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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95398; File No. SR-CBOE-2022-040]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 4.5

August 1, 2022.

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 July 29, 2022, 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] 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 4.5. 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.

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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 proposed rule change amends Rule 4.5(d). Specifically, the Exchange proposes to amend Rule 4.5(d)(6) to account for conflicts between different provisions within the Short Term Option Series Rules and make other clarifying changes.

In 2021, the Exchange amended Rule 4.5 to limit the intervals between strikes in equity options listed as part of the Short Term Option Series Program, excluding Exchange-Traded Fund Shares and ETNs, that have an expiration date more than twenty-one days from the listing date ("Strike Interval Proposal").[5] The Strike Interval Proposal adopted new subparagraph (d)(6), which included a table that intended to specify the applicable strike intervals that would supersede subparagraph (d)(5)[6] for Short Term Option Series in equity options, excluding options on exchange-traded fund shares and on exchange-traded notes, which have an expiration more than 21 days from the listing date. The Strike Interval Proposal was designed to reduce the density of strike

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[5] See Securities Exchange Act Release No. 91456 (April 1, 2021), 86 FR 18090 (April 7, 2021) (SR-CBOE-2021-019).

[6] Rule 4.5(d)(5) states the interval between strike prices on Short Term Option Series may be: (a) $0.50 or greater where the strike is less than $100 and $1 or greater where the strike price is between $100 and $150 for all classes that participate in the Short Term Option Series Program; (b) $0.50 or greater for classes that trade in one dollar increments in non-Short Term Options and that participate in the Short Term Option Series Program; or (c) $2.50 or greater where the strike price is above $150. A non-Short Term Option that is on a class that has been selected to participate in the Short Term Option Series Program is referred to as a "Related non-Short Term Option."

intervals that would be listed in later weeks, within the Short Term Option Series Program, by utilizing limitations for intervals between strikes that have an expiration date more than 21 days from the listing date.

The Exchange proposes to amend Rule 4.5(d)(6) to clarify the current rule text and amend the application of the table to account for potential conflicts within the Short Term Option Series Rules. Currently, Rule 4.5(d)(6) provides that notwithstanding subparagraph (d)(5), when Short Term Option Series in equity options (excluding options on ETFs and ETNs) have an expiration more than 21 days from the listing date, the strike interval for each option class will be based on the following table:

Tier	**Average Daily Volume**	**Share Price**[7]				
		Less than $25	**$25 to less than $75**	**$75 to less than $150**	**$150 to less than $500**	**$500 or greater**
1	Greater than 5,000	$0.50	$1.00	$1.00	$5.00	$5.00
2	Greater than 1,000 to 5,000	$1.00	$1.00	$1.00	$5.00	$10.00
3	0 to 1,000	$2.50	$5.00	$5.00	$5.00	$10.00

First, the Exchange proposes to add the phrase "which specifies the applicable interval for listing" to the end of the first sentence of subparagraph (d)(6). The table within that subparagraph provides for the listing of intervals based on certain parameters (average daily volume and share price). The Exchange proposes to add the phrase "which specifies the applicable interval for

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7 Share Price is the closing price on the primary market on the last day of the calendar quarter. In the event of a corporate action, the Share Price of the surviving company is utilized. The Average Daily Volume is the total number of option contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter. Beginning on the second trading day in the first month of each calendar quarter, the Average Daily Volume is calculated by utilizing data from the prior calendar quarter based on Customer-cleared volume at OCC. For options listed on the first trading day of a given calendar quarter, the Average Daily Volume is calculated using the quarter prior to the last trading calendar quarter. See Rule 4.5(d)(6)(A) and (B).

listing" to clarify that the only permitted intervals are as specified in the table within subparagraph (d)(6), as proposed to be amended.

