

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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-BOX-2020-27 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-BOX-2020-27. 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 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-BOX-2020-27, and should be submitted on or before August 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-89308; File No. SR-CBOE-2020-034]

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating To Authorize for Trading Flexible Exchange Options ("FLEX options") on Full-Value Indexes With a Contract Multiplier of One**

July 14, 2020.

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 June 30, 2020, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**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 authorize for trading flexible exchange options ("FLEX options") on full-value indexes with a contract multiplier of one. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposed rule change authorizes for trading on the Exchange FLEX Options on full-value indexes with a contract multiplier of one. Currently, Rule 4.21(b)(1) states the index multiplier for FLEX Index Options is 100. The proposed rule change deletes the parenthetical with that provision from current Rule 4.21(b)(1), and instead proposes to describe the index multiplier for FLEX Index Options in proposed Rule 4.20(b). Options with the same underlying but different units of trading or index multipliers, as applicable, are different classes.<sup>3</sup> An index multiplier is a term of a class (and thus applicable to all series in the

<sup>3</sup> For example, the Exchange may list for trading on five securities mini-options, which are options with a unit of trading of ten shares, which is ten times lower than the standard-sized option of 100 shares. See Rule 4.5, Interpretation and Policy .18. While a mini-option has the same underlying as a standard-sized option, they are separate products. See Securities Exchange Act Release No. 68656 (January 15, 2013), 78 FR 4526 (January 22, 2013) (SR-CBOE-2013-001).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

class)<sup>4</sup> rather than a term individual to a series. The Exchange, therefore, believes including the provision regarding the index multiplier of FLEX Index Options in Rule 4.20, which describes which classes the Exchange may authorize for trading, is more appropriate.

The proposed provisions in Rule 4.20(b) that state the index multiplier may be 100 for FLEX Index Options on full-value indexes (proposed clause (1)) and is 100 for FLEX Index Options on reduced-value indexes (proposed clause (2)) merely restate the parenthetical from current Rule 4.21(b)(1) in a more appropriate part of the Rules, and thus are nonsubstantive changes.<sup>5</sup> Additionally, proposed Rule 4.20(a) states that the unit of trading for FLEX Equity Options is the same as the unit of trading for non-FLEX Equity Options overlying the same equity security. The unit of trading for equity options (both FLEX and non-FLEX) that may be listed on the Exchange is 100,<sup>6</sup> except for mini-options, which have a unit of trading of 10.<sup>7</sup> This is not a substantive change, but rather is merely a clarification in the Rules regarding the current unit of trading for FLEX Equity Options. Therefore, the proposed rule change has no impact on which FLEX Equity Options may be traded on the Exchange. The “unit of trading” in respect of any series of options means the number of units (*i.e.*, shares in the case of equity options) of the underlying interest subject to a single option contract in the series.<sup>8</sup>

Rule 4.11 defines an “index multiplier” as the amount specified in the contract by which the current index value is to be multiplied to arrive at the value required to be delivered to the holder of a call or by the holder of a put

upon valid exercise of the contract. Currently, the Exchange has specified the index multiplier for index options it currently lists as 100.<sup>9</sup> While the Exchange has no current plans to designate an index multiplier of one for non-FLEX index options, Rule 4.11 permits the Exchange to specify what the index multiplier for an index option is contract and thus provides the Exchange with authority to list an index option with a multiplier of one.<sup>10</sup> Similarly, Article I, Section 1, I(3) of the OCC By-Laws defines “index multiplier” as the dollar amount (as specified by the Exchange on which such contract is traded) by which the current index value is to be multiplied to obtain the aggregate current index value. Unlike the definition of a unit of trading in the OCC By-Laws, which states the unit of trading in is designated by OCC but is 100 shares if not otherwise specified, the definition of index multiplier includes no such default.<sup>11</sup> Therefore, given the inclusion of a default unit of trading for equity options but the lack of a default index multiplier for index options, the Exchange believes the current index multiplier definition in the OCC By-Laws (which would have previously been filed with the Commission) permits any index multiplier specified by the listing Exchange. This is consistent with the lack of default number in Exchange’s definition of index multiplier and the ability for the Exchange to specify the index multiplier, as noted above.

The current index multiplier for all FLEX Index Options is 100, and thus does not provide the same flexibility as the broader Exchange and OCC definitions. The proposed rule change provides that the index multiplier for FLEX Index options on full-value indexes may also be one (in addition to the current index multiplier of 100).<sup>12</sup> One-hundred contracts for a FLEX Index Option with a multiplier of one are economically equivalent to one contract for a FLEX Index Option with a multiplier of 100.<sup>13</sup> Rule 4.20 permits

the Exchange to authorize for trading a FLEX Option class on any equity security or index if it may authorize for trading a non-FLEX Option class on that equity security or index pursuant to Rules 4.3 and 4.10, respectively, even if the Exchange does not list that non-FLEX Option class for trading. As discussed above, the Rules (and OCC By-Laws) authorize the Exchange to specify an index multiplier of one for an index option, subject to any applicable rule filing requirements. Therefore, while the Exchange does not list a non-FLEX Index Option with a multiplier of one, the Exchange may authorize for trading a FLEX Index Option with a multiplier of one for any index it may authorize for non-FLEX trading pursuant to Rule 4.10.

When submitting a FLEX Order, the submitting FLEX Trader<sup>14</sup> must include all required terms of a FLEX Option series.<sup>15</sup> Pursuant to current Rule 4.21(b)(1), the submitting FLEX Trader must include the underlying equity security or index (*i.e.*, the FLEX Option class) on the FLEX Order. The proposed rule change amends Rule 4.21(b)(1) to state that if a FLEX Trader specifies a full-value index on a FLEX Order, the FLEX Trader must also include whether the index option has an index multiplier of 100 or 1 when identifying the class of FLEX Order. While the concept of a flexible index multiplier is permissible under OCC’s By-Laws, the Exchange does not propose to make the index multiplier a flexible term that a FLEX Trader can designate (unlike the other terms of FLEX Options (strike price, settlement, expiration date, and exercise style) that are designated by the FLEX Trader rather than by the Exchange).<sup>16</sup> Instead, as discussed above, the Exchange is specifying the index multiplier for FLEX Options on full-value indexes may be one or 100, as permitted by the current definition of index multiplier in Rule 4.11, and is therefore authorizing new classes of FLEX Index Options. Therefore, each FLEX Index Option series in a FLEX Index Option class with a multiplier of

<sup>4</sup> In other words, options on the S&P 500 Index (“SPX options”) with a multiplier of one are a different class than options on the S&P 500 with a multiplier of 100, just as options on the S&P 500 Index with a multiplier of 100 are a different class than options on the reduced-value S&P 500 Index (with one-tenth the value of the of the S&P 500 Index) with a multiplier of 100.

