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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89749; File No. SR-CBOE-2020-080)

September 2, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to List and Trade Options that Overlie the S&P 500 ESG Index

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 27, 2020, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) 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 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 list and trade options that overlie the S&P 500 ESG Index. 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.

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 purpose of this proposed rule change is to amend certain rules in connection with the Exchange’s plans to list and trade S&P 500 ESG Index options.³ The S&P 500 ESG Index is a broad-based, market-capitalization-weighted index that is designed to measure the performance of securities meeting sustainability criteria, while maintaining similar overall industry group weights as the S&P 500. Each constituent of a S&P 500 ESG Index is a constituent of the S&P 500 Index. S&P Dow Jones Indices’ (“S&P DJI”) assigns constituents to a S&P 500 ESG Index based on S&P DJI ESG Scores and other environmental, social and governance (“ESG”) data to select companies, targeting 75% of the market capitalization of each global industry classification standard (“GICS”) industry group within the S&P 500. In addition to the exclusion of companies with S&P DJI ESG Scores in the bottom 25% of companies globally within their GICS industry groups, the S&P 500 ESG Index excludes tobacco, controversial weapons and other companies not in compliance with the UN Global Compact.

³ The Exchange intends to file a Form 19b-4(e) with the Commission for S&P 500 ESG Index options pursuant to Rule 19b-4(e) of the Act.

Initial and Maintenance Listing Criteria

The S&P 500 ESG Index meets the definition of a broad-based index as set forth in Rule 4.11 (i.e., an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries). Additionally, the S&P 500 ESG Index satisfies the initial listing criteria of a broad-based index, as set forth in Rule 4.10(f):

- (1) the index is broad-based, as defined in Rule 4.11;
- (2) options will be A.M.-settled;
- (3) the index is capitalization-weighted, modified capitalization-weighted, price-weighted, or equal dollar-weighted (the S&P 500 ESG Index is capitalization-weighted);
- (4) the index consists of 50 or more component securities;
- (5) each component security that accounts for at least 95% of the weight of the index has a market capitalization of at least \$75 million, except that for each component security that accounts for at least 65% of the weight of the index has a market capitalization of at least \$100 million;
- (6) Component securities that account for at least 80% of the weight of the index satisfy the requirements of Rule 4.3 applicable to individual underlying securities;
- (7) Each component security that accounts for at least 1% of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six-month period;
- (8) No single component security accounts for more than 10% of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than 33% of the weight of the index;

- (9) Each component security is an NMS stock;
- (10) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than 20% of the weight of the index (S&P 500 ESG Index is comprised of only U.S. component securities);
- (11) the current index value is widely disseminated at least once every 15 seconds by the Options Price Reporting Authority, CTA/CQ, NIDS or one or more major market data vendors during the time options on the index are traded on the Exchange;
- (12) The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange's current Independent System Capacity Advisor allocation and the number of new messages per second expected to be generated by options on such index;
- (13) An equal dollar-weighted index is rebalanced at least once every calendar quarter (not applicable as S&P 500 ESG Index is a capitalization-weighted index);
- (14) If an index is maintained by a broker-dealer, the index is calculated by a third-party who is not a broker-dealer, and the broker-dealer has erected an informational barrier around its personnel who have access to information concerning changes in, and adjustments to, the index (not applicable as S&P is not a broker-dealer);

- (15) The Exchange has written surveillance procedures in place with respect to surveillance of trading of options on the index

The S&P 500 ESG Index options will also be subject to the maintenance listing standards set forth in Rule 4.10(g):

- (1) the conditions stated in (1), (2), (3), (9), (10), (11), (12), (13), (14), and (15) above must continue to be satisfied and the conditions stated in (5), (6), (7), (8) above must be satisfied only as of the first day of January and July in each year;
- (2) The total number of component securities in the index may not increase or decrease by more than 10% from the number of component securities in the index at the time of its initial listing⁴

Expiration Months, Settlement, and Exercise Style

Consistent with existing rules for certain index options, the Exchange will allow up to twelve near-term expiration months for the S&P 500 ESG Index options⁵ as well as LEAPS⁶, as these are the same amounts the Rules permit for options on the S&P 500 Index (“SPX options”). The S&P 500 ESG Index consists of components that are also included in the S&P 500, as discussed above. Because of the relation between the S&P 500 ESG Index and the S&P 500,

⁴ As is the case with other index options authorized for listing and trading on Cboe Options, in the event the S&P 500 ESG Index fails to satisfy the maintenance listing standards, the Exchange will not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Securities and Exchange Commission (the “Commission”) under Section 19(b)(2) of the Securities and Exchange Act (the “Act”).

