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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-87706; File No. SR-CBOE-2019-115)

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Maximum Composite Width Check of the Opening Rotation as Provided in Subparagraph (e)(1) of Exchange Rule 5.31

December 10, 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 December 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 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”) proposes to amend the Maximum Composite Width Check of the opening rotation as provided in subparagraph (e)(1) of Exchange Rule 5.31. 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

Exchange Rule 5.31 sets forth the Exchange's opening auction process. Paragraph (e) of the Rule provides the opening rotation process, during which the System will determine whether the Composite Market⁵ for a series is not wider than a maximum width, will determine the opening price, and open the series. Subparagraph (e)(1) provides that the System will determine whether the Composite Market for a series is not wider than a maximum width, as follows:

- If the Composite Width⁶ of a series is less than or equal to the Maximum Composite Width,⁷ the series is eligible to open (and the System determines the Opening Price).⁸

⁵ The term "Composite Market" means the market for a series comprised of (1) the higher of the then-current best appointed Market-Maker bulk message bid on the Exchange and the ABB (if there is an ABB) and (2) the lower of the then-current best appointed Market-Maker bulk message offer on the Exchange and the ABO (if there is an ABO). The term "Composite Bid (Offer)" means the bid (offer) used to determine the Composite Market. See Exchange Rule 5.31(a).

⁶ The term "Composite Width" means the width of the Composite Market (*i.e.*, the width between the Composite Bid and the Composite Offer) of a series. See Exchange Rule 5.31(a).

⁷ The term "Maximum Composite Width" means the amount that the Composite Width of a series may generally not be greater than for the series to open (subject to certain

- If the Composite Width of a series is greater than the Maximum Composite Width, but there are no non-M Capacity⁹ market orders or buy (sell) limit orders with prices higher (lower) than the Composite Bid (Offer) and there are no locked or crossed orders or quotes, the series is eligible to open (and the System determines the Opening Price).¹⁰
- If neither of the conditions above are satisfied for a series, or if the Composite Market of a series is crossed, the series is ineligible to open. The Queuing Period¹¹ for the series continues (including the dissemination of opening auction updates) until one of the above conditions for the series is satisfied, or the Exchange opens the series pursuant to paragraph (h).¹²

The Exchange implemented the price protection measure of subparagraph (e)(1)(B) in order to conservatively protect non-M capacity orders from executing in the Opening Auction Process at an extreme price. While it is possible for Market-Makers to submit orders to the Exchange at an extreme price, the Exchange believes there is less risk of a Market-Maker inputting an order at an

exceptions set forth in subparagraph (e)(1)). The Exchange determines this amount on a class and Composite Bid basis, which amount the Exchange may modify during the opening auction process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates). See Exchange Rule 5.31(a).

⁸ See Exchange Rule 5.31(e)(1)(A).

⁹ Capacity M is used for orders for the account of a Market-Maker (with an appointment in the class), thus "non-M Capacity" orders refer to orders entered for the accounts of non-Market-Makers (e.g., Customer or Firm accounts). See U.S. Options Binary Order Entry Specifications, at 28 (definition of Capacity), available at http://cdn.cboe.com/resources/membership/US_Options_BOE_Specification.pdf.

¹⁰ See Exchange Rule 5.31(e)(1)(B).

¹¹ The term "Queuing Period" means the time period prior to the initiation of an opening rotation during which the System accepts orders and quotes in the Queuing Book for participation in the opening rotation for the applicable trading session. See Exchange Rule 5.31(a).

¹² See Exchange Rule 5.31(e)(1)(C).

extreme price given that Market-Makers are generally responsible for pricing the market. The following example shows the application of the Maximum Composite Width check provided for in subparagraph (e)(1)(B) and the type of extreme trade price for which the check is intended to limit.

