

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.” The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’” Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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 Act¹² and paragraph (f) of Rule 19b-4¹³ 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-CboeBYX-2020-029 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-CboeBYX-2020-029. 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-CboeBYX-2020-029 and should be submitted on or before November 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-22705 Filed 10-13-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90116; File No. SR-FINRA-2020-020]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Adopt FINRA Rule 3241 (Registered Person Being Named a Customer’s Beneficiary or Holding a Position of Trust for a Customer)

October 7, 2020.

I. Introduction

On June 23, 2020, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt FINRA Rule 3241 (Registered Person Being Named a Customer’s Beneficiary or Holding a Position of Trust for a Customer). The proposed rule was published for comment in the **Federal Register** on July 9, 2020.³ On August 18, 2020, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule, disapprove the proposed rule, or institute proceedings to determine whether to approve or disapprove the proposed rule to October 7, 2020.⁴ On October 6, 2020, FINRA responded to the comment letters received in response to the Notice.⁵ This order approves the proposed rule.

II. Description of the Proposed Rule

The proposed rule would address the conflicts of interest that result from registered representatives being named beneficiaries of a customer or holding positions of trust on behalf of a customer for personal monetary gain.⁶ Specifically, the proposed rule would

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 89218 (July 2, 2020), 85 FR 41249 (July 9, 2020) (File No. SR-FINRA-2020-020) (“Notice”).

⁴ See letter from Jeanette Wingler, Associate General Counsel, Office of General Counsel, FINRA, to Lourdes Gonzalez, Assistant Chief Counsel, Division of Trading and Markets, Commission, dated August 18, 2020.

⁵ See letter from Jeanette Wingler, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated October 6, 2020 (“FINRA Letter”). The FINRA Letter is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA, on the Commission’s website at <https://www.sec.gov/comments/sr-finra-2020-020/srfinra2020-020.htm>, and at the Commission’s Public Reference Room.

⁶ Notice at 41250.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

¹⁴ 17 CFR 200.30-3(a)(12).

require a registered representative to decline being named a beneficiary of a customer's estate or receiving a bequest from a customer's estate unless she notifies her employer in writing and receives written approval from the broker-dealer prior to being named a beneficiary of a customer's estate or receiving a bequest from a customer's estate.⁷ The proposed rule would also require a registered representative to decline being named as an executor or trustee or holding a power of attorney or similar position for or on behalf of a customer unless: (1) She provides written notice to her employer and receives written approval from the broker-dealer prior to acting in such capacity or receiving any fees, assets or other benefit in relation to acting in such capacity; and (2) she does not derive financial gain from acting in such capacity other than from fees or other charges that are reasonable and customary for acting in such capacity.⁸ The proposed rule would not apply where the customer⁹ is a member of the registered representative's immediate family.¹⁰

Registered Representative's Knowledge

The proposed rule would require that a registered representative have knowledge that she was named as a beneficiary or to a position of trust. A registered representative who was named to such a capacity without her knowledge generally would not violate the new rule.¹¹ Similarly, a registered

representative cannot evade the rule by instructing or asking a customer to name another person, such as the registered representative's spouse or child, to be a beneficiary of the customer's estate or to receive a bequest from the customer's estate.¹²

Broker-Dealer Notice and Approval

As stated above, the proposed rule would require a registered representative to notify, and receive prior approval from, her employer if she is named as a beneficiary or to a position of trust by her customer. Similarly, if a registered representative was named as a beneficiary or to a position of trust prior to the registered representative's association with the FINRA member broker-dealer, the proposed rule would require her, within 30 calendar days of becoming associated, to provide notice to and receive approval from, the broker-dealer to maintain the beneficiary status or position of trust.¹³ Furthermore, if a registered representative was named as a beneficiary or to a position of trust prior to the registered representative establishing a customer relationship with the individual, the registered representative and her broker-dealer employer would need to comply with the proposed new rule.¹⁴

The proposed rule does not prescribe any specific form of written notice but instead would permit a FINRA member broker-dealer to specify the required form of written notice for its registered representatives.¹⁵ Upon receipt of the written notice, the proposed rule would require the broker-dealer to: (1) Perform a reasonable assessment of the risks created by the registered representative's assuming such status or acting in such capacity, including, but not limited to, an evaluation of whether it would interfere with or otherwise compromise the registered representative's responsibilities to the customer; and (2) make a reasonable determination of whether to approve the registered representative's assuming such status or acting in such capacity, to approve it subject to specific conditions or limitations, or to disapprove it.¹⁶

If a FINRA member broker-dealer approves a registered representative assuming such status or acting in such capacity, the broker-dealer assumes supervisory responsibilities following

before she may assume such status or act in such capacity.

