

*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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii)<sup>8</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>9</sup> Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2021-019 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-BX-2021-019. 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. 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-BX-2021-019, and should be submitted on or before June 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-91780; File No. SR-NYSEArca-2021-09]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca Rule 6.86-O To Eliminate the Use of Dark Series on the Exchange**

May 5, 2021.

**I. Introduction**

On January 26, 2021, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Arca Rule 6.86-O to eliminate the use of "dark" series on the Exchange. The proposed rule change was published for comment in the **Federal Register** on February 5, 2021.<sup>3</sup> On March 18, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On April 27, 2021, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>6</sup> The Commission received no

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

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

<sup>3</sup> See Securities Exchange Act Release No. 91038 (February 1, 2021), 86 FR 8416 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 91354, 86 FR 15764 (March 24, 2021). The Commission designated May 6, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.

<sup>6</sup> In Amendment No. 1, the Exchange provided data that showed that during the eighteen (18) trading days between March 1, 2021 and March 24, 2021, quotes in dark series accounted for 2.43% of NYSE Arca quotes and 1.99% of NYSE American, LLC ("NYSE American") quotes, and quotes in dark series averaged 0.174% on NYSE Arca and 0.190% on NYSE American when compared to the total OPRA disseminated quotes during the same period. The Exchange also stated that on March 4, 2021 and March 5, 2021, OPRA processed the most messages in its history and provided data that shows that on March 4th, quotes in dark series from NYSE Arca and NYSE American combined for 0.5095% compared to OPRA message traffic. On March 5th, quotes in dark series from NYSE Arca and NYSE American combined for 0.2562% when compared to OPRA quote volume. The Exchange concluded that eliminating the suppression of quotes in dark series would result in a *de minimis* increase in quotes sent by NYSE Arca and NYSE American to OPRA and have essentially no impact on messaging at an industry level. Because Amendment No. 1 to the proposed rule change does not materially alter

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 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 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>11</sup> 17 CFR 200.30-3(a)(12).

comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

Currently, NYSE Arca Rule 6.86–O (“Firm Quotes”) requires the Exchange to collect, process, and make available to quotation vendors the best bid and best offer for each option series that is a reported security unless the series is subject to an approved quote mitigation plan.<sup>7</sup> Pursuant to the quote mitigation plan set forth in Commentary .03 to NYSE Arca Rule 6.86–O, the Exchange only disseminates quotes in “active” series.<sup>8</sup> A series is considered active if the series: (i) Has traded on any options exchange in the previous 14 calendar days; (ii) is solely listed on the Exchange; (iii) has been trading ten days or less; or (iv) is a series in which the Exchange has an order.<sup>9</sup> In addition, a series may be considered active on an intraday basis if: (i) The series trades at any options exchange; (ii) the Exchange receives an order in the series; or (iii) the Exchange receives a request for quote from a customer in that series.<sup>10</sup> Any options series that does not meet the definition of an active series is deemed to be an inactive or “dark” series. Consequently, under the Exchange’s current rules, although the Exchange accepts quotes from OTP Holders in all series, the only quote messages the Exchange disseminates to the Options Price Reporting Authority (“OPRA”) are quotes for active series.<sup>11</sup> The Exchange proposes to delete Commentary .03 to Rule 6.86–O. Therefore, the proposed rule change would eliminate the distinction between active and dark

series, and thus require quotes in all series to be disseminated to OPRA.<sup>12</sup>

## III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires that the rules of an exchange be designed, among other things, 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 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.

In support of its proposal, the Exchange states the proposed rule change would increase transparency, enhance price discovery, and alleviate potential confusion among market participants regarding what quotes are being published in the disseminated quote feed and what quotes are being suppressed.<sup>15</sup> According to the Exchange, discontinuing the use of the quote mitigation plan set forth in Commentary .03 to NYSE Arca Rule 6.86–O would result in all Market Maker quotes (including those currently being suppressed because they are considered inactive) being displayed and reflected in the market, benefitting market participants by providing notice of such liquidity and removing the element of potential confusion.<sup>16</sup>

Further, the Exchange states the proposed rule change would not change the amount of capacity needed at OPRA to accommodate the inclusion of quotes in dark series because the Exchange already includes such quotes in the Exchange’s current capacity planning requests to OPRA.<sup>17</sup> According to the

