

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87028; File No. SR–CBOE–2019–061]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add a New Version of the Silexx Platform to Support FLEX Options Trading

September 19, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on September 13, 2019, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I 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 add a new version of the Silexx platform to support FLEX Options trading. 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

In 2016, the Exchange’s parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (“Cboe Global”), which is also the parent company of Cboe C2 Exchange, Inc. (“C2”), acquired Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX” or “EDGX Options”), Cboe BZX Exchange, Inc. (“BZX” or “BZX Options”), and Cboe BYX Exchange, Inc. (“BYX” and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the “Cboe Affiliated Exchanges”). Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019.

In anticipation of migration, the Exchange proposes to add a new version of the Silexx platform in connection with the trading of FLEX Options. Silexx is a User-optional order entry and management trading platform. The current versions of the Silexx platform are designed so that a User may enter orders into the platform to send to the executing broker, including Trading Permit Holders (“TPHs”), of its choice with connectivity to the platform. The executing broker can then send orders to Cboe Options (if the broker-dealer is a TPH) or other U.S. exchanges (and trading centers) in accordance with the User’s instructions. Users cannot directly route orders through any of the current versions of Silexx to an exchange or trading center nor is the platform integrated into or directly connected to Cboe Option’s System. Additionally, the Exchange notes that it does not currently have an electronic broker or system that that supports FLEX Options trading on Cboe Options. Some firms have developed their own front-end systems to support FLEX trading,⁵ and others use systems developed and provided by third-party vendors or brokers that support FLEX trading electronically. Moreover, in connection with migration, the Exchange intends to simplify the process pursuant to which FLEX

Traders⁶ may execute FLEX Orders on the Exchange, which will align the trading of FLEX Options with the trading on non-FLEX Options, which the Exchange believes may encourage more Users to submit FLEX Orders for execution, as Users are more familiar with this type of trading.

In anticipation of the changes to FLEX trading upon migration, the Exchange proposes to implement an additional version of the Silexx platform, Silexx FLEX. Silexx FLEX will exclusively support the trading of FLEX Options and allow for direct access to the Exchange. The Exchange notes that only authorized Users and associated persons of Users may establish connectivity to and directly access the Exchange, pursuant to Rule 5.5 (effective upon migration)⁷, however, a User that is not authorized for direct access will be able to send orders through the Exchange’s broker community who will have access to Silexx FLEX and can submit orders directly on the User’s behalf.⁸ The Exchange notes there will be a verification process for Users that wish to access Silexx FLEX to ensure that each User is authorized for direct Exchange access. Each verified User will require a username and password to authenticate their access. The Exchange notes that those authorized to directly access the Exchange must uphold supervisory duties over those associated with it to ensure that only authorized Users access the platform. In addition, the Exchange at this time does not propose to assess any fees in connection with the Silexx FLEX platform. Other than the above noted differences, the new Silexx platform will function in the same manner as the Silexx versions currently available to Users: It will be completely voluntary; FLEX orders entered through the platform will receive no preferential treatment as compared to FLEX Orders electronically

⁶ A Trading Permit Holder may trade FLEX Options if the Exchange has approved the Trading Permit Holder to trade FLEX Options on the Exchange; such a Trading Permit Holder is referred to as a “FLEX Trader”.

⁷ The Exchange notes that in connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration. Rule 5.6 is currently in the shell Rulebook.

⁸ The Exchange notes that Users may also send orders through a Silexx FLEX certified broker, once brokers begin electing to become certified. The Exchange has implemented a certification process which is open to any broker that supports FLEX trading and will allow Users without direct access to submit through an electronic broker certified with Silexx. The Exchange currently conducts similar certifications for any broker that wishes to connect to Cboe, and for other platform offerings (e.g. PULSe).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b–4(f)(6).

