SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Cboe Exchange, Inc.: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Extend the Operation of Its Flexible Exchange Options ("FLEX Options") Pilot Program Regarding Permissible Exercise Settlement Values for FLEX Index Options


Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”), 1 and Rule 19b–4 thereunder, notice is hereby given that on October 16, 2020, 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 2 and Rule 19b–4(f)(6) thereunder. 3 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 extend the operation of its Flexible Exchange Options (“FLEX Options”) pilot program regarding permissible exercise settlement values for FLEX Index Options. The text of the proposed rule change is provided below.

Rule 4.21. Series of FLEX Options

(a) No change.

(b) Terms. When submitting a FLEX Order for a FLEX Option series to the System, the submitting FLEX Trader must include one of each of the following terms in the FLEX Order (all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options), which terms constitute the FLEX Option series:

(1)–(4) No change.

(5) settlement type:

(A) No change.

(B) FLEX Index Options. FLEX Index Options are settled in U.S. dollars, and may be:

(i) No change.

(ii) p.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported closing prices of the component securities), except for a FLEX Index Option that expires on any business day that falls on or within two business days of a third Friday-of-the-month expiration day for a non-FLEX Option (other than a QIX option) may only be a.m.-settled.

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

On January 28, 2010, the Securities and Exchange Commission (the “Commission”) approved a Cboe Options rule change that, among other things, established a pilot program regarding permissible exercise settlement values for FLEX Index Options. 4 The Exchange has extended the pilot period numerous times, which is currently set to expire on the earlier of November 2, 2020 or the date on which the pilot program is approved on a permanent basis. 5 The purpose of this

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6 Securities Exchange Act Release Nos. 64110 (March 23, 2011), 76 FR 17463 (March 29, 2011) (SR–CBOE–2011–024) (extending the pilot program through the earlier of March 30, 2012 or the date on which the pilot program is approved on the permanent basis); 66701 (March 30, 2012); 77 FR 73168 (December 27, 2012) (SR–CBOE–2012–029) (further extending the pilot program through the earlier of March 30, 2013 or the date on which the pilot program is approved on the permanent basis); 77 FR 1331 (January 3, 2013) (SR–CBOE–2013–002) (further extending the pilot program through the earlier of March 30, 2014 or the date on which the pilot program is approved on the permanent basis); 77 FR 10955 (March 22, 2012) (SR–CBOE–2012–018) (further extending the pilot program through the earlier of March 30, 2013 or the date on which the pilot program is approved on the permanent basis); 77 FR 10565 (March 18, 2012) (SR–CBOE–2012–006) (further extending the pilot program through the earlier of March 30, 2013 or the date on which the pilot program is approved on the permanent basis); 77 FR 19986 (April 17, 2012) (further extending the pilot program through the earlier of March 30, 2013 or the date on which the pilot program is approved on the permanent basis).
rule change filing is to extend the pilot program through the earlier of May 3, 2021, or the date on which the pilot program is approved on a permanent basis. This filing simply seeks to extend the operation of the pilot program and does not propose any substantive changes to the pilot program.

Under Rule 4.21(b), Series of FLEX Options (regarding terms of a FLEX Option),8 a FLEX Option may expire on any business day (specified to day, month and year) no more than 15 years from the date on which a FLEX Trader submits a FLEX Order to the System.9

20673 (April 5, 2012) (SR–CBOE–2012–027) (extending the pilot program through the earlier of November 2, 2012 or the date on which the pilot program is approved on a permanent basis); 68145 (November 7, 2012) (SR–CBOE–2012–102) (extending the pilot program through the earlier of November 2, 2013 or the date on which the pilot program is approved on a permanent basis); 77742 (April 29, 2016) (SR–CBOE–2016–032) (extending the pilot program through the earlier of May 3, 2016 or the date on which the pilot program is approved on a permanent basis); 77742 (April 29, 2016) 81 FR 26857 (May 4, 2016) (SR–CBOE–2016–032) (extending the pilot program through the earlier of May 3, 2016 or the date on which the pilot program is approved on a permanent basis); 80443 (April 12, 2017) 82 FR 18313 (April 18, 2017) (SR–CBOE–2017–012); 83 FR 21808 (May 10, 2018) (extending the pilot program through the earlier of May 3, 2018 or the date on which the pilot program is approved on a permanent basis); 83175 (May 4, 2018) 83 FR 21808 (May 10, 2018) (SR–CBOE–2018–037); 84537 (November 5, 2018) (SR–CBOE–2018–071); 85707 (April 23, 2018) (SR–CBOE–2018–037); 84537 (November 5, 2018) 83 FR 56113 (November 9, 2018) (SR–CBOE–2018–071); 85707 (April 23, 2019) 84 FR 18100 (April 29, 2019) (SR–CBOE–2019–049); 8990 (October 13, 2020) 84 FR 63945 (November 19, 2019) (SR–CBOE–2019–108); 88782 (April 30, 2020) 85 FR 27004 (May 6, 2020) (SR–CBOE–2020–039). At the same time the permissible exercise settlement values pilot was established for FLEX Index Options, the Exchange also established a pilot program eliminating the minimum value size requirements for all FLEX Options. See Approval Order, supra note 6. The program eliminating the minimum value size requirements was extended twice pursuant to the same rule filings that extended the permissible exercise settlement values (for the same extended periods) and was approved on a permanent basis in a separate rule change filing. See id.; and Securities Exchange Act Release No. 67624 (August 8, 2012). 7 On October 7, 2019, the Exchange migrated its trading platform to the same system used by the Cboe Options to date and over the pilot period, Cboe Options continues to believe that the restrictions on exercise settlement values are no longer necessary to insulate Non-FLEX expiration dates (or on the expiration dates of, a third Friday-of-the-month expiration day for a Non-FLEX Option (other than a QIX option), may only be a.m.-settled. 9 However, under the exercise settlement values pilot, this restriction on p.m.-settled FLEX Index Options was eliminated.14 As stated, the exercise settlement values pilot is currently set to expire on the earlier of November 2, 2020 or the date on which the pilot program is approved on a permanent basis.

