



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83923; File No. SR-CBOE-2018-059]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Implementation Date of Changes to Cboe Options Rule 24A.4, Interpretation and Policy .02, Concerning FLEX Options

August 23, 2018

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 14, 2018, 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 Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 proposes to delay the implementation date of rule change SR-CBOE-2018-008 to permit all FLEX series to be fungible with the corresponding non-FLEX series once an identical non-FLEX series becomes listed.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

(additions are in italics; deletions are [bracketed])

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Rules of Cboe Exchange, Inc.

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Rule 24A.4. Terms of FLEX Options

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. . . Interpretations and Policies:

.01 No change.

.02

The below version of Interpretation and Policy .02 will remain in effect until [an effective date specified by the Exchange in a Regulatory Circular. The effective date shall be no later than July 31, 2018, and the Regulatory Circular announcing the effective date shall be issued at least 30 days prior to the effective date]August 21, 2018.

Provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options shall be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as Non-FLEX Options that are already available for trading on the same underlying security or index. FLEX Options shall also be permitted before the options are listed for trading as Non-FLEX Options. Once and if the option series are listed for trading as Non-FLEX Options, (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Option series and (ii) any further trading in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures and rules. However, in the event the Non-FLEX series is added intra-day, a position established under the FLEX trading procedures would be permitted to be closed using the FLEX trading procedures for the balance of the trading day on which the Non-FLEX series is added against another closing only FLEX position. For such FLEX series, the FLEX Official will make an announcement that the FLEX series is now restricted to closing transactions; a FLEX Request for Quotes may not be disseminated for any order representing a FLEX series having the same terms as a Non-FLEX series, unless such FLEX Order is a closing order (and it is the day the Non-FLEX series has been added); and only responses that close out an existing FLEX position are permitted. Any transactions in a restricted series that occur that do not conform to these requirements will be nullified by the FLEX Official pursuant to Rule 24A.14.

The below version of Interpretation and Policy .02 shall be in effect on [the effective date specified by the Exchange in a Regulatory Circular. The effective date shall be no later than July 31, 2018, and the Regulatory Circular announcing the effective date shall be issued at least 30 days prior to the effective date]August 21, 2018.

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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 May 9, 2018, the Securities and Exchange Commission (the "Commission") approved certain changes to Rule 24A.4, Interpretation and Policy .02 (SR-CBOE-2018-008), which changes allowed flexibility structured options ("FLEX Options") with quarterly expirations, short-term expirations, weekly expirations, and End-of-Month expirations to be fungible with Non-FLEX Options that have identical terms.⁵ Pursuant to SR-CBOE-2018-008, the proposed changes would not take effect until a date specified by the Exchange in a Regulatory Circular, which date would be no later than July 31, 2018. The Regulatory Circular announcing the effective date was required to be issued at least 30 days prior to the effective date.

⁵ Securities Exchange Act Release No. 83205 (May 9, 2018), 83 FR 22550 (May 15, 2018) (SR-CBOE-2018-008).

As noted in SR-CBOE-2018-008, to give effect to the Cboe Options rule change, the Options Clearing Corporation (“OCC”) would need to amend its By-Laws after Cboe Options amended its Rules.⁶ However, OCC did not submit proposed changes to its By-Laws until July 16, 2018, on which date those changes became effective.⁷ Cboe Options understands that OCC does not intend to implement those changes as to Cboe Options until the implementation date Cboe Options announced for the proposed rule change in SR-CBOE-2018-008. Because Cboe Options was unable to determine an implementation date for the proposed changes until it knew the effective time of OCC’s By-Law amendments, Cboe Options was unable to announce an implementation date until after OCC amended its By-Laws (and thus not until after July 16, 2018). On July 20, 2018, after the OCC By-Law amendment was filed, Cboe Options announced an implementation date of August 21, 2018, which was more than 30 days after the notice to Trading Permit Holders.⁸ Because this implementation date is past July 31, 2018, the Exchange proposes to extend the implementation date of the rule changes in SR-CBOE-2018-008 to August 21, 2018.

Historically, Cboe Options would have announced this information pursuant to a Regulatory Circular as required by the rule text. However, Cboe Options announced the

⁶ See id.

⁷ Securities Exchange Act Release No. 83724 (July 27, 2018), 83 FR 37875 (August 2, 2018) (SR-OCC-2018-010).

⁸ Exchange Notice C2018072002 announcing the implementation date of rule change SR-CBOE-2018-008 is available at: http://cdn.batstrading.com/resources/release_notes/2018/Exchange-Notice-on-Open-Interest-Consolidation-for-Quarterly-and-Short-term-FLEX-products.pdf, which can be accessed through the markets.cboe.com website. Cboe Options previously informed market participants of its change in company practice to announce information such as the proposed rule change in SR-CBOE-2018-008 by Exchange Notice rather than Regulatory Circular: <https://www.cboe.com/publish/RegCir/RG17-191.pdf>.

implementation date pursuant to an Exchange Notice in accordance with new company practice.⁹ This is merely a change in the name of the document issued to market participants to announce this information. The substance of the announcement in the Exchange Notice was the same as it would have been if announced in a Regulatory Circular. Exchange Notices are distributed to the same group of market participants to which Regulatory Circulars were distributed before this change in company practice. Additionally, Exchange Notices are posted to Cboe Options' website, just as Regulatory Circulars are posted. As a result, the Exchange believes announcement of the implementation date by Exchange Notice provided market participants with sufficient notice of the proposed rule change in SR-CBOE-2018-008. The Exchange plans to issue a reminder of the implementation date to market participants by Regulatory Circular.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change

⁹ Id.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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

The proposed rule change is merely delaying the implementation date of a proposed rule change, the rule filing for which addressed why that change and the need for at least 30 days' notice of implementation of that change was consistent with the Act and was previously approved by the Commission. This will ensure market participants receive sufficient notice of the implementation date of the proposed rule change.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options 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 proposed rule change is merely delaying the implementation date of a proposed rule change, the rule filing for which addressed any potential competitive impact that change and the need for at least 30 days' notice of implementation of that change may have and was previously approved by the Commission. The proposed delay to the implementation date ensures market participants receive sufficient notice of the implementation date of the proposed rule change, which ultimately protects investors. The Exchange believes the proposed delay to the implementation date will have no impact on competition.

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.

¹²

Id.

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may 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. The Commission is waiving the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow the rule change to be implemented as detailed in the Exchange Notice whereas keeping the 30-day operative delay in place could create confusion. Therefore, the Commission designates the proposal operative upon filing.¹⁷

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires Cboe Options 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. Cboe Options has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

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

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:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2018-059 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2018-059. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications

relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2018-059 and should be submitted on or before [INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

Eduardo A. Aleman,
Assistant Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).

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