

## OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 28

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No.\* SR - 2019 - \* 117

Amendment No. (req. for Amendments \*)

Filing by Cboe Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

|  |   |  |  |  |   |
|--|---|--|--|--|---|
| Initial *<br><input checked="" type="checkbox"/> | Amendment *<br><input type="checkbox"/>   | Withdrawal<br><input type="checkbox"/> | Section 19(b)(2) *<br><input type="checkbox"/> | Section 19(b)(3)(A) *<br><input checked="" type="checkbox"/> | Section 19(b)(3)(B) *<br><input type="checkbox"/> |
|  |   |  | Rule   |  |   |
| Pilot<br><input type="checkbox"/>                | Extension of Time Period<br>for Commission Action *<br><input type="checkbox"/> | Date Expires *<br><input type="text"/> | <input type="checkbox"/> 19b-4(f)(1)           | <input type="checkbox"/> 19b-4(f)(4)                         |   |
|  |   |  | <input type="checkbox"/> 19b-4(f)(2)           | <input type="checkbox"/> 19b-4(f)(5)                         |   |
|  |   |  | <input type="checkbox"/> 19b-4(f)(3)           | <input checked="" type="checkbox"/> 19b-4(f)(6)              |   |

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant  
 to the Securities Exchange Act of 1934

Section 806(e)(1) \*

☐

Section 806(e)(2) \*

☐

Section 3C(b)(2) \*

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Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

The Exchange proposes a rule change to permit FLEX Traders to enter leg prices of FLEX complex orders following execution rather than upon systemization.

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Laura Last Name \* Dickman  
 Title \* Vice President, Associate General Counsel  
 E-mail \* dickmsn@cboe.com  
 Telephone \* (312) 786-7572 Fax

### Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 12/06/2019

By Laura G. Dickman

(Name \*)

Vice President, Associate General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

dickman@cboe.com

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**Item 1.      Text of the Proposed Rule Change**

(a) Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Rule 5.72. The text of the proposed rule change is provided below and in Exhibit 1.

(additions are underlined; deletions are [bracketed])

\* \* \* \* \*

**Rules of Cboe Exchange, Inc.**

\* \* \* \* \*

**Rule 5.72. FLEX Trading**

(a) No change.

(b) *FLEX Orders*. A FLEX Option series is only eligible for trading if a FLEX Trader (the “Submitting FLEX Trader”) (i) submits a FLEX Order for that series into an electronic FLEX Auction pursuant to paragraph (c) of this Rule, (ii) represents the FLEX Order in an open outcry FLEX Auction pursuant to paragraph (d) of this Rule, or (iii) submits the FLEX Order to a FLEX AIM or SAM Auction pursuant to Rule 5.73 or 5.74, respectively.

(1) No change.

(2) *Complex FLEX Order*. A FLEX Order for a FLEX Option complex strategy submitted to the System must satisfy the criteria for a complex FLEX Order set forth in Rule 5.70(b) and include size, side of the market, and a net debit or credit price[, and a bid or offer price for each leg of the FLEX Order, which leg prices must add together to equal the net price]. Additionally, each leg of the FLEX Option complex strategy must include all terms for a FLEX Option series set forth in Rule 4.21 (including that a non-FLEX Option series with identical terms is not listed for trading), subject to the order entry requirements set forth in Rule 5.7.

(A) A complex FLEX Order submitted into the System for an electronic FLEX Auction pursuant to paragraph (c) below must include a bid or offer price for each leg, which leg prices must add together to equal the net price.

(B) A complex FLEX Order submitted into the System prior to representation in an open outcry FLEX Auction pursuant to paragraph (d) below may include a bid or offer price on one or more of the legs (subject to a FLEX Trader’s responsibilities pursuant to Rule 5.91 and Chapter 9). The execution leg prices must be entered or modified, as necessary, via PAR following execution of the order, which prices must add together to equal the net execution price.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

**Item 2. Procedures of the Self-Regulatory Organization**

(a) The Exchange's President (or designee) pursuant to delegated authority approved the proposed rule change on November 12, 2019.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Laura G. Dickman, (312) 786-7572, Cboe Exchange, Inc., 400 South LaSalle, Chicago, Illinois 60605.

**Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

The Exchange proposes to amend Rule 5.72(b) regarding the information required in a FLEX Order<sup>1</sup> for a FLEX Option complex strategy submitted to the System for execution in an open outcry FLEX Auction.<sup>2</sup> A FLEX Option series is only eligible for trading if a FLEX Trader (the "Submitting FLEX Trader") submits a FLEX Order for that series into an electronic FLEX Auction pursuant to Rule 5.72(c) or represents the FLEX Order in an open outcry FLEX Auction pursuant to Rule 5.72(d).<sup>3</sup> Currently, Rule 5.72(b) provides that a

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<sup>1</sup> A "FLEX Order" is an order submitted in a FLEX Option. See Rule 5.70(a). A "FLEX Option" means a flexible exchange option. See Rule 1.1.

<sup>2</sup> See Rule 5.72(d) for a description of the open outcry FLEX Auction process.

<sup>3</sup> See Rule 5.72(b). A FLEX Option series may also be eligible for trading if the Submitting FLEX Trader submits the FLEX Order to a FLEX Automated Improvement Mechanism auction or FLEX Solicitation Auction Mechanism auction pursuant to Rule 5.73 or 5.74, respectively.

FLEX Order for a FLEX Option complex strategy submitted to the System must satisfy the criteria for a complex FLEX Order set forth in Rule 5.70(b)<sup>4</sup> and include size, side of the market, a net debit or credit price, and a bid or offer price for each leg of the FLEX Order, which leg prices must add together to equal that net price. This applies to complex FLEX Orders submitted for both electronic and open outcry execution.

The proposed rule change removes the requirement that a FLEX Order submitted into the System prior to representation in an open outcry FLEX Auction include leg prices at the time of order submission.<sup>5</sup> Specifically, proposed Rule 5.72(b)(2)(B) states a complex FLEX Order submitted into the System prior to representation in an open outcry FLEX Auction pursuant to paragraph (d) of Rule 5.72 may include a bid or offer price on one or more of the legs (subject to a FLEX Trader's responsibilities pursuant to Rule 5.91 (which describes responsibilities of a floor broker) and Chapter 9 (which describes obligations on Trading Permit Holders that do business with the public)). The execution leg prices must be entered or modified, as necessary, via PAR following execution of the order, which prices must add together to equal the net execution price.

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<sup>4</sup> Rule 5.70(b) requires each leg of a complex FLEX Order to: (1) be for a FLEX Option series authorized for FLEX trading with the same underlying equity security or index; (2) must have the same exercise style (American or European); and (3) for a FLEX Index Option, may have a different settlement type (a.m.-settled or p.m.-settled), except each leg must have the same settlement type if designated as Asian-settled or Cliquet-settled.

<sup>5</sup> The proposed rule change has no impact on complex FLEX Orders submitted for electronic execution. The proposed rule change moves the requirement that a complex FLEX Order submitted into the System for an electronic FLEX Auction pursuant to Rule 5.72(c) include a bid or offer price for each leg, which leg prices must add together to equal the net price, to proposed Rule 5.72(b)(2)(A).

When a floor broker (which is the Submitting FLEX Trader with respect to open outcry FLEX trading) receives an order from a customer, the floor broker must systematize the terms of that order, including any limit price (which is the net price with respect to a complex order).<sup>6</sup> As noted above, current Rule 5.72(b)(2) requires a Submitting FLEX Trader (i.e., a floor broker with respect to open outcry trading) to systematize prices of all legs of a complex order upon submission. The Exchange imposed this requirement for both electronic and open outcry FLEX orders for consistency within the Rules.

Additionally, the Exchange believed this requirement to be appropriate due to the lack of electronic leg markets in FLEX options. In the non-FLEX market, there is no requirement to systematize leg prices upon submission of a complex order. In a non-FLEX market, there is a book and a national best bid or offer, and as a result, the System has a benchmark to use to determine execution leg prices based on the net execution price of a complex order (which leg prices may not be outside of the best prices of orders and quotes in the book for those legs). This is not the case in the FLEX market, in which there is no market in the leg series

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<sup>6</sup> See Rule 5.7(f) (which requires systemization of the terms of an order, which would include the limit price if a limit order); see also Rule 5.6(b) (which defines a “limit order” as an order to buy or sell a stated number of option contracts at a specified price or better). Customers that trade complex limit orders generally only provide a limit price for the net price, as they are ultimately looking for execution of the entire package to occur at a certain price (or better). However, it is possible (although uncommon) that a customer may provide a limit price for one or more of the legs, which the floor broker would also be required to systematize upon entry as a term of the order. In addition to the definition of a limit order, which may not trade at a price worse than the limit price, floor brokers are required to use due diligence to execute an order at the best prices available, as well as in accordance with the rules (including the definition of a limit order) and general floor broker responsibilities. See Rule 5.91(a); see also Rule 5.91(c) (which provides that an order entrusted to a floor broker is considered not held, which (as defined in Rule 5.6(c)) gives a floor broker discretion as to the price and time at which an order is to be executed, subject to a client’s specified instruction).

