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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86429; File No. SR-CBOE-2019-038]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Maintenance Listing Standards for Options on Certain Indexes under Rule 24.2.01(b)(2)

July 22, 2019.

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 July 22, 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 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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its maintenance listing standards for options on certain indexes under Rule 24.2.01(b)(2). 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.

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).

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 amend the listing criteria in Rule 24.01(b) for options that overlie certain indexes. Specifically, Rule 24.2.01(b) establishes maintenance listing standards that apply to options on the MSCI Emerging Markets (“EM”) Index. The proposed rule change does not impact options on the MSCI EAFE (“EAFE”).⁵ Rule 24.2.01(b)(2), requires that the total number of component securities in the index may not increase or decrease by more than 35% from the number of component securities in the index at the time of its initial listing. Due to global market trends and the overall objectives of the EM Index, as described below, the EM Index no longer meets the maintenance listing standard set forth under Rule 24.2.01(b)(2), and, thus, the Exchange now seeks approval to amend its rules in order to continue to list series of options on the EM Index. Specifically, the Exchange proposes to amend Rule 24.4.01(b)(2) to provide an exception for the EM Index component securities in which the total of the component

⁵ The Rule also governs options on the FTSE Emerging and FTSE Developed Europe indexes. The Exchange has not listed FTSE Developed Europe Index options and delisted FTSE Emerging Index options on January 5, 2018. See <http://www.cboe.com/publish/OptionClassDelistings/Class%20Delisting%20010518.pdf> (January 5, 2018).

securities in the index may not increase or decrease more than 10% over the last six month period.

The EM Index is designed to capture large and mid-cap representation across emerging market countries. In particular, it is built to “be flexible enough to adjust quickly to a constantly changing opportunity set”, that is, emerging markets.⁶ It seeks “to capitalize on the unique attributes of these vibrant economies”, which includes “superior growth potential”.⁷ Indeed, EM has experienced a continuous rise in the number of its component securities, which has recently climbed to over a 35% increase from the number of its total initial components. When initially listed on the Exchange in 2015, the EM Index consisted of the following 23 emerging market country indexes: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Greece, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Peru, Philippines, Poland, Qatar, Russia, South Africa, Taiwan, Thailand, Turkey and United Arab Emirates. At that time, the EM Index had 834 constituents which covered approximately 85% of the free float-adjusted market capitalization in each country. Since its initial listing, Argentina,⁸ Pakistan,⁹ and Saudi Arabia¹⁰ have joined the list of countries represented in the EM Index, and its number of constituents has grown to a total of 1,194, which still covers approximately 85% of the free float-adjusted market capitalization in each country represented. As a result of the growth of the emerging markets represented, the index has experienced continued expansion. The Exchange notes that the cumulative average

⁶ See MSCI Emerging Markets Index brochure (dated May 2019) located at: <https://www.msci.com/documents/1296102/15035999/USLetter-MIS-EM-May2019-cbr-en.pdf/fb580e1e-d54c-4c68-1314-977bbff69bd7?t=1559125400402>.

⁷ Id.

⁸ Added in June 2018.

⁹ Added in June 2017.

¹⁰ Added in June 2018.

growth rate of the EM Index component securities since 2015 has averaged 4.5% every 6 months. In the 6-month window from January 2019 through July 2019 the EM Index experienced approximately a 6.2% increase in component securities, and, in the second quarter of 2019 alone, 26 Chinese stocks, 30 Saudi Arabian stocks, eight Argentinian stocks were added to the EM Index. Over recent years, the component securities of the EM Index have grown to a market capitalization of 5,521,075.33 (USD Millions) (up from 3,219,779.13 in 2016) and average market capitalization per constituent of 4,624.02 (up from 3,846.81 in 2016). In addition to this, the components securities have an average daily volume of over 42 billion, and an average daily volume per constituent of over 35 million. Additionally, the largest constituent in the EM Index currently only accounts for 4.67% of the weight of the EM Index.¹¹

Given the increasingly high number of constituents and capitalization of the EM Index, the deep and liquid markets for the securities underlying the index, and the low percentage each constituent comprises of the total EM Index weight, and the recent growth patterns, as well as the Exchange's expectations that these growth trends will continue into the future, the concerns for market manipulation and/or disruption in the underlying markets are greatly reduced. The Exchange also notes that the proposed amended listing standard is designed to prevent more than 10% decreases over 6-month periods at a time, which, in turn, ensures that no significant decreases will occur over shorter periods of time that could potentially render the EM Index more susceptible to manipulation and/or disruption in the underlying markets.