<sup>5</sup> The separation of this provision for FLEX Index Options on full-value and reduced-value indexes relates to the proposed rule change to permit FLEX Index Options on full-value indexes to also have a multiplier of one.

<sup>6</sup> See Options Clearing Corporation (“OCC”) By-Laws Article I, Section I(U)(5), which defines “unit of trading” in respect of any series of options as the number of units of the underlying interest designated by OCC as the minimum number to be the subject of a single option contract in such series, and stating that in the absence of any such designation for a series of options in which the underlying security is a common stock, the unit of trading is 100 shares.

<sup>7</sup> See Rule 4.5, Interpretation and Policy .18(a).

<sup>8</sup> See Rule 4.21(b)(1); and Options Clearing Corporation (“OCC”) Bylaws Article I, Section 1, U(5).

<sup>9</sup> See index option specifications, available at <http://www.cboe.com/products/stock-index-options-spx-rut-msci-ftse>.

<sup>10</sup> Such listing would be subject to any applicable filing requirements, such as a Form 19b-4(e).

<sup>11</sup> See OCC Bylaws Article I, Section 1, U(5)

<sup>12</sup> See proposed Rule 4.20(b)(1).

<sup>13</sup> The proposed rule change also amends Rule 5.74(a)(4) to provide that the minimum size of an agency order for a FLEX solicitation auction mechanism (“SAM”) will be 50,000 FLEX Index Option contracts if the multiplier is one, which is proportionately equivalent to 500 FLEX Index Option contracts if the multiplier is 100, the current minimum size of agency orders for SAM auctions. This corresponds to the minimum size of 5,000 mini-options.

<sup>14</sup> A “FLEX Trader” is a Trading Permit Holder the Exchange has approved to trade FLEX Options on the Exchange.

<sup>15</sup> These terms include, in addition to the underlying equity security or index, the type of options (put or call), exercise style, expiration date, settlement type, and exercise price. See Rule 4.21(b). A “FLEX Order” is an order submitted in FLEX Options. The submission of a FLEX Order makes the FLEX Option series in that order eligible for trading. See Rule 5.72(b).

<sup>16</sup> Pursuant to the OCC By-Laws, which would have previously been filed with the Commission, the Exchange could make the multiplier a flexible term, as the index multiplier is listed as a variable term in the case of a flexibly structured index option. See OCC By-Laws Article I, Section 1, V(1).

one will include the same flexible terms as any other FLEX Option series, including strike price, settlement, expiration date, and exercise style as required by Rule 4.21(b).<sup>17</sup>

The table below demonstrates the proposed differences between a FLEX Index Option contract if the multiplier is one and a FLEX Index Option if the

multiplier is 100 on the S&P 500 Index. If the intraday value of the S&P 500 Index is 3,109.50, one S&P 500 Index option (“SPX option”) contract has a notional value of \$310,950 (100 times 3,109.50). Suppose at that time, an SPX July 3200 call option is trading at \$21.80, making the cost of that contract

overlying 100 units of the index \$2,180. Proportionately equivalent FLEX Index Option contracts if the multiplier is one on an SPX July 3200 call would provide investors with the ability to manage and hedge their positions and portfolio risk on their underlying investment, at a price of \$21.80 per contract.

Term	Index multiplier of 100	Index multiplier of 1
Strike Price .....	3200	3200
Bid/offer .....	21.80	21.80
Total Value of Deliverable .....	\$320,000	\$3,200
Total Value of Contract .....	2,180	21.80

The Exchange believes there is demand from investors for FLEX Index Options with an index multiplier of one, and that the proposed rule change will expand investors’ choices and flexibility with respect to the trading of index options. Permitting investors to trade FLEX Index Option contracts on full-value indexes with an index multiplier of one will provide investors with additional granularity with respect to the prices at which they may execute and exercise their FLEX Options on the Exchange, as investors may execute and exercise over-the-counter options with this smaller contract multiplier. The Exchange believes this additional granularity will appeal to investors, as it will provide them with an additional tool to manage the positions and associated risk in their portfolios based on notional value, which currently may equal a fraction of a standard contract.

For example, suppose a FLEX Trader holds a security portfolio of \$10,000,000. The FLEX Trader desires to hedge its portfolio with FLEX SPX Index Options with an index multiplier of 100. Assume the current value of the S&P 500 Index is 3,253.82. With a 100 multiplier, a FLEX SPX Index Option contract with an index multiplier of 100 would have a notional value of \$325,382.00. In order to hedge the entire portfolio, the FLEX Trader would need to trade 30.73 contracts (\$10,000,000/\$325,382). The nearest whole number of contracts would be 31 contracts, which would have a total notional value of \$10,086,842. As a result, the FLEX

Trader could only hedge within \$86,842 of its portfolio value with FLEX Index Options. A FLEX SPX Index Option contract with an index multiplier of one would have a notional value of \$3,253.82. In order to hedge the entire \$10,000,000 portfolio, the FLEX Trader would need to trade 3,073.3 contracts (\$10,000,000/\$3,253.82). The nearest whole number of contracts would be 3,073 FLEX SPX Index Option contracts with an index multiplier of one, which would have a total notional value of \$9,998,988.86.<sup>18</sup> This will allow the FLEX Trader to hedge within \$1,011.14 of its portfolio value. Therefore, the proposed rule change would permit this FLEX Trader to hedge its portfolio more effectively with far greater precision (\$85,830.86).

The Exchange notes a FLEX Trader currently has the option to trade a reduced-value contract on the S&P 500 Index in the form of XSP options.<sup>19</sup> Given the circumstances in the previous paragraph, a FLEX SPX Index Option contract with a multiplier of 100 would have a notional value of \$325,382.00, while a FLEX XSP Index Option contract (which also has an index multiplier of 100)<sup>20</sup> would have a notional value of \$32,538.20. In order to hedge the FLEX Trader’s entire portfolio, the FLEX Trader would need to trade 307.3 XSP contracts (\$10,000,000/\$32,538.20). The nearest whole number of contracts would be 300, which would have a total notional value of \$9,989,227.40. As a result, the FLEX Trader could hedge within

\$10,772.60 of its portfolio value. While the multipliers of reduced-value indexes are \$100, the reduced value has a similar effect as a smaller multiplier. A FLEX Index Option with an index multiplier of one corresponds to a reduced-valued index that is 1/100th the value of the full-value index (as noted above, the Exchange is currently authorized to list options on certain reduced-value indexes with such value). It just uses a different multiplier rather than a different value of the underlying index.