of complex orders that the System can use to calculate appropriate execution prices of the legs of a complex strategy (for which there are countless combinations of prices). Therefore, the Exchange believed requiring the leg prices to be input upon submission of a complex FLEX order would provide the System with this benchmark information to use when determining leg execution prices based on the net execution price. Because of the automatic execution of an electronic FLEX order following the electronic FLEX auction, which auction is based on the net execution price, the Exchange continues to believe the requirement to input leg prices upon submission of an order to an electronic FLEX auction is appropriate. However, in open outcry FLEX trading (as well as open outcry non-FLEX trading), the FLEX auction process functions as a price negotiation through which the net execution price, as well as the leg execution prices (that add up to that net execution price) are determined. Since the open outcry FLEX Auction process can be used to determine leg prices for a complex FLEX order after the parties agree to a net execution price, the Exchange believes it is reasonable to permit a Submitting FLEX Trader to input leg prices into the System either upon submission of a complex FLEX Order (and adjusted as necessary following execution), or only following execution. If a Submitting FLEX Trader includes leg prices in a complex FLEX Order upon submission of the order, the execution prices of those legs may be modified following the auction (subject to any limit price for a leg as instructed by a customer), as long as they add up to the net execution price.

The proposed rule change permits a Submitting FLEX Trader to continue to input those leg prices upon submission of the order and modify them as necessary following execution, or input them after execution. The proposed rule change is not modifying how complex FLEX Orders may be executed in open outcry, or the execution information that

must be provided to the Exchange. Any leg prices input upon systematization of an order are visible only to the FLEX Trader on its PAR workstation. Prior to representing a complex order to the trading crowd, a FLEX Trader will generally request a market from the trading crowd. FLEX Traders (generally market-makers) in the trading crowd will respond with a market for the net price. Market-makers price the orders and the legs based on their own pricing models – they do not know the net limit price or the leg price of the systematized order, as a floor broker does not announce the leg prices when it represents the order on the trading floor. Once the crowd agrees on a net price, it then negotiates prices for the legs, which the Submitting FLEX Trader will input (or update, if applicable) into the order record on its PAR workstation. Therefore, whether a FLEX Trader inputs leg prices before an execution (and modifies them as necessary after execution to reflect floor negotiations during the open outcry auction (if necessary)), or only inputs the execution leg prices after execution, has no impact on the open outcry FLEX auction or the prices at which FLEX complex orders (and the prices of the legs of those orders) trade. The proposed rule change is merely modifying the time at which FLEX Traders may provide the information to the Exchange.

The Exchange will issue an Exchange Notice announcing the implementation date for the proposed rule change, which date the Exchange expects to be within the next two weeks. This will permit the Exchange to implement the proposed rule change within its system and provide sufficient notice of the change and its related requirements to Trading Permit Holders.

(b) 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>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</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>9</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 remove impediments to and perfect the mechanism of a free and open market by providing Submitting FLEX Traders with the flexibility to input leg prices of complex strategies either upon entry of a complex FLEX Order or following execution. The Exchange believes this may lead to more efficient open outcry executions on behalf of a floor broker's customer, as a Submitting FLEX Trader will not be required to take the time to input leg prices upon submission of the order and then modify them after execution to reflect these negotiations, which ultimately benefits investors (as further discussed below). As noted above, because any leg prices of a complex FLEX order input upon systematization are

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> Id.

only known to the Submitting FLEX Trader and not known to any other person in the trading crowd, the Exchange believes the proposed rule change will have no impact on the manner in which complex FLEX Orders are negotiated and executed in open outcry. The proposed rule change is not modifying how complex FLEX Orders may be executed in open outcry, or the information that Submitting FLEX Traders must provide to the Exchange. The proposed rule change is merely modifying the time at which Submitting FLEX Traders may provide certain information to the Exchange.

The Exchange believes the proposed rule change will protect investors, because it will permit a floor broker to request a market and execute a customer's order in open outcry in a more timely fashion. FLEX orders may include a substantial number of legs (they regularly include more than ten legs, but may include up to 100 legs). Inputting leg prices for a large number of legs may be a time-consuming exercise (and as noted above, it is ultimately unnecessary prior to an open outcry FLEX auction<sup>10</sup> given the negotiations that occur during such an auction), which may delay execution of the customer's order and potentially miss an opportunity for execution at prices based on then-current market conditions. While the proposed rule change has virtually no impact on other members of the trading crowd, the proposed rule change provides a floor broker with flexibility that may result in a timelier execution of its customer's FLEX order.

