to any trades that were not marked or updated on the trade date. As such, the Exchange proposes to eliminate the ability for TPHs to submit electronically updated FTID information on the following trade date. Instead, the Exchange proposes to provide that an executing TPH may add or modify FTID information on post-trade records using the Clearing Editor<sup>7</sup> for changes on the trade date or electronically submit such FTID information to the Exchange in a form and manner prescribed by the Exchange no later than 4:29 p.m. CT, or by such time that the Exchange submits its final trade submission to the Options Clearing Corporation ("OCC") if later than 4:29 p.m. CT, on the trade date.<sup>8</sup> The Exchange believes that the vast majority of TPHs shouldn't need more than the trade date to submit FTID information electronically as it is not an overly burdensome process. The Exchange also notes that the Frequent Trader Program was established over three years ago and TPHs therefore should be familiar with the program and its requirements and more proficient in ensuring FTID information is submitted in a timely manner. Moreover, TPHs still have the option of affixing FTIDs on the orders or may add or modify FTID information on post-trade records on the trade date via the Clearing Editor.

Next, the Exchange proposes to amend Footnote 13 of the Fees Schedule to eliminate the requirement to submit a rebate request with supporting documentation in order to qualify for strategy order fee caps. By way of

<sup>7</sup> The Exchange notes that post-migration, the Cboe Trade Match (CTM) system will be replaced with the Clearing Editor, which is functionally equivalent to current CTM. As such, the Exchange proposes to replace the reference to Cboe Trade Match ("CTM") with "Clearing Editor" in the Frequent Trader Program Notes section.

<sup>8</sup> Effective October 7, 2019, FTIDs can be added or modified using the Clearing Edit Service in the Secure Web API ("Clearing Editor API") on the trading day the trade occurred. See Cboe Options Trade Notice, "Frequent Trader ID Additions and Corrections—Change in Procedures", Reference ID C2019060700, which sets forth the manner in which TPHs may update FTID information. The Exchange notes that the default cutoff time to make changes via the Clearing Editor tool or API is 4:29 p.m. CT, which is the time the Exchange submits its final trade submission to the OCC, which triggers OCC's end of day processing and settlement. However, there may be instances in which the Exchange must delay its final trade submission and the Clearing Editor would in those instances not preclude changes to be made or submitted.

<sup>5</sup> The Exchange notes that it is the responsibility of the Customer to request that the executing TPH affix its FTID to its order(s), and that it is voluntary for the executing TPH to do so.

<sup>6</sup> The Exchange has issued an Exchange Trade Notice providing the details as to how TPHs may submit such information to the Exchange and any corresponding deadline. See Cboe Options Trade Notice, "Frequent Trader ID Additions and Corrections—Change in Procedures", Reference ID C2019060700, which sets forth the file format, information required and corresponding deadlines. To the extent the Exchange amends the process or deadline in the future, the Exchange will similarly issue Exchange a new Trade Notice describing the changes.

background, Market-Maker, Clearing TPH, Joint-Back Office (“JBO”), broker-dealer and non-TPH market-maker transaction fees are capped at (1) \$1,000 for all (i) merger strategies and (ii) short stock interest strategies and at (2) \$700 for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class for options on equities, ETFs and ETNs. Such transaction fees for these strategies are further capped at \$25,000 per month per initiating TPH or TPH organization (excluding Clearing TPHs). Currently, to qualify transactions for the cap, a rebate request with supporting documentation must be submitted to the Exchange within 3 business days of the transactions. The Exchange notes that post-migration, it will no longer support the intake of various rebate request forms. Accordingly, the Exchange proposes to modify current Footnote 13 to eliminate the requirement that TPHs must submit a written request with supporting documentation in order to qualify for the fee caps. The Exchange notes that upon migration, TPHs will be able to mark their strategy orders as strategy orders and the fee caps will therefore automatically be processed without requiring any supporting documentation. As such, rebate forms are no longer necessary to process the above-mentioned fee caps. Additionally, the Exchange has only received a handful of these rebate requests over the past year and therefore believes the impact of the proposed change to be de minimis.