Cboe Options is proposing to extend the pilot program through the earlier of May 3, 2021 or the date on which the pilot program is approved on a permanent basis. Cboe Options believes the pilot program has been successful and well received by its Trading Permit Holders and the investing public for the period that it has been in operation as a pilot. In support of the proposed extension of the pilot program, and as required by the pilot program’s Approval Order, the Exchange has submitted to the Commission pilot program reports regarding the pilot, which detail the Exchange’s experience with the program. Specifically, the Exchange provided the Commission with annual reports analyzing volume and open interest for each broad-based FLEX Index Options class overlying a third Friday-of-the-month expiration day, p.m.-settled FLEX Index Options series.12 The annual reports also contained information and analysis of FLEX Index Options trading patterns. The Exchange also provided the Commission, on a periodic basis, interim reports of volume and open interest. In providing the pilot reports to the Commission, the Exchange has previously requested confidential treatment of the pilot reports under the Freedom of Information Act (“FOIA”).13 The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement (as discussed below).

In that regard, based on the Exchange’s experience in trading FLEX Options to date and over the pilot period, Cboe Options continues to believe that the restrictions on exercise settlement values are no longer necessary to insulate Non-FLEX expiration dates (or on the expiration dates of, a third Friday-of-the-month expiration day, p.m.-settled FLEX Index option.

8 Except an Asian-settled orCliquet-settled FLEX Option series, which must have an expiration date within two business days of, the third Friday-of-the-month expiration day, p.m.-settled FLEX Index option.

In further support, the Exchange also notes that the p.m. settlements are already permitted for FLEX Index Options on any other business day except on, or within two business days of, the third Friday-of-the-month. The Exchange is not aware of any market disruptions or problems caused by the use of these settlement methodologies on these expiration dates (or on the expiration dates of, a third Friday-of-the-month expiration day, p.m.-settled FLEX Index option).

In that regard, based on the Exchange’s experience in trading FLEX Options to date and over the pilot period, Cboe Options continues to believe that the restrictions on exercise settlement values are no longer necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations.14

12 The annual reports also contained certain pilot period and pre-pilot period analyses of volume and open interest for third Friday-of-the-month expiration days, a.m.-settled FLEX Index series and third Friday-of-the-month expiration days, Non-FLEX Index series overlying the same index as a third Friday-of-the-month expiration day, p.m.-settled FLEX Index option.

13 5 U.S.C. 552; see infra note 12.

14 In further support, the Exchange also notes that the p.m. settlements are already permitted for FLEX Index Options on any other business day except on, or within two business days of, the third Friday-of-the-month. The Exchange is not aware of any market disruptions or problems caused by the use of these settlement methodologies on these expiration dates (or on the expiration dates of, a third Friday-of-the-month expiration day, p.m.-settled FLEX Index option).
To the contrary, Cboe Options believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants’ ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability.

The Exchange also notes that certain position limit, aggregation and exercise limit requirements continue to apply to FLEX Index Options in accordance with Rules 8.35, Position Limits for FLEX Options, 8.42(g) Exercise Limits (in connection with FLEX Options) and 8.43(j). Reports Related to Position Limits (in connection with FLEX Options). Additionally, all FLEX Options remain subject to the general position reporting requirements in Rule 8.43(a). Moreover, the Exchange and its Trading Permit Holder organizations each have the authority, pursuant to Rule 10.9. Margin Required is Minimum, to impose additional margin as deemed advisable. Cboe Options continues to believe these existing safeguards serve sufficiently to help monitor open interest in FLEX Option series and significantly reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement.