⁵ Market participants are free to do so by accessing the Exchange’s FLEX specs via the publicly accessible Application Programming Interface and using such information in order to support FLEX trading within their own technology, software, and front-end systems.

sent to Cboe Options in any other manner; FLEX Orders entered through the platform will be subject to current trading rules in the same manner as all other orders sent to the Exchange, which is the same as orders that are sent through the Exchange's System today; the Exchange's System will not distinguish between FLEX Orders sent from Silexx FLEX and orders sent in any other manner; and Cboe Silexx⁹ will provide technical support, maintenance and user training for the new platform version upon the same terms and conditions for all Users.¹⁰ The Exchange notes that it currently offers a similar front-end order entry system, the PULSe workstation, which also permits connectivity to Cboe Options. The Exchange notes that no changes are being made to the current Silexx platform versions or to the fees schedule in connection with the current versions.

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.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² 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)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Exchange also believes the proposed rule change is consistent

with Section 6(b)(4) of the Act,¹⁴ 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 that offering the Silexx FLEX platform to market participants protects investors and is in the public interest because it will allow the Exchange to directly offer Users an order entry and management tool for FLEX trading in addition to the technology products it currently offers for non-FLEX trading, such as the other versions of the Silexx platform and the PULSe workstation. In addition, firms can create their own proprietary front-end FLEX Order entry technology or obtain systems with such functionality from third-party vendors.¹⁵

In particular, the Exchange believes that the proposed Silexx FLEX platform will facilitate transactions in FLEX Options and will remove impediments to and perfect the mechanism of a free and open market and national market system by offering to Users an order and management system with direct access to the Exchange for FLEX trading. The Exchange believes providing an alternative tool for FLEX Trading, in conjunction with the Exchange's planned changes to the FLEX trading process upon migration, may encourage more Users to submit FLEX Orders and responses to FLEX auctions (including price improvement auctions), which may lead to additional liquidity in the FLEX market, which ultimately benefits investors. Currently, the Exchange does not have an electronic broker or other system or platform that supports FLEX trading on the Exchange; Users must either build their own front-end systems or rely on outside brokers or vendors that support FLEX trading. As the Exchange anticipates an increase of FLEX trading due to the changes to be implemented upon migration, the Exchange believes that offering Silexx as a direct access platform for FLEX trading will facilitate transactions in these securities and, in general, protect investors. The Exchange believes the proposed platform will remove impediments to and perfect the mechanism of a free and open market and national market system because it will allow Users more control over the execution of their FLEX orders and to more efficiently trade in FLEX Options, as well as potentially reduce transaction costs associated with building out their own front-end FLEX systems or using outside vendors or brokers.

The Exchange believes the proposed rule change does not discriminate among market participants because use of the platform for FLEX trading is completely voluntary. Users can choose to enter FLEX Orders without the use of the platform. The Exchange is making the proposed version of the platform available as a convenience to market participants, who will continue to have the option to use any order entry and management system available in the marketplace to send FLEX Orders to the Exchange. As such, the platform is not an exclusive means available to market participants to send FLEX Orders to the Exchange but merely an alternative that will be offered by the Exchange. Like current Silexx platform versions, no orders sent through the Silexx FLEX platform to Cboe Options for execution will receive any preferential treatment or execute in any dissimilar manner from those FLEX Orders enters via another means. Additionally, the platform will be available to all Users, both those with authorized direct access and those without who will be able to call in their orders to an Exchange broker for execution through Silexx FLEX. As stated, the Exchange will license the platform to participants with authorized direct access pursuant to the same terms and conditions as the current versions of Silexx.

The Exchange believes that not charging a fee in connection with the proposed Silexx FLEX platform is reasonable and equitable. The Exchange notes that FLEX trading currently does not experience the same level of volume and liquidity as that of non-FLEX trading. The Exchange believes that offering the proposed Silexx FLEX platform is also not discriminatory because it will be made available at no cost to all FLEX Traders. The Exchange believes supplying market participants with more efficient functionality at no cost for FLEX trading may encourage participation in FLEX trading. Therefore, in order to incentivize growth and participation in FLEX trading, along with the overall changes to streamline FLEX trading that the Exchange will implement upon migration, the Exchange believes that it is reasonable, equitable and nondiscriminatory to allow for use of the Silexx FLEX platform at no cost at this time.