Second, the Exchange proposes to amend the table in subparagraph (d)(6) to address situations in which there is a conflict between applying the intervals in subparagraph (d)(5) and the table in subparagraph (d)(6). Today, there are instances where a conflict is presented as between the application of the table within subparagraph (d)(6) and the rule text within subparagraph (d)(5) with respect to the correct interval. To address these potential conflicts, the Exchange proposes that to the extent there is a conflict between applying the current table within subparagraph (d)(6) and the rule text within subparagraph (d)(5), the greater interval would apply. To reflect this within the Rules, the Exchange proposes to amend the table in subparagraph (d)(6) to specify what the greater interval would be, and thus the interval the Exchange would apply, in the event of any possible conflict between the two rule provisions. Specifically, the proposed rule change amends the table as follows:

Tier	**Average Daily Volume**	**Share Price**				
		Less than $25	**$25 to less than $75**	**$75 to less than $150**	**$150 to less than $500**	**$500 or greater**
1	Greater than 5,000	$0.50 for strikes less than $100 in Short Term Option Series Program classes and classes that trade in $1 increments in non-Short Term Options $1.00 for strikes between $100 and $150 for classes that do not otherwise trade in $1.00 increments in non-Short Term Options $2.50 for strikes greater than $150	$1.00 for strikes less than $150 $2.50 for strikes greater than $150	$1.00 for strikes less than $150 $2.50 for strikes greater than $150	$5.00	$5.00

2	Greater than 1,000 to 5,000	$1.00 for strikes less than $150 $2.50 for strikes greater than $150	$1.00 for strikes less than $150 $2.50 for strikes greater than $150	$1.00 for strikes less than $150 $2.50 for strikes greater than $150	$5.00	$10.00
3	0 to 1,000	$2.50	$5.00	$5.00	$5.00	$10.00

Below are some examples to demonstrate the application of the proposed table:

Example 1: Assume a Tier 1 stock that closed on the last day of Q1 with a quarterly share price higher than $75 but less than $150. Therefore, utilizing the current table within subparagraph (d)(6), the interval would be $1.00 for strikes added during Q2 even for strikes above $150. However, subparagraph (d)(5) provides that the Exchange may list a Short Term Option Series at $2.50 intervals where the strike price is above $150. In other words, there is a potential conflict between the permitted strike intervals above $150 during Q2. In this example, current subparagraph (d)(6) would specify a $1.00 interval whereas current subparagraph (d)(5) would specify a $2.50 interval. Consistent with selecting the greater interval (from current subparagraph (d)(5)), the permissible strike interval in this scenario would be $2.50 as set forth in the proposed table. Therefore, during Q2, the following strikes would be eligible to list: $152.50 and $157.50. For strikes less than $150, the following strikes would be eligible to list during Q2: $149 and $148 because Short Term Option Series with expiration dates more than 21 days from the listing date as well as Short Term Option Series with expiration dates less than 21 days from the listing date would both be eligible to list $1 intervals pursuant to both subparagraphs (d)(5) and (d)(6).

Example 2: Assume a Tier 2 stock that closed on the last day of Q1 with a quarterly share price less than $25. Therefore, utilizing the current table within subparagraph (d)(6), the interval would be $1.00 for strikes added during Q2 even for strikes above $25. However, subparagraph (d)(5) provides that the Exchange may list a Short Term Option Series at $0.50 intervals where the

strike is less than $100, at $1.00 intervals where the strike price is between $100 and $150, and at $2.50 intervals where the strike price is above $150. In other words, there is a potential conflict between the permitted strike intervals below $100 and above $150 during Q2. In this example, current subparagraph (d)(6) would specify a $1.00 interval for strikes below $100 whereas current subparagraph (d)(5) would specify a $0.50 interval. Consistent with selecting the greater interval (from current subparagraph (d)(6)), the permissible strike interval in this scenario for strikes below $100 would be $1.00 as set forth in the proposed table. For strikes between $100 and $150, there is no conflict, as both provisions would provide $1.00 intervals for those strikes. For strikes above $150, current subparagraph (d)(6) would specify a $1.00 interval for strikes above $150 whereas current subparagraph (d)(5) would specify a $2.50 interval. Consistent with selecting the greater interval (from current subparagraph (d)(5)), the permissible strike interval in this scenario for strikes above $150 would be $2.50 as set forth in the proposed table.