Regarding the proposed threshold, the Exchange believes that 10% component securities changes applied every 6 months is sufficient to detect significant increases or, more importantly,

¹¹ See MSCI Emerging Markets Index fact sheet (dated June 28, 2019) located at: http://www.msci.com/resources/factsheets/index_fact_sheet/msci-emerging-markets-index-usd-price.pdf.

successive decreases over time that could, in theory, reduce component securities to a point that might potentially raise concerns regarding manipulation of the index itself. The Exchange also notes that the proposed threshold is sufficient in monitoring for material increases that might potentially change the character of the index over which broad-based index options are issued; if the index grows too quickly it may raise surveillance issues and the Exchange must ensure it has the capacity to enforce its own rules so as for surveillance to continuously to be able to properly monitor the index. The Exchange also believes that the proposed threshold is wide enough to allow for the more rapid, shorter-term changes (e.g. an average 4.5% increase in constituents every 6 months since 2015) experienced by emerging markets that the EM Index is designed to capture. For example, the proposed standard would allow for the swift growth in the emerging markets like that of the most recent EM Index component increase of approximately 6.2% over the first 6 months of 2019, and, if in the second half of 2019, the component makeup of the index decreased 10% from its total in July, it would not be listed until compliant with the threshold. Under the current component threshold, which measures a 35% decrease or increase from the EM Index's initial listing, such a swift, shorter-term change would likely not be detected and/or addressed, potentially exposing the underlying securities to increased risk of manipulation and/or disruption. The Exchange believes that the proposed threshold is more restrictive than the 35% threshold, which other exchanges also have in place¹², as it measures for smaller increases over shorter period of time, which is better aligned with the way the EM Index has continuously grown over the past three years and is expected to grow.¹³ The 10% over 6 month threshold is

¹² See NASDAQ Options Rules, Chapter XIV, Sec. 3(e).

¹³ The Exchange also notes that the generic listing standards applicable to ETPs listed on other national securities exchanges (e.g., Cboe BZX Exchange Rule 14.11(c)(3)(A)(ii)) do not include any requirements based on the increase or decrease in component securities, and instead only require that an ETP based on an index that includes non-U.S.

more restrictive because it will capture incremental changes in the component securities before they compound to greater, material levels of change, for which the 35% threshold allows. As the EM Index stands today, the current 35% threshold would allow for the component securities to decrease by approximately 54.5%, that is, from the current 1,194 component securities to 543 component securities, which is the number of component securities that would constitute just over a 35% decrease from the 834 component securities when initially listed. Therefore, the Exchange believes that the proposed threshold is more restrictive as it would not allow for such significant changes to occur. The Exchange notes that, theoretically, incremental decreases over a long period of time could evolve into a greater, material change like that described above, however, this is unlikely given the extensive growth patterns of the EM Index over the recent years and the Exchange's expectation that similar growth will continue. The Exchange currently maintains "watch lists" made up of countries and indexes with large constituent count changes which it reviews at least quarterly. If the Exchange determines from its reviews that a downside change in an index's composition would affect the protection of investors, it may cease listing series on such index pursuant to Rule 5.4, even if the index is still compliant with the component security threshold. Furthermore, the Exchange notes that while a component threshold fixed at the point of initial listing may be aligned with an index that is meant to represent a relatively fixed constituent count reflection of large-cap stocks, such as the S&P 500 Index, this criteria is not compatible with the EM Index, which contain mid-cap components and is designed to be flexible to change over time as the represented markets change.

component stocks includes at least 20 component securities, among other diversification, liquidity, and market cap requirements. As such, an ETP based on the EM Index would not be delisted based on a percentage increase or decrease in component securities as long as it continued to have at least 20 component securities. Therefore, the Exchange believes that the proposed threshold is more restrictive than the current standard for listing products on the EM Index.

