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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90967; File No. SR-CBOE-2021-005]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend its Opening Process for Simple Orders

January 22, 2021.

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 January 11, 2021, 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 opening process for simple orders. 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 Rule 5.31 regarding its opening process for simple orders. Currently, following the occurrence of an opening rotation trigger pursuant to Rule 5.31(d), the System conducts an opening rotation for an option series. Following the opening rotation trigger, the System conducts the Maximum Composite Width Check pursuant to Rule 5.31(e)(1) to determine if a series is eligible to open. If the Composite Market⁵ of a series is not crossed, and the Composite Width⁶ of the series is less than or equal to the Maximum Composite Width (as defined in Rule 5.31(a)), the series is eligible to open. Additionally, if the Composite Market of a series is not crossed, and the Composite Width of the series is greater than the Maximum Composite Width, but there are (i) no non-M Capacity (a) market orders or (b) buy (sell) limit orders with prices higher (lower) than the Composite Market midpoint and (ii) no orders or quotes marketable against each other, the series is eligible to open. Once a series become eligible to open, the System conducts the opening auction for the series (*i.e.* determines the opening trade price pursuant to Rule 5.31(e)(2)

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 away best bid ("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 away best offer ("ABO") (if there is an ABO). The term "Composite Bid (Offer)" means the bid (offer) used to determine the Composite Market. See 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 Rule 5.31(a).

and opens the series pursuant to Rule 5.31(e)(3)). The Exchange may also determine to compel a series to open in the interest of fair and orderly markets, including if the opening width is wider than the Maximum Composite Width, pursuant to Rule 5.31(h).

Currently, if a series cannot satisfy these conditions described above (and thus is not eligible to open), or if the Composite Market of a series is crossed, the series is ineligible to open.⁷ When that occurs, the Queuing Period⁸ for the series continues (including the dissemination of opening auction updates) until the Maximum Composite Width Check is satisfied or the Exchange determines to open the series pursuant to Rule 5.31(h). The proposed rule change adds that such a series may open pursuant to a forced opening as set forth in proposed Rule 5.31(f).⁹ Specifically, as proposed, if a series in an equity or exchange-traded product (“ETP”) option class¹⁰ is unable to open because it does not satisfy the Maximum Composite Width Check described above within a time period (which the Exchange determines for all equity and ETP option classes)¹¹ after the occurrence of the opening rotation trigger for the class pursuant to Rule 5.31(d), and the Composite Market is not crossed, the System forces the series to open after that time period upon the System’s

⁷ See Rule 5.31(e)(1)(C). The proposed rule change codifies in this provision that a series is not eligible to open if there is no Composite Market. This is true today and implied by the current rule text. If there were no Composite Market, the System would be unable to perform the Maximum Composite Width Check, thus meaning the series could not satisfy that check and thus would not be eligible to open. This proposed change merely adds this detail to the Rules for additional transparency.

⁸ 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 (the book into which Users may submit orders for participation in the opening rotation) for participation in the opening rotation for the applicable trading session. See Rule 5.31(a).

⁹ The proposed forced opening process has no impact on the modified opening auction process set forth in Rule 5.31(j).

¹⁰ The proposed rule change is limited to series in equity and ETP option classes because these classes are eligible for listing on all U.S. options exchanges.

¹¹ See Rule 1.5 (which permits the Exchange to announce determinations by, among other things, notice, regulatory circular, and specification).

observation of an away best bid and offer (“ABBO”) (with a non-zero offer)¹² for the series.¹³ For a series subject to a forced opening, the opening trade price determination and series open set forth in Rule 5.31(e)(2) and (3) (i.e., the opening auction) do not occur; instead, the System opens the series without a trade. This will permit a series to open for trading on the Exchange if the series is open for trading on at least one other options exchange, even though the market for the series on the Exchange may be wide.

