

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91211; File No. SR-CBOE-2021-011)

February 25, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend an Exchange Rule Relating to Inactive Nominees

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 February 19, 2021, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the 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. (the “Exchange” or “Cboe Options”) proposes to amend an Exchange Rule relating to Inactive Nominees. The text of the proposed rule change is provided below.

(additions are underlined; deletions are [bracketed])

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Rules of Cboe Exchange, Inc.

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).

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Rule 3.9. Responsible Persons and Nominees

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(e) A TPH organization may designate one or more inactive nominees. An “inactive nominee” of a TPH organization is an individual who is eligible to become an effective nominee of that organization with respect to any Floor Broker Trading Permit or Market-Maker Floor Trading Permit which the organization holds. The following requirements shall apply to inactive nominees:

(1) to become an inactive nominee of a TPH organization, an individual must be approved to be a Trading Permit Holder and become an effective nominee of the TPH organization, with authorized trading functions, within 90 days of the approval to be a Trading Permit Holder;

(2) an individual may be an inactive nominee of only one TPH organization; and

(3) an inactive nominee shall have no rights or privileges of a Trading Permit Holder and shall have no right of access to the trading floor of the Exchange to trade as a Trading Permit Holder, unless and until the inactive nominee becomes an effective Trading Permit Holder pursuant to Rule 3.11.[]; and

(4) if at any time an individual remains an inactive nominee for 9 consecutive months, the individual’s eligibility to be a Trading Permit Holder will be terminated and the individual must reapply to be a Trading Permit Holder in order to again become eligible for inactive nominee status.]

* * * * *

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 a certain requirement related to inactive nominees. Specifically, the Exchange proposes to amend Cboe Options Rule 3.9 (Responsible Persons and Nominees) with respect to inactive nominee status. By way of background, an inactive nominee is an individual who is eligible to become an effective nominee of that organization with respect to any Floor Broker Trading Permit or Market-Maker Floor Trading Permit which the organization holds.⁵ An inactive nominee shall have no rights or privileges of a TPH and shall have no right of access to the trading floor of the Exchange to trade as a TPH, unless and until the inactive nominee becomes an effective TPH.⁶ To become an inactive nominee of a TPH organization, an individual must be approved to be a TPH and become an effective nominee of the TPH organization, with authorized trading functions, within 90 days of the approval to be a TPH.⁷ Additionally, if at any time an individual remains an inactive nominee for 9 consecutive months, the individual's eligibility to be a TPH will be terminated and the

⁵ See Cboe Rule 3.9(e).

⁶ See Cboe Rule 3.9(e)(3).

⁷ See Cboe Rule 3.9(e)(1).

individual must reapply to be a TPH in order to again become eligible for inactive nominee status.⁸

The Exchange proposes to eliminate Rule 3.9(e)(4) which provides that if an individual remains an inactive nominee for 9 consecutive months, the individual's eligibility to be a TPH will be terminated and the individual must reapply to be a TPH in order to again become eligible for inactive nominee status. Particularly, the Exchange doesn't believe the 9-month inactive status deadline adds any meaningful value, but rather is an arbitrary administrative requirement that the Exchange believes is unnecessary and no longer wishes to (nor does it believe is required to) maintain. For example, if a TPH organization wishes to add a new inactive nominee, such organization can merely request that the Exchange make that individual "effective" in the System and then request that the nominee be switched to the inactive status in the system just moments later to restart the clock. The Exchange does not believe such a deadline is necessary and therefore does not wish to maintain it.

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.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent

⁸ See Cboe Rule 3.9(e)(4).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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)¹¹ 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 the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating an arbitrary and administrative process that the Exchange believes is outdated and an administrative burden to both TPHs and the Exchange. As noted above, the Exchange also does not believe such requirement adds meaningful value. The Exchange also does not believe it's required to maintain the requirement and notes that other exchanges similarly do not include such requirement. The Exchange notes that it is not substantively changing any rights or obligations of nominees of floor Trading Permits.

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

The Exchange 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. Particularly, the Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in

¹¹ Id.

furtherance of the purposes of the Act because the proposed change applies to all TPHs. The proposed rule change also does not address competitive issues, but rather, amends a requirement relating to nominees, particularly inactive nominees, to eliminate a practice that the Exchange no longer believes is necessary. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only affects TPHs of Cboe Options.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6)(iii) thereunder.¹⁵

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 e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2021-011 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-2021-011. This file number should be included on the subject line if e-mail 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

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 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 complied with this requirement.

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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. 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. All submissions should refer to File Number SR-CBOE-2021-011 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).