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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-87228; File No. SR-CBOE-2019-070]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Certain Rules in Connection with Market-Makers in the Shell Rulebook

October 4, 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 September 26, 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 the Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend certain rules in connection with Market-Makers in the shell Rulebook.

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

On September 6, 2019, the Exchange filed a rule filing, SR-CBOE-2019-059,⁵ operative upon the October 7, 2019 technology migration.⁶ This rule filing amended the Exchange rules related to its Market-Maker program, including Market-Maker registration, appointments, and obligations. Pursuant to SR-CBOE-2019-059, the updated Market-Maker rules reside in the Exchange’s shell Rulebook, and, upon migration, the rules in shell Rulebook will take effect and the Market-Maker rules in the currently effective Rulebook will be deleted.⁷ Specifically, under SR-CBOE-2019-059, Rule 5.50 will govern appointment costs (or “weights”, as amended by SR-

⁵ See Securities Exchange Act Release No. 87024 (September 19, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Certain Rules Relating To Market-Makers Upon Migration to the Trading System Used by Cboe Affiliated Exchanges) (SR-CBOE-2019-059).

⁶ Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges (i.e., together with Cboe Options, C2 Exchange, Inc. (“C2”), 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”)) which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

⁷ See id.

CBOE-2019-059) and Rule 7.6 will govern the identification of securities accounts of Market-Makers. In SR-CBOE-2019-059, the Exchange inadvertently neglected to update the Global Trading Hours (“GTH”) appointment weights in light of the amended rules which will apply a Market-Maker’s selected class appointments across the entire trading day (i.e., both GTH and Regular Trading Hours (“RTH”)), and inadvertently neglected to update some instances in which the rules refer to appointment costs. It also inadvertently did not include language specific to Cboe Options when conforming Rule 7.6 to the corresponding rules of its affiliated exchanges, C2, EDGX Options, and BZX Options (collectively, the “Affiliated Options Exchanges”). The proposed changes intended to remedy the aforementioned are described in greater detail below. In order to coincide with the effective date of SR-CBOE-2019-059 and the migration of the Exchange’s trading platform to the same system used by the Cboe Affiliated Exchanges,⁸ the Exchange also intends to implement this proposed rule change on October 7, 2019.

In particular, SR-CBOE-2019-059 updated Rule 5.50(g) in the shell Rulebook to reflect the manner in which appointment weights will function upon migration. SR-CBOE-2019-059 also updated the rules to allow a Market-Maker to select class appointments that will apply to classes during all trading sessions beginning October 7, 2019.⁹ In removing separate class appointments between the two trading sessions, the Exchange inadvertently failed to remove the separate appointment weights for options classes during GTH. Therefore, the Exchange now proposes to remove separate appointment weights for the GTH trading session from the appointment weight table under Rule 5.50(g). In addition to this, SR-CBOE-2019-059 updated the term appointment costs to appointment weights, but inadvertently failed to update all such references throughout

⁸ Id.

⁹ See Rule 5.50(a) in the shell Rulebook.

updated Rule 5.50(g). The Exchange now proposes to update the remaining references to appointment costs in Rule 5.50(g) to appointment weights.

SR-CBOE-2019-059 also conformed Rule 7.6 in the shell Rulebook to the corresponding rules of the Affiliated Options Exchanges. Rule 7.6 governs the identification of a Market-Maker's securities accounts. In conforming this rule to the Affiliated Options Exchanges' corresponding rules, the Exchange inadvertently did not maintain the language which provides that, in a manner prescribed by the Exchange, "upon request" each Market-Maker must file with the Exchange a list identifying all accounts enumerated in the same provision. This specification is not currently in the corresponding rules of the Affiliated Options Exchanges, but the Exchange intends to maintain this provision for post-migration. Therefore, the Exchange now proposes to include the existing language in currently effective Rule 8.9 into shell Rule 7.6(a) in order to continue this account identification process for Market-Makers post-migration. The proposed change to include the Exchange request provision will simply allow Market-Makers to continue to identify accounts in the manner to which they are accustomed and currently adhere, instead of taking on a potential additional compliance burden in identifying all accounts to the Exchange notwithstanding an Exchange request.

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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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)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 to remove separate appointment weights for the GTH trading session under Rule 5.50(g) will foster cooperation and coordination with persons facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will mitigate any potential confusion for Market-Makers upon migration when they will be able to select class appointments that apply to classes across all trading sessions. The proposed change protects investors by aligning the term appointment weight and the appointment weight table with the correct term that will be used, and the class appointment process that will be in place, post-migration. Additionally, the proposed change to incorporate the Cboe Options-specific request language into the rule governing identification of Market-Maker accounts is substantively the same as the manner in which the current account identification process works today. The proposed change is intended to correct an inadvertent omission from Rule 7.6(a) in the shell Rulebook that currently applies to Market-Makers and does not alter the manner in which the current rule functions. Instead, it will remove impediments to and protect the mechanism of a free and open market and national market system by allowing Market-Makers to continue to identify accounts upon the request of the Exchange,

¹²

Id.

without taking on any potential additional compliance burden notwithstanding an Exchange request.

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

The Exchange does not believe that the proposed change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended as a competitive filing, but merely aligns the appointment weight table with the appointment process that will be in effect upon the October 7, 2019 migration. Additionally, the proposed change amends the rules to continue to allow for Market-Makers to identify accounts upon Exchange request post-migration, consistent with the process currently in place. The Exchange also notes that, as stated above, the proposed change is intended mitigate any potential compliance burden on Market-Makers by continuing to allow for account identification upon Exchange request. The Exchange notes that neither the GTH appointment weights (because they will not be relevant to the post-migration class appointment structure and just provides Market-Makers with uniform quoting ability per appointment across the trading day¹³) nor the account identification procedures have any impact on trading on the Exchange.

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

¹³ See supra note 9.

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁶ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁷ 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 asked the Commission to waive the 30-day operative delay so that the Exchange may implement this proposed rule change to make additional changes to conform to changes it recently adopted in SR-CBOE-2019-059 and have both sets of changes operative for its anticipated October 7, 2019 system migration. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.¹⁸

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

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 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 satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ 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).

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 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 e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2019-070 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-2019-070. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-070, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Jill M. Peterson,
Assistant Secretary.

¹⁹ 17 CFR 200.30-3(a)(12).

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