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. The

⁹ Cboe Silexx is the wholly owned subsidiary of Cboe Options' parent company, Cboe Global Markets, Inc., which purchased Silexx in 2017.

¹⁰ See Securities Exchange Act Release No. 82088 (November 15, 2017), 82 FR 55443 (November 21, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Describe Functionality of and Adopt Fees for a New Front-End Order Entry and Management Platform) (SR-CBOE-2017-068).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ See *supra* note 5.

proposed change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange will make the Silexx FLEX version of the platform available to market participants who are approved to trade FLEX Options on the Exchange on the same terms and conditions (save for its allowing for direct access and offering at no cost) as the current Silexx versions. As described in detail above, the use of the platform to trade in FLEX Options will be completely voluntary and market participants will continue to have the flexibility to use any FLEX Order entry and management that is proprietary or from third-party vendors, and/or market participants may choose any executing brokers to enter their FLEX Orders. The proposed platform is not an exclusive means of FLEX trading, and if market participants believe that other products, vendors, front-end builds, etc. available in the marketplace are more beneficial than the Silexx FLEX platform, they may simply use those products instead. Also, the Exchange notes that use of the platform will not provide market participants with any additional access to the Exchange than that which is available through the use of any other front-end order entry system supporting FLEX trading. FLEX Orders executed through the platform will not receive preferential treatment and the Exchange's System will not distinguish between orders sent from Silexx FLEX and orders sent in any other manner. The Exchange notes that similar platforms, other Silexx versions and PULSe workstations, are currently offered today. In addition to this, all market participants may use Silexx FLEX, both those with direct access and those without, by sending orders through the Exchange's broker community who will be able to submit orders directly through Silexx FLEX. Those approved for FLEX trading on the Exchange will be subject to the same terms and conditions as other Silexx versions (save for the offering of direct access), and no market participants will be assessed a fee to use Silexx FLEX.

The Exchange does not believe that the proposed change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because other market participants that support FLEX trading may continue to remain competitive for FLEX Order entry, including firms that build-out their own FLEX-supported front-end systems, and outside vendors and brokers that support electronic FLEX

connectivity. As such, market participants approved for FLEX trading on the Exchange will be able to choose to execute, or continue to execute, their FLEX Orders through any of these means. The Exchange notes that all market participants are free to create their own proprietary front-end FLEX Order entry technology.¹⁶ The Exchange also notes that Silexx FLEX will not have any preferential access to current or planned Cboe Options technology and will therefore compete on the same terms as any other firms that build-out their own FLEX-supported front-end systems and/or outside vendors and brokers that support electronic FLEX connectivity.

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)(iii) of the Act¹⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁰ permits the Commission to 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 it may implement the Silexx FLEX platform in connection with the technology migration on October 7, 2019. According to the Exchange, waiver of

the operative delay will benefit investors by providing them with a platform that will support the trading of FLEX Options. The Commission believes that the proposed rule change raises no new or novel issues and that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.²¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2019-061 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-CBOE-2019-061. 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

¹⁶ See *supra* note 5.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 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.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-061 and should be submitted on or before October 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87023; File No. SR-NSCC-2019-002]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Amend Procedure VII with Respect to the Receipt of CNS Securities and Make Other Changes

September 19, 2019.

I. Introduction

On July 22, 2019, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2019-002, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the **Federal**

Register on August 8, 2019.³ On September 16, 2019, NSCC filed Partial Amendment No. 1 to the proposed rule change to postpone the implementation date of the proposed rule change.⁴ The Commission did not receive any comment letters on the proposed rule change. The Commission is publishing this notice to solicit comment on Partial Amendment No. 1 from interested persons and to approve the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, "Proposed Rule Change"), on an accelerated basis.

