

from the Treasury Policy and update references in the Treasury Policy and the LRMF accordingly. These changes do not amend ICC's methodology and would apply uniformly across all market participants. ICC does not believe these amendments would affect the costs of clearing or the ability of market participants to access clearing. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-ICC-2022-013 on the subject line.

*Paper Comments*

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-ICC-2022-013. 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>.

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-ICC-2022-013 and should be submitted on or before December 1, 2022.

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

**J. Matthew DeLesDernier,**  
*Deputy Secretary.*

[FR Doc. 2022-24505 Filed 11-9-22; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-96239; File No. SR-CBOE-2022-053]**

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

November 4, 2022.

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 October 24, 2022, 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), provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), 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

<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>14</sup> 17 CFR 200.30-3(a)(12).

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 [November 7, 2022] May 8, 2023 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/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

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 November 7, 2022 or the date on which the pilot program is approved on

a permanent basis.<sup>6</sup> The purpose of this rule change filing is to extend the pilot program through the earlier of May 8, 2023 or the date on which the pilot program is approved on a permanent basis. This filing simply seeks to extend the operation of the pilot program and does not propose any substantive changes to the pilot program.

Under Rule 4.21(b), *Series of FLEX Options* (regarding terms of a FLEX Option),<sup>7</sup> a FLEX Option may expire on any business day (specified to day, month and year) no more than 15 years from the date on which a FLEX Trader submits a FLEX Order to the System.<sup>8</sup> FLEX Index Options are settled in U.S. dollars, and may be a.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported opening prices of the component

<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); 90279 (October 28, 2020), 85 FR 69667 (November 3, 2020) (SR-CBOE-2020-103); 91782 (May 5, 2021), 86 FR 25915 (May 11, 2021) (SR-CBOE-2021-031); 93500 (November 1, 2021), 86 FR 61340 (November 5, 2021) (SR-CBOE-2021-064) and 94812 (April 28, 2022), 87 FR 26381 (May 4, 2022) (SR-CBOE-2022-020) (extending the pilot program through the earlier of November 7, 2022 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 FLEX Index Options, the Exchange also established a pilot program eliminating the minimum value size requirements for all FLEX Options. See Approval Order, *supra* note 5. The pilot program eliminating the minimum value size requirements was extended twice pursuant to the same rule filings that extended the permissible exercise settlement values (for the same extended periods) and was approved on a permanent basis in a separate rule change filing. See *id.*; and Securities Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR-CBOE-2012-040) (Order Granting Approval of Proposed Rule Change Related to Permanent Approval of Its Pilot on FLEX Minimum Value Sizes).

<sup>7</sup> In 2019, prior Rule 24A.4.01, covering the pilot program, was relocated to current Rule 4.21(b)(5). See Securities Exchange Act Release No. 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR-CBOE-2019-084).

<sup>8</sup> Except an Asian-settled or Cliquet-settled FLEX Option series, which must have an expiration date that is a business day but may only expire 350 to 371 days (which is approximately 50 to 53 calendar weeks) from the date on which a FLEX Trader submits a FLEX Order to the System.

securities) or 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).<sup>9</sup> Specifically, a FLEX Index Option that expires 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.<sup>10</sup> However, under the exercise settlement values pilot, this restriction on p.m.-settled FLEX Index Options was eliminated.<sup>11</sup> As stated, the exercise settlement values pilot is currently set to expire on the earlier of November 7, 2022 or the date on which the pilot program is approved on a permanent basis.

Cboe Options is proposing to extend the pilot program through the earlier of May 8, 2023 or the date on which the pilot program is approved on a permanent basis. Cboe Options believes the pilot program has been successful and well received by its Trading Permit Holders and the investing public for the period that it has been in operation as a pilot. In support of the proposed extension of the pilot program, and as required by the pilot program's Approval Order, the Exchange has submitted to the Commission pilot program reports regarding the pilot, which detail the Exchange's experience with the program. Specifically, the Exchange provided the Commission with annual reports analyzing volume and open interest for each broad-based FLEX Index Options class overlying a third Friday-of-the-month expiration day, p.m.-settled FLEX Index Options series.<sup>12</sup> The annual reports also

<sup>9</sup> See Rule 4.21(b)(5)(B); see also Securities Exchange Act Release No. 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR-CBOE-2019-084). The rule change removed the provision regarding the exercise settlement value of FLEX Index Options on the NYSE Composite Index, as the Exchange no longer lists options on that index for trading, and included the provisions regarding how the exercise settlement value is determined for each settlement type, as how the exercise settlement value is determined is dependent on the settlement type.

<sup>10</sup> For example, notwithstanding the pilot, the exercise settlement value of a FLEX Index Option that expires on the Tuesday before the third Friday-of-the-month could be a.m. or p.m. settled. However, the exercise settlement value of a FLEX Index Option that expires on the Wednesday before the third Friday-of-the-month could only be a.m. settled.

<sup>11</sup> No change was necessary or requested with respect to FLEX Equity Options. Regardless of the expiration date, FLEX Equity Options are settled by physical delivery of the underlying.