⁵ See Rule 4.13(a).

⁶ Pursuant to Rule 4.13(b)), index LEAPS may expire from 12-180 months from the date of issuance.

which will likely result in market participants' investment and hedging strategies consisting of options over both, the Exchange believes it is appropriate to permit the same number of monthly expirations for the S&P 500 ESG Index options as SPX options.

The S&P 500 ESG Index options will be A.M., cash-settled contracts with European-style exercise.⁷ A.M.-settlement is consistent with the generic listing criteria for broad-based indexes⁸, and thus it is common for index options to be A.M.-settled. The Exchange proposes to amend Rule 4.13(a)(4) to add the S&P 500 ESG Index options to the list of other A.M.-settled options. Standard third-Friday SPX options are A.M.-settled. European-style exercise is consistent with many index options, as set forth in Rule 4.13(a)(3). Standard third-Friday SPX options are A.M.-settled with European-style exercise. The Exchange proposes to amend Rule 4.13(a)(3) to add the S&P 500 ESG Index options to the list of other European-style index options. Because of the relation between the S&P 500 ESG Index and the S&P 500 Index, which will likely result in market participants' investment and hedging strategies consisting of options over both, the Exchange believes it is appropriate to list the S&P 500 ESG Index options with the same settlement and exercise style as the other SPX options.

Appointment Weights

The Exchange proposes a Market-Maker appointment weight of .001 for the S&P ESG 500 Index options, and each will have a Market-Maker appointment weight of .001.⁹ This is the

⁷ See Rule 4.13(a)(3).

⁸ See Rule 4.10(f)(2).

⁹ See Rule 5.1(g). S&P 500 ESG Index options will be in Tier AA (as are other S&P index options). While the appointment weights of Tier AA classes are not subject to quarterly rebalancing under Rule 5.1(g)(1), the Exchange regularly reviews the appointment weights of Tier AA classes to ensure that they continue to be appropriate. The Exchange determines appointment weights of Tier AA classes based on several factors, including, but not limited to, competitive forces and trading volume.

same appointment weight as other options on options on S&P indexes (e.g., S&P Select Sector Indexes). The Exchange determines appointment weights of Tier AA classes based on several factors, including, but not limited to, competitive forces and trading volume. The Exchange believes the proposed initial appointment weight for the S&P 500 ESG Index options will foster competition by incentivizing Market-Makers to obtain an appointment in these newly listed options, which may increase liquidity in the new class.

Capacity

The Exchange has analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result from the introduction of the S&P 500 ESG Index options up to the proposed number of possible expirations. Because the proposal is limited to one class, the Exchange believes any additional traffic that would be generated from the introduction of the S&P 500 ESG Index options would be manageable.

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

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 proposal to list and trade options on the S&P 500 ESG Index will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because the Exchange believes that the proposed rule change will further the Exchange's goal of introducing new and innovative products to the marketplace. Additionally, the Exchange believes that the proposed rule change will protect investors, as the Exchange believes there is unmet market demand for exchange-listed security options listed on this new ESG index. ESG SPDRs and E-mini S&P ESG future products are listed and traded on other exchanges. As a result, the Exchange believes that the S&P 500 ESG Index options are designed to provide different and additional opportunities for investors to hedge or speculate on the market risk associated with this index by listing an option directly on this index. Because of the relation between the S&P 500 ESG Indexes, and the S&P 500 Index, the Exchange believes the proposed rule change will benefit investors, as it will provide market participants with additional investment and hedging strategies consisting of options over each of these indexes.

The Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because the proposed rule change is consistent with current Rules, which were previously filed with approved as

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Id.

consistent with the Exchange Act by the Commission. Particularly, the S&P 500 ESG Index options satisfy the initial listing standards for broad-based indexes in the Exchange's current Rules, which the Commission previously deemed consistent with Act.¹³ The proposed rule change merely adds the S&P 500 ESG Index to the table regarding reporting authorities for indexes, to the rule regarding number of permissible expirations, to the list of European-style exercise index options, and to the list of A.M.-settled index options, similar to SPX options. These changes are consistent with existing Rules and index options currently authorized and listed for trading on the Exchange. The Exchange notes, with respect to these changes, standard third-Friday SPX options (which overlie the S&P 500 Index, which consist of the same components as the S&P 500 ESG Index) currently has the same reporting authority, the same number of permissible expirations, the same settlement, and the same exercise style.¹⁴ The Exchange has observed no trading or capacity issues in SPX trading given the number of permissible expirations, a.m. settlement, and European-style exercise. Because of the relation between the S&P 500 ESG Index and the S&P 500 Index, which will likely result in market participants' investment and hedging strategies consisting of options over each of these indexes, the Exchange believes it is appropriate to have the same number of expirations, settlement, and exercise style for options on each of these indexes.

The Exchange also represents that it has the necessary systems capacity to support the new option series given these proposed specifications. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative

¹³ See Securities Exchange Act Release No. 34-53266 (February 9, 2006), 71 FR 8321 (February 16, 2006) (SR-CBOE-2005-59) (order approving generic listing standards for options on broad-based indexes).

¹⁴ See Rules 4.12(c), 4.13(a)(2) through (4).

behavior which might arise from listing and trading options on the S&P 500 ESG Index. The Exchange further notes that current Exchange Rules that apply to the trading of other index options traded on the Exchange, such as options on the S&P 500 Index, would also apply to the trading of options on the S&P 500 ESG Index, such as, for example, Exchange Rules governing customer accounts, margin requirements and trading halt procedures.

The Exchange lastly believes the proposed initial low appointment weight for the S&P 500 ESG Index options promotes competition and efficiency by incentivizing more Market-Makers to obtain an appointment in the newly listed class. The Exchange believes this may result in liquidity and competitive pricing in this class, which ultimately benefits investors. The proposed rule change does not result in unfair discrimination, as the appointment weight will apply to all Market-Makers in this class. Additionally, the proposed appointment weight is the same as the appointment weight for other S&P Index options (e.g., S&P Select Sector Indexes).¹⁵

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 S&P 500 ESG Index satisfies initial listing standards set forth in the Rules, and the proposed number of expirations, settlement, and exercise style are consistent with current rules applicable to index options, including standard third-Friday SPX options. Because of the relation between the S&P 500 ESG Index and the S&P 500 Index, which will likely result in market participants' investment and hedging strategies consisting of options over each of these indexes, the Exchange believes it is appropriate to have the same number of expirations, settlement, and exercise style

¹⁵ See Rule 5.50(g).

for options on each index. The S&P 500 ESG Index options will provide investors with different and additional opportunities to hedge or speculate on the market associated with this index.

The Exchange believes the proposed initial low appointment cost for the S&P 500 ESG Index options promotes competition and efficiency by incentivizing more Market-Makers to obtain an appointment in the newly listed class. The Exchange believes this may result in liquidity and competitive pricing in this class, which ultimately benefits investors. The proposed rule change does not result in unfair discrimination, as the appointment weight will apply to all Market-Makers in this class. Additionally, the proposed appointment weight for the S&P 500 ESG Index options is the same as the appointment weight for the other S&P Index related options (e.g., S&P Select Sector Indexes).

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

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁸ 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. The Commission notes that the Exchange intends to launch the S&P 500 ESG Index options on September 21, 2020. The Commission notes that waiver of the operative delay will permit the Exchange to list these products on the Exchange on such date and thus provide market participants with the ability to trade these products on the Exchange. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues, as the S&P 500 ESG Index satisfies the initial listing criteria for broad-based indexes as set forth in Rule 4.10(f). Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁹

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.

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ 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).

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-2020-080 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-2020-080. 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, 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-2020-080 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.²⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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²⁰ 17 CFR 200.30-3(a)(12).