¹² Notice at 41252.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Notice at 41251.

¹⁶ *Id.*

approval.¹⁷ The proposed rule would require a member firm to establish and maintain written procedures to comply with the proposed new rule's requirements.¹⁸ The proposed rule also would require FINRA member broker-dealers to preserve the written notice and approval for at least three years after the date that the beneficiary status or position of trust has terminated or the bequest received or for at least three years, whichever is earlier, after the registered representative's association with the firm has terminated.¹⁹

Reasonable Assessment and Determination

The proposed rule would not prohibit a registered representative from being named a beneficiary of, or receiving a bequest from, a customer's estate. However, given the potential conflicts of interest such arrangements create, the proposed rule would require a FINRA member broker-dealer to reasonably assess the risks created by the registered representative's assuming such status or acting in such capacity, taking into consideration several factors, including, but not limited to: (1) Any potential conflicts of interest created by the registered representative being named a beneficiary or holding a position of trust; (2) the length and type of relationship between the customer and registered representative; (3) the customer's age; (4) the size of any bequest relative to the size of a customer's estate; (5) whether the registered representative has received other bequests or been named a beneficiary on other customer accounts; (6) whether, based on the facts and circumstances observed in the broker-dealer's business relationship with the customer, the customer has a mental or physical impairment that renders the customer unable to protect his or her

¹⁷ *Id.* If the FINRA member broker-dealer imposes conditions or limitations on its approval, the broker-dealer would be required to reasonably supervise the registered representative's compliance with the conditions or limitations. Moreover, where a registered representative is knowingly named a beneficiary, executor, or trustee or holds a power of attorney or a similar position for or on behalf of a customer account at the firm with which the registered representative is associated and the firm has approved the registered representative assuming such status or position, the firm must supervise the account in accordance with FINRA Rule 3110, including the longstanding obligation to follow-up on "red flags" indicating problematic activity. If a registered representative is approved to hold (and receive compensation for) a position of trust for a customer away from the FINRA member broker-dealer, the requirements of both the proposed rule and FINRA Rule 3270 regarding outside business activities would apply to the activities away from the firm. Notice at 41251.

¹⁸ *Id.*

¹⁹ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ For purposes of the proposed rule, the word "customer" would include any customer that has, or in the previous six months had, a securities account assigned to the registered representative at any FINRA member broker-dealer. Notice at 41252.

¹⁰ Notice at 41250. FINRA stated that the risk that a registered representative misused her role in the broker-customer relationship to be named a beneficiary or hold a position of trust is reduced when the customer is an immediate family member. See Notice at 41255. Over the past five years, FINRA stated that more than 85% of such requests by registered representatives have been on behalf of immediate family members. See Notice at 41253.

For purposes of the proposed rule, the term "immediate family" would mean parents, grandparents, mother-in-law or father-in-law, spouse or domestic partner, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person who resides in the same household as the registered representative who the registered representative financially supports, directly or indirectly, to a material extent. The term would also include step and adoptive relationships. Notice at 41250.

¹¹ Notice at 41251. As described further below, the registered representative with knowledge that she has been named to a position of trust or as a beneficiary to the customer's estate would need to provide notice to her member broker-dealer and receive approval from the member broker-dealer

own interests; (7) any indicia of improper activity or conduct with respect to the customer or the customer's account; and (8) any indicia of customer vulnerability or undue influence of the registered representative over the customer.²⁰

Timing

The proposed rule would apply if the registered representative is named a beneficiary or receives a bequest from a customer's estate after the effective date of the proposed new rule. For the non-beneficiary positions, the proposed rule would apply to positions that the registered representative was named to prior to the rule becoming effective only if the initiation of the customer relationship between the registered representative and the customer occurred after the effective date of the proposed rule.²¹

III. Discussion and Commission Findings

After careful review of the proposed rule, the comment letters, and FINRA's responses to the comments, the Commission finds that the proposed rule is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.²² Specifically, the Commission finds that the proposed rule is consistent with Section 15A(b)(6) of the Exchange Act,²³ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA's proposed rule aims to address concerns related to conflicts of interest created when registered representatives are named beneficiaries of a customer or hold positions of trust on behalf of a customer for personal monetary gain. FINRA stated that these conflicts of interest can take many forms and include a registered representative benefiting from the use of undue and inappropriate influence over important financial decisions to the detriment of a

customer.²⁴ The proposed rule would establish a uniform, national standard that is designed to protect investors from registered representatives who might exploit their relationships with their customers. The proposed rule would also establish a consistent approach to addressing these concerns across FINRA member broker-dealers' policies and procedures.²⁵ The Commission believes that the proposed rule requiring a registered representative to notify her employer prior to entering into such relationships with her customers, as well as requiring the firm to approve and supervise the proposed relationship after reasonable analysis of the risks will lead to greater oversight of registered representatives' activities, thereby reducing the potential risk of customer harm.²⁶