The Exchange represents that reducing the threshold and specifying a certain period of time from which the threshold is measured will not have an adverse impact on the Exchange's surveillance program. The Exchange will continue to use the same surveillance procedures currently utilized for each of the Exchange's other index options. Currently, the Exchange conducts formal semi-annual reviews, as well as intermediate reviews on at least a quarterly basis to identify potential compliance concerns in connection with the continued listing standards in advance of its formal semi-annual index maintenance reviews. The Exchange believes the frequency of these reviews will continue to successfully identify and address continued listing compliance risks for the EM Index.

EM options are currently listed for trading on the Exchange. The Exchange generally adds new series after an expiration, which allows trading to commence in the new series on the first trading day after the expiration date. The Exchange currently lists EM options that expire monthly, as well as Friday-expiring weekly options. In addition to this, the Exchange offers FLEX options on this index, which may only be listed if the standard options on an index are authorized to be listed. Specifically, additional series of weekly EM options may no longer be scheduled to be added, nor will additional monthly series after expiration on July 19, 2019, which would allow trading to commence in the additional series on the next trading day of July 22, 2019. Without this amendment, EM options cannot meet the continuing listing criteria of Rule 24.2.01(b), specifically the criteria under (b)(2), which will prevent the Exchange from adding weekly and monthly EM options.

Market participants have already begun to express concern to the Exchange regarding interruption in their trading of series on the EM Index. Indeed, market participants that intend to write optionality with weekly expiration dates in the upcoming weeks will, instead, have to take

their volume OTC. This poses counter party risks to which a market participant would not otherwise have exposure if series were available on the EM Index. The inability to add the EM options would be a detriment to market participants seeking to hedge positions in ETPs based on the EM Index, options on EEM and EM futures, and European-traded derivatives on the EM Index. Further, there are ETPs that use options on the EM Index as part of their investment strategy. Without the ability to add the EM options, these ETPs could be unable to achieve their investment objective, to the detriment of investors. Additionally, to the extent market participants want to roll a position in EM options that expire in July to series at a later expiration date and at a favorable or comparable price, they will be prevented from doing so without this amendment. Furthermore, in the time in which the Exchange may not list additional series on EM, FLEX trades which may result in the creation of new FLEX series will be nullified, which may cause confusion and prove burdensome to market participants.

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.¹⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁵ 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

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange does not believe that the EM Index is easily susceptible to manipulation. This index is a broad-based index and has high market capitalization. As described above, the EM Index is comprised of 1,194 component securities, the component securities have a market capitalization of 5,521,075.33 (USD Millions) and an average daily volume of over 42 billion, and no single component comprises more than 4.67% of the index, making it not easily subject to market manipulation.

The proposed change will 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, because it is designed to allow the Exchange to continue to list EM options in a manner that is aligned with the EM Index's objective to be flexible enough to adjust quickly to constantly changing emerging markets and capitalize on their "superior growth potential", while also ensuring that its underlying markets do not become susceptible to manipulation and/or disruption by monitoring for significant component changes (importantly, decreases) over a shorter-term period of time, which is better aligned with the way in which emerging markets change over time. The Exchange believes that the 10% component threshold is sufficient to detect significant decreases that may pose risk of manipulation or disruption in the underlying securities, while also being wide enough to allow for the rapid and continuous changes emerging markets experience that the EM Index is designed to capture. The Exchange believes this protects investors by allowing the continued listing of EM Index options as the EM Index

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Id.

continues to change (as it is designed to do), and therefore the continued, uninterrupted investor participation in such options, while also ensuring that the underlying securities do not become susceptible to risk of manipulation and/or disruption.

