

chief compliance officer, the chief compliance officer of the BDC that controls the BDC Downstream Fund will prepare the report for the relevant Independent Party.

(d) The Independent Directors (including the non-interested members of each Independent Party) will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under section 57(f).

12. *Director Independence.* No Independent Director (including the non-interested members of any Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an "affiliated person" (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*³⁰ Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also

be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87762; File No. SR-CBOE-2019-116]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect the Financial Crimes Enforcement Network's Adoption of a Final Rule on Customer Due Diligence Requirements for Financial Institutions

December 16, 2019.

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 December 5, 2019, 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, II, and III 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. ("Cboe" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission"), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange, to reflect the Financial Crimes Enforcement Network's ("FinCEN") adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions ("CDD Rule"). 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

I. Background

The Bank Secrecy Act⁵ ("BSA"), among other things, requires financial institutions,⁶ including broker-dealers,

³⁰ Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

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).

⁵ 31 U.S.C. 5311, *et seq.*

⁶ See U.S.C. 5312(a)(2) (defining "financial institution").

to develop and implement AML programs that, at a minimum, meet the statutorily enumerated “four pillars.”⁷ These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- The establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.⁸

In addition to meeting the BSA’s requirements with respect to AML programs, Exchange Members⁹ must also comply with Exchange Rule 8.12, which incorporates the BSA’s four pillars, as well as requires Members’ AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule¹⁰ to clarify and strengthen customer due diligence for covered financial institutions,¹¹ including broker-dealers. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) Customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating

customer information.¹² As the first component is already required to be part of a broker-dealers AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.¹³ The CDD Rule also addresses the third and fourth components, which FinCEN states “are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements,” by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new “fifth pillar.”

On November 21, 2017, FINRA published Regulatory Notice 17–40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of FinCEN’s CDD Rule. In addition, the Notice summarized the CDD Rule’s impact on member firms, including the addition of the new fifth pillar required for member firms’ AML programs. FINRA also amended FINRA Rule 3310 to explicitly incorporate the fifth pillar.¹⁴ This proposed rule change amends Cboe Rule 8.12 to harmonize it with the FINRA rule and incorporate the fifth pillar.

II. Exchange Rule 8.12 and Amendment to Minimum Requirements for Members’ AML Programs

Section 352 of the USA PATRIOT Act of 2001¹⁵ amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, Cboe Rule 8.12 requires each Member to develop and implement a written AML program reasonably designed to achieve and monitor the Member’s compliance with the BSA and implementing regulations. Among other requirements, Cboe Rule 8.12 requires

that each Member firm, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide independent testing for compliance to be conducted by Member personnel or a qualified outside party; (4) designate and identify to Cboe an individual or individuals (*i.e.*, AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to the Exchange of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN’s CDD Rule does not change the requirements of Exchange Rule 8.12, and Members must continue to comply with its requirements.¹⁶ However, FinCEN’s CDD Rule amends the minimum regulatory requirements for broker-dealers’ AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.¹⁷ Accordingly, the Exchange is proposing to amend Exchange Rule 8.12 to incorporate this ongoing customer due diligence element, or “fifth pillar” required for AML programs. Thus, proposed Rule 8.12(b)(6) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (A) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (B) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for Members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and

⁷ 31 U.S.C. 5318(h)(1).

⁸ 31 CFR 1023.210(b).

⁹ See Exchange Rule 1.1.

¹⁰ FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. See 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

¹¹ See 31 CFR 1010.230(f) (defining “covered financial institution”).

¹² See CDD Rule Release at 29398.

¹³ See 31 CFR 1010.230(d) (defining “beneficial owner”) and 31 CFR 1010.230(e) (defining “legal entity customer”).

¹⁴ See Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR-FINRA-2018-016).

¹⁵ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (2001).

¹⁶ FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially identical to Exchange Rule 8.12. See CDD Rule Release 29421, n. 85.

