

in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated

transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.³ The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

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

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86432; File No. SR-CBOE-2019-030]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change To Adopt Rules To Permit Cboe Trading, Inc. To Become a Trading Permit Holder and an Inbound and Outbound Router of the Exchange

July 23, 2019.

I. Introduction

On June 25, 2019, the Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² a proposal to adopt rules related to outbound routing and limited inbound routing by an affiliated Trading Permit Holder, as well as seek approval from the Commission for that affiliate, Cboe Trading, Inc. ("Cboe Trading"), to become a Trading Permit Holder of the Exchange. The proposed rule change was published for comment in the **Federal Register** on July 3, 2019.³ The Commission did not receive any comment letters on the proposed rule change. This order provides accelerated approval of the proposed rule change.

II. Description of the Proposed Rule Change

As described in more detail in the Notice, the Exchange proposes to: (1) Seek approval from the Commission pursuant to Cboe Options Rule 3.32(b) for its affiliate, Cboe Trading, to become a Trading Permit Holder of the Exchange; (2) amend Rule 3.32(b) to conform it to the rules of the Exchange's affiliate options exchanges (Cboe EDGX Exchange, Inc. ("EDGX Options"), Cboe BZX Exchange, Inc. ("BZX Options") and Cboe C2 Exchange, Inc. ("C2")) (collectively, the "Affiliated Cboe Exchanges") and relocate it to Rule 3.11; (3) adopt Rule 3.12 to govern the Exchange's use of Cboe Trading as an outbound router; (4) adopt Rule 3.13 to govern the Exchange's receipt of inbound orders from the Affiliated Cboe Exchanges; and (5) amend Rule 6.14B to specify that it applies to the Exchange's non-affiliated routing brokers.⁴ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 86224 (June 27, 2019), 84 FR 31940 (July 3, 2019) ("Notice").

⁴ See *id.* at 31941. The Exchange proposes to amend Rule 6.14B to account for its use of affiliate

³ The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

Exchange notes that proposed Rules 3.11, 3.12 and 3.13 and current Rule 6.14B are substantively identical in all material respects to EDGX Options Rules 2.10, 2.11, 2.12, and 21.9(e), as well as C2 Rules 3.16, 3.17, 3.18 and 6.15(e).⁵

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to and from which it is routing orders, the Exchange has proposed limitations and conditions on Cboe Trading's affiliation with the Exchange as part of its proposal to use Cboe Trading as an outbound router and limited inbound router.

Limited Inbound Routing.

Specifically, as detailed above, the Exchange committed to the following limitations and conditions concerning limited inbound routing of transactions to Cboe Options from the Affiliated Cboe Exchanges:⁶

- The Exchange must enter into a plan pursuant to Rule 17d-2 under the Exchange Act with a non-affiliated self-regulatory organization ("SRO") and a regulatory services agreement with a non-affiliated SRO to perform regulatory responsibilities for Cboe Trading for unique Exchange rules.

- The regulatory services agreement must require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively, "Exceptions") in which Cboe Trading is identified as a participant that has potentially violated Exchange or Commission rules, and shall require that the non-affiliated SRO provide a report to the Exchange quantifying all such exception reports, alerts, complaints, trading errors, cancellations, investigations and enforcement matters on not less than a quarterly basis.

Cboe Trading as an outbound router, as proposed, by specifying that the rule applies to the Exchange's non-affiliated routing brokers. The Exchange also proposes to specify in the introductory rule text under Rule 6.14B that the conditions in the following subparagraphs apply to non-affiliated routing brokers, as well as update the rule heading accordingly. The Exchange noted in its filing that the proposed changes to Rule 6.14B do not substantively alter the conditions in that rule, which currently are applicable to non-affiliated routing brokers. *See id.* at 31943. The Exchange further noted that C2 Rule 6.15(e) and EDGX Options Rule 21.9(e) provide the same conditions for their non-affiliated routing brokers. *See id.* The Exchange is not proposing to treat its non-affiliated routing brokers as back-up routing brokers for its affiliate. *See id.* at note 6.

⁵ *See id.* at 31941.

⁶ *See Notice, supra* note 3 at 31942.

- The Exchange, on behalf of its parent company, Cboe Global Markets, must establish and maintain procedures and internal controls reasonably designed to ensure that Cboe Trading does not develop or implement changes to its systems on the basis of nonpublic information obtained as a result of its affiliation with the Exchange until such information is available generally to similarly situated Trading Permit Holders of the Exchange.

As proposed, if the Exchange complies with the above-listed conditions, then Cboe Trading would be permitted to operate as a limited inbound router for orders sent to Cboe Options from the Affiliated Cboe Exchanges, which would entail Cboe Trading acting as an outbound router on behalf of each Affiliated Cboe Exchange in accordance with their respective rules.

Outbound Routing. Further, the Exchange committed to the following limitations and conditions concerning outbound routing transactions:⁷

- Cboe Options will regulate the outbound router function of Cboe Trading as a facility (subject to Section 6 of the Act), and will, among other things, be responsible for filing with the Commission rule changes and fees relating to the Cboe Trading outbound router function and Cboe Trading will be subject to exchange nondiscrimination requirements.

- FINRA, an SRO unaffiliated with the Exchange or any of its affiliates, will carry out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Rule 17d-1 of the Act with the responsibility for examining Cboe Trading for compliance with applicable financial responsibility rules.

- A Trading Permit Holder's use of Cboe Trading to route orders to another trading center will be optional. Any Trading Permit Holder that does not want to use Cboe Trading may use other routers to route orders to other trading centers.

