

of the purposes of the Act. The proposed rule change is not intended to address competitive issues. 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 the proposed rule change will apply to all market participants in the same manner. All market participants will be able to effect position transfers pursuant to Options 6, Section 5(a)(2) on a recurring or routine basis without providing the Exchange with notice of such transfers. The Exchange does not believe 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 it relates solely to the notice required for transfers that may occur today, and the frequency with which those transfers may occur. These transfers will continue to not result in a change in ownership or netting, and thus will have no impact on outstanding option positions.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**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 Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> 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 to so that it may adopt the proposed position transfer rules as soon as possible which, according to the Exchange, would benefit investors and the general public because it will provide Participants with the ability to request a transfer, for limited, non-recurring types of transfers, without the need for exposing those orders on the Exchange. The proposed rule change does not present any unique or novel regulatory issues and is substantively identical to provisions in Cboe Rule 6.7. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>16</sup>

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 will 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2020-19 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-GEMX-2020-19. This file number should be included on the subject line if email 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/>

<sup>16</sup> 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).

[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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-GEMX-2020-19 and should be submitted on or before September 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020-18347 Filed 8-20-20; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-89585; File No. SR-CBOE-2020-076]

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Adopt Fees for a Recently Adopted Data Product Known as Intraday Open-Close Data**

August 17, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 3, 2020, 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 Commission is publishing this notice to

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 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.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

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") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to adopt fees for a recently adopted data product known as Intraday Open-Close Data. 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.

### **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 recently adopted a new data product on Cboe Options to be known as Intraday Open-Close Data, which will be available for purchase to Cboe Options Trading Permit Holders ("TPHS") and non-TPHs.<sup>3</sup> The Exchange now proposes to adopt fees for Intraday Open-Close Data. Cboe LiveVol, LLC ("LiveVol"), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., will make the Intraday Open-Close Data available for purchase to TPHs and non-TPHs on the LiveVol DataShop website ([datashop.cboe.com](http://datashop.cboe.com)).

By way of background, the Exchange historically offered Open-Close Data, which is an end-of-day volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side

of the market (buy or sell), price, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Open-Close Data is proprietary Cboe Options trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed.

The Exchange recently adopted a similar product: Intraday Open-Close Data. The Intraday Open-Close Data will provide similar information to that of Open-Close Data but will be produced and updated every 10 minutes during the trading day. Data is captured in "snapshots" taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period. For example, subscribers to the intraday product will receive the first calculation of intraday data by approximately 9:42 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update at 9:52 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data captured from the current "snapshot" and all previous "snapshots." The Intraday Open-Close Data will provide a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume will be further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Intraday Open-Close Data is also proprietary Cboe Options trade data and does not include trade data from any other exchange. In contrast to the existing Open-Close Data product, the Intraday Open-Close Data will not provide execution price.

The Exchange anticipates a wide variety of market participants to purchase Intraday Open-Close Data, including, but not limited to, individual customers, buy-side investors, and investment banks. The Exchange believes the Intraday Open-Close Data product may also provide helpful trading information regarding investor sentiment that may allow market participants to make better trading decisions throughout the day and may be used to create and test trading models and analytical strategies and provides comprehensive insight into

trading on the Exchange. For example, intraday open data may allow a market participant to identify new interest or possible risks throughout the trading day, while intraday closing data may allow a market participant to identify fading interests in a security. The product is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange notes that other exchanges offer a similar data product.<sup>4</sup>

The Exchange proposes to provide in its Fee Schedule that TPHs and non-TPHs may purchase Intraday Open-Close Data on a subscription basis (monthly or annually) or by ad hoc request for a specified month (historical file). The Exchange proposes to assess a monthly fee of \$2,000 (or \$24,000 per year) for subscribing to the data feed. The Exchange also proposes to assess a fee of \$1,000 per request per month for an ad-hoc request of historical Intraday Open/Close data covering all Exchange-listed securities. An ad-hoc request can be for any number of months beginning with October 2019 for which the data is available.<sup>5</sup> The proposed subscription and ad-hoc fees will apply both to TPHs or non-TPHs. The Exchange notes that other exchanges provide similar data products that may be purchased on both a subscription and ad-hoc basis and are similarly priced.<sup>6</sup>

<sup>4</sup> See Securities Exchange Act Release No. 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR-ISE-2009-103); Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); Securities Exchange Act Release No. 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144); and Securities Exchange Act Release No. 81632 (September 15, 2017), 82 FR 44235 (September 21, 2017) (SR-GEMX-2017-42).