<sup>12</sup> The annual reports also contained certain pilot period and pre-pilot period analyses of volume and open interest for third Friday-of-the-month expiration days, a.m.-settled FLEX Index series and third Friday-of-the-month expiration day Non-FLEX Index series overlying the same index as a third

<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).

contained information and analysis of FLEX Index Options trading patterns. The Exchange also provided the Commission, on a periodic basis, interim reports of volume and open interest.

The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement (as discussed below).

In that regard, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, Cboe Options continues to believe that the restrictions on exercise settlement values are no longer necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations.<sup>13</sup>

Friday-of-the-month expiration day, p.m.-settled FLEX Index option.

<sup>13</sup> In further support, the Exchange also notes that the p.m. settlements are already permitted for FLEX Index Options on any other business day except on, or within two business days of, the third Friday-of-the-month. The Exchange is not aware of any market disruptions or problems caused by the use of these settlement methodologies on these expiration dates (or on the expiration dates addressed under the pilot program). The Exchange is also not aware of any market disruptions or problems caused by the use of customized options in the over-the-counter ("OTC") markets that expire on or near the third Friday-of-the-month and are p.m. settled. In addition, the Exchange believes the reasons for limiting expirations to a.m. settlement, which is something the SEC has imposed since the early 1990s for Non-FLEX Options, revolved around a concern about expiration pressure on the New York Stock Exchange ("NYSE") at the close that are no longer relevant in today's market. Today, the Exchange believes stock exchanges are able to better handle volume. There are multiple primary listing and unlisted trading privilege ("UTP") markets, and trading is dispersed among several exchanges and alternative trading systems. In addition, the Exchange believes that surveillance techniques are much more robust and automated. In the early 1990s, it was also thought by some that opening procedures allow more time to attract contra-side interest to reduce imbalances. The Exchange believes, however, that today, order flow is predominantly electronic and the ability to smooth out openings and closes is greatly reduced (e.g., market-on-close procedures work just as well as openings). Also, other markets, such as the NASDAQ Stock Exchange, do not have the same type of pre-opening imbalance disseminations as NYSE, so many stocks are not subject to the same procedures on the third Friday-of-the-month. In addition, the Exchange believes that NYSE has reduced the required time a specialist has to wait

To the contrary, Cboe Options believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability.

The Exchange also notes that certain position limit, aggregation and exercise limit requirements continue to apply to FLEX Index Options in accordance with Rules 8.35, *Position Limits for FLEX Options*, 8.42(g) *Exercise Limits* (in connection with FLEX Options) and 8.43(j), *Reports Related to Position Limits* (in connection with FLEX Options). Additionally, all FLEX Options remain subject to the general position reporting requirements in Rule 8.43(a).<sup>14</sup> Moreover, the Exchange and its Trading Permit Holder organizations each have the authority, pursuant to Rule 10.9, *Margin Required is Minimum*, to impose additional margin as deemed advisable. Cboe Options continues to believe these existing safeguards serve sufficiently to help monitor open interest in FLEX Option series and significantly reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement.

Cboe Options is also cognizant of the OTC market, in which similar restrictions on exercise settlement

after disseminating a pre-opening indication. So, in this respect, the Exchange believes there is less time to react in the opening than in the close. Moreover, to the extent there may be a risk of adverse market effects attributable to p.m. settled options that would otherwise be traded in a non-transparent fashion in the OTC market, the Exchange continues to believe that such risk would be lessened by making these customized options eligible for trading in an exchange environment because of the added transparency, price discovery, liquidity, and financial stability available.

<sup>14</sup> Rule 8.43(a) provides that "[i]n a manner and form prescribed by the Exchange, each Trading Permit Holder shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. The report shall indicate for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered." For purposes of Rule 8.43, the term "customer" in respect of any Trading Permit Holder includes "the Trading Permit Holder, any general or special partner of the Trading Permit Holder, any officer or director of the Trading Permit Holder, or any participant, as such, in any joint, group or syndicate account with the Trading Permit Holder or with any partner, officer or director thereof." Rule 8.43(d).

values do not apply. Cboe Options continues to believe that the pilot program is appropriate and reasonable and provides market participants with additional flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. Cboe Options continues to believe that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions, increased market transparency, and heightened counterparty creditworthiness due to the role of the Options Clearing Corporation as issuer and guarantor of FLEX Options.

If, in the future, the Exchange proposes an additional extension of the pilot program, or should the Exchange propose to make the pilot program permanent, the Exchange will submit, along with any filing proposing such amendments to the pilot program, an annual report (addressing the same areas referenced above and consistent with the pilot program's Approval Order) to the Commission at least two months prior to the expiration date of the program. The Exchange is required to submit an annual report at least yearly. Currently, the Exchange provides annual reports that cover the period from August 1st to July 31st of the applicable year. The Exchange will continue to provide reports covering this period annually and any additional report at least two months prior to the expiration date of the program covering the full prior year in the case that the Exchange is requesting permanent approval of the program.<sup>15</sup> The Exchange will also continue, on a periodic basis, to submit interim reports of volume and open interest consistent with the terms of the exercise settlement values pilot program as described in the pilot program's Approval Order.<sup>16</sup> Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the pilot program is consistent with the Exchange Act. The Exchange is in the process of making public on its website all data and analyses previously

<sup>15</sup> For example, if the Exchange plans on submitting a proposal in April 2023 requesting permanent approval of the pilot program expiring May 8, 2023, the Exchange would have to submit an annual report no later than March 8, 2023 covering the full prior year.