Two commenters support the proposed rule, believing it will serve to protect investors and mitigate potential conflicts of interests that can arise from having a customer name their registered representative as a beneficiary or to a position of trust.²⁷ One commenter stated that the proposed rule would help promote trust and confidence in the securities industry by ensuring that broker-dealers establish appropriate policies that will protect their senior and vulnerable customers.²⁸ The second commenter viewed the proposed rule as "an important and necessary step in fighting a particular form of abuse—where registered representatives take advantage of customers to have themselves installed as the customers' beneficiaries or trustees over the clients' assets."²⁹ However, the latter commenter also stated that further action was necessary. Specifically, the commenter recommended that FINRA adopt a uniform written notice rather than permitting broker-dealers specify

the required form of written notice for their respective registered representatives. The commenter believes that this amendment to the proposed rule would add yet another procedural safeguard that would help protect investors.³⁰

As described in the Notice, FINRA considered adopting a uniform written notice for its member broker-dealers.³¹ FINRA decided, however, that it was important to provide its members with a level of flexibility that a uniform written notice could not give them.³² Because the proposed rule would require each broker-dealer to perform a reasonable assessment and make a determination of whether to approve or disapprove a proposed arrangement, FINRA believes it is important for each firm to decide for itself the type and amount of information needed to perform the required assessment and make the related determination.³³ Accordingly, FINRA declined to amend the proposed rule in response to the comment.

The Commission recognizes the possible costs to customers associated with the proposed rule (for example, less customer choice in identifying a person to serve in a capacity of trust).³⁴ The Commission also believes, however, that a customer may benefit if a registered representative's status as trustee or beneficiary are disclosed to the firm and the risks of undue influence are sufficiently mitigated. Moreover, the proposed rule does not prescribe any specific form of written notice, giving firms the flexibility to specify the required form of written notice for its registered representatives based on a firm's specific business model and resources.³⁵ Accordingly, the Commission believes that the proposed rule strikes a balance by allowing a firm to reasonably assess the risks to customers associated with those conflicts of interest and permitting a registered representative to be named a beneficiary of a customer or hold a position of trust on behalf of a customer

²⁴ See Notice at 41250.

²⁵ The inconsistent approach among firms currently allows registered representatives to circumvent firms' policies and procedures, for example by resigning as a customer's registered representative, transferring the customer to another registered representative, or having the customer name the registered representative's spouse or child as the customer's beneficiary. See *id.* The proposed rule change is intended to cover these situations. See Notice at 41257.

²⁶ See letter from Samuel B. Edwards, President, Public Investors Advocate Bar Association, dated July 30, 2002 ("PIABA Letter") (finding meaningful benefit in a firm having more information available when supervising transactions in an account for which the firm is on notice the registered representative has a financial interest).

²⁷ See letter from Lisa Bleier, Managing Director, Securities Industry and Financial Markets Association ("SIFMA"), to Matthew DeLesDernier, Assistant Secretary, Commission, dated July 30, 2020 ("SIFMA Letter") and PIABA Letter.

²⁸ SIFMA Letter.

²⁹ PIABA Letter.

³⁰ *Id.*

³¹ See FINRA Letter (stating that regardless of its format, the notice should provide a broker-dealer sufficient information about the proposed relationship upon which to perform the required assessment and make the related determination); see also Notice at 41256.

³² See FINRA Letter; see also Notice at 41256.

³³ *Id.*

³⁴ See Notice at 41253 and FINRA Letter. There may also be costs to a customer to amend estate or other legal documents if the broker-dealer disapproves a registered representative being named a beneficiary, executor, or trustee or holding a power of attorney or a similar position for or on behalf of the customer.

³⁵ See Notice at 41251.

²⁰ Notice at 41251. FINRA stated that while a listed factor may not be applicable to a particular situation, the factors that a FINRA member broker-dealer considers should allow for a reasonable assessment of the associated risks so that the firm can make a reasonable determination of whether to approve the registered representative's assuming a status or acting in a capacity. *Id.*

²¹ Notice at 41252.