Next, the Exchange proposes to amend Footnotes 27 and 47 which govern the Customer Large Trade Discount Program and a non-customer Large Trade Discount Program, respectively. By way of background, the Customer Large Trade Discount Program caps fees for customer orders of a certain size in VIX, SPX/SPXW, XSP, other index options and ETF and ETN options. The Large Trade Discount Program similarly caps fees for non-customer orders of a certain size in VIX options. Both programs provide that qualification of an order for the fee caps are based on the trade date and order ID on each order. More specifically, to qualify for the discount, the entire order quantity must be tied to a single order ID (unless the order is a complex order with a number of legs that exceeds system limitations) either within the Cboe Command system or PULSe or in the front end system used to enter and/or transmit the order (provided the Exchange is granted access to effectively audit such front end system) (the order must be entered in its entirety on one

system so that the Exchange can clearly identify the total size of the order). Currently, for an order entered via PULSe or another front end system, or a complex order with multiple order IDs, a large trade discount request must be submitted to the Exchange within 3 business days of the transactions and must identify all necessary information, including the order ID and related trade details. The Exchange proposes to eliminate the ability to submit a form for orders entered via PULSe or another front end system or a complex order with multiple order IDs. Particularly, the Exchange notes that TPHs should be able to identify such orders on each order thus eliminating the need to support a rebate request and documentation post-trade. Additionally, the Exchange notes that it has received less than a handful of forms over the past year. As such, the Exchange believes the impact of the proposed change to be de minimis.

Lastly, the Exchange proposes to amend Footnote 41 to eliminate the requirement that TPHs must submit a rebate request to receive rebates for compression trades. By way of background, the Exchange rebates transaction fees, including the Index License Surcharge, for SPX and SPXW transactions if the transaction: (i) Involves a complex order with at least five (5) different series in S&P 500 Index (SPX) options, SPX Weeklys (SPXW) options, (ii) is a closing-only transaction or, if the transaction involves a Firm order (origin code “F”), is an opening transaction executed to facilitate a compression of option positions for a market-maker or joint-back office (“JBO”) account executed as a cross pursuant to and in accordance with Cboe Options Rule 6.74(b) or (d); (iii) is a position with a required capital charge equal to the minimum capital charge under Option Clearing Corporation’s (“OCC”) rules RBH Calculator or is a position comprised of option series with a delta of ten (10) or less and (iv) is entered on any of the final three (3) trading days of any calendar month. The Exchange also rebates transaction fees, including the Index License Surcharge, for closing transactions involving SPX and SPXW compression-list positions executed in a compression forum. Currently, to receive either rebate, a rebate request with supporting documentation must be submitted to the Exchange within 3 business days of the transactions. The Exchange notes that upon migration, TPHs will be able to mark their orders to identify them as eligible for the compression rebates which would enable the Exchange to

validate and process the rebates without the submission of a request and supporting documentation. As such, the Exchange believes the need to submit rebate requests and supporting documentation to receive compression rebates are no longer necessary.

## 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.<sup>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</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>11</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the Exchange notes that eliminating the ability to submit FTID information after the trade date is reasonable as the Exchange will no longer be able to apply rebates to any trades that were not marked or updated on the trade date. The Exchange further believes that all TPHs should be able to prepare and submit FTID information electronically to the Exchange on the trade date. The proposed change continues to ensure timely processing and finality. Additionally, it has been approximately 3 years since the original FT Form was adopted and as such, TPHs should be familiar with the Frequent Trader Program and should have systems and procedures in place to process to provide the required FTID information on the trade date. The Exchange also notes that the ability to provide FTID information electronically to the Exchange post-trade is merely an additional means to ensure FTID information is relayed to the Exchange. TPHs still have the option of affixing FTIDs on the orders or may add or

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> *Id.*

modify FTID information on post-trade records on the trade date via the Clearing Editor (formerly the CTM terminal). As such, the Exchange believes notwithstanding the proposed changes, that TPHs still are provided a variety of means to ensure FTID information is relayed to the Exchange in a timely, efficient manner, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and protecting investors and the public interest.