¹⁷ See CDD Rule Release at 29420; 31 CFR 1023.210.

understand their customers.¹⁸ The proposed rule change simply incorporates into Exchange Rule 8.12 the ongoing customer due diligence element, or “fifth pillar,” required for AML programs by the CDD Rule to aid Members in complying with the CDD Rule’s requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in Members’ AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar’s Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.¹⁹ To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.²⁰ Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer’s income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer’s history of activity.²¹ The CDD Rule also does not prescribe a particular form of the customer risk profile.²² Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.²³

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation

discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).²⁴ Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.²⁵

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms’ AML programs.²⁶ If, in the course of its normal monitoring for suspicious activity, the Member detects information that is relevant to assessing the customer’s risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal entity customers.²⁷ However, there is no expectation that the Member update customer information, including beneficial ownership information, on an ongoing or continuous basis.²⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)²⁹ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act³⁰ 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, in general, to protect investors and the public interest. Specifically, the Exchange believes the proposed rule

change will protect investors, because it will aid Members in complying with the CDD Rule’s requirement that Members’ AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into Exchange Rule 8.12.

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. The proposed rule change simply incorporates into Exchange Rule 8.12 the ongoing customer due diligence element, or “fifth pillar,” required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar are not already included in Members’ AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all Exchange Members that have customers are required to be members of FINRA pursuant to Rule 15b9–1 under the Exchange Act,³¹ and are therefore already subject to the requirements of FINRA Rule 3310. Additionally, the proposed rule change is virtually identical³² to FINRA Rule 3310. The Exchange is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such, the proposal imposes no new burdens on competition.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

³¹ 17 CFR 240.15b9–1.

³² The Exchange notes that changes between the proposed Rule and FINRA Rule 3310 are non-substantive and relate to cross references.

¹⁸ *Id.* at 29419.

¹⁹ *Id.* at 29421.

²⁰ *Id.* at 29422.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 29402.

²⁷ *Id.* at 29420–21. See also FINRA Regulatory Notice 17–40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

²⁸ *Id.*

²⁹ 15 U.S.C. 78f.

³⁰ 15 U.S.C. 78f(b)(5).

C. 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 Act³³ and Rule 19b-4(f)(6)³⁴ thereunder. 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. Please include File Number SR-CBOE-2019-116 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-2019-116. 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-CBOE-2019-116 and should be submitted on or before January 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2019-27458 Filed 12-19-19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87756; File No. SR-DTC-2019-012]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Implementation Timeframe for a Rule Change To Implement a New Algorithm for Transactions Processed in the Night Cycle

December 16, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 13, 2019, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

³⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4).

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change⁵ would amend the Procedures⁶ set forth in the DTC Settlement Service Guide ("Settlement Guide")⁷ to extend the implementation timeframe for a rule change ("Approved Rule Change"), that became effective pursuant to rule filing SR-DTC-2019-005, as amended ("Original Rule Filing")⁸ upon approval by the Commission.⁹ In this regard, pursuant to the proposed rule change, the Settlement Guide would be amended to state that the Approved Rule Change will be implemented by March 6, 2020, rather than being implemented by December 6, 2019, as stated in the Settlement Guide, as discussed below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the Procedures set forth in the Settlement Guide¹⁰ to extend the implementation timeframe for the Approved Rule Change. In this regard, pursuant to the proposed rule change, the Settlement Guide would be

⁵ Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC ("Rules"), available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf.

⁶ Pursuant to the Rules, the term "Procedures" means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. See Rule 1, Section 1, *supra* note 5. Pursuant to Rule 27, each Participant and DTC is bound by the Procedures and any amendment thereto in the same manner as it is bound by the Rules. See Rule 27, *supra* note 5.

⁷ Available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf>.

⁸ Available at <http://www.dtcc.com/legal/sec-rule-filings?subsidiary=DTC&pgs=1>.

⁹ See Securities Exchange Act Release No. 87022 (September 19, 2019), 84 FR 50541 (September 25, 2019) (SR-DTC-2019-005).

¹⁰ *Supra* note 7.

³³ 15 U.S.C. 78s(b)(3)(A).

³⁴ 17 CFR 240.19b-4(f)(6).