

Rules (1) the governing law of agreements and other documents provided to FICC pursuant to the Rules; and (2) the affirmative undertakings that Members currently make in onboarding membership agreements.

By enhancing the clarity and transparency of the Rules, and allowing FICC to simplify the membership agreements and other documents, the proposed changes would allow Members to more efficiently and effectively conduct their business in accordance with the Rules, which FICC believes would promote the prompt and accurate clearance and settlement of securities transactions. As such, FICC believes that the proposed changes would be consistent with Section 17A(b)(3)(F) of the Act.¹⁶

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe the proposed rule changes would impact competition. The proposed rule changes would merely enhance the clarity and transparency of the Rules and would simplify the documentation that is provided to FICC by Members pursuant to the Rules. Therefore, the proposed changes would not affect FICC's operations or the rights and obligations of membership. As such, FICC believes the proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding

this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

FICC reserves the right to not respond to any comments 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)¹⁷ of the Act and paragraph (f)¹⁸ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FICC-2021-008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-FICC-2021-008. 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 FICC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-FICC-2021-008 and should be submitted on or before December 21, 2021.

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

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93655; File No. SR-CBOE-2021-046]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Cboe Rule 5.4 and Make Corresponding Changes to Other Rules

November 23, 2021.

I. Introduction

On August 6, 2021, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to allow all complex orders to be quoted and executed in \$0.01 increments.³ The

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "complex order" means an order involving the concurrent execution of two or more different series in the same underlying security or index (the "legs" or "components" of the complex order), for the same account, occurring at or near the same time and for the purpose of executing a particular investment strategy with no more than

Continued

¹⁶ *Id.*

¹⁷ 15 U.S.C 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

proposed rule change was published for comment in the **Federal Register** on August 25, 2021.⁴ The Commission received two comment letters regarding the proposal.⁵ Cboe responded to the comments on September 23, 2021.⁶ On September 28, 2021, pursuant to Section 19(b)(2) of the Act,⁷ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁸ On November 1, 2021, the Exchange filed Amendment No. 1 to the proposed rule change.⁹ This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁰ to

the applicable number of legs (which number the Exchange determines on a class-by-class basis). The Exchange determines in which classes complex orders are eligible for processing. Unless the context otherwise requires, the term complex order includes stock-option orders and security future-option orders. For purposes of Rules 5.33 and 5.85(b)(1), the term “complex order” means a complex order with any ratio equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00), an Index Combo order, a stock-option order, or a security future-option order. For the purpose of applying these ratios to complex orders comprised of legs for both mini-options and standard options, ten mini-option contracts represent one standard option contract. For the purpose of applying these ratios to complex orders comprised of legs for both micro-options and standard options, 100 micro-option contracts represent one standard option contract. See Cboe Rule 1.1.

⁴ See Securities Exchange Act Release No. 92709 (August 19, 2021), 86 FR 47529 (“Notice”).

⁵ See letter to Vanessa Countryman, Secretary, Commission, from Alanna Barton, General Counsel, BOX Exchange LLC, dated September 14, 2021 (“BOX Letter”); and letter from Mary Smith, dated August 19, 2021 (“Smith Letter”). Comments received regarding the proposal are available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboe-2021-046/sr-cboe2021046.htm>.

⁶ See letter to Vanessa Countryman, Secretary, Commission, from Laura G. Dickman, Vice President and Associate General Counsel, Cboe Options, dated September 23, 2021 (“Exchange Response”). The Exchange Response is available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboe-2021-046/sr-cboe2021046.htm>.

⁷ 15 U.S.C. 78s(b)(2).

