

All submissions should refer to File Number SR–PEARL–2021–02. 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–PEARL–2021–02 and should be submitted on or before March 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91067; File No. SR–CBOE–2020–116]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Add Options on the Mini-Russell 2000 Index to Its P.M. Pilot Program

February 5, 2021.

#### I. Introduction

On December 18, 2020, Cboe Exchange, Inc. (“Cboe” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to add Mini-Russell 2000 Index (“Mini-RUT” or “MRUT”) options to the Exchange's pilot program for P.M. settled options with third-Friday-of-the-month expiration dates (“Expiration Friday”). The proposed rule change was published for comment in the **Federal Register** on December 29, 2020.<sup>3</sup> On January 28, 2021, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received no comment letters on the proposed rule change. The Commission is approving the proposed rule change.

**II. Description of the Proposal, as Modified by Amendment No. 1**

The Exchange is proposing to amend its rules to permit it to list and trade, on a pilot basis, cash-settled MRUT options with Expiration Friday expiration dates, for which the exercise settlement value will be based on the index value derived from the closing prices of the component securities (“P.M.-settled”). MRUT options are options on the Mini-RUT Index, the value of which is 1/10th the value of the Russell 2000 (“RUT”) Index.

The Exchange proposes to add P.M.-settled MRUT options to the Exchange's pilot program under Interpretation and Policy .13 to Rule 4.13 that allows the listing of P.M. settled options that expire on Expiration Friday (“P.M. Pilot Program”). The Exchange notes that the existing P.M. Pilot Program, which is set to end on May 3, 2021, includes options on the Mini-SPX Index (“XSP”), the value of which is 1/10th the value of the S&P 500 Index.<sup>5</sup> Cboe has proposed to

#### II. Description of the Proposal, as Modified by Amendment No. 1

add P.M.-settled MRUT options to that pilot so that the end of the pilot period for P.M.-settled MRUT options would also be May 3, 2021.

The Exchange notes that trading in P.M.-settled MRUT options would operate in the same manner as provided in the proposal to list and trade Mini-RUT options on the Exchange. That is, P.M.-settled MRUT options would have the same European-style exercise, same number of permissible expirations, same exercise interval prices and limitations, same position and exercise limits, and will trade in the same minimum price increment.<sup>6</sup>

The Exchange proposes to abide by the same reporting requirements for the trading of P.M.-settled MRUT options that it does for the trading of P.M.-settled XSP options.<sup>7</sup> The Exchange proposes to include data regarding P.M.-settled MRUT options as it does for P.M.-settled XSP options in the pilot program report that it submits to the Commission at least two months prior to the expiration date of the P.M. Pilot Program (the “annual report”).<sup>8</sup> Specifically, the Exchange submits annual reports to the Commission that contain an analysis of volume, open interest, and trading patterns in connection with products in the P.M. Pilot Program. The analysis examines trading in products in the P.M. Pilot Program, as well as trading in the securities that comprise the underlying index. Additionally, for series that exceed certain minimum open interest parameters, the annual reports provide analysis of index price volatility and share trading activity.

Going forward, the Exchange would include the same analysis of P.M.-settled MRUT options, as well as trading in securities that comprise the RUT Index (as MRUT options are based on 1/10th the value of the RUT Index), in the annual reports. Also, like it currently does for P.M.-settled XSP options, the Exchange would submit periodic interim reports for P.M.-settled MRUT options that contain some, but not all, of the information contained in the annual reports.

The pilot reports will both contain the following volume and open interest data:

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 90749 (December 21, 2020), 85 FR 85752 (“Notice”).

<sup>4</sup> In Amendment No. 1, the Exchange (i) represented that its existing surveillance and reporting safeguards in place are adequate to deter and detect possible manipulative behavior which might arise from listing and trading P.M.-settled MRUT options and (ii) stated that the trading of P.M.-settled MRUT options will be subject to Exchange Rules governing customer accounts, position and exercise limits, margin requirements and trading halt procedures. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change and makes conforming and technical changes, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-cboe-2020-116/sr-cboe2020116-8302266-228358.pdf>.