The Exchange believes that the proposed change serves to protect investors and the public interest because it is more restrictive than the current component threshold, as well as component thresholds on other exchanges.¹⁷ As stated, the current 35% threshold would allow for significant decreases in the number of component securities, whereas the proposed threshold allows only for smaller decreases in the component securities captured over shorter periods of time, which is in line with the more rapid way in which the EM Index changes and ensures component changes are flagged prior to becoming greater, material changes to the EM Index. Given the historical growth trends and the Exchange's expectations that these growth trends will continue into the future for the EM Index, the Exchange does not believe that incremental decreases will aggregate to a material decrease. The Exchange maintains and monitors its constituent and country watch list, and, if it determines that a component change adversely impacts investors, it may cease listing series on an index pursuant to Rule 5.4, even if the index is still compliant with the threshold.

In addition to this, because a total component securities standard is not essential to the continued listing standards for EM Index-based products, the Exchange believes the proposed change is not a novel change and serves to protect investors as it is an additional protection against potential manipulation and/or disruption in the underlying securities in a manner that maintains stability during both upside and downside swings, as well as the integrity of the index continuously over time.

¹⁷ See supra note 12.

As stated above, without this amendment, the Exchange is no longer able to list new series of weekly or monthly options on the EM Index. The Exchange believes that the proposed amendment is necessary for the protection of investors and the public interest, as without such an amendment, EM options cannot meet the continuing listing criteria under Rule 24.2.01(b)(2), which will prevent the Exchange from adding the weekly and monthly EM options. Indeed, market participants that intend to write optionality with weekly expiration dates in the upcoming weeks will, instead, have to take their volume OTC. OTC poses counter party risks for investors that they would not normally otherwise choose to be subject to if series on the EM Index were available for trading. The inability to add the EM options would be a detriment to market participants seeking to hedge positions in ETPs based on the EM Index (e.g. EEM), options on EEM and EM futures, and European-traded derivatives on the EM Index. Further, there are ETPs that use options on the EM Index as part of their investment strategy. Without the ability to add the EM options, these ETPs could be unable to achieve their investment objective, to the detriment of investors. Additionally, market participants that wish to roll a position in EM options that expire in July to a position in a series with a later expiration month at a favorable or comparable price, will be prevented from doing so without this amendment. Furthermore, in the time in which the Exchange may not list additional series on EM, FLEX trades which may result in the creation of new FLEX series will be nullified, which may cause confusion and prove burdensome to market participants. Since the discontinuation of new series listed on the EM Index on July 1, 2019, multiple market participants have express their concern to the Exchange regarding interruption of their activity in EM Index series.

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 does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of Act as the proposed rule change will facilitate the continued listing and trading of options on the EM Index, on which series are already listed and readily available for all market participants to trade, as will be the case for series added following the EM Index's compliance with the implementation of the proposed continued listing standards.

The Exchange does not believe that the proposed change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of Act as the proposed rule change does not alter the types of products offered by the Exchange in which market participants already may choose to participate. The proposed change merely allows the Exchange to continue listing certain index options in light of shifting global markets and continue to adequately surveil for any concerning changes.

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)(iii) of the Act¹⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁹

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)²⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, Cboe Options requested that the Commission waive the 30-day operative delay. The Exchange indicated that its proposed revised component threshold for options on the EM index is more restrictive than the current component threshold in that it will allow only for smaller decreases in the number of component securities captured over shorter periods of time, which the Exchange believes is more in line with the way in which the EM index changes and will better ensure that the Exchange can flag component changes prior to becoming material changes to the EM index. In addition, the Exchange explained that waiver of the operative delay will allow it to continue to list options on the EM index in a manner that is in line with the index's objective, with the flexibility to capture the growth in emerging markets, allowing for investor participation in options on this index while avoiding an interruption caused by a discontinuation of new series. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as the revised standard applies only to options on the EM index and is narrowly tailored within the bounds of existing listing requirements by imposing a lower component securities change threshold measured over a shorter period of time. Further, waiver is consistent with the protection of investors and the public interest in that it will avoid the potential for disruption associated with an interruption in the continuity of listings of index options on the EM index. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change

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 satisfied this requirement.

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17 CFR 240.19b-4(f)(6)(iii).

operative upon filing.²¹

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-2019-038 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-2019-038. 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

²¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2019-038 and should be submitted on or before [insert date 21 days after date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Jill M. Peterson,
Assistant Secretary.

²² 17 CFR 200.30-3(a)(12).

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