Example #1

Suppose the Maximum Composite Width for a class is 1.00, and the Composite Market is 5.00 x 20.00 comprised of an appointed Market-Maker bulk message bid of 5.00 and an appointed Market-Maker bulk message offer of 20.00. There is a non-M capacity limit order to buy for 18.00 in the Queuing Book. Prior to the open, the Exchange does not know the market value of the option series; however, assume that the intrinsic value of the option series is 6.00. In this case, the series would not be eligible to open because the width of the Composite Market is greater than the Maximum Composite Width, and there is a non-M Capacity order at a price inside of the Composite Market. If the Exchange permitted the option series to open in this circumstance, the non-M capacity limit order may execute in the Opening Auction Process at its limit price, which the Exchange would consider an extreme price given that the intrinsic value of the option series is 6.00. Therefore, subparagraph (e)(1)(B) is designed to protect the non-M capacity order from executing at such an extreme price by not opening the option series in such a scenario.

However, in certain instances where the Composite Market is wide, the Exchange believes the conditions of subparagraph (e)(1)(B) may be overly conservative and unnecessarily prevent the opening of a series when the risk of execution at the open at an extreme price is minimal. The following example shows the application of the Maximum Composite Width check provided for in subparagraph (e)(1)(B) and the type of non-extreme trade price for which the check will limit.

Example #2

Suppose the Maximum Composite Width for a class is 1.00, and the Composite Market is 5.00 x 7.00 comprised of an appointed Market-Maker bulk message bid of 5.00 and an appointed Market-Maker bulk message offer of 7.00. There is a non-M capacity limit order to buy for 5.75 in the Queuing Book.¹³ Prior to the open, the Exchange does not know the market value of the option series; however, assume that the intrinsic value of the option series is 5.75. In this case, the series would not be eligible to open because the width of the Composite Market is greater than the Maximum Composite Width, and there is a non-M Capacity order at a price inside of the Composite Market.

As demonstrated in Example #2, subparagraph (e)(1)(B) provides no circumstance under which a non-M capacity order may improve the Composite Market when the Composite Width is greater than the Maximum Composite Width that would allow the Exchange to open the series, even when such non-M capacity order is not entered at an extreme limit price. Given this, the Exchange proposes to amend subparagraph (e)(1)(B) to allow the Exchange to open a series if the Composite Width is greater than the Maximum Composite Width and there are non-M Capacity limit orders at a price better than the Composite Bid (Offer) in certain circumstances. Specifically, the proposed amendment will allow the Exchange to open a series if the Composite Width of a series is greater than the Maximum Composite Width, but there are no non-M Capacity market orders or buy (sell) limit orders with prices higher (lower) than the Composite Market midpoint and

¹³ The term “Queuing Book” means the book into which Users may submit orders and quotes (and onto which Good-til-Cancelled (“GTC”) and Good-til-Date (“GTD”) orders remaining on the Book from the previous trading session or trading day, as applicable, are entered) during the Queuing Period for participation in the applicable opening rotation. Orders and quotes on the Queuing Book may not execute until the opening rotation. The Queuing Book for the Global Trading Hours (“GTH”) opening auction process may be referred to as the “GTH Queuing Book,” and the Queuing Book for the Regular Trading Hours (“RTH”) opening auction process may be referred to as the “RTH Queuing Book.” See Exchange Rule 5.31(a).

there are no locked or crossed orders or quotes. Thus, under proposed subparagraph (e)(1)(B), the Exchange would allow the option series to open in Example #2 above as the non-M capacity limit bid was entered at a price lower than the Composite Market midpoint. The proposed amendment would continue to limit the risk of a non-M capacity order executing at an extreme price in Example #1 as the non-M capacity limit bid was entered at a price higher than the Composite Market midpoint.

The Exchange believes the proposed amendment strikes a reasonable balance between protecting non-M capacity orders from executing at extreme prices and encouraging the submission of non-M capacity orders at prices that improve the Composite Market, which will allow the Exchange to open series earlier and also allow for more trading opportunities on the Exchange throughout the trading day. The Exchange believes the proposed amendment is reasonable, as it will allow the Exchange to open series on a less restrictive basis and potentially earlier, while still limiting the risk of a non-M capacity order executing at an extreme price on the open. If the width of the Composite Market (which the Exchange believes represents the prices most reflective of the market, as it is comprised of the better of Market-Maker bulk messages on the Exchange or any away market quotes) is no greater than the Maximum Composite Width, the Exchange will open the series because there is minimal risk of execution at an extreme price. Further, the Exchange notes that there are other price protections available to limit the risk of executions at an extreme price (e.g., drill-through protection).¹⁴ However, if the Composite Width is greater than the Maximum Composite Width but there are no non-M Capacity bids (offers) higher (lower) than the midpoint of the Composite Market (and thus better