²² In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78o-3(b)(6).

for personal monetary gain if the firm reasonably determines the risks are acceptable. For these reasons, the Commission finds that the proposed rule will provide additional investor protections, especially for broker-dealers who do not currently have policies and procedures in place to address these scenarios, or have such policies and procedures that are either less restrictive than the proposed rule change or are applied inconsistently.³⁶

One commenter stated that it applauded FINRA for recognizing the need for controls in this area, but it maintained that registered persons should be unconditionally prohibited from being named as beneficiaries or appointed to positions of trust by any customer other than immediate family members.³⁷ In response, FINRA stated that it considered an outright prohibition of some or all positions of trust, but declined to adopt a prohibition, believing that some positions of trust may benefit customers³⁸ and the proposed rule would establish safeguards to protect investors, including: Requiring disclosure of the proposed relationship to the registered representative's employer broker-dealer, requiring the firm to assess the risks of the proposed arrangement, requiring the firm to affirmatively approve or deny the proposed arrangement, and reaffirming the firm's obligation to maintain records regarding, and supervise, the arrangement.³⁹

The Commission shares the commenter's concern that certain conflicts of interest create high-pressure

situations for registered representatives to engage in conduct contrary to the best interest of their customer.⁴⁰ As stated above, however, the Commission also sees value for customers to be able to appoint their registered representatives to a position of trust if the risks can be properly mitigated. The Commission believes the proposed rule would help mitigate the risks by requiring a broker-dealer to reasonably assess a proposed relationship based on detailed disclosure of the relationship by the registered representative, and, based on its assessment, whether to approve or disapprove the proposed relationship, or approve the arrangement subject to additional conditions or limitations.⁴¹

A commenter also asked FINRA to apply the proposed rule to preexisting beneficiary designations or designated positions of trust. In particular, the commenter believes that more investors should benefit from the proposed rule's protections.⁴² In response, FINRA stated that many of its member broker-dealers already have policies and procedures prohibiting or imposing limitations on being named as a beneficiary or to a position of trust when there is not a familial relationship. Accordingly, many preexisting beneficiary designations or positions of trust have already been addressed by their respective firms.⁴³ Moreover, FINRA believes that it would be challenging and time-consuming for broker-dealers to conduct a full-scale retroactive review of all accounts across an organization to determine whether the arrangements currently in place are consistent with the proposed requirements.⁴⁴ In addition, customers may have relied on a broker-dealer's approval of arrangements currently in place in drafting estate or other legal documents, handling their assets or performing some duties (e.g., a registered representative may have been named a customer's trustee in reliance

on the firm's prior approval). As such, FINRA states that retroactively applying the obligations of the proposed rule would further compound the challenge for broker-dealers, registered representatives and customers.⁴⁵

The Commission acknowledges that if applied retroactively the proposed rule's protections could benefit more customers who designated their registered representative a beneficiary or to hold a position of trust. However, the Commission also acknowledges the resources (financial and time) firms would expend to retroactively apply the proposed rule to existing customers, as well as the potential disruption to customers who have relied on existing arrangements with their registered representatives. Accordingly, the Commission believes that it is appropriate only to apply the rule prospectively. To the extent a registered representative was named by a customer as a beneficiary or to a position of trust prior to the effective date of the proposed rule, if that registered representative takes a job with, and moves the customer's account to, a new broker-dealer following the effective date, she and her new firm would be subject to the proposed rule's obligations.

As stated above, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act.⁴⁶ The Commission believes that establishing a uniform, baseline standard will help broker-dealers protect their customers from those registered representatives who might exploit their relationships with their customers. Specifically, requiring a registered representative to notify her employer prior to being named a beneficiary of a customer or holding positions of trust on behalf of a customer for personal monetary gain, as well as requiring the firm to approve and supervise the proposed relationship after reasonable analysis of the risks, will lead to greater oversight of registered representatives' activities, thereby helping to mitigate the potential risk of customer harm.⁴⁷

IV. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act ⁴⁸

³⁶ See Notice at 41252.

³⁷ See letter from Christopher Gerold, President, North American Securities Administrators Association, Inc., to J. Matthew DeLesDernier, Assistant Secretary, Commission, dated July 30, 2020 ("NASAA Letter").

³⁸ FINRA stated that it has observed that investment professionals, including registered persons, often develop close and trusted relationships with their customers, which in some instances have resulted in the investment professional being named the customer's beneficiary. However, being a customer's beneficiary may present significant conflicts of interest. FINRA would not expect a registered person's assertion that a customer has no viable alternative person to be named a beneficiary or to serve in a position of trust to be dispositive in the member firm's assessment. See Notice at 41251–2. However, according to FINRA, there may be circumstances where the registered representative represents a better alternative to the customer than other available options. Assuming a broker-dealer has done a reasonable assessment of the potential conflicts of interest before making a reasonable determination to approve the arrangement, a registered representative with financial acumen and knowledge of a customer's financial circumstances may be better positioned to serve in a position of trust than other alternatives available to the customer. See Notice at 41253, 41255–6.

