



This document is scheduled to be published in the Federal Register on 06/05/2020 and available online at federalregister.gov/d/2020-12158, and on govinfo.gov

8011-01

SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-88978; File No. SR-CBOE-2020-049]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 8.16 and Rule 9.2 to Temporarily Extend the Filing Deadline for Certain Supervision-Related Reports

June 1, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 29, 2020, Cboe Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“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 Rule 8.16 and Rule 9.2 to temporarily extend the filing requirements for certain supervision-related reports, currently given an extension through June 1, 2020, to June 30, 2020. The text of the proposed rule change is provided in Exhibit 5.

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).

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

Given current market conditions, the Exchange proposes to provide its Trading Permit Holders (“TPHs”) temporary relief from filing certain supervision-related reports pursuant to Rule 8.16 (Supervision) and Rule 9.2 (Supervision of Accounts).

The Exchange has been closely monitoring the current situation regarding the novel coronavirus (“COVID-19”) pandemic. The Exchange understands COVID-19 has placed stress on market participants’ information technology infrastructure and the required deployment of significant resources, including to implement and continuously adapt business continuity plans. On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic and to slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses, all of which are largely still in place for the foreseeable future. Indeed, in response to the pandemic, the Exchange has taken various actions to allow it to maintain fair and orderly markets,

including the closure of its trading floor, which will remain inoperable into June 2020.⁵ The Exchange also notes that in response to COVID-19, the Financial Industry Reporting Authority (“FINRA”) recently reissued temporary relief for member firms by, among other things, extending the deadline for submitting their supervision-related reports (FINRA Rule 3120 Report and FINRA Rule 3130 certification) from their initial extension deadlines of June 1, 2020⁶ to June 30, 2020.⁷ The Exchange notes, too, that other options exchanges that had previously extended the supervisory report deadlines from April 1 to June 1 for their members,⁸ also plan to submit similar filings to, again, extend their deadlines through June 30, 2020.

By way of background, Rule 8.16(g)(2) provides that by April 1 of each year each Trading Permit Holder shall submit to the Exchange written report on the Trading Permit Holder’s supervision and compliance effort during the preceding year and on the adequacy of the Trading Permit Holder’s ongoing compliance processes and procedures, and Rule 9.2(g) provides that by April 1 of each year each TPH organization that conducts a non-Trading Permit Holder customer business shall submit to the Exchange a written report on the TPH organization’s supervision and compliance effort during the preceding year and on the adequacy of the TPH organization’s ongoing compliance processes and procedures, and (3) Rule 9.2 (h) provides that by April 1 of each year, each TPH organization shall submit a copy of the report

⁵ See Tradedesk Update No. C2020031204 (March 12, 2020) Novel Coronavirus Update, Trading Floor Closure; and Tradedesk Update No. C2020052603 (May 26, 2020) Cboe Options Trading Floor Re-Opening.

⁶ See FINRA Regulatory Notice 20-08 (March 9, 2020) available at <https://www.finra.org/rules-guidance/notices/20-08>.

⁷ See FINRA Regulatory Notice 20-08, FAQs, Supervision (May 19, 2020) available at <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#supe>.

⁸ See Securities Exchange Act Release Nos. 88524 (March 31, 2020), 85 FR 19198 (April 6, 2020) (SR-ISE-2020-14); and 88527 (March 31, 2020), 85 FR 19190 (April 6, 2020) (SR-Phlx-2020-16).

that paragraph (g) (of Rule 9.2) requires the TPH organization to prepare to its one or more control persons or, if the TPH organization has no control person, to the audit committee of its board of directors or its equivalent committee or group. Both Rules currently provide relief to TPHs and their employees by extending these deadlines to June 1, 2020.⁹ However, as COVID-19 remains an ongoing pandemic, to meet the current June 1 deadlines in Rules 8.16 and 9.2, TPH personnel would have to divide their efforts and resources that are otherwise necessary to address continued disruptions and stresses as a result of the ongoing COVID-19 pandemic. Therefore, the Exchange proposes to extend the filing deadline through June 30, 2020, thus allowing TPH personnel that are tasked with organizing, compiling and filing such reports, but are also tasked with maintaining critical operations and sustainable business continuity plans, and otherwise adjusting the TPH's trading operations in line with evolving market conditions and initiatives to address such conditions to focus their attention on those immediate needs.

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

⁹ See Securities Exchange Act No. 88528 (March 31, 2020), 85 FR 19196 (April 6, 2020) (SR-CBOE-2020-029).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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.

In particular, the Exchange believes that the proposed rule will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposed rule change will allow the Exchange to extend temporary relief to its TPHs by issuing another extension of certain supervisory reporting deadlines from June 1, 2020 to June 30, 2020 in light of the ongoing COVID-19 crisis. The Exchange understands this pandemic has caused, and continues to cause, stress on market participants' information technology infrastructure and the deployment of significant resources to address ongoing disruptions and continued stresses. By allowing the Exchange to re-extend the deadlines for filing certain supervision related reports in Rules 8.16 and 9.2, the Exchange believes the proposed rule will allow TPH personnel, who would normally be tasked with organizing and compiling such reports, to focus their attention on maintaining critical operations and sustainable business continuity plans, and otherwise adjusting their trading operations in line with evolving market conditions and initiatives in response to the ongoing COVID-19 pandemic. The Exchange also believes the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system because, as noted above, FINRA has also re-extended the time for their members to file

¹² Id.

supervision-related reports from June 1, 2020 to June 30, 2020.¹³ Additionally, as indicated above, other options exchanges that had previously extended the supervisory report deadlines from April 1 to June 1 for their members,¹⁴ plan to submit similar filings to re-extend their deadlines through June 30, 2020.

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 proposed rule change is not intended to address competitive issues. The Exchange does not believe the proposed rule would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act, because the additional June 30, 2020 extension for supervision-related reports in Rules 8.16 and 9.2 will apply equally to all TPHs. The Exchange does not believe that the proposed rule change would impose any burden on intermarket competition because it relates only to the extension of the filing deadline for supervision-related reports. Additionally, and as stated above, FINRA has recently notified its members that the filing deadline for their supervision-related reports has again been extended from June 1, 2020 to June 30, 2020,¹⁵ and other options exchanges plan to file for the same relief through June 30, 2020, as well.

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.

¹³ See supra note 7.

¹⁴ See supra note 8.

¹⁵ See supra note 7.

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 Act¹⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁷

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁸ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁹ 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 requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission notes that the proposed rule change would allow the Exchange, in light of the COVID-19 pandemic, to provide temporary relief for TPHs by extending the deadline for supervision-related reports in Rules 8.16 and 9.2 from June 1, 2020 to June 30, 2020, consistent with the extension FINRA has provided its members for supervision-related reports and certifications required pursuant to FINRA Rule 3120 and FINRA Rule 3130. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 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 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.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.²⁰

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.

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-2020-049 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-2020-049. 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

²⁰ 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).

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-2020-049 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.²¹

J. Matthew DeLesDernier,
Assistant Secretary.

²¹ 17 CFR 200.30-3(a)(12).

[FR Doc. 2020-12158 Filed: 6/4/2020 8:45 am; Publication Date: 6/5/2020]