The proposed change to Rule 5.31(f) provides that in the event of a forced opening of a series pursuant to proposed Rule 5.31(e)(4) or a compelled opening of a series pursuant to paragraph (h), the System enters all of a User’s orders in that series in the Queuing Book into the Book in the manner set forth in current Rule 5.31(f), unless a User instructs the System to cancel its market orders or all of its orders, in which case the System enters only the non-cancelled orders into the Book in this manner. Specifically, they will be processed in accordance with Rule 5.32 (as unexecuted orders and quotes are handled following the conclusion of the opening rotation), which describes how the System processes, handles, and executes orders. If any order or quote in the Queuing Book is marketable upon the forced opening (and the User does not instruct the System to cancel it as proposed), the System would execute marketable orders subject to the priority rules set forth in Rule 5.32. If an order is marketable against away interest and is eligible for routing, the System may route the order for execution to an away exchange. Any non-marketable order would enter the Book or cancel, subject to the User instructions. This proposed change provides Users with flexibility for automated handling of their orders in the event a series opens with a wide market or is otherwise manually opened when the opening conditions may not otherwise be standard.

If a series satisfies the Maximum Composite Width Check prior to the System’s observation of an ABBO for the series, the series opens pursuant to Rule 5.31(d)(2) and (3) (i.e., the standard

¹² Such an ABBO would indicate that an away exchange is open, as it would have disseminated an opening quote.

¹³ The Exchange currently has a similar forced opening after a specified amount of time for complex order strategies. See Rule 5.33(c)(2)(C).

opening auction process occurs for the series). For example, suppose the Exchange determined the “forced opening” timer to be three minutes. If the opening trigger for a series occurs at 9:30:05 Eastern time but the series does not satisfy the Maximum Composite Width Check after the trigger, the System will force the series open after 9:33:05 Eastern time if it has received an ABBO by that time. However, if the series satisfies the Maximum Composite Width Check at 9:32:30, the series will open in accordance with the normal opening auction process.

Finally, the proposed rule change amends the definitions of “Maximum Composite Width” and “Opening Collar” in Rule 5.31(a). 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 exceptions set forth in Rule 5.31(e)(1)). The term “Opening Collar” means the price range that establishes limits at or inside which the System determines the Opening Trade Price for a series. The Opening Collar is determined by determining the midpoint of the Composite Market, and adding and subtracting half of the applicable width amount above and below, respectively, that midpoint. The amounts for the Maximum Composite Width and Opening Collar each apply on a Composite Bid basis and are currently the same for all classes (and the Maximum Composite Width amounts are the same as the Opening Collar amounts).

The Maximum Composite Width and Opening Collar amounts are currently specified in these defined terms. The proposed rule change deletes these specified amounts and instead states that the Exchange determines each 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).¹⁴ The Exchange believes having flexibility to set these amounts is appropriate so that it may consider the different market models and characteristics of different classes, as well as modify amounts in response to then-current market conditions. The Rules currently permit the

¹⁴ The Exchange would announce the determinations (and any changes to those determinations) in accordance with Rule 1.5.

Exchange to modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates). This proposed change merely permits the Exchange to modify these amounts at any time as it deems necessary and appropriate. The Exchange notes several options exchanges are able to change the amounts of valid opening widths by notice or circular and do not need to submit a rule filing to the Commission to do so.¹⁵

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 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

¹⁵ See, e.g., Nasdaq Options Market ("NOM") Options 3, Section 8(a)(6), Cboe EDGX Options Exchange, Inc. ("EDGX") Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar); Cboe BZX Options Exchange, Inc. ("BZX") Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar); Cboe C2 Exchange Inc. ("C2") Rule 6.11(a) (definitions of Maximum Composite Width and Opening Collar); see also Miami Securities Exchange, Inc. ("MIAX") Rule 503(f)(2) (which permits MIAX to determine by circular an acceptable range in which openings are permissible if there is no valid width national best bid or offer ("NBBO")).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

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.