The Rules permit trading in a put or call FLEX Option series only if it does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX Option series on the same underlying security or index that is already available for trading.<sup>21</sup> In other words, a FLEX Option series may not have identical terms as a non-FLEX Option series listed for trading. Rule 1.1 defines the term “series” as all option contracts of the same class that are the same type of option and have the same exercise price and expiration date. Therefore, a FLEX Option series in one class may have the same exercise style, same expiration date, settlement, and same exercise price as a non-FLEX Option series in a different class, even if they are on the same underlying security or index. For example, pursuant to the Exchange’s rules, a FLEX Option overlying Apple stock that is a mini-option (i.e. a multiplier of 10) may be listed with the same exercise style, same expiration date, settlement,

<sup>17</sup> As discussed below, these are the terms designated by the Commission as those that constitute standardized options, and therefore, the Exchange believes the proposed rule change is consistent with Section 9(b) of the Act. See Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993) (“1993 FLEX Approval Order”).

<sup>18</sup> The FLEX Trader could also trade 30 FLEX SPX Index Option contracts (for a total notional value of \$9,761,460) for SPX (with a multiplier of 100) and 73 FLEX SPX Index Option contracts (with a multiplier of one) for a total notional value of \$237,528.86), which would have the same total notional value. However, executing these two separate transactions introduces price risk, as each could execute at separate prices, which may

interfere with the FLEX Trader’s investment objective.

<sup>19</sup> Not all indexes on which the Exchange lists options have equivalent reduced-value indexes.

<sup>20</sup> Because XSP is a reduced-value index, FLEX XSP Index Options may not have an index multiplier of one under the proposed rule change.

<sup>21</sup> See Rule 4.21(a)(1).

and same exercise price as a non-FLEX Option overlying Apple stock that is not a mini-option (*i.e.* a multiplier of 100). The terms of these series are not identical, as they are in different classes, and thus are permissible under Rule 4.21(a)(1). Similarly, pursuant to the proposed rule change, a FLEX Option series overlying the S&P 500 with a multiplier of one may have the same exercise style, same expiration date, settlement, and same exercise price as a non-FLEX Option series overlying the S&P 500 with a multiplier of 100, as they are series in different classes.

FLEX Index Options with a multiplier of one will be traded in the same manner as all other FLEX Options pursuant to Chapter 5, Section F of the Rules. As demonstrated above, there are two important distinctions between FLEX Index Options with a multiplier of 100 and FLEX Index Options with a multiplier of one due to the difference in multipliers. The proposed rule change amends certain Rules describing the exercise prices and bids and offers of FLEX Options to reflect these distinctions. The proposed rule change amends Rule 4.21(b)(6) to describe the difference between the meaning of the exercise price of a FLEX Index Option with a multiplier of 100 and a FLEX Index Option with a multiplier of one. Specifically, the proposed rule change states that the exercise price for a FLEX Index Option series in a class with a multiplier of one is set at the same level as the exercise price for a FLEX Index Option series in a class with a multiplier of 100. The proposed rule change also adds the following examples to Rule 4.21(b)(6) regarding how the deliverable for a FLEX Index Option with a multiplier of one will be calculated (as well as for a FLEX Index Option with a multiplier of 100 and a FLEX Equity Option, for additional clarity and transparency): If the exercise price of a FLEX Option series is a fixed price of 50, it will deliver: (A) 100 shares of the underlying security at \$50 (with a total deliverable of \$5,000) if a FLEX Equity Option; (B) cash equal to 100 (*i.e.* the index multiplier) times 50 (with a total deliverable value of \$5,000) if a FLEX Index Option with a multiplier of 100; and (C) cash equal to one (*i.e.* the index multiplier) times 50 (with a total deliverable value of \$50) if a FLEX Index Option with a multiplier of one. If the exercise price of a FLEX Option series is 50% of the closing value of the underlying security or index, as applicable, on the trade date, it will deliver: (A) 100 shares of the underlying security at a price equal to 50% of the closing value of the

underlying security on the trade date (with a total deliverable of 100 times that percentage amount) if a FLEX Equity Option; (B) cash equal to 100 (*i.e.* the index multiplier) times a value equal to 50% of the closing value of the underlying index on the trade date (with a total deliverable of 100 times that percentage amount) if a FLEX Index Option with a multiplier of 100; and (C) cash equal to one (*i.e.* the index multiplier) times a value equal to 50% of the closing value of the underlying index on the trade date (with a total deliverable of one times that percentage amount) if a FLEX Index Option with a multiplier of one.<sup>22</sup> The descriptions of exercise prices for FLEX Equity Options and FLEX Index Options with a multiplier of 100 are true today, and merely add for purposes of clarity examples to the rule regarding the exercise price of a FLEX Equity Option or a FLEX Index Option with a multiplier of 100, the deliverables for which are equal to the exercise price times the 100 contract multiplier to determine the deliverable dollar value. Because a FLEX Index Option with a multiplier of one has a multiplier of 1/100 of the multiplier of a FLEX Index Option with a multiplier of 100, the value of the deliverable of a FLEX Index Option with a multiplier of one as a result is 1/100 of the value of the deliverable of a FLEX Index Option with a deliverable of 100.

Similarly, the proposed rule change amends Rule 5.3(e)(3) to describe the difference between the meaning of bids and offers for FLEX Equity Options, FLEX Index Options with a multiplier of 100, and FLEX Index Options with a multiplier of one. Currently, that rule states that bids and offers for FLEX Options must be expressed in (a) U.S. dollars and decimals if the exercise price for the FLEX Option series is a fixed price, or (b) a percentage, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, per unit.<sup>23</sup>

<sup>22</sup> This corresponds to the calculation of exercise prices for other types of options with a reduced multiplier. For example, Rule 4.5, Interpretation and Policy .18(b) provides that strike prices (*i.e.*, exercise prices) for mini-options (which have multipliers of 10 rather than 100, as set forth in Rule 4.5, Interpretation and Policy .18(a)) are set at the same level as for standard options. For example, a call series strike price to deliver 10 shares of stock at \$125 per share has a total deliverable value of \$1,250 (10 × 125) if the strike is 125. A standard non-FLEX option with a strike price of 125 would have a total deliverable value of \$12,500 (100 × 125).

<sup>23</sup> The proposed rule change reorganizes the language in this provision to make clear that the phrase “if the exercise price for the FLEX Option series is a percentage of the closing value of the

As noted above, a FLEX Option contract unit consists of 100 shares of the underlying security or 100 times the value of the underlying index, as they currently have a 100 contract multiplier.<sup>24</sup> The proposed rule change clarifies that bids and offers are expressed per unit, if a FLEX Equity Option or a FLEX Index Option with a multiplier of 100, and adds an example (as set forth below). This is true today, and merely adds clarity to the Rules.