Example 3: Assume a Tier 3 stock that closed on the last day of Q1 with a quarterly share price less than $25. Therefore, utilizing the current table within subparagraph (d)(6), the interval would be $2.50 for all strikes added during Q2. However, subparagraph (d)(5) provides that the Exchange may list a Short Term Option Series at $0.50 intervals where the strike price is less than $100, $1.00 intervals where the strike price is between $100 and $150, and $2.50 intervals where the strike price is above $150. In other words, there is a potential conflict between the permitted strike intervals below $150 during Q2 (there is no conflict for strikes above $150, as both provisions provide for a $2.50 strike interval). Consistent with selecting the greater interval (from current subparagraph (d)(6)), the permissible strike interval in this scenario for strikes below $150 would be $2.50 as set forth in the proposed table.[8]

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[8] The Exchange made similar corresponding changes to the table for tier 1 and tier 2 stocks with prices $25 to less than $75 and $75 to less than $150, with all potential conflicts between current subparagraphs (d)(5) and (d)(6) resolved to apply the greater interval.

Third, the Exchange proposes to delete the last sentence of the introductory paragraph of subparagraph (d)(6), which states "[t]he below table indicates the applicable strike intervals and supersedes subparagraph (d)(4) above, which permits additional series to be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened." The table within subparagraph (d)(6) supersedes other rules pertaining to strike intervals, but the table does not supersede rules governing the addition of options series. Therefore, the table within subparagraph (d)(6) and the rule text of subparagraph (d)(4) do not conflict with each other. Deleting the reference to subparagraph (d)(4) will avoid potential confusion.

Fourth, the Exchange proposes to delete subparagraph (d)(6)(D), which states "[n]otwithstanding the limitations imposed by this subparagraph (d)(6), this subparagraph (d)(6) does not amend the range of strikes for Short Term Option Series may be listed pursuant to subparagraph (d)(5) above." While the range limitations continue to be applicable within subparagraph (d)(6), the strike ranges do not conflict with the strike intervals and therefore the sentence is not necessary. Removing this provision will avoid potential confusion.

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.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] 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

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[9] 15 U.S.C. 78f(b).

[10] 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)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes the Strike Proposal continues to limit the intervals between strikes listed in the Short Term Option Series Program that have an expiration date more than twenty-one days.

In particular, the Exchange's proposed addition to the first sentence of Rule 4.5(d)(6) is consistent with the Act because it clarifies that the only permitted intervals are as specified in the table within that subparagraph, as amended. The Exchange believes this proposed rule change will bring greater transparency to the rule. The proposed rule change to amend the table within Rule 4.5(d)(6) to address potential conflicts between that subparagraph and subparagraph (d)(5) with respect to the correct strike interval is consistent with the Act because it protects investors and the public interest by adding transparency to the manner in which the Exchange implements its listing rules and removes potential uncertainty. The proposed rule text specifies the applicable intervals when there is a conflict between the rule text within subparagraphs (d)(5) and (d)(6), thereby providing certainty as to the outcome. The table within subparagraph (d)(6) impacts strike intervals and supersedes other strike interval rules but does not supersede the addition of option series. Therefore, subparagraph (d)(4) regarding the addition of option series does not conflict with the table in subparagraph (d)(6). Deleting the last sentence of the introductory paragraph of Rule 4.5(d)(6) that includes the reference to subparagraph (d)(4) is therefore consistent with the Act. Similarly, deleting Rule 4.5(d)(6)(D) is consistent with the Act because while the range limitations continue to be applicable, the strike ranges do not conflict

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[11] Id.

with strike intervals, rendering the sentence unnecessary. Deletion of this provision will avoid potential confusion.