In particular, the Exchange believes the proposed forced opening process for simple orders will remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors. The proposed rule change will provide for series to open for trading on the Exchange sooner than they may open currently, as long as they are open for trading on other options exchanges. The Exchange believes the proposed rule change will benefit investors, because it may permit these options to open sooner and increase the times during which investors may conduct trading in these options. Additionally, this may increase liquidity in the market for a series that is otherwise open on another options exchange. While the market on the Exchange for a series may be wider than the Maximum Composite Width,¹⁹ the Exchange believes it is reasonable to open the series if it opened for trading on another options exchange pursuant to that exchange's Commission-approved rules. Options exchanges have varying opening processes and have made separate determinations on what constitutes separate, reasonable opening market widths. The Exchange believes if other options exchanges opened a series with a market width, it is reasonable to open the series for trading on the Exchange as well (as orders submitted to other exchanges may be trading at those widths). Since orders may not trade outside of the disseminated NBBO (which defines the then-current market for the series), any orders resting in the Queuing Book that may execute following the forced opening will receive protection against executions at potentially erroneous prices. Additionally, the proposed ability of Users to cancel orders in the event of a forced opening will provide Users with additional protection. Additionally, the Exchange believes opening series for trading on the Exchange that are open for trading on other options exchanges will put Exchange Users on equal

¹⁸ Id.

¹⁹ The Exchange notes pursuant to Rule 5.31(e)(1)(B), there are currently instances in which the Exchange will open for trading despite the Composite Market Width being larger than the Maximum Composite Width.

footing with other market participants, as it will provide Users' orders that are otherwise resting in the Queuing Book and awaiting execution with the ability to get into the market for potential execution.

The Exchange currently has the authority to deviate from the standard opening process, including to temporarily increase the Maximum Composite Width amounts (*i.e.*, widen the permissible opening market) and to compel a series open, even if the Maximum Composite Width check is not satisfied, but that may only happen manually if the Exchange determines it is necessary in the interests of a fair and orderly market.²⁰ Currently, if a series is open on another exchange but not on the Exchange, the Exchange generally manually increases the Maximum Composite Width for the series until the series opens. Manually increasing the Maximum Composite Width for a series until the series open is a different manual process than compelling the series to open, but ultimately achieves the same result of causing a series that does not satisfy the Maximum Composite Width check to otherwise open. The Exchange believes it is in the interests of a fair and orderly market to deviate from the opening process to systematically force a series to open, despite a wide Exchange market, if the series is open for trading on another exchange to provide investors with orders in that series resting on the Exchange's Queuing Book to have the same execution opportunities as other investors who submitted orders to other options exchanges with different opening conditions. The proposed rule change is consistent with this authority and creates an automated compelled opening in certain circumstances to replace the manual process currently used. This will benefit investors by providing additional transparency to the Rules regarding when a series may open despite not satisfying the Maximum Composite Width check as well as remove impediments to and perfect the mechanism of a free and open market and a national market system by automating an otherwise manual process.

²⁰ See Rule 5.31(h); see also definition of Maximum Composite Width and Opening Collar in Rule 5.31(a).

The Exchange believes the proposed rule change to permit Users to give the System a standing instruction regarding how to handle their orders when a forced or manually compelled (for simple orders) opening of series occurs will benefit investors, as it will give them an additional tool to manage their orders in connection with the opening of series. Users may currently cancel any of their orders resting in the Queuing Book prior to the opening of a series, and they may cancel any orders that do not execute at the open once those orders are in the Book or COB, as applicable. Because the Exchange market may be wider in these situations, the Exchange believes it is appropriate to provide Users with the ability to cancel market orders so they don't execute at the wider market prices once in the Book or cancel all of their orders if they prefer.