<sup>5</sup> See Securities Exchange Act Release No. 90263 (October 23, 2020), 85 FR 68611 (October 29, 2020) (CBOE–2020–100). See also Securities Exchange Act Release No. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR–CBOE–2013–055) (“P.M.-settled XSP Approval Order”).

<sup>6</sup> See Notice, supra note 3, fn. 3 at 85753. The Exchange represents that its existing surveillance and reporting safeguards in place are adequate to deter and detect possible manipulative behavior which might arise from listing and trading P.M.-settled MRUT options. See Amendment No. 1, supra note 4.

<sup>7</sup> See P.M.-settled XSP Approval Order supra note 4.

<sup>8</sup> See P.M.-settled XSP Approval Order, supra note 4.

<sup>43</sup> 17 CFR 200.30–3(a)(12).

(1) Monthly volume aggregated for all trades;

(2) monthly volume aggregated by expiration date;

(3) monthly volume for each individual series;

(4) month-end open interest aggregated for all series;

(5) month-end open interest for all series aggregated by expiration date; and

(6) month-end open interest for each individual series.

The annual reports will also contain the information noted in Items (1) through (6) above for Expiration Friday, A.M.-settled, RUT index options traded on Cboe, as well as the following analysis of trading patterns in P.M.-settled MRUT options series in the Pilot Program:

(1) A time series analysis of open interest; and

(2) an analysis of the distribution of trade sizes.

Finally, for series that exceed certain minimum parameters, the annual reports will contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays:

(1) A comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data includes a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the Cboe Volatility Index (VIX), is provided; and

(2) a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data includes a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods are determined by the Exchange and the Commission. Additionally, the Exchange would provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the P.M. Pilot Program, including P.M.-settled MRUT options as proposed, is consistent with the Exchange Act. As it does for current P.M. Pilot products, the Exchange would make public any data

and analyses in connection with P.M.-settled MRUT options it submits to the Commission under the Pilot Program.<sup>9</sup>

Further, the Exchange proposes to amend Rule 5.1, which governs trading days and hours, in conjunction with the proposed addition of MRUT options to the P.M. Pilot Program. Cboe Rule 5.1(b)(2)(C) currently provides that on their last trading day, Regular Trading Hours for P.M.-settled XSP options are between 9:30 a.m. and 4:00 p.m. Eastern Time (as opposed to the 9:30 a.m. to 4:15 p.m. Regular Trading Hours for options with those expirations that are non-expiring). The proposed rule change amends Rule 5.1(b)(2)(C) to apply these time frames to the trading of P.M.-settled MRUT options on their last trading day.

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 any potential additional traffic associated with trading of P.M.-settled MRUT options.<sup>10</sup> The Exchange believes that its Trading Permit Holders will not experience a capacity issue as a result of this proposal. Cboe represents that it will monitor the trading volume associated with any possible additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.<sup>11</sup>

### III. Discussion and Commission Findings

After careful consideration of the proposal, the Commission finds that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>12</sup> and, in particular, the requirements of Section 6 of the Act.<sup>13</sup> Specifically, the Commission finds that the proposed rule change to allow the Exchange to add P.M.-settled MRUT options to the P.M. Pilot Program is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires that an exchange have rules designed to remove impediments to and perfect the mechanism of a free and

open market and to protect investors and the public interest.

As the Commission noted in its orders approving the listing and trading of P.M.-settled options on the S&P 500 Index ("SPXPM"), the Commission has had concerns about the potential adverse effects and impact of P.M. settlement upon market volatility and the operation of fair and orderly markets on the underlying cash markets at or near the close of trading, including for cash-settled derivatives contracts based on a broad-based index.<sup>15</sup> The potential impact today remains unclear, given the significant changes in the closing procedures of the primary markets in recent decades. The Commission is mindful of the historical experience with the impact of P.M. settlement of cash-settled index derivatives on the underlying cash markets, but recognizes that these risks may be mitigated today by the enhanced closing procedures that are now in use at the primary equity markets.