Exchange, the proposal would not impact market participants or downstream users that consume Exchange or OPRA data because the quote capacity information OPRA currently publishes already reflects quotes in dark series because they are part of the Exchange’s current capacity request.<sup>18</sup> Thus, according to the Exchange, market participants (including data vendors and subscribers) currently have the opportunity to prepare for and make necessary accommodations for anticipated quote traffic (including quotes in dark series).<sup>19</sup> Further, the Exchange anticipates that the proposed increase in quote message traffic due to the dissemination of quotes in inactive series is likely to be minimal and therefore unlikely to impact the flow of message traffic and/or harm downstream consumers of OPRA data.<sup>20</sup> In support of this assertion, the Exchange states that on the two trading days that OPRA processed the most messages in its history (March 4, 2021 and March 5, 2021), quotes in dark series from NYSE Arca and NYSE American combined were only 0.5095% and 0.2562%, respectively, compared to OPRA message traffic.<sup>21</sup> Finally, the Exchange states its additional existing quote mitigation strategies are sufficient to continue to mitigate quote traffic.<sup>22</sup>

The Commission believes that eliminating the exclusion of inactive or dark series from the requirements of NYSE Arca Rule 6.86–O should increase transparency and may enhance opportunities for price discovery. Publishing all quotes (not just those in active series) in the disseminated quote feed may benefit market participants because it will provide notice of additional liquidity. Further, because the Exchange currently includes Market Maker quotes in inactive series in its capacity planning request to OPRA<sup>23</sup> and because publication of dark quotes from both the Exchange and NYSE American combined would result in a percentage increase in OPRA disseminated quotes that is *de minimis*

total quote traffic it receives from Market Makers, including quotes in dark series, when making its capacity requests to OPRA. Specifically, the Exchange “presumes that all series will be active and therefore requests capacity to accommodate sending quotes in all series to OPRA.” *Id.* at 8416.

<sup>18</sup> See Notice, *supra* note 3, at 8417.

<sup>19</sup> See *id.*

<sup>20</sup> See *id.* at 8418. See also Amendment No. 1, *supra* note 6.

<sup>21</sup> See Amendment No. 1, *supra* note 6.

<sup>22</sup> See Notice, *supra* note 3, at 8417–18 (discussing three quote mitigation strategies the exchange currently employs to reduce the potential for excessive quoting and to reduce quote traffic).

<sup>23</sup> See *id.* at 8418.

the substance of the proposed rule change, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2021-09/srnysearca202109.htm>.

<sup>7</sup> See NYSE Arca Rule 6.86–O(b)(1).

<sup>8</sup> The quote mitigation plan set forth in Commentary .03 to NYSE Arca Rule 6.86 was adopted in 2006 in connection with the Penny Pilot Program, a program which was subsequently approved on a permanent basis in 2020. See Notice, *supra* note 3, at 8416.

<sup>9</sup> See Commentary .03 to NYSE Arca Rule 6.86–O.

<sup>10</sup> See Commentary .03 to NYSE Arca Rule 6.86–O.

<sup>11</sup> See Notice, *supra* note 3, at 8416. See also Amendment No. 1, *supra* note 6 (providing data to support the Exchange’s conclusion that eliminating the suppression of quotes in dark series would result in a *de minimis* increase in quotes sent by NYSE Arca and NYSE American to OPRA and would have essentially no impact on messaging at an industry level).

<sup>12</sup> See Notice, *supra* note 3, at 8416.

<sup>13</sup> In approving this proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See Notice, *supra* note 3, at 8417 (stating that “over the years, certain market participants have expressed confusion regarding what quotes are being published and which are being suppressed”).

<sup>16</sup> See Notice, *supra* note 3, at 8417.

<sup>17</sup> See Notice, *supra* note 3, at 8416–17. The Exchange represents that it has always factored the

according to the Exchange's data,<sup>24</sup> the Commission believes that dissemination of these quotes as part of the Exchange's quote feed to OPRA is not likely to negatively impact systems capacity. In addition, the Exchange has existing additional quote mitigation strategies that also serve to reduce the potential for excessive quoting.<sup>25</sup>

Accordingly, for the reasons set forth above, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act<sup>26</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (SR-NYSEArca-2021-09), as modified by Amendment No. 1, hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91782; File No. SR-CBOE-2021-031]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Extend the Operation of Its Flexible Exchange Options ("FLEX Options") Pilot Program Regarding Permissible Exercise Settlement Values for FLEX Index Options

May 5, 2021.