II. Description of the Proposed Rule Change

The proposed rule change would amend Procedure VII (CNS Accounting Operation) of NSCC's Rules & Procedures ("Rules")⁵ with respect to the receipt of securities from NSCC's Continuous Net Settlement ("CNS") System.⁶ Specifically, these amendments would reflect a change in the allocation algorithm used during the night cycle used by NSCC's CNS System. The proposed rule change would also make technical changes to the Rules.

A. Background

NSCC's CNS System is an automated accounting and securities settlement system that centralizes and nets the settlement of compared and recorded securities transactions and maintains an orderly flow of security and money balances. The settlement processing cycle spans two business days, with a night cycle that begins at approximately 8:30 p.m. Eastern Time ("ET") on the day prior to settlement date and runs until approximately 10 p.m. ET, and a day cycle that begins at approximately 6:30 a.m. ET on settlement date and runs until approximately 3:10 p.m. ET. The night cycle and day cycle settlement processes are essentially the same, except that the night cycle settlement process runs in batches and

the day cycle settlement process runs continuously.

Transactions that do not get processed for settlement during the night cycle are carried into the following day cycle for settlement processing.

CNS relies on an interface with the Depository Trust Company ("DTC"), an affiliate of NSCC, for the book-entry movement of securities. Procedure VII (CNS Accounting Operation) describes the receipt and delivery of CNS Securities. CNS long (buy) positions are allocated to Members as the securities are received by NSCC (*i.e.*, CNS long positions are transferred from the NSCC account at DTC to the accounts of NSCC Members at DTC) in accordance with the CNS System algorithm.

Currently, NSCC employs an algorithm to determine the order in which Members with long allocations receive positions from CNS; however, Members can submit priority requests that override NSCC's algorithm when they have special needs to receive securities owed to them (*e.g.*, the security is undergoing a corporate action or the Member has an urgent customer delivery).⁷ The priority requests can be submitted for the night cycle, the day cycle, or both. The current priority groups are as follows—

First, long positions in a CNS Reorganization Sub-Account established pursuant to paragraph H.4 of Procedure VII of the Rules;⁸

Second, long positions against which Buy-In Intent⁹ notices are due to expire that day but which were not filled the previous day;

Third, long positions against which Buy-In Intent notices are due to expire the following day;

Fourth, (i) long positions in a receiving ID Net Subscriber's agency account established at a Qualified Securities Depository,¹⁰ and (ii) long positions against the component securities of index receipts;

Fifth, in descending sequence, priority levels as specified by Standing Priority Requests and as modified by Priority Overrides.

³ Securities Exchange Act Release No. 86556 (August 2, 2019), 84 FR 39037 (August 8, 2019) (SR-NSCC-2019-002) ("Notice").

⁴ NSCC submitted a courtesy copy of Partial Amendment No. 1 to the proposed rule change through the Commission's electronic public comment letter mechanism. Accordingly, Partial Amendment No. 1 to the proposed rule change has been publicly available on the Commission's website since September 16, 2019: <https://www.sec.gov/comments/sr-nsc-2019-002/srnsc2019002-6132116-192236.pdf>.

⁵ Capitalized terms not defined herein are defined in the Rules, available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/nsc_rules.pdf.

⁶ The CNS System and its operation are described in Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the Rules. *Id.*

⁷ Specifically, under Procedure VII, subsection E (Influencing Receipts from CNS), Members can request that they receive priority for some or all issues on a standing or override basis.

⁸ *Supra* note 5.

⁹ Section 7 of Rule 11 (CNS System) and subsection J of Procedure VII (CNS Accounting Operation) of the Rules provide that in the event a Member has a Long Position in a CNS Security, the Member may demand immediate delivery thereof by submitting to NSCC a Buy-In Intent notice in such form and within such times as determined by NSCC. *Supra* note 5.

¹⁰ ID Net Service and its operation are described in Rule 65 (ID Net Service) and Procedure XVI (ID Net Service) of the Rules. *Supra* note 5.

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.