The Strike Interval Proposal was designed to reduce the density of strike intervals that would be listed in later weeks, within the Short Term Option Series Program, by utilizing limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date. The Exchange's proposal intends to continue to remove certain strike intervals where there exist clusters of strikes whose characteristics closely resemble one another and, therefore, do not serve different trading needs,[12] rendering these strikes less useful. Also, the Strike Interval Proposal continues to reduce the number of strikes listed on the Exchange, allowing Market-Makers to expend their capital in the options market in a more efficient manner, thereby improving overall market quality on the Exchange.

Additionally, by applying the greater interval would control as between the rule text within current Rule 4.5(d)(5) and (d)(6), the Exchange is reducing the number of strikes listed in a manner consistent with the intent of the Strike Interval Proposal, which was to reduce strikes which were farther out in time. The result of this clarification is to select wider strike intervals for Short Term Option Series in equity options which have an expiration date more than twenty-one days from the listing date. This rule change would harmonize strike intervals as between inner weeklies (those having less than twenty-one days from the listing date) and outer weeklies (those having more than twenty-one days from the listing date) so that strike intervals are not widening as the listing date approaches.

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

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12 For example, two strikes that are densely clustered may have the same risk properties and may also be the same percentage out-of-the-money.

Strike Interval Proposal continues to limit the number of Short Term Option Series Program strike intervals available for quoting and trading on the Exchange for all Trading Permit Holders.

The Exchange believes adding clarifying language to the first sentence of Rule 4.5(d)(6) regarding which parameter the table within that provision amends within the Short Term Option Series Program will bring greater transparency to the rules. Amending the table within subparagraph (d)(6) to address potential conflicts as between the rule text of Rule 4.5(d)(5) and (d)(6) will bring greater transparency to and reduce potential confusion regarding the manner in which the Exchange implements its listing rules. Deleting the last sentence of the first paragraph of the introductory paragraph of Rule 4.5(d)(6) that references subparagraph (d)(4) does not impose an undue burden on competition and will avoid potential confusion because the table within Rule 4.5(d)(6) impacts strike intervals and supersedes other rules pertaining to strike intervals, but the table does not supersede rules governing the addition of options series, such as Rule 4.5(d)(4). Deleting Rule 4.5(d)(6)(D) will also avoid any potential confusion because, while the range limitations continue to be applicable, the strike ranges do not conflict with strike intervals and are not necessary.

While this proposal continues to limit the intervals of strikes listed on the Exchange, the Exchange continues to balance the needs of market participants by continuing to offer a number of strikes to meet a market participant's investment objective. The Exchange's Strike Interval Proposal does not impose an undue burden on intermarket competition as this Strike Interval Proposal does not impact the listings available at another self-regulatory organization.

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 after the date of the filing, or such shorter

time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[13] and Rule 19b-4(f)(6)[14] thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),[16] the Commission may 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 Exchange may implement the proposed rule change on August 1, 2022—the same time other exchanges are implementing the same change.[17] The Exchange states that implementing the proposal simultaneously with other option exchanges will promote the protection of investors by harmonizing the strike listing methodology across exchanges. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or

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13 15 U.S.C. 78s(b)(3)(A).

14 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.

15 17 CFR 240.19b-4(f)(6).

16 17 CFR 240.19b-4(f)(6)(iii).

17 The Commission recently approved a substantially similar proposal. See Securities Exchange Act Release No. 95085 (June 10, 2022), 87 FR 36353 (June 16, 2022) (SR-ISE-2022-10) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend ISE Options 4, Section 5, Series of Options Contracts Open for Trading).

18 For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-2022-040 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-2022-040. 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-2022-040, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

J. Matthew DeLesDernier,

Deputy Secretary.

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[19] 17 CFR 200.30-3(a)(12), (59).