⁸ See Securities Exchange Act Release No. 93159 (September 28, 2021), 86 FR 54780 (October 4, 2021). The Commission designated November 23, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁹ Amendment No. 1 revises the proposal to provide rationale for allowing complex orders with any ratio equal to or greater than one-to-three and less than or equal to three-to-one to trade electronically; provide information regarding the number of additional contracts that would be permitted to trade in \$0.01 increments under the proposal; and express the view that the rules of another options exchange do not clearly specify the minimum trading increment applicable to complex orders traded on that exchange’s trading floor. Amendment No. 1 is available on the Commission’s website at <https://www.sec.gov/comments/sr-cboe-2021-046/sr-cboe2021046.htm>.

¹⁰ 15 U.S.C. 78s(b)(2)(B).

determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

Currently, Exchange Rule 5.4 provides that, except as provided in Exchange Rule 5.33, the minimum increment for bids and offers on complex orders with any ratio equal to or greater than one-to-three and less than or equal to three-to-one for equity and index options, and Index Combo orders, is \$0.01 or greater, which the Exchange may determine on a class-by-class basis, and the legs may be executed in \$0.01 increments. The rule further provides that the minimum increment for bids and offers on complex orders with any ratio less than one-to-three or greater than three-to-one for equity and index options (except for Index Combo orders) is the standard increment for the class pursuant to Exchange Rule 5.4(a), and the legs may be executed in the minimum increment applicable to the class pursuant to Exchange Rule 5.4(a).¹¹ The Exchange proposes to amend Exchange Rule 5.4(a) to allow complex orders with any ratio to be quoted in increments of \$0.01 or greater, as determined by the Exchange on a class-by-class basis, and executed in \$0.01 increments.

The Exchange states that if complex orders cannot be expressed in increments smaller than the increment for the class (such as \$0.05), it may be difficult for brokers to obtain the desired prices for their customers’ complex orders because the parties to a trade must perform complicated and time-consuming calculations to break down the orders into the required contract quantities and prices to fit within the constraint of executing the orders at a minimum increment other than \$0.01.¹² In addition, the Exchange notes that the calculation process for larger-ratio complex orders is time-consuming because these orders generally are entered in large quantities with a large number of legs.¹³ As a result, brokers executing larger-ratio complex orders on active trading days cannot be as efficient in representing other customer orders they are holding.¹⁴ The Exchange states that the proposal to allow larger-ratio complex orders to be quoted and

executed in \$0.01 increments will provide market participants with flexibility in pricing their investment strategies and allow Trading Permit Holders (“TPHs”) to execute these orders more efficiently and at better prices for their customers.¹⁵

The Exchange notes that, in general, because fewer than one third of complex orders executed on the Exchange’s trading floor have ratios greater than three-to-one, a significant majority of the complex orders traded on the Exchange are eligible to execute in pennies.¹⁶ Accordingly, if the proposal increases the number of complex orders submitted with ratios greater than three-to-one (and thus the number of orders that may trade in pennies), the Exchange believes that any increase would represent a nominal increase in the volume that would be eligible to execute in pennies.¹⁷

Currently, the Exchange permits complex orders with any ratio less than one-to-three or greater than three-to-one to trade only on the Exchange’s trading floor.¹⁸ The Exchange proposes to allow these larger-ratio orders to be traded electronically, as well as in open outcry.¹⁹ The Exchange states that electronic trading of larger-ratio complex orders will provide investors with additional flexibility in executing these orders and will increase the investment strategies available to investors who prefer to or solely trade electronically.²⁰

The Exchange asserts that it is unlikely that market participants would submit orders with any ratio equal to or greater than one-to-three and less than or equal to three-to-one that is not a bona fide trading strategy solely for the purpose of trading in \$0.01 increments.²¹ The Exchange states that it is unlikely that other market participants would be willing to execute against an order that is not a bona fide trading strategy, thereby reducing the likelihood that a market participant would be able to execute such a strategy.²² The Exchange further states that adding an extra leg to a large order to be able to improve the book by \$0.01 would be unnecessary because such order could be executed in an AIM Auction in \$0.01 increments.²³ In addition, the Exchange notes that these orders would be subject to review by the

¹¹ The minimum increment for bids and offers on complex orders in options on the S&P 500 Index (SPX) or on the S&P 100 Index (OEX and XEO), except for box/roll spreads, is \$0.05 or greater, or any increment, which the Exchange may determine on a class-by-class basis. See Cboe Rule 5.4(a).