The Exchange also believes eliminating the requirement to submit a written rebate request with supporting documentation in order to (i) qualify for strategy orders fee caps, (ii) to receive the discounts under the customer and non-customer Large Trade Discount programs for certain orders and (iii) to qualify for compression rebates is reasonable as TPHs are still eligible to receive all available caps, discounts and rebates. Specifically, post-migration, TPHs must merely mark inbound orders appropriately by populating the appropriate FIX or BOE field or make same-day changes in the Clearing Editor, in lieu of submitting documentation post-trade. The proposed changes also streamline and simplify the Exchange's billing processes, as the system will be able to identify marked orders and apply fee caps, rebates and discounts without TPHs having to submit, and the Exchange having to manually review, additional documentation. Lastly, the Exchange notes the proposed rule change is not intended to have a significant impact or address any competitive issues. Rather it is precipitated by the transition of its billing system to a new system that is automated and will not process post-trade rebate requests.

#### *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 because the proposed changes apply uniformly to all TPHs and still provide for TPHs an opportunity to receive the above described caps, rebates, and discounts notwithstanding the elimination of various form submissions. The Exchange believes that the proposed rule change will not cause an unnecessary burden on intermarket competition because it only applies to trading on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace

for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>14</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange asserts that waiver of the delay will allow the Exchange to implement the proposed changes on October 7, 2019, the day the Exchange's billing system is migrated to a new system. In addition, CBOE notes that the Exchange provided TPHs notice of the proposed changes and implementation on September 4, 2019.<sup>16</sup> The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby waives the operative delay and designates the

proposed rule change operative upon filing.<sup>17</sup>

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-2019-094 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-2019-094. 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

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the five-day pre-filing requirement. The Commission hereby grants the request.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> See *supra* note 6.

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-2019-094 and should be submitted on or before November 13, 2019.

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

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 2019-23057 Filed 10-22-19; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87340; File No. SR-CBOE-2019-048]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, To Adopt Rule 6.9 (In-Kind Exchange of Options Positions and ETF Shares)

October 17, 2019.

#### I. Introduction

On September 6, 2019, Cboe Exchange, Inc. (“Cboe” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder, <sup>2</sup> a proposed rule change to adopt Rule 6.9. The proposed rule change was published for comment in the *Federal Register* on September 25, 2019.<sup>3</sup> On September 27, 2019, the Exchange filed Amendment No. 1 to the proposed rule change. On October 2, 2019, the Exchange withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On October 7, 2019, the

Exchange filed Amendment No. 3 to the proposed rule change.<sup>5</sup> The Commission received one comment on the proposed rule change.<sup>6</sup> The Commission is approving the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

#### II. Summary of the Proposed Rule Change

##### A. Background

Specified quantities of ETF shares are created and redeemed for consideration by authorized participants. “In-kind” creations and redemptions occur when the authorized participants present (in the case of creations) or receive (in the case of redemptions) securities in exchange for ETF shares. The Commission has observed that, when creation and redemption transactions occur wholly or partly in-kind, certain benefits can accrue to an ETF and its investors; specifically, in-kind exchanges generally result in: (1) Lower trading expenses (because securities received or delivered in-kind do not need to be purchased or sold in the market by the ETF, thus avoiding brokerage fees); and (2) lower taxable gains to shareholders (because appreciated securities are not sold but are delivered in kind to redeeming authorized participants).<sup>7</sup>

its expectation regarding the magnitude of the transfers pursuant to the proposed rule, asserting that it would constitute a minimal percentage of the total average daily volume of the combined standardized and FLEXible EXchange Options (“FLEX Options”) with the same underlying security or index (rather than simply stating that it would constitute a minimal percentage of average daily volume of options). Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, and therefore it is not subject to notice and comment. Amendment No. 2 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-cboe-2019-048/srcboe2019048-6283760-193330.pdf>.