<sup>5</sup> For example, a TPH or non-TPH that requests historical Intraday Open/Close Data for the months of January 2020 and February 2020, would be assessed a total of \$1,000. The Exchange notes that it may make historical data prior to October 2019 available in the future and that such historical data would be available to all TPHs or non-TPHs.

<sup>6</sup> See Price List—U.S. Derivatives Data for Nasdaq PHLX, LLC ("PHLX"), The Nasdaq Stock Market, LLC ("Nasdaq"), Nasdaq ISE, LLC ("ISE"), and Nasdaq GEMX, LLC ("GEMX"), available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPPriceListOptions#web>. Particularly, PHLX offers "Nasdaq PHLX Options Trade Outline (PHOTO)" and assesses \$1,500 per month for an intra-day subscription and \$750 per month for historical reports; Nasdaq offers the "Nasdaq Options Trade Outline (NOTO)" and assesses \$750 per month for an intra-day subscription and \$500 per month for historical reports; ISE offers the "Nasdaq ISE Open/Close Trade Profile" and assesses \$2,000 per month for an intra-day subscription and \$1,000 per month for historical reports; and GEMX offers the "Nasdaq GEMX Open/Close Trade Profile" and assesses \$1,000 per month for an intra-day subscription and \$750 per month for historical reports.

<sup>3</sup> See SR-CBOE-2020-070.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for Intraday Open-Close Data is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, Intraday Open-Close Data further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of Intraday Open-Close Data. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes Intraday Open-Close Data provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer a similar data product.<sup>10</sup>

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share and currently the Exchange represents only approximately 16.52% of the market share.<sup>11</sup> The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>12</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Intraday Open-Close Data product.

The Exchange believes the proposed fees are reasonable as the proposed fees are in line with the fees assessed by other exchanges that provide similar data products.<sup>13</sup> Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Like the Exchange's Intraday Open-Close Data product, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Intraday Open-Close data products provide only proprietary trade data and not trade data from other exchanges, it's possible investors are still able to gauge overall investor sentiment across different

option series based on open and closing interest on any one exchange. Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only Intraday Open-Close data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's Intraday Open-Close data as more attractive than its proposed Intraday Open-Close data product, then such market participant can merely choose not to purchase the Exchange's Intraday Open-Close Data and instead purchase another exchange's Intraday Open-Close data product, which offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing insight into trading on Cboe Options. The recently adopted Intraday Open-Close Data would provide options market participants with valuable information about opening and closing transactions executed on the Exchange throughout the trading day, similar to other trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better informed trading decisions. As noted above, users may also use such data to create and test trading models and analytical strategies.

Selling market data, such as Intraday Open-Close Data, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Intraday Open-Close Data, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.<sup>14</sup> The Exchange therefore believes that the proposed fees for Intraday Open-Close Data reflect the competitive environment and would be properly assessed on TPH or non-TPH users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate

<sup>11</sup> See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (July 31, 2020), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

<sup>12</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

<sup>13</sup> See *supra* note 6. The Exchange notes the proposed fees are the same as the fees assessed for the Nasdaq ISE Open/Close Trade Profile.

<sup>14</sup> See *supra* note 6.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> See *supra* note 4.

between subscribers that purchase Intraday Open-Close Data and are set at a modest level that would allow any interested TPH or non-TPH to purchase such data based on their business needs.

As noted above, the Exchange anticipates a wide variety of market participants to purchase Intraday Open-Close Data, including but not limited to individual customers, buy-side investors and investment banks. The Exchange reiterates that the decision as to whether or not to purchase the Intraday Open-Close Data is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Intraday Open-Close Data, and the Exchange is not required to make the Intraday Open-Close Data available to all investors. Rather, the Exchange is voluntarily making Intraday Open-Close Data available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor options exchanges.<sup>15</sup> The Exchange made Open-Close Data available in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. At least four other U.S. options exchanges offer a market data product that is substantially similar to the Intraday Open-Close Data. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price Intraday Open-Close Data is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of similar products available to market participants and investors. At least four other U.S. options exchanges offer a market data product that is substantially similar to the Intraday