The proposed rule change also adds to Rule 5.3(e)(3) the meaning of bids and offers for FLEX Index Option with a multiplier of one. Specifically, bids and offers for FLEX Index Options with a multiplier of one must be expressed in (a) U.S. dollars and decimals if the exercise price for the FLEX Option series is a fixed price, or (b) a percentage, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, per 1/100th unit.<sup>25</sup> Additionally, the proposed rule change adds examples of the meaning of bids and offers of FLEX Options: If the exercise price of a FLEX Option series is a fixed price, a bid of “0.50” represents a bid of (A) \$50 (0.50 times 100 shares) for a FLEX Equity Option; (B) \$50 (0.50 times an index multiplier of 100) for a FLEX Index Option with a multiplier of 100; and (C) \$0.50 (0.50 times an index multiplier of one) for a FLEX Index Option with a multiplier of one.

If the exercise price of a FLEX Option series is a percentage of the closing value of the underlying equity security, a bid of “0.50” represents a bid of (A) 50% (0.50 times 100 shares) of the closing value of the underlying equity security on the trade date if a FLEX Equity Option; (B) 50% (0.50 times an index multiplier of 100) of the closing value of the underlying index on the trade date if a FLEX Index Option with a multiplier of 100; and (C) 0.50% (0.50 times an index multiplier of one) of the closing value of the underlying index on the trade date if a FLEX Index Option with a multiplier of one. The Exchange believes this approach identifies a clear, transparent description of the

underlying equity security or index on the trade date” applies to the entire clause (B) of 5.4(e)(3).

<sup>24</sup> See current Rule 4.21(b)(1).

<sup>25</sup> This corresponds to the meaning of bids and offers for other types of options with reduced multiplier. For example, Rule 5.3(c) provides that bids and offers for an option contract overlying 10 shares (*i.e.*, mini-options) must be expressed in terms of dollars per 1/10th part of the total value of the contract (for example, an offer of 0.50 represents an offer of \$5.00 for an option contract having a unit of trading consisting of 10 shares, as opposed to \$50 for a standard option contract having a unit of trading consisting of 100 shares).

differences between FLEX Index Options with a multiplier of 100 and FLEX Index Options with a multiplier of one. Additionally, the Exchange believes the proposed terms of FLEX Index Options with a multiplier of one are consistent with the terms of the Options Disclosure Document (“ODD”).<sup>26</sup> The proposed rule change also provides additional clarity regarding the meaning of bids and offers of FLEX Equity Options and FLEX Index Options with a multiplier of 100.

The proposed rule change also clarifies that the System rounds bids and offers and offers of FLEX Options to the nearest minimum increment following application of the designated percentage to the closing value of the underlying security or index. This is consistent with current functionality and is merely a clarification in the Rules. For example, suppose a FLEX Trader enters a bid of 0.27 for a FLEX Equity Option, and the underlying security has a closing value of 24.52 on the trade date. Following the close on the trade date, the System calculates the bid to be 6.6204 ( $0.27 \times 24.52$ ). Because the minimum increment for bids and offers in a FLEX Option class is \$0.01, the System rounds 6.6204 to the nearest penny, which would be a bid of \$6.62.

Pursuant to Rule 4.22(a), a FLEX Option position becomes fungible with a non-FLEX option that becomes listed with identical terms. As noted above, while the Exchange Rules and OCC By-Laws imply that an index multiplier of one is permissible, subject to any other applicable filing requirements, the Exchange does not currently, and currently has no plans to, list for trading any non-FLEX Index Option class with a multiplier of one. Therefore, initially it would not be possible for a FLEX Index Option series with a multiplier of one to have the same terms as a non-FLEX Index Option series, and thus it would not be possible for a FLEX Index Option series with a multiplier of 100 to be identical to, and fungible with, any non-FLEX Option pursuant to Rule 4.22(a). As discussed above, options with different multipliers are different classes, and an option series in one class

cannot be fungible with an option series in another class, even if they are economically equivalent. Fungibility is only possible for series with identical terms. This is similar to how a FLEX XSP Index Option series is not fungible to an economically equivalent non-FLEX SPX Option series. If the Exchange determines to list non-FLEX Index options with a one multiplier in the future, then a FLEX Index Option with a multiplier of one would become fungible with any non-FLEX Index Option with a multiplier of one with the same terms pursuant to Rule 4.22(a).

The proposed rule change amends Rule 8.35(a) regarding position limits for FLEX Options to describe how FLEX Index Options with a multiplier of one will be counted for purposes of determining compliance with position limits. Because 100 FLEX Index Options with a multiplier of one are equivalent to one FLEX Index Option with a multiplier of 100 overlying the same index due to the difference in contract multipliers, proposed Rule 8.35(a)(7) states that for purposes of determining compliance with the position limits under Rule 8.35, 100 FLEX Index Option contracts with a multiplier of one equal one FLEX Index Option contract with a multiplier of 100 with the same underlying index.<sup>27</sup> This is consistent with the current treatment of other reduced-value FLEX Index Options with respect to position limits. The proposed rule change adds paragraph (g) to Rule 8.42 to make a corresponding statement regarding the application of exercise limits to FLEX Index Options with a multiplier of one. The margin requirements set forth in Chapter 10 of the Rules will apply to FLEX Index Options with a multiplier of one (as they currently do to all FLEX Options).<sup>28</sup>

The proposed rule change also corrects an administrative error in Rule 8.35(a). Currently, there are two subparagraphs numbered as (a)(5). The proposed rule change amends paragraph (a) to renumber the second subparagraph (a)(5) to be subparagraph (a)(6).

<sup>27</sup> The proposed rule change makes a corresponding change to Rule 8.35(b) to clarify that, like reduced-value FLEX contracts, FLEX Index Option contracts with a multiplier of one will be aggregated with full-value contracts and counted by the amount by which they equal a full-value contract for purposes of the reporting obligation in that provision (*i.e.*, 100 FLEX Index Options with a multiplier of one will equal one FLEX Index Option contract with a multiplier of 100 overlying the same index).