³⁹ See FINRA Letter; see also Notice at 41254.

⁴⁰ See NASAA Letter.

⁴¹ Proposed Rule 3241(b). The Commission notes that the proposed rule represents the minimum a broker-dealer must do when a registered representative is named a beneficiary of a customer or holds a position of trust on behalf of a customer for personal monetary gain. The broker-dealer may choose to go beyond the proposed rule by: (1) Requiring notification and approval when a registered person is named a beneficiary or to a position of trust for immediate family members; or (2) completely prohibiting the practice. See FINRA Letter.

⁴² See NASAA Letter.

⁴³ See FINRA Letter and Notice at 41257.

⁴⁴ See FINRA Letter (citing a letter to FINRA commenting on Regulatory Notice 19–36 (November 2019) from the Securities Industry and Financial Markets Association, a United States industry trade group representing securities firms, banks, and asset management); see also Notice at 41257.

⁴⁵ See FINRA Letter.

⁴⁶ 15 U.S.C. 78o–3(b)(6).

⁴⁷ Further, FINRA stated that it would assess registered representatives' and broker-dealers' conduct under the rule to determine its effectiveness in addressing potential conflicts of interest and evaluate whether additional rulemaking or other action is appropriate. See Notice at 41254.

⁴⁸ 15 U.S.C. 78s(b)(2).

that the proposed rule (SR-FINRA-2020-020) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-22636 Filed 10-13-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90103; File No. SR-CBOE-2020-089]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fees Schedule With Respect to Its Strategy Fee Cap

October 7, 2020.

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 September 30, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Fees Schedule with respect to its strategy fee cap. 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 proposes to amend its Fees Schedule in connection with its strategy order fee cap, effective September 30, 2020.

Effective September 1, 2020, the Exchange amended Footnote 13 to provide that market-maker, Clearing Trading Permit Holder, JBO participant, broker-dealer and non-Trading Permit Holder market-maker transaction fees are capped at \$0.00 for all merger, short stock interest, reversal, conversion and jelly roll strategies executed in open outcry on the same trading day in the same option class across all symbols.³ Essentially, that rule change removed three previous strategy fee cap amounts, and, instead, adopted a \$0.00 cap for strategies executed in open outcry in all classes (*i.e.*, all strategies transacted on the trading floor will be free). The Exchange proposes to explicitly clarify in Footnote 13 that in order for a strategy transaction to be eligible for the fee cap (*i.e.*, not be assessed transaction fees), TPHs must mark such strategy orders with a code approved by the Exchange identifying the orders as eligible for the fee cap.⁴ The Exchange also proposes to provide that strategy orders executed during September 2020 will be eligible for the fee cap notwithstanding not being marked, provided that a TPH submits a rebate request with supporting documentation for such orders to the Exchange within 3 business days of September 30, 2020 (*i.e.*, October 5, 2020).

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.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes making it clear and explicit in its fees schedule that TPHs must mark strategy orders with a code approved by the Exchange in order to receive the fee cap is reasonable as it reduces the risk of orders not receiving the current fee cap that would otherwise be entitled to it by ensuring TPHs are aware of the marking requirement. Additionally, the clarification provides transparency in the fees schedule and alleviates potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system and protecting investors and the public interest. The Exchange also believes the marking requirement is equitable and not unfairly discriminatory as it applies uniformly to all TPHs.

The Exchange also believes it’s reasonable to provide TPHs the option of submitting a written rebate request to qualify strategy orders executed in September 2020 for the fee cap as it provides TPHs who did not know to mark their orders an opportunity to receive the fee cap for strategies that would otherwise qualify. Particularly, the Exchange notes it operates in highly competitive market. To respond to this competitive marketplace, the Exchange adopted a fee cap of \$0.00 for all strategy orders, effective September 1, 2020, which was designed to incentivize Trading Permit Holders to increase their strategy orders submitted to and executed on the Exchange’s trading floor, which can benefit all markets

³ See Securities Exchange Act Release No. 89831 (September 11, 2020) 85 FR 58096 (September 17, 2020) (SR-CBOE-2020-084).

⁴ The Exchange notes that its billing system is unable to recognize that an order is a strategy order absent such order being explicitly marked as a strategy order.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(4).

⁴⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.