For the reasons described below, the Commission believes that the Exchange's proposal to add P.M.-settled MRUT options to the P.M. Pilot Program is designed to mitigate concerns regarding P.M. settlement and will provide additional trading opportunities for investors while providing the Commission with data to monitor the effects of MRUT options and the impact of P.M. settlement on the markets. To assist the Commission in assessing any potential impact of a P.M.-settled Mini-RUT index option on the options market as well as the underlying cash equities markets, Cboe will be required to submit data to the Commission in connection with the P.M. Pilot Program. The Commission believes that Cboe's P.M. Pilot Program, together with the data and analysis that the Exchange will provide to the Commission, will allow Cboe and the Commission to monitor for and assess any potential for adverse market effects of allowing P.M. settlement for Mini-RUT index options, including on the underlying component stocks. In particular, the data collected from Cboe's P.M. Pilot Program will help inform the Commission's consideration of whether the P.M. Pilot

<sup>9</sup> P.M. Pilot products data and analyses are made available at <https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data>.

<sup>10</sup> See Notice supra, note 3 at 85754.

<sup>11</sup> See Notice supra, note 3 at 85754.

<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78(f)(b)(5).

<sup>15</sup> See Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668, 10669 (February 14, 2013) (order approving the listing and trading of SPXPM on CBOE). See also Securities Exchange Act Release Nos. 64599 (June 3, 2011), 76 FR 33798, 33801-02 (June 9, 2011) (order instituting proceedings to determine whether to approve or disapprove a proposed rule change to allow the listing and trading of SPXPM options); and 65256 (September 2, 2011), 76 FR 55969, 55970-76 (September 9, 2011) (order approving proposed rule change to establish a pilot program to list and trade SPXPM options).

Program should be modified, discontinued, extended, or permanently approved. Furthermore, the Exchange's ongoing analysis of the P.M. Pilot Program should help it monitor any potential risks from large P.M.-settled positions and take appropriate action on a timely basis if warranted.

The Exchange represents that it has adequate surveillance procedures to monitor trading in these options thereby helping to ensure the maintenance of a fair and orderly market<sup>16</sup> and has represented that it has sufficient capacity to handle additional traffic associated with this new listing.<sup>17</sup>

For the reasons discussed above, the Commission finds that Cboe's proposal is consistent with the Act, including Section 6(b)(5) thereof, in that it is designed to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In light of the enhanced closing procedures at the underlying markets and the potential benefits to investors discussed by the Exchange in the Notice,<sup>18</sup> the Commission finds that it is appropriate and consistent with the Act to approve Cboe's proposal on a pilot basis. The collection of data during the P.M. Pilot Program and Cboe's active monitoring of any effects of P.M.-settled MRUT options on the markets will help Cboe and the Commission assess any impact of P.M. settlement in today's market.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-CBOE-2020-116), as modified by Amendment No. 1, be, and hereby is, approved, subject to a pilot period set to expire on May 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91070; File No. SR-FINRA-2020-037]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the By-Laws of FINRA Regulation, Inc. To Align the Grounds for Member Removal From the NAC With an Existing Provision in the FINRA By-Laws

February 5, 2021.