Open-Close Data, which the Exchange must consider in its pricing discipline in order to compete for the market data.<sup>16</sup> For example, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase Intraday Open-Close Data. The proposed fees are set at a modest level that would allow any interested TPH or non-TPH to purchase such data based on their business needs.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and paragraph (f) of Rule 19b-4<sup>18</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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 will 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2020-076 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-2020-076. This file number should be included on the subject line if email 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-

<sup>15</sup> *Id.*

<sup>16</sup> See e.g., Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. See also Nasdaq ISE Options 7 Pricing Schedule, Section 10.A and Nasdaq PHLX Options 7 Pricing Schedule, Section 10, PHLX Options Trade Outline ("PHOTO").

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f).

2020-076 and should be submitted on or before September 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020-18351 Filed 8-20-20; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89575; File No. SR-ISE-2020-32]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 6, Section 5 (Transfer of Positions)

August 17, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 6, 2020, Nasdaq ISE, LLC (“ISE” or “Exchange”) 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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

The Exchange proposes to amend Options 6, Section 5, titled “Transfer of Positions.”

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, 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

The Exchange proposes to amend Options 6, Section 5, titled “Transfer of Positions.” The proposed rule change is similar to Cboe Exchange, Inc. (“Cboe”) Rule 6.7.<sup>5</sup>

Options 6, Section 5 permits market participants to move positions from one account to another without first exposure of the transaction on the Exchange, provided certain exceptions are met. Specifically, Options 6, Section 5(a)(2)<sup>6</sup> provides that transfers of positions are permissible if from one account to another account where no change in ownership is involved (*i.e.*, accounts of the same Person),<sup>7</sup> provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements. These transfers are subject to, among other things, the requirement to submit prior written notice of the transfers to the Exchange pursuant to Options 6, Section 5(d) and the restriction on effecting these transfers repeatedly or routinely.

The proposed rule change excepts position transfers effected pursuant to Options 6, Section(a)(2) from the prior written notice requirement in paragraph (d) and from repeated, recurring use restriction in paragraph (g). Position transfers pursuant to Options 6,

Section(a)(2) do not involve a change in ownership. In other words, such transfers may only occur between the same individual or legal entity. These types of transfers are merely transfers of positions from one account to another, both of which accounts are attributable to the same individual or legal entity, and thus the transferred option positions will continue to be attributable to the same Person. A market participant effecting an position transfer pursuant to Options 6, Section 5(a)(2) is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

Because there is no change in ownership of positions transferred pursuant to Options 6, Section 5(a)(2), the Exchange believes it is appropriate to permit them to occur as routinely and repeatedly as a market participant would like. These transfers will continue to be subject to the prohibition on netting set forth in Options 6, Section 5(b), and thus may not result in the closing of any positions. While the position transfers permitted by Options 6, Section 5 were intended to accommodate non-routine and non-recurring transfers, the Exchange believes permitting routine, recurring position transfers that do not result in a change in ownership or reduction in open interest is consistent with the purpose of not being used to circumvent the normal auction purpose.

Additionally, given that these transfers may occur on a regular basis in accordance with a market participants’ business needs and procedures, the Exchange believes prior written notice would be onerous and would not serve any purpose given the lack of change in ownership and in open interest. The Exchange believes this will provide market participants with additional flexibility to structure their option position accounts as they believe is appropriate and move their positions between accounts as they deem necessary and appropriate for their business and trading needs, including for risk management purposes.

The proposed rule change also corrects an erroneous cross-reference in Rule Options 6, Section 5(d)(1), as the method for determining the transfer price is in paragraph (c) rather than paragraph (e) of Options 6, Section 5.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities and Exchange Act Release No. 89389 (July 23, 2020), 85 FR 45709 (July 29, 2020) (SR-Cboe-2020-067) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 6.7 Concerning Off-Floor Transfers).

<sup>6</sup> Options 6, Section 5(a) states, “*Permissible Transfers*. Existing positions in options listed on the Exchange of a Member or non-Member that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves on or more of the following events: . . . (2) the transfer of positions from one account to another account where no change in ownership is involved (*i.e.*, accounts of the same Person, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements; . . .”

<sup>7</sup> For purposes of this rule, the term “Person” as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust, or unincorporated organization, or any governmental entity or agency or political subdivision thereof. See Options 6, Section 5(a).