<sup>16</sup> The Exchange is required to submit the interim reports on a quarterly basis within 15 days of the end of each calendar quarter that the pilot is in effect.

submitted to the Commission under the pilot program, and will make public any data and analyses it submits to the Commission under the pilot program in the future.<sup>17</sup>

As noted in the pilot program's Approval Order, any positions established under the pilot program would not be impacted by the expiration of the pilot program.<sup>18</sup>

## 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.<sup>19</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>20</sup> 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 the Section 6(b)(5)<sup>21</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension of the pilot program, which permits an additional exercise settlement value, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange believes that it has not experienced any adverse effects from the operation of the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near

Non-FLEX expirations and are p.m.-settled. The Exchange also believes that the extension of the exercise settlement values pilot does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise questions with the Commission, the Exchange believes that, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, market impact and investor protection concerns will not be raised by this rule change. The Exchange also believes that the proposed rule change would continue to provide Trading Permit Holders and investors with additional opportunities to trade customized options in an exchange environment (which offers the added benefits of transparency, price discovery, liquidity, and financial stability as compared to the over-the-counter market) and subject to exchange-based rules, and investors would benefit as a result.

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

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-Flex expirations and use a p.m. settlement. Cboe Options believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability. Therefore, the Exchange does not believe that the proposed rule change will impose any burden on competition.

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

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

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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>22</sup> and Rule 19b-4(f)(6) thereunder.<sup>23</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>24</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>25</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 so that the proposal may become operative immediately upon filing. The Exchange states that such waiver will allow the Exchange to extend the pilot program and maintain the status quo, thereby reducing market disruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>26</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

<sup>17</sup> Available at <https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-flex-pm-data>.

<sup>18</sup> For example, a position in a p.m.-settled FLEX Index Option series that expires on the third Friday-of-the-month in January 2020 could be established during the exercise settlement values pilot. If the pilot program were not extended (or made permanent), then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction. See Approval Order at footnote 3, *supra* note 5.

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> *Id.*

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</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>24</sup> 17 CFR 240.19b-4(f)(6).

<sup>25</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>26</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-CBOE-2022-053 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-CBOE-2022-053. 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-2022-053, and should be submitted on or before December 1, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022-24506 Filed 11-9-22; 8:45 am]

**BILLING CODE 8011-01-P**

## SURFACE TRANSPORTATION BOARD

[Docket No. FD 36634]

### **Norfolk Southern Railway Company, Tennessee Railway Company, and Tennessee, Alabama & Georgia Railway Company—Corporate Family Exemption**

Norfolk Southern Railway Company (NSR), Tennessee Railway Company (TRC), and Tennessee, Alabama & Georgia Railway Company (TAG) (collectively, Applicants) have jointly filed a verified notice of exemption for a corporate family transaction under 49 CFR 1180.2(d)(3).

According to the verified notice, both TRC and TAG are wholly owned, direct subsidiaries of NSR.<sup>1</sup> Applicants state that NSR, together with its rail subsidiaries, operates approximately 19,300 route miles in 22 states and the District of Columbia. Under the proposed transaction, TRC and TAG will be merged with and into NSR. Applicants state that the purpose of the transaction is to improve operating and administrative efficiencies within the corporate family. According to Applicants, the proposed transaction will not result in any significant changes in rail operations over the properties owned by TRC and TAG.

The verified notice states that the agreement for the proposed transaction will not involve restrictions on interchange with railroads outside the corporate family.

Although Applicants state in their verified notice that the proposed transaction is scheduled to be consummated on or after November 11, 2022, this transaction may not be consummated until November 24, 2022

(30 days after the verified notice was filed).<sup>2</sup>

The verified notice states that the proposed transaction is within Applicants' corporate family and will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(3).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Accordingly, this transaction is subject to the standard employee protective conditions in *New York Dock Railway—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd New York Dock Railway v. United States*, 609 F.2d 83 (2d Cir. 1979).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 17, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36634, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Applicants' representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave, NW, Suite 300, Washington, DC 20037.

According to Applicants, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and historic preservation reporting under 49 CFR 1105.8(b).

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

Decided: November 7, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

**Jeffrey Herzig,**  
*Clearance Clerk.*

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<sup>27</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> The verified notice states TRC is a Class III railroad that operates over approximately 0.95 miles of rail line in Tennessee, and TAG is a Class III railroad that owns and/or operates over approximately 19.7 miles of rail line in Tennessee, Alabama, and Georgia.

<sup>2</sup> Applicants initially submitted their verified notice of exemption on October 11, 2022, but supplemented it on October 25, 2022. Therefore, October 25, 2022, is the filing date.