#### I. Introduction

On October 22, 2020, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend a provision in the By-Laws of FINRA Regulation, Inc. ("FINRA Regulation"), FINRA's regulatory subsidiary. The proposed rule change would further align the grounds in the FINRA Regulation By-Laws for removal of a member from the National Adjudicatory Council ("NAC") with an existing provision in the FINRA By-Laws for removal of a governor from the FINRA Board of Governors ("FINRA Board").<sup>3</sup>

The proposed rule change was published for comment in the **Federal Register** on November 9, 2020.<sup>4</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposal

As described in the Notice, FINRA Regulation is the regulatory subsidiary of FINRA and operates according to the Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries (the "Plan").<sup>5</sup> The FINRA Regulation By-Laws authorize the NAC to function on behalf of the FINRA Board in several capacities.<sup>6</sup> For example, FINRA explains that the NAC presides over disciplinary matters that have been appealed to or called for review by the

NAC and also acts on applications in statutory disqualification and membership proceedings.<sup>7</sup> In most matters that the NAC considers, FINRA states that the NAC prepares proposed written decisions that become final FINRA action if the FINRA Board does not call for review of those decisions.<sup>8</sup>

FINRA also states that it periodically reviews its and FINRA Regulation's By-Laws to ensure adherence to effective governance practices.<sup>9</sup> Based on that review, FINRA explains that currently, Article V, Section 5.8 of the FINRA Regulation By-Laws provides that, "[a]ny or all of the members of the [NAC] may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the FINRA Board."<sup>10</sup> By comparison, however, the FINRA By-Laws provide that a governor may be removed for those grounds as well as "for any cause affecting the best interests of [FINRA] the sufficiency of which the Board shall be the sole judge."<sup>11</sup> As a result, FINRA proposes to amend the FINRA Regulation By-Laws to add this ground for removal of a NAC member to further align the bases for removal of a NAC member with the bases for removal of a FINRA Board governor.<sup>12</sup> Specifically, the proposed rule change would amend the FINRA Regulation By-Laws to permit a NAC member to be removed by a majority vote of the FINRA Board "for any cause affecting the best interests of the [NAC] the sufficiency of which the FINRA Board shall be the sole judge."<sup>13</sup>

FINRA further explains that the removal of a NAC member would continue to require a majority vote of the FINRA Board, while a vote to remove a FINRA Board governor requires a two-thirds vote.<sup>14</sup> In

<sup>7</sup> See *id.* FINRA states that the NAC also exercises exemption authority and acts in other proceedings as set forth in the FINRA Rule 9000 Series (Code of Procedure). The FINRA Board may also delegate other powers and duties to the NAC as the FINRA Board deems appropriate and in a manner not inconsistent with the Plan. See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See *id.* As FINRA explains, the FINRA Regulation By-Laws were amended in 2008 to, among other things, designate the FINRA Board as the body authorized to oversee the NAC and empowered to remove NAC members for the grounds mentioned above. See *id.* (citing Exchange Act Release No. 58909 (November 6, 2008), 73 FR 68467 (November 18, 2008) (Order Approving File No. SR-FINRA-2008-046) (the "FINRA Regulation By-Laws Approval Order").

<sup>11</sup> See *id.* Compare Article VII, Section 1(b) of the FINRA By-Laws, with Article V, Sec. 5.8 of the FINRA Regulation By-Laws.

<sup>12</sup> See Notice, 85 FR at 71388.

<sup>13</sup> See *id.*

<sup>14</sup> See *id.* As FINRA notes, both FINRA and FINRA Regulation are corporations organized under

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

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

<sup>3</sup> See *infra* Section II.

<sup>4</sup> See Exchange Act Release No. 90324 (November 3, 2020), 85 FR 71387 (November 9, 2020) (File No. SR-FINRA-2020-037) (the "Notice").

<sup>5</sup> See *id.* at 71388, n.4 (citing the Plan, Sec. II., FINRA Regulation, Inc., <https://www.finra.org/rules-guidance/rulebooks/corporate-organization/ii-finra-regulation-inc>).

<sup>6</sup> See *id.* (citing Article V, Sec. 5.1 of the FINRA Regulation By-Laws).

<sup>16</sup> See Amendment No. 1, *supra* note 4.

<sup>17</sup> See Notice, *supra* note 3 at 85754.

<sup>18</sup> See Notice, *supra* note 3 at 85755.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).