<sup>28</sup> Pursuant to Rule 8.43(j), FLEX Index Options with a multiplier of one will be aggregated with non-FLEX Index Options on the same underlying index in the same manner as all other FLEX Index Options.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of FLEX Index Options with a multiplier of one. The Exchange also understands that the OCC will be able to accommodate the listing and trading of FLEX Index Options with a multiplier of one. FLEX Index Options with a multiplier of one will be listed with different trading symbols than FLEX Index Options with a multiplier of 100 with the same underlying to reduce any potential confusion.<sup>29</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>30</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>31</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>32</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 the proposed rule change will benefit investors by expanding investors’ choices and flexibility with respect to the trading of FLEX Options. These options will provide investors with additional granularity with respect to the prices at which they may execute and exercise their FLEX Index Options on the Exchange, as investors may

<sup>29</sup> For example, a FLEX Index Option for index ABC with a multiplier of 100 may have symbol 4ABC (the “4” is the designation generally used for FLEX Options to distinguish from the non-FLEX Option with the same underlying), while a FLEX Index Option for class ABC with a multiplier of one may have symbol 4ABC9.

<sup>30</sup> 15 U.S.C. 78f(b).

<sup>31</sup> 15 U.S.C. 78f(b)(5).

<sup>32</sup> *Id.*

<sup>26</sup> The ODD is available at <https://www.theocc.com/about/publications/characteristics.jsp>. The ODD states that the exercise price of a stock option is multiplied by the number of shares underlying the option to determine the aggregate exercise price and aggregate premium of that option. See ODD at 18. Similarly, the ODD states that the total exercise price for an index option is the exercise price multiplied by the multiplier, and the aggregate premium is the premium multiplied by the multiplier. See ODD at 8, 9, and 125. Per the ODD, the amount of the underlying interest may be a variable term with respect to flexibly structured options (*i.e.*, FLEX Options).

execute and exercise unregulated over-the-counter options with this smaller contract multiplier. The Exchange believes this additional granularity will provide investors with an additional tool to manage more efficiently their positions and associated risk based on notional value so that they equal whole contracts, as opposed to fractions of a standard contract as currently may happen. Given the various trading and hedging strategies employed by investors, this additional granularity may provide investors with more control over the trading of their FLEX strategies and management of their positions and risk associated with FLEX option positions in their portfolios. FLEX Index Options with a multiplier of one are substantially similar to FLEX Index Options on reduced-value indexes, but will provide investors with further granularity with respect to options for which there already is a reduced-valued index and also a granular option with respect to options for which there is no reduced-value index.

FLEX Index Options with a multiplier of one will trade in the same manner as all other FLEX Options, with premiums (*i.e.*, bids and offers) and deliverables adjusted proportionately to reflect the difference in multiplier, and thus the difference in the deliverable value of the underlying. The Exchange believes the proposed rule change adds transparency and clarity to the Rules regarding the distinctions between FLEX Index Options with a multiplier of 100 and FLEX Index Options with a multiplier of one due to the different multipliers will benefit investor, as well as with respect to current terms of FLEX Options. This proposal is similar to rules regarding other reduced-value options.<sup>33</sup>

The Exchange believes the proposed rule change will further benefit investors, as it also provides clarity regarding bids and offers, and exercise prices, of FLEX Index Options with a multiplier of 100 and FLEX Equity Options (but makes no changes to the terms of these options or how they trade). These proposed rule changes include (1) providing examples of the

<sup>33</sup> See, *e.g.*, Rules 4.5, Interpretation and Policy .18 (description of strike prices for mini-options, which have a multiplier of 10), 5.3(c) (description of bids and offers for mini-options), and 5.74(a)(4) (description of minimum size of FLEX Agency Order for mini-options). Just as terms for mini-options, which have a multiplier of 1/10th the size of standard options, equal 1/10th of the same terms for standard options, the proposed terms for FLEX Index Options with a multiplier of one, which have a multiplier 1/100th the size of FLEX Index Options with a multiplier of 100, equal 1/100th of the same terms as FLEX Index Options with a multiplier of 100.

meaning of the exercise prices and bids and offers of both FLEX Index Options with a multiplier of 100 and FLEX Index Options with a multiplier of one (as well as FLEX Equity Options) and (2) including the corresponding minimum size for a FLEX SAM Agency Order consisting of FLEX Index Options with a multiplier of one. This additional clarity and transparency in the Rules will benefit investors. The Exchange believes the proposed nonsubstantive changes (to clarify the current contract multiplier for FLEX Index Options with a multiplier of 100 and FLEX Equity Options in Rule 4.21(b), to add examples regarding exercise prices and the meaning of bids and offers of FLEX Index Options with a multiplier of 100 and FLEX Equity Options, and to correct the numbering of subparagraphs in Rule 8.35(a)) will protect investors, as they enhance transparency and clarity in the Rules but make no changes to the terms of these options or how they trade. Additionally, the correction to subparagraph numbering will enable investors to more easily reference rule provisions in different subparagraphs.

The Exchange believes the proposed rule change regarding the treatment of FLEX Index Options with a multiplier of one with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade, as FLEX Index Options with a multiplier of one will be counted for purposes of those limits in a proportional manner to FLEX Index Options with a multiplier of 100 and aggregated with non-FLEX Options overlying the same index manner as FLEX Index Options currently are. This is similar to limits imposed on reduced-value options. As noted above, while the multipliers of reduced-value indexes are \$100, the reduced value has a similar effect as a smaller multiplier. A FLEX Index Option with a multiplier of one corresponds to a reduced-valued index that is 1/100th the value of the full-value index (as noted above, the Exchange is currently authorized to list options on certain reduced-value indexes with such value).<sup>34</sup> It just uses a different multiplier rather than a different value of the underlying index.<sup>35</sup> The Exchange believes its

<sup>34</sup> See Rule 4.10(h) through (m) and Rule 4.13(a)(3) (which lists European-style options currently approved for trading on the Exchange). The Exchange notes Rule 4.10 describes generic listing criteria for index options, which apply to reduced-value index options as well.

<sup>35</sup> This is also similar to position limits for other options with multipliers less than 100. See, *e.g.*,

enhanced surveillances continue to be designed to deter and detect violations of Exchange Rules, including position and exercise limits and possible manipulative behavior, and those surveillance will apply to FLEX Index Options with a multiplier of one.

The Exchange does not believe the propose rule change raises price protection concerns that market participants may submit FLEX Index Options with a multiplier of one rather than the economically equivalent non-FLEX Index Options in order to get better pricing, or that a trade of a FLEX Index Option with a multiplier of one may occur at a price that would trade through the book of the non-FLEX full-value index option.<sup>36</sup> The Exchange believes the risk (if any) of a market participant trading a FLEX Index Option with a multiplier of one rather than a non-FLEX Index Option with a multiplier of 100 with the same underlying to use the FLEX market as a substitute for the non-FLEX market and achieve such a result is minimal. As further described below, this possibility exists today with respect to indexes on which the Exchange may list full- and reduced-value index options as well as economically equivalent index and ETF options, as a market participant could trade FLEX reduced-value index option series (as long as not listed as non-FLEX option series) as opposed to non-FLEX full-value index option series. Similarly, a market participant could trade FLEX Equity Options on an ETF overlying an index as opposed to a non-FLEX option overlying the same index (as long as not listed as a non-FLEX option series).<sup>37</sup>

The Exchange believes attempting to execute an order in the FLEX market as a substitute for the non-FLEX market would minimize execution opportunities for that order. Such trading would be inefficient for market participants and could introduce price and execution risk to market participants' trading strategies given the

Rule 8.30, Interpretation and Policy .08 (describing position limits for mini-options).