Cboe Options is also cognizant of the OTC market, in which similar restrictions on exercise settlement values do not apply. Cboe Options continues to believe that the pilot program is appropriate and reasonable and provides market participants with additional flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. The Exchange continues to believe that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions, increased market transparency, and heightened counterparty creditworthiness due to the role of the Options Clearing Corporation as issuer and guarantor of FLEX Options.

If, in the future, the Exchange proposes an additional extension of the pilot program, or should the Exchange propose to make the pilot program permanent, the Exchange will submit, along with any filing proposing such amendments to the pilot program, an annual report (addressing the same areas referenced above and consistent with the pilot program’s Approval Order) to the Commission at least two months prior to the expiration date of the program. The Exchange will also continue, on a periodic basis, to submit interim reports of volume and open interest consistent with the terms of the exercise settlement values pilot program as described in the pilot program’s Approval Order. Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the pilot program is consistent with the Exchange Act. The Exchange is in the process of making public on its website all data and analyses previously submitted to the Commission under the pilot program, and will make public any data and analyses it submits to the Commission under the pilot program in the future, as noted in the pilot program’s Approval Order, any positions established under the pilot program would not be impacted by the expiration of the pilot program. Specifically, 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)(5) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the Exchange believes that the proposed extension of the pilot program, which permits an additional exercise settlement value, would provide greater opportunities for investors to manage risk through the use of FLEX Options.

Further, the Exchange believes that it has not experienced any adverse effects from the operation of the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and are p.m.-settled. The Exchange also believes that the extension of the exercise settlement values pilot does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise regulatory concerns, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction. See Approval Order at footnote 3, supra note 6.

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)(5) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the Exchange believes that the proposed extension of the pilot program, which permits an additional exercise settlement value, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange believes that it has not experienced any adverse effects from the operation of the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and are p.m.-settled. The Exchange also believes that the extension of the exercise settlement values pilot does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise regulatory concerns, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction. See Approval Order at
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 21 and Rule 19b–4(f)(6) thereunder.22

A proposed rule change filed under Rule 19b–4(f)(6)23 normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),24 the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver will allow the Exchange to extend the pilot program and maintain the status quo, thereby reducing market disruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.25

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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


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–2020–103. 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 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–2020–103, and should be submitted on or before November 24, 2020.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Small Business Capital Formation Advisory Committee will hold a public meeting on Monday, November 9, 2020, via videoconference.

PLACE: The meeting will begin at 10:00 a.m. (ET) and will be open to the public. The meeting will be conducted by remote means (videoconference) and/or at the Commission’s headquarters, 100 F Street NE, Washington, DC 20549. Members of the public may watch the webcast of the meeting on the Commission’s website at www.sec.gov.

STATUS: On October 23, 2020, the Commission published notice of the Committee meeting (Release No. 33–10877), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTER TO BE CONSIDERED: The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging businesses and their investors.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.


Vanessa A. Countryman,
Secretary.

[FR Doc. 2020–24490 Filed 10–30–20; 4:15 pm]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Enable Members To Designate Certain Orders To Be Identified as Retail Orders to the Exchange


Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b–4 thereunder, notice is hereby given that on October 26, 2020, MEMX LLC (“MEMX” or the “Exchange”) 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 and Rule 19b–4(f)(6) thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to adopt new Rule 11.21 to enable Members of the Exchange (“Members”) to designate certain orders they submit to the Exchange on behalf of retail customers to be identified as retail orders to the Exchange. The text of the proposed rule change is provided in Exhibit 5.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to adopt new Rule 11.21 to enable Members to designate certain orders they submit to the Exchange on behalf of retail customers to be identified as retail orders to the Exchange. Under the proposed rule change, the Exchange would create a new class of market participant for any Member that satisfies the requirements under proposed Rule 11.21 called a Retail Member Organization (“RMO”), which would be eligible to submit certain retail order flow (“Retail Orders”) to the Exchange.

Specifically, proposed Rule 11.21 would: (i) Define a Retail Order and RMO; (ii) set forth an RMO’s qualification and application requirements and the Exchange’s approval process; (iii) outline procedures for when an RMO fails to abide by the Retail Order requirements; and (iv) outline the procedures under which a Member may appeal the Exchange’s decision to disapprove it or disqualify it as an RMO. The Exchange notes that proposed Rule 11.21 is substantially similar to and based on paragraphs (a)–(d) of Cboe BZX Exchange, Inc. (“Cboe BZX”) Rule 11.25.6

Definitions

The Exchange proposes to adopt the following definitions under proposed Rule 11.21(a). First, the term “Retail Member Organization” or “RMO” would be defined as a Member (or a division thereof) that has been approved by the Exchange to submit Retail Orders. Second, the term “Retail Order” would be defined as an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

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