¹² See Notice, 86 FR at 47530.

¹³ See Exchange Response at 4.

¹⁴ See Notice, 86 FR at 47530.

¹⁵ See *id.* at 47530–1.

¹⁶ See Amendment No. 1 at 4.

¹⁷ See *id.*

¹⁸ See Notice, 86 FR at 47529.

¹⁹ See *id.* at n. 6.

²⁰ See Amendment No. 1 at 5.

²¹ See Notice, 86 FR at 47531.

²² See *id.*

²³ See *id.*

Exchange's regulatory division, which could determine that the submission of such orders was in violation of the Exchange's rules, including Exchange Rule 8.1, which prohibits TPHs from engaging in acts or practices inconsistent with just and equitable principles of trade.²⁴

The proposal does not extend the complex order priority provisions applicable to complex orders with any ratio equal to or greater than one-to-three and less than or equal to three-to-one to complex orders with any ratio less than one-to-three or greater than three-to-one.²⁵ The proposal amends Exchange Rule 5.33(f)(2)(A)(v) to provide that a complex order that has any ratio less than one-to-three or greater than three-to-one will not execute at a net price that would cause any component of the complex strategy to be executed at a price ahead of a Priority Customer order on the Simple Book²⁶ without improving the BBO²⁷ of each component of the complex strategy with a Priority Customer order at the BBO.²⁸ As a result, a complex order with any ratio less than one-to-three or greater than three-to-one may be executed at a net debit or credit price only if each leg of the order betters the corresponding bid (offer) of a Priority Customer order(s) in the Simple Book.²⁹ Accordingly, the Exchange states that the complex order priority rules will continue to protect Priority Customer interest on the Simple Book.³⁰

III. Summary of Comments and Exchange's Response

The Commission received two comment letters regarding the proposal.³¹ One commenter states that the proposal would solely benefit high-speed traders and result in worse prices for retail traders due to decreased quotes.³²

²⁴ See *id.*

²⁵ See Notice, 86 FR at 47530.

²⁶ The Simple Book is the electronic book of simple orders and quotes maintained by the System, which single book is used during both the Regular Trading Hours and Global Trading Hours trading sessions. See Exchange Rule 1.1.

²⁷ The BBO is the best bid or offer disseminated on the Exchange.

²⁸ See Exchange Rule 1.1. Exchange Rule 5.33(f)(2)(A)(v) will continue to provide that a complex order that has any ratio equal to or greater than one-to-three and less than or equal to three-to-one, or an Index Combo order, will not execute at a net price that would cause any component of the complex strategy to be executed at a price ahead of a Priority Customer Order on the Simple Book without improving the BBO of at least one component of the complex strategy.

²⁹ See Notice, 86 FR at 47530.

³⁰ See *id.*

³¹ See *supra* note 5.

³² See Smith Letter.

The Exchange states that the proposal is designed to increase the efficiency of trading larger-ratio, highly complex orders and is not intended to benefit high-speed traders.³³ The Exchange further states that the proposal has minimal relevance to high-speed traders, who generally participate in listed options trading as market makers rather than as brokers conducting agency businesses.³⁴ The Exchange concludes that the proposal "will have minimal impact on either high-speed traders or retail traders (or on the simple market), as it is intended to increase the efficiency and precision available to brokers attempting to execute highly complicated yet bona-fide multi-leg option strategies on the Exchange, which strategies are not common among high-speed traders or retail traders."³⁵ In addition, the Exchange notes that the proposal is unrelated to quoting and that the increased number of complex orders that would be eligible for more flexible pricing under the proposal could increase the number of complex orders entered on the Exchange that may leg into the Simple Book, thereby increasing execution opportunities for resting customer orders.³⁶