<sup>36</sup> The same concern would have been raised if a market participant submits a FLEX Order for a mini-option for one of the securities specified in the rules rather than an economically equivalent non-FLEX mini-option overlying the same security.

<sup>37</sup> The Exchange notes there are no price protections in the non-FLEX market for economically equivalent options listed for trading. For example, suppose the Aug SPX 3300 call and Aug XSP 330 call are both listed for trading. A market participant could purchase the XSP call at a price that is through the market of the SPX option, which is economically equivalent. Similarly, an Aug SPY 330 call may trade at a price through the market of the Aug XSP 330 call, which is economically equivalent. Trade-throughs are only prohibited for identical series, not economically equivalent series.

reduced liquidity, participation, and price discovery in the FLEX market compared to the non-FLEX market.<sup>38</sup> Additionally, if a FLEX Index Option with a multiplier of one traded through the book of the equivalent non-FLEX Index Option with a multiplier of 100, while that would be a better price for one transaction participant, it would be a worse price for the participant on the opposite side, and thus it may be more difficult for the initiating participant to obtain an execution. For example, suppose the market for Aug ABC 800 call with a multiplier of 100 is 10.20–11.00. If a market participant submitted a FLEX Order to buy Aug ABC 800 call with a multiplier of one with a bid of 0.10 (equivalent to a bid of 10.00 in the non-FLEX market for the series with a multiplier of 100), it is unlikely another market participant would sell at that price, given that participant could sell the economically equivalent non-FLEX Option series at 10.20, which would be a better price for that seller. Given the likely difficulties (such as reduced liquidity and potentially longer timeframe to receive execution) of trading in the FLEX market as a substitute for trading an economically equivalent option in the non-FLEX market (such as to obtain a better execution price), the Exchange believes the risk of this occurring is *de minimis*. The Exchange has not observed market participants attempting to trade in the FLEX market rather than the non-FLEX market for this purpose in classes in which this is possible today.

Additionally, as noted above, the Exchange's surveillance program will incorporate FLEX Index Options with a multiplier of one. If the Exchange identifies FLEX Orders that appear to be attempts to use FLEX Index Options with a multiplier of one to avoid trading in the non-FLEX market, the Exchange may determine those orders to be inconsistent with just and equitable principles of trading and thus a violation of Rule 8.1. In addition, broker-dealers are also subject to due diligence and best execution obligations, which obligations may require broker-dealers to consider the prices of economically equivalent options when executing customer orders. The Exchange notes that market participants may currently, and currently do, execute orders like the ones being proposed in the unregulated OTC market, where neither the Exchange nor the Commission has oversight over market participants that may be purposely trading at prices

through the listed market. As discussed below, the proposed rule change may encourage these orders to be submitted to the Exchange, which could bring these orders into a regulated market and be subject to surveillance and oversight to which they are currently not subject with respect to execution of these option orders.

As noted above, the Exchange may currently authorize for listing and trading on the Exchange options on indexes that are either full-value or reduced-value (subject to any applicable regulatory requirements).<sup>39</sup> Some reduced-value indexes are 1/10th the value of the full-value index (for example, the FTSE 100 Index), while others are 1/100th the value of the full-value-index (for example, the FTSE China 50 Index). The Exchange notes there are not reduced-value indexes and full-value indexes for all indexes on which the Exchange currently lists options for trading. For indexes on which the Exchange may currently list full- and reduced-value options, while the index multipliers of reduced-value indexes are \$100, the reduced value has a similar effect as a smaller multiplier. As a result, the Exchange may currently authorize for trading a FLEX Index Option on a reduced-value index that is an economic equivalent of a non-FLEX Index Option on the full-value index, as long as the FLEX Index Option on the reduced-value index is not listed as a non-FLEX Index Option. For example, suppose the Exchange lists for trading a non-FLEX SPX Index Option call with an August expiration and exercise price of 3300. Assuming there is no non-FLEX XSP Index Option call with an August expiration and exercise price of 330 listed for trading, a FLEX Trader may submit a FLEX Order for a FLEX XSP Index Option call with an August expiration and exercise price of 330.

The Exchange notes there are numerous examples of economically equivalent options that trade on options exchanges today that create the possibility that a trade in a full (or reduced) contract would be through the book of the reduced (or full) contract (either in the FLEX or non-FLEX market). For example, the Exchange currently lists SPX options and XSP options, which are 1/10th the size of SPX options. It is possible for transactions in XSP options to occur through the price of an economically equivalent SPX option. Similarly, SPY options are economically equivalent to XSP options, as each are based on 1/10th the S&P 500 Index. It is possible for a SPY option to trade through the book

of an equivalent XSP (and SPX) option. Suppose the Exchange lists for trading a non-FLEX XSP Index Option call with an August expiration and exercise price of 330. Assuming there is no non-FLEX SPY Option call with an August expiration and exercise price of 330 listed for trading, a FLEX Trader may submit a FLEX Order for a FLEX SPY Equity Option call with an August expiration and exercise price of 330. Additional examples of economically equivalent options (which can be FLEX and non-FLEX, thus making it possible that a FLEX Option could trade through the book of an economically equivalent non-FLEX option) that may be listed on options exchanges include options on the Russell 2000 Index, Mini-Russell 2000 Index, and IWM exchange-traded fund ("ETF") and options on the Nasdaq 100, the Mini-Nasdaq 100, and the QQQ ETF, among others. Further, the Exchange permits FLEX Traders to apply Asian and Cliquet style settlement to FLEX Broad-Based Index options to provide investors with additional trading and hedging tools. It is possible, for example, for a FLEX SPX option to have the same strike and expiration date as a non-FLEX SPX option, and thus have an economic equivalent listed for trading, but the FLEX option could trade through the book of the non-FLEX option.<sup>40</sup>

As these examples demonstrate, it is currently possible for many economically equivalent options to be listed on the Exchange, both in the FLEX and non-FLEX markets. The Exchange has not observed market participants attempting to trade in the FLEX market rather than the non-FLEX market by using economically equivalent options. The proposed rule change similarly permits the possibility that FLEX Index Options with a multiplier of one may have a non-FLEX Index Option with a multiplier of 100 that is an economic equivalent listed for trading.<sup>41</sup> Like other FLEX products, the Exchange believes the proposed rule change may provide an additional trading and hedging tool to market participants to individual tailor certain terms of options to address their investment needs. The Exchange believes the benefits of this additional tool in the listed options market

<sup>38</sup> The Exchange notes the approval of Asian and Cliquet style options included no reference to price protection concerns.