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 April 22, 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 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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to extend the operation of its Flexible Exchange Options ("FLEX Options") pilot program regarding permissible exercise settlement values for FLEX Index Options. The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

\* \* \* \* \*

#### Rules of Cboe Exchange, Inc.

\* \* \* \* \*

#### Rule 4.21. Series of FLEX Options

(a) No change.  
(b) *Terms.* When submitting a FLEX Order for a FLEX Option series to the System, the submitting FLEX Trader must include one of each of the following terms in the FLEX Order (all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options), which terms constitute the FLEX Option series:

- (1)-(4) No change.
- (5) settlement type:
  - (A) No change.
  - (B) *FLEX Index Options.* FLEX Index Options are settled in U.S. dollars, and may be:
    - (i) No change.
    - (ii) p.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported closing prices of the component securities), except for a FLEX Index Option that expires on any business day that falls on or within two business days of a third Friday-of-the-month expiration day for a non-FLEX Option (other than a QIX option) may only be a.m.-settled; however, for a pilot period ending the earlier of [May 3] *November 1, 2021* or the date on which the pilot program is approved on a permanent basis, a FLEX Index Option with an expiration date on the third-Friday of the month may be p.m.-settled;
    - (iii)-(iv) No change.

\* \* \* \* \*

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatory>

[Home.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

On January 28, 2010, the Securities and Exchange Commission (the "Commission") approved a Cboe Options rule change that, among other things, established a pilot program regarding permissible exercise settlement values for FLEX Index Options.<sup>5</sup> The Exchange has extended the pilot period numerous times, which is currently set to expire on the earlier of May 3, 2021 or the date on which the pilot program is approved on a permanent basis.<sup>6</sup> The purpose of this

<sup>5</sup> Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087) ("Approval Order"). The initial pilot period was set to expire on March 28, 2011, which date was added to the rules in 2010. See Securities Exchange Act Release No. 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010) (SR-CBOE-2010-026).

<sup>6</sup> See Securities Exchange Act Release Nos. 64110 (March 23, 2011), 76 FR 17463 (March 29, 2011) (SR-CBOE-2011-024); 66701 (March 30, 2012), 77 FR 20673 (April 5, 2012) (SR-CBOE-2012-027); 68145 (November 2, 2012), 77 FR 67044 (November 8, 2012) (SR-CBOE-2012-102); 70752 (October 24, 2013), 78 FR 65023 (October 30, 2013) (SR-CBOE-2013-099); 73460 (October 29, 2014), 79 FR 65464 (November 4, 2014) (SR-CBOE-2014-080); 77742 (April 29, 2016), 81 FR 26857 (May 4, 2016) (SR-CBOE-2016-032); 80443 (April 12, 2017), 82 FR 18331 (April 18, 2017) (SR-CBOE-2017-032); 83175 (May 4, 2018), 83 FR 21808 (May 10, 2018) (SR-CBOE-2018-037); 84537 (November 5, 2018), 83 FR 56113 (November 9, 2018) (SR-CBOE-2018-071); 85707 (April 23, 2019), 84 FR 18100 (April 29, 2019) (SR-CBOE-2019-021); 87515 (November 13, 2020), 84 FR 63945 (November 19, 2019) (SR-CBOE-2019-108); 88782 (April 30, 2020), 85 FR 27004 (May 6, 2020) (SR-CBOE-2020-039); and 90279 (October 28, 2020) 85 FR 69667 (November 3, 2020) (SR-CBOE-2020-103) (extending the pilot program through the earlier of May 3, 2021 or the date on which the pilot program is approved on a permanent basis). At the same time the permissible exercise settlement values pilot was established for

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<sup>24</sup> See Amendment No. 1, *supra* note 6. In addition, the Exchange states that there is sufficient capacity at OPRA to accommodate any additional quote traffic that will result from the elimination of dark series. See Notice, *supra* note 3, at 8416-17. The Exchange further notes that it does not believe its proposal will impact any other exchange's capacity at OPRA. See *id.* at 8416 n.9.

<sup>25</sup> See Notice, *supra* note 3, at 8416-17.

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</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).