¹⁴ The Exchange notes that drill-through protection is designed to limit a marketable non-bulk message bid (offer) from executing a certain amount higher (lower) than the National Best Offer (National Best Bid) or the Opening Collar. See Exchange Rule 5.34(a)(4).

than the best Composite Bid (Offer) but still not marketable at a price at which the Exchange would open), there is minimal risk of an order executing at an extreme price on the open. Because the risk that the Maximum Composite Width Check is intended to address is limited in this situation and also because any such orders would be subject to other price protections to further limit this risk, and that the Exchange believes such minimal risk is outweighed by the benefits of additional trading opportunities by opening these series earlier, the Exchange believes it is appropriate to open a series in either of these conditions. Therefore, if neither the 1) Composite Width of a series is less than or equal to the Maximum Composite Width, nor 2) if the Composite Width of a series is greater than the Maximum Composite Width, but there are no non-M Capacity¹⁵ market orders or buy (sell) limit orders with prices higher (lower) than the Composite Market midpoint and there are no locked or crossed orders or quotes, the Exchange continues to believe there may be higher risk that orders would execute at an extreme price if the series opened, and therefore the Exchange will continue to not open a series.

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.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ 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

¹⁵ Capacity M is used for orders for the account of a Market-Maker (with an appointment in the class), thus “non-M Capacity” orders refer to orders entered for the accounts of non-Market-Makers (e.g., Customer or Firm accounts). See Exchange Rule 1.1.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

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)¹⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes proposed Rule 5.31(e) will protect investors, because it will continue to limit the risk of execution of orders at extreme prices at the open in a manner similar to the existing Rule. The Exchange also believes the proposed amendment will benefit market participants as it may encourage the submission of orders at prices that improve the Composite Market in the Opening Auction Process on the Exchange, and allow the Exchange to open series earlier, which may also allow for more trading opportunities on the Exchange throughout the trading day.

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 that the proposed amendment will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply to orders and quotes of all market participants in the same manner. Further, the proposed amendment would allow trading in options series to open sooner, which would benefit all market participants in these series. The Exchange notes that the protections of Rule 5.31(e)(1)(B) are not applied to Market-Maker orders because the Exchange believes there is less

¹⁸ Id.

risk of a Market-Maker inputting an order at an extreme price given that Market-Makers are generally responsible for pricing the market.

The Exchange does not believe that the proposed rule change to amend the Maximum Composite Width Check of the opening rotation will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed rule change only impacts the conditions under which a series will open on the Exchange. The proposed amendment may increase participation in the Opening Auction Process and further allow more series to open on the Exchange to the benefit of all Exchange Trading Permit Holders.

The Exchange believes the proposed rule change may enhance intermarket competition by encouraging the submission of orders at improved prices in the Opening Auction Process and allowing more series to open on the Exchange in a more timely manner. Further, the proposed amendment will continue to limit the risk of orders executing at extreme prices at the open in a similar manner as set forth under current Rule 5.31(e).

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 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 Act¹⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²² 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 proposal may become operative upon filing. The Exchange believes that the proposed rule change may encourage submission of orders at improved prices in the Opening Auction Process on the Exchange and allow the Exchange to open series earlier, which will allow for more trading opportunities on the Exchange throughout the trading day. In addition, as noted above, the Exchange believes the Maximum Composite Width Check will continue to limit the risk of executions at extreme prices, and executions will be subject to other price protections on the Exchange. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing so that the benefits of this proposed rule change can be realized immediately.²³

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 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.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ 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).

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 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-2019-115 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-2019-115. 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-2019-115 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.²⁴

J. Matthew DeLesDernier
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).