<sup>41</sup> The Exchange notes that FLEX Options that are Asian or Cliquet-settled, like FLEX Index Options with a multiplier of one, can never be fungible with non-FLEX options, as those settlement styles are not currently available for non-FLEX options. See Securities Exchange Act Release No. 75425 (July 10, 2015), 80 FR 42152 (July 16, 2015) (SR-CBOE-2015-044).

<sup>38</sup> See Sections VII and X of the ODD regarding risks associated with FLEX Options.

<sup>39</sup> See Rule 4.10.

outweigh the de minimis (if any) risk of market participants using FLEX Index Options with a multiplier of one to trade through the markets for any economically equivalent non-FLEX option. The Exchange is not aware of any negative impact on execution prices as a result of the listing of economically equivalent options on the Exchange today, nor is the Exchange aware of any data or analysis suggesting that trading of FLEX Options has acted as a substitute for the trading of standardized non-FLEX options as a result of the ability to list FLEX Options that are economically equivalent to non-FLEX Options listed for trading on the Exchange. The Exchange understands that market participants generally use the same information when pricing economically equivalent options, which the Exchange believes further addresses any price protection concerns.

By permitting FLEX Index Options to trade with the same multiplier currently available to customized options in the OTC market, the Exchange believes the proposed rule change will remove impediments to and perfects the mechanism of a free and open market and a national market system by further improving a comparable alternative to the OTC market in customized options. By enhancing our FLEX trading platform to provide additional flexible terms available in the OTC market but not currently available in the listed options market, the Exchange believes it may be a more attractive alternative to the OTC market. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of the OCC as issuer and guarantor of FLEX Options.

The proposed rule change is also consistent with Section 9(b) of the Act<sup>42</sup> and Rule 9b-1 thereunder.<sup>43</sup> Rule 9b-1 provides that standardized options are options contracts trading on a national securities exchange that relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate. Additionally, Rule 9b-1 requires an options disclosure document (“ODD”) be provided to customers, which includes a glossary of relevant terms and identification of

instruments underlying options classes and classes covered by the ODD. The current ODD, available on the OCC website (and previously filed with the Commission), describes flexibly structured options (*i.e.*, FLEX Options) that may be issued and traded on exchanges. Specifically, Chapter VII of the ODD states that the terms of a flexibly structured option that may be fixed by the parties are called variable terms, which is what makes these options different from other options. The ODD further states that included among the terms that an options market may identify as variable terms are the specification and amount of the underlying interest (*i.e.*, the multiplier associated with the underlying security or index). Therefore, the ODD currently includes a description of and risks associated with flexibly structured options, which may have an amount of the underlying interest that differs from the amount of the underlying interest associated with non-FLEX options overlying the same index, such as FLEX Index Options with a multiplier of one.

Additionally, as discussed above, the Exchange believes the OCC Bylaws imply that the Exchange may designate a multiplier of one for an index option class because the Bylaws are silent on a default index multiplier for index options but not for a default unit of trading for equity options. As further discussed above, the Exchange’s rules currently permit it to specify the index multiplier of an option contract. Those rules would have been previously filed with the Commission. Therefore, 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, as it is consistent with the rules of another self-regulatory organization.

The Commission has not historically issued orders designating new classes as “standardized options” pursuant to Rule 9b-1.<sup>44</sup> This includes listing of options that contain multipliers other than 100. For example, when the Commission approved mini-options,<sup>45</sup> there was no Commission “designation” of mini-options as being standardized options available for trading on national securities exchanges. The multiplier of an option relates to the value of the underlying, and thus is part of the class designation rather than a term of the series. Each series of a FLEX Index Option with a multiplier of one will contain the terms designated by the Commission as those that constitute standardized options, and therefore, are

consistent with Section 9(b) of the Act. Specifically, the Commission provided that “[a]part from the flexibility with respect to strike prices, settlement, expiration dates, and exercise style, all of the other terms of FLEX Options are standardized pursuant to OCC and CBOE rules. Standardized terms include matters such as exercise procedures, contract adjustments, time of issuance, effect of closing transactions, restrictions on exercise under OCC rules, margin requirements, and other matters pertaining to the rights and obligations of holders and writers.”<sup>46</sup> The number of shares or amount of cash received or paid, as applicable, upon settlement of an option relate is a right or obligation, respectively of a holder or writer. Therefore, like all FLEX Options, in accordance with the 1993 FLEX Approval Order, investors will have the ability to designate the strike price, settlement, expiration date, and exercise style of FLEX Index Options with a multiplier of one, and all other terms (including matters such as exercise procedures, contract adjustments, time of issuance, effect of closing transactions, restrictions on exercise under OCC rules, margin requirements, and other matters pertaining to the rights and obligations of holders and writers (such as the index multiplier)) will be standardized pursuant to OCC and CBOE Rules (specifically, OCC Bylaw Article I, Section 1, I(3) and Cboe Rule 4.11, as discussed above, pursuant to which the Exchange specifies the index multiplier for an index). When submitting a FLEX Order for a FLEX Index Option with a multiplier of one, a FLEX Trader will designate each of the strike price, settlement, expiration date, and exercise style for option contract it seeks to trade, and the other terms will be the same as the standardized terms on the same underlying indexes as designated by the Exchange. A FLEX Trader electing to submit a FLEX Order for a FLEX Index Option on an index with a multiplier of one as opposed to for a FLEX Index Option on the same index with a multiplier of 100 is no different than a FLEX Trader electing to submit a FLEX Order for a FLEX Index Option on one index as opposed to a FLEX Index Option on another index. If the Exchange determines to list non-FLEX index options with a multiplier of one, a FLEX Index Option with a multiplier of one with the same terms would become fungible with such options.

The Exchange notes that FLEX Options listed on the Exchange were initially listed on only two indexes—the

<sup>42</sup> See 15 U.S. Code § 78i.

<sup>43</sup> See 17 CFR 240.9b-1.

<sup>44</sup> See 17 CFR 240.9b-1.

<sup>45</sup> See *supra* note 3.

<sup>46</sup> See 1993 FLEX Approval Order.