Another commenter states that, contrary to statements in the proposal, each component leg of s of a multi-leg Qualified Open Outcry Order ("QOO") on the BOX Exchange LLC's ("BOX") trading floor respects the minimum trading increment for the series (e.g., \$0.01, \$0.05, \$0.10).³⁷ The commenter further states that multi-leg QOO Orders do not meet the definition of Complex QOO Order and are treated like single-leg QOO Orders for purposes of execution and priority.³⁸

In its response, the Exchange states that multiple TPHs who are also members of BOX informed the Exchange that multi-legged orders with ratios greater than three-to-one or less than one-to-three are executed regularly on BOX's trading floor in penny increments.³⁹ The Exchange also expressed the view that BOX's rules lack clarity regarding the increments applicable to QOO Orders that do not satisfy the definition of a complex order in BOX Rule 7240(a)(7).⁴⁰

³³ See Exchange Response at 1–2.

³⁴ See *id.* at 2.

³⁵ *Id.* at 3–4.

³⁶ See *id.* at 2.

³⁷ See BOX Letter at 1.

³⁸ See *id.*

³⁹ See Exchange Response at 4.

⁴⁰ See *id.* at 4–5. See also Amendment No. 1 at 6–7.

IV. Proceedings To Determine Whether To Approve or Disapprove SR–CBOE–2021–046 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁴¹ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,⁴² the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,⁴³ which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . . to 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,"⁴⁴ and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.⁴⁵ The proposal would allow a complex order with any ratio less than one-to-three or greater than three-to-one to be quoted and executed in \$0.01 increments, regardless of the trading increment for the class. Thus, the component series of a complex order with any ratio less than one-to-three or greater than three-to-one in a class that trades in \$0.05 increments would be able to trade in \$0.01 increments, while single-leg orders in those series would trade in \$0.05 increments. The Commission believes that questions are raised as to whether this disparity in trading increments could disadvantage market participants trading single-leg orders in classes with a standard trading increment of \$0.05 or \$0.10.

⁴¹ 15 U.S.C. 78s(b)(2)(B).

⁴² *Id.*

⁴³ 15 U.S.C. 78f(b)(5).

⁴⁴ *Id.*

⁴⁵ See *id.*

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provisions of the Act, or rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,⁴⁶ any request for an opportunity to make an oral presentation.⁴⁷

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by December 21, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 4, 2022. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other issues raised by the proposed rule change raised under the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-CBOE-2021-046 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 No. SR-CBOE-2021-046. The file number should be included on the subject line

⁴⁶ 17 CFR 240.19b-4.

⁴⁷ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 No. SR-CBOE-2021-046 and should be submitted by December 21, 2021. Rebuttal comments should be submitted by January 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁸

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93669; File No. SR-DTC-2021-016]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Certain Revisions and Clarifications to the Rules

November 24, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,²

⁴⁸ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on November 15, 2021, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to DTC's Rules, Bylaws and Organization Certificate (“Rules”) to (1) incorporate into the Rules the governing law of agreements and other documents provided to DTC pursuant to the Rules; (2) incorporate in the Rules the affirmative undertakings that Participants currently make in onboarding membership agreements; (3) clarify that Participants shall appoint a duly authorized representative in connection with their membership, and remove the requirement that DTC approve the form of power of attorney or resolutions of the Participant's board of directors that evidences such authorization; and (4) clarify DTC's ability to rely on electronic signatures on agreements and other documents provided to DTC pursuant to the Rules, as described in greater detail below.⁵

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4).

⁵ Capitalized terms not defined herein are defined in the Rules, available at <https://www.dtcc.com/legal/rules-and-procedures>. Unless otherwise indicated by the context, the term “Participant” as used herein includes the term “Limited Participant.”