<sup>5</sup> In Amendment No. 3, the Exchange revises the proposed rule text to renumber proposed Rule 6.49C to Rule 6.9 and correct an internal cross-reference to newly renumbered Rule 5.12 in order to conform the proposal to rule text organizational changes that became effective pursuant to a separate proposed rule change while the instant proposal was pending before the Commission. Because Amendment No. 3 is a technical amendment that does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment. Amendment No. 3 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-cboe-2019-048/srcboe2019048-6258834-192936.pdf>.

<sup>6</sup> See letter dated October 11, 2019 from Ken Mungan, Chairman, Milliman Financial Risk Management LLC, to Vanessa Countryman, Secretary, Commission (“Comment Letter”), which is available at: <https://www.sec.gov/comments/sr-cboe-2019-048/srcboe2019048-6285127-193334.pdf>.

<sup>7</sup> See Securities Exchange Act Release No. 75165 (June 12, 2015), 80 FR 34729, 34732–33 (June 17, 2015) (requesting comment on topics related to the

The Exchange’s current rules do not allow its Trading Permit Holders to effect options transfers in connection with ETF creations or redemptions because such transfers do not occur on Cboe or on another national securities exchange. Specifically, Cboe Rule 5.12(a)<sup>8</sup> generally requires that transactions by Trading Permit Holders in option contracts listed on the Exchange for a premium in excess of \$1.00 must be effected on the Exchange or on another national securities exchange.<sup>9</sup>

##### B. Proposed Rule 6.9

The Exchange proposes to adopt Rule 6.9, which would add a new circumstance under which off-floor transfers of options positions by Trading Permit Holders would be allowed. Under proposed Rule 6.9, positions in options listed on the Exchange would be permitted to be transferred off the Exchange by a Trading Permit Holder in connection with transactions to purchase or redeem “creation units” of ETF shares between an “authorized participant”<sup>10</sup> and the issuer<sup>11</sup> of such ETF shares, which transfer would occur at the price used to calculate the NAV of such ETF shares.

The Exchange asserts that proposed Rule 6.9: (1) Would allow options-based

listing and trading of exchange-traded products on national securities exchanges and sales of these products by broker-dealers).

<sup>8</sup> See Amendment No. 3, *supra* note 5 (describing the relocation of this rule to its current location in the Cboe rulebook).

<sup>9</sup> Cboe Rule 6.7(a) lists the circumstances under which Trading Permit Holders may transfer their positions off of the Exchange. The circumstances listed include: (1) The dissolution of a joint account in which the remaining Trading Permit Holder assumes the positions of the joint account; (2) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions; (3) positions transferred as part of a Trading Permit Holder’s capital contribution to a new joint account, partnership, or corporation; (4) the donation of positions to a not-for-profit corporation; (5) the transfer of positions to a minor under the Uniform Gifts to Minors Act; and (6) a merger or acquisition where continuity of ownership or management results. Additionally, Cboe Rule 5.12(b) allows a Trading Permit Holder acting as agent to execute a customer’s order off the Exchange floor with any other person (except when such Trading Permit Holder also is acting as agent for such other person in such transaction) for the purchase or sale of an option contract listed on the Exchange.

<sup>10</sup> For purposes of proposed Rule 6.9, an “authorized participant” is an entity that has a written agreement with the issuer of ETF shares or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units (*i.e.*, specified quantities of ETF shares).

<sup>11</sup> For purposes of proposed Rule 6.9, an issuer of ETF shares would be registered with the Commission as an open-end management investment company under the Investment Company Act of 1940.

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

<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. 87013 (September 19, 2019), 84 FR 50490 (“Notice”).

<sup>4</sup> In Amendment No. 2, the Exchange clarifies: (1) In its description of the proposal that the transfer price(s) of the options would be the price(s) used to calculate the net asset value (“NAV”) of the exchange-traded fund (“ETF”) shares, in conformance with the proposed rule text; and (2)