S&P 500 (SPX) and the S&P 100 (XSP)—and were subject to minimum size requirements.<sup>47</sup> FLEX Options may now be listed on the Exchange on any underlying equity or index and in any size, demonstrating the broader demand and benefits of FLEX Options and the innovation that has continued to occur with respect to these options. When Congress charged the Commission with supervising the development of a “national market system” for securities, Congress stated its intent that the “national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.<sup>48</sup> Consistent with this purpose, Congress and the Commission have repeatedly stated their preference for competition, rather than regulatory intervention to determine products and services in the securities markets.<sup>49</sup> This consistent and considered judgment of Congress and the Commission is correct, particularly in light of evidence of robust competition in the options trading industry. The fact that an exchange proposed something new is a reason to be receptive, not skeptical—innovation is the life-blood of a vibrant competitive market—and that is particularly so given the continued internalization of the securities markets, as exchanges continue to implement new products and services to compete not only in the United States but throughout the world. Options exchanges continuously adopt new and different products and trading services in response to industry demands in order to attract order flow and liquidity to increase their trading volume. This competition has led to a growth in

<sup>47</sup> As noted above, it is possible for a FLEX XSP option to be economically equivalent to a non-FLEX SPX option. However, the 1993 FLEX Approval Order made no reference to any concerns regarding the listing of FLEX Options economically equivalent to non-FLEX Options. See *id.*

<sup>48</sup> See H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.).

<sup>49</sup> See S. Rep. No. 94–75, 94th Cong., 1st Sess. 8 (1975) (“The objective [in enacting the 1975 amendments to the Exchange Act] would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services.”); Order Approving Proposed Rule Change Relating to NYSE Arca Data, Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (“The Exchange Act and its legislative history strongly support the Commission’s reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the [self-regulatory organizations] and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.”); and Regulation NMS, 70 FR at 37499 (observing that NMS regulation “has been remarkably successful in promoting market competition in [the] forms that are most important to investors and listed companies”).

investment choices, which ultimately benefits the marketplace and the public. The Exchange believes that the proposed rule change will help further competition by providing market participants with yet another investment option for the listed options market.

#### *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 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 Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because all FLEX Index Options with a multiplier of one will be available for all indexes currently eligible for FLEX trading, and all FLEX Traders may trade FLEX Index Options with a multiplier of one. FLEX Index Options with a multiplier of one will trade in the same manner as FLEX Index Options with a multiplier of 100, with certain terms proportionately adjusted to reflect the different contract multipliers. The Exchange believes it is appropriate to limit FLEX Index Options with a multiplier of one to full-value indexes, as several indexes have large notional values, which makes the precision afforded by FLEX Index Options with a multiplier of one the most beneficial to market participants.

The Exchange does not believe 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 rule change relates solely to FLEX options listed solely for trading on the Exchange. Other options exchanges may determine to offer flexible options, including with a different contract multiplier. To the extent the proposed rule change makes the Exchange a more attractive trading venue for market participants on other exchanges, those market participants may elect to become Exchange market participants.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition. The Exchange believes this is an enhancement to a comparable alternative to the OTC market in customized options. By enhancing our FLEX trading platform to provide

additional contract granularity that available in the OTC market but not currently available in the listed options market, the Exchange believes it may be a more attractive alternative to the OTC market. The Exchange believes market participants will benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

The proposed nonsubstantive changes (to move and clarify the current contract multiplier for FLEX Equity Options and FLEX Index Options with a multiplier of 100 in Rule 4.21(b) and to correct the numbering of subparagraphs in Rule 8.35(a), as well as examples of the exercise prices and the meanings of bids and offers) will have no impact on competition, as they merely clarify or correct, as applicable, information in the Rules and make no changes to how FLEX Options trade.

#### *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**

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 Exchange 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-CBOE-2020-034 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-2020-034. 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-2020-034, and should be submitted on or before August 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>50</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-89310; File No. SR-NYSEArca-2020-59]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) and To Permit the Listing and Trading of Shares of the United States Gold and Treasury Investment Trust Under NYSE Arca Rule 8.201-E**

July 14, 2020.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 30, 2020, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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**

The Exchange proposes (1) to amend NYSE Arca Rule 8.201-E ("Commodity-Based Trust Shares") to permit a trust to hold (a) a specified commodity deposited with the trust, or (b) a specified commodity and, in addition to such specified commodity, U.S. Department of Treasury securities and/or cash, and to issue and redeem shares for such commodity and/or cash; and (2) to list and trade shares of the United States Gold and Treasury Investment Trust under NYSE Arca Rule 8.201-E as proposed to be amended. The proposed change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes (1) to amend NYSE Arca Rule 8.201-E ("Commodity-Based Trust Shares") to permit a trust to hold (a) a specified commodity deposited with the Trust (defined below), or (b) a specified commodity and, in addition to such specified commodity, U.S. Department of Treasury securities and/or cash, and (2) to list and trade shares ("Shares") of the United States Gold and Treasury Investment Trust ("Trust") under NYSE Arca Rule 8.201-E as proposed to be amended.<sup>4</sup>

The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended.<sup>5</sup> The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended.<sup>6</sup>

The sponsor of the Trust is Wilshire Phoenix Funds LLC ("Sponsor"). The "Trustee" is Delaware Trust Company and the "Gold Custodian" is JPMorgan Chase Bank, N.A. The Bank of New York Mellon will be the administrator ("Administrator"), transfer agent ("Transfer Agent") and cash and treasury custodian ("Treasury Custodian") of the Trust. Foreside Fund Services, LLC will be the Trust's marketing agent ("Marketing Agent").

The Commission has previously approved listing on the Exchange under NYSE Arca Rules 5.2-E(j)(5) and 8.201-E of other precious metals and gold-based commodity trusts, including the GraniteShares Gold Trust;<sup>7</sup> Merk Gold Trust;<sup>8</sup> ETFs Gold Trust;<sup>9</sup> ETFs

<sup>4</sup> On May 8, 2020, the Trust filed Amendment No. 1 to its registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) (File No. 333-235913) (the "Registration Statement"). The description of the operation of the Trust and the Shares herein is based, in part, on the Registration Statement.

<sup>5</sup> 15 U.S.C. 80a-1.

<sup>6</sup> 17 U.S.C. 1.

<sup>7</sup> Securities Exchange Act Release No. 81077 (July 5, 2017) (SR-NYSEArca-2017-55) (order approving listing and trading shares of the GraniteShares Gold Trust under NYSE Arca Equities Rule 8.201).

<sup>8</sup> Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR-NYSEArca-2013-137).

<sup>9</sup> Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40).

<sup>50</sup> 17 CFR 200.30-3(a)(12).