- Cboe Trading will not engage in any business other than (i) its outbound router function, (ii) its inbound router function as described in Rule 3.13, (iii) its usage of an error account in compliance with proposed Rule 3.12(a)(7) (regarding Cboe Trading's maintenance of an error account described below), and (iv) any other activities it may engage in as approved by the Commission.

- The Exchange will establish and maintain procedures and internal

controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including Cboe Trading), and any other entity, including any affiliate of Cboe Trading, and, if Cboe Trading or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of Cboe Trading or its affiliate that provides the other business activities and the routing services.

- The Exchange or Cboe Trading may cancel orders as either deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, Cboe Trading, or a routing destination. The Exchange or Cboe Trading will provide notice of the cancellation to affected Trading Permit Holders as soon as practicable.

- Proposed Rule 3.12(a)(7) provides that Cboe Trading will maintain an error account for the purpose of addressing positions that are the result of an execution or executions that are not clearly erroneous under Rule 6.25 and result from a technical or systems issue at Cboe Trading, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders ("Error Positions").⁸

- The books, records, premises, officers, agents, directors, and employees of Cboe Trading as a facility of the Exchange are deemed to be the books, records, premises, officers, agents, directors, and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Exchange Act. The books and records of Cboe Trading as a facility of the Exchange are subject at all times to inspection and copying by the Exchange and the Commission. Nothing in the Rules precludes officers, agents, directors, or employees of the Exchange from also serving as officers, agents, directors, and employees of Cboe Trading.

The Exchange proposed the above conditions for both inbound and outbound routing to protect the independence of the Exchange's regulatory responsibility with respect to Cboe Trading, as well as ensure that Cboe Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage.⁹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is

⁸ *See Notice, supra* note 3, at 31941-42.

⁹ *See Notice, supra* note 3, at 31943.

⁷ *See id.* at 31941.

consistent with the requirements of the Act,¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,¹² which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹³ which requires, among other things, that the rules of a national securities 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.¹⁴ To address these concerns,

¹⁰ 15 U.S.C. 78f(b).

¹¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(1).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62 and SR-NYSE-2008-60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10-

the Exchange has proposed the ongoing conditions summarized above, and also discussed further in the Notice, that will be applicable to Cboe Trading's routing activities in its capacity as a facility of the Exchange. The Commission believes that these conditions are designed to mitigate concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that a non-affiliated SRO's oversight of Cboe Trading, combined with a non-affiliated SRO's monitoring of Cboe Trading's compliance with applicable rules and regulations, will help ensure appropriate and independent regulatory oversight of Cboe Trading. The Commission also believes that the Exchange's proposal is designed to ensure that the Exchange will not permit Cboe Trading to have any information advantage on account of its affiliation with the Exchange.

Finally, Exchange Rule 3.32(b) provides that, without prior Commission approval, no Trading Permit Holder may be or become affiliated with the Exchange. The Exchange now seeks Commission approval for its affiliate, Cboe Trading, to become a Trading Permit Holder of the Exchange pursuant to Rule 3.32(b) so that its affiliate may provide routing services as a facility of the Exchange. Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed above, the Commission believes that it is consistent with the Act to permit Cboe Trading to become affiliated with the Exchange, in the capacity of a facility of the Exchange, for the purposes of providing the proposed subject to the conditions described above.

The Commission notes that Cboe Trading currently serves as the outbound, and limited inbound, routing

182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10-194 and 10-196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10-198) (order granting the exchange registration of BATS-Y Exchange, Inc.); 66808 (April 13, 2012), 77 FR 23294 (April 18, 2012) (SR-BATS-2012-013) (order approving rules change to make permanent a pilot program allowing inbound routing); 69870 (June 27, 2013), 78 FR 40225 (July 3, 2013) (SR-EDGX-2013-17) (same); and 82952 (March 27, 2018), 83 FR 14096 (April 2, 2018) (C2-2018-004) (order approving inbound router).

facility for the Affiliated Cboe Exchanges, and is subject to the same conditions and limitations by those exchanges.¹⁵ The Exchange's current proposal is intended to allow Cboe Trading to perform an identical role for the Exchange as to which it currently performs for EDGX Options, BZX Options, and C2, including acting as an outbound router and as a limited inbound router to receive options orders from other Affiliated Cboe Exchanges.

The Commission believes that good cause exists for accelerated approval of the proposed rule change because the proposed rule change raises no novel issues, as the Exchange is adopting the same conditions and limitations that EDGX Options, BZX Options, and C2 have adopted for Cboe Trading.¹⁶ Furthermore, the Commission did not receive any comments during the comment period on this filing. For those reasons, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁷ to approve the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-CBOE-2019-030) be, and hereby is, granted accelerated approval.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Jill M. Peterson,

Assistant Secretary.

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¹⁵ See EDGX Options Rule 2.12 (Cboe Trading, Inc. as Inbound Router), BZX Options Rule 2.12 (Cboe Trading, Inc. as Inbound Router), and C2 Options Rule 3.18 (Cboe Trading, Inc. as Inbound Router). See also EDGX Options Rule 2.11 (Cboe Trading, Inc. as Outbound Router), BZX Options Rule 2.11 (Cboe Trading, Inc. as Outbound Router), and C2 Rule 3.18 (Cboe Trading, Inc. as Outbound Router).

¹⁶ The Commission notes that it did not receive any comments on substantively identical proposals from EDGX Options, BZX Options, and C2 with respect to inbound routing from Cboe Trading. See Securities Exchange Act Release Nos. 66808 (April 13, 2012), 77 FR 23294 (April 18, 2012) (SR-BATS-2012-013); 69870 (June 27, 2013), 78 FR 40225 (July 3, 2013) (SR-EDGX-2013-17); and 82952 (March 27, 2018), 83 FR 14097 (April 2, 2018) (SR-C2-2018-004).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).