Additionally, the Exchange believes the proposed rule change to permit the Exchange to determine the amounts of the Maximum Composite Width and Opening Collar on a class and Composite Bid basis will remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors, because it will provide the Exchange with flexibility to consider the different market models and characteristics of different classes, and respond to then-current market conditions. The Rules currently permit the Exchange to modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates). This proposed change merely permits the Exchange to modify these amounts at any time as it deems necessary and appropriate. The Exchange notes several options exchanges are able to change the amounts of valid opening widths by notice or circular and do not need to submit a rule filing to the Commission to do so, and the proposed rule change would provide the Exchange with the same flexibility to determine maximum opening widths that other exchanges have.²¹

²¹ See, e.g., NOM Options 3, Section 8(a)(6), EDGX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), BZX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), and C2 Rule 6.11(a) (definitions of Maximum

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 rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all Users may trade in any series that opens subject to the proposed forced opening process. The Exchange believes it is appropriate to limit the forced opening to equity and ETP options, as those may be multiply listed on exchanges. Additionally, all Users will have the opportunity to instruct the System to cancel its market orders or all open orders in the event of a forced or otherwise manual opening. Cancellation of some or all of a User's orders in the event of such an opening would be voluntary and completely within the User's discretion. The Exchange believes the proposed rule change to determine the amounts of the Maximum Composite Width and Opening Collar on a class and Composite Bid basis will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the determined amounts (by Composite Bid) for each class will apply to all orders of all market participants in the applicable class in the same manner. The Exchange believes it is appropriate to be able to determine different amounts on a class basis (it already determines different amounts on a Composite Bid basis), because it will provide the Exchange with flexibility to consider the different market models and characteristics of different classes, and respond to then-current market conditions. The Rules currently permit the Exchange to modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates). This proposed change merely

Composite Width and Opening Collar); see also MIAX Rule 503(f)(2) (which permits MIAX to determine by circular an acceptable range in which openings are permissible if there is no valid width NBBO).

permits the Exchange to modify these amounts at any time as it deems necessary and appropriate.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed forced opening process will permit series to open on the Exchange that are otherwise open for trading on other options Exchange, which may increase liquidity and competition in those series sooner. Additionally, the Exchange believes opening series for trading on the Exchange that are open for trading on other options exchanges will put Exchange Users on equal footing with other market participants, as it will provide Users' orders that are otherwise resting in the Queuing Book and awaiting execution with the ability to get into the market for potential execution. The proposed flexibility for Users to instruct the System how to handle their orders in the event of a forced or manual opening applies only to how a Users' orders on the Exchange will be handled in such a circumstance. The Exchange does not believe the proposed rule change to permit the Exchange to determine the amounts of the Maximum Composite Width and Opening Collar on a class and Composite Bid basis will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Several options exchanges are able to change the amounts of valid opening widths by notice or circular and do not need to submit a rule filing to the Commission to do so, and the proposed rule change would provide the Exchange with the same flexibility to determine maximum opening widths that other exchanges have.²²

²² See, e.g., NOM Options 3, Section 8(a)(6), EDGX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), BZX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), and C2 Rule 6.11(a) (definitions of Maximum Composite Width and Opening Collar); see also MIAX Rule 503(f)(2) (which permits MIAX to determine by circular an acceptable range in which openings are permissible if there is no valid width NBBO).

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)²³ of the Act and Rule 19b-4(f)(6)²⁴ thereunder. 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 Act and Rule 19b-4(f)(6) thereunder.²⁵

A proposed rule change filed under Rule 19b-4(f)(6)²⁶ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁷ the Commission may 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. Waiver of the operative delay will immediately permit series to open for trading on the Exchange when those series are already open for trading on other options exchanges pursuant their respective rules, and provide Users' orders that are otherwise resting in the Queuing Book and awaiting execution with the ability to get into the market for potential execution, thereby putting such Users on equal footing with other market participants as soon as possible. In addition, the proposal automates an aspect

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ In addition, Rule 19b-4(f)(6)(iii) requires the Exchange 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁶ Id.

²⁷ 17 CFR 240.19b-4(f)(6)(iii).

of the opening process that the Exchange currently has the authority to perform manually, and provides the Exchange with the same flexibility as other exchanges to determine appropriate maximum opening widths. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.²⁸

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-2021-005 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.

²⁸ 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).

All submissions should refer to File Number SR-CBOE-2021-005. 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. 20549-1090 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-2021-005 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.²⁹

J. Matthew DeLesDernier,
Assistant Secretary.

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²⁹ 17 CFR 200.30-3(a)(12).