**Item 4. 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

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<sup>10</sup> This is subject to a floor broker's general obligation to adhere to its customers' instructions. See supra note 6.

of the Act. The Exchange does not believe that 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 it will apply to all Submitting FLEX Traders that represent complex FLEX Orders (i.e., floor brokers) in open outcry in the same manner. All Submitting FLEX Traders will have the option to input leg prices on a complex FLEX Order upon submission of the order to an open outcry FLEX Auction, or following execution of that FLEX Order. As noted above, because the remainder of the trading crowd does not currently know the leg prices systematized by the Submitting FLEX Trader, the proposed rule change will have virtually no impact on other market participants. The proposed rule change is not modifying the information that FLEX Traders must provide to the Exchange – it is merely modifying the time at which FLEX Traders may provide the information to the Exchange. The Exchange believes applying the proposed rule change to open outcry FLEX auctions but not electronic FLEX auctions is reasonable given the ability for the trading crowd to negotiate the leg prices in open outcry, while the System has no ability to price the legs based on the net execution price without an electronic leg market.

The Exchange does not believe that 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 it relates solely to the timing of the input of leg prices of FLEX Orders that may be executed on the Exchange. The proposed rule change merely provides Submitting FLEX Traders with flexibility regarding when they may input leg prices for complex FLEX Orders submitted for open outcry execution – either upon submission of the order or following execution of the order. The proposed rule change will

have no impact on how, or the prices at which, a complex FLEX Order may execute in an open outcry FLEX Auction.

**Item 5. 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.

**Item 6. Extension of Time Period for Commission Action**

Not applicable.

**Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder.

(b) The Exchange designates that the proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange believes the proposed rule change will not significantly affect the protection of investors or the public interest, because it will provide Submitting FLEX

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

Traders with the flexibility to input leg prices of complex strategies either upon entry of a complex FLEX Order or following execution. The Exchange believes this may lead to more efficient open outcry executions on behalf of a floor broker's customer, as a Submitting FLEX Trader will not be required to take the time to input leg prices upon submission of the order and then modify them after execution to reflect these negotiations. The Exchange believes the proposed rule change will protect investors, because it will permit a floor broker to request a market and execute a customer's order in open outcry in a more timely fashion. Complex FLEX orders may include a substantial number of legs, and inputting leg prices for a large number of legs may be a time-consuming exercise (and as noted above, it is ultimately unnecessary prior to an open outcry FLEX auction<sup>13</sup> given the negotiations that occur during such an auction). This may delay execution of the customer's order and potentially miss an opportunity for execution at prices based on then-current market conditions. While the proposed rule change has virtually no impact on other members of the trading crowd, the proposed rule change provides a floor broker with flexibility that may result in a timelier execution of its customer's complex FLEX order.

The Exchange believes the proposed rule change will not impose any significant burden on competition, because it will apply to all Submitting FLEX Traders that represent complex FLEX Orders (i.e., floor brokers) in open outcry in the same manner. All Submitting FLEX Traders will have the option to input leg prices on a complex FLEX Order upon submission of the order to an open outcry FLEX Auction, or following execution of that FLEX Order. The proposed rule change is not modifying the information

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<sup>13</sup> This is subject to a floor broker's general obligation to adhere to its customers' instructions. See supra note 6.

that FLEX Traders must provide to the Exchange – it is merely modifying the time at which FLEX Traders may provide the information to the Exchange. The Exchange believes applying the proposed rule change to open outcry FLEX auctions but not electronic FLEX auctions is reasonable given the ability for the trading crowd to negotiate the leg prices in open outcry, while the System has no ability to price the legs based on the net execution price without an electronic leg market. The proposed rule change relates solely to the timing of the input of leg prices of complex FLEX Orders that may be executed on the Exchange. The proposed rule change merely provides Submitting FLEX Traders with flexibility regarding when they may input leg prices for complex FLEX Orders submitted for open outcry execution – either upon submission of the order or following execution of the order. The proposed rule change will have no impact on how, or the prices at which, a complex FLEX Order may execute in an open outcry FLEX Auction.

For the foregoing reasons, this rule filing qualifies as a “non-controversial” rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission. At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective, which the Exchange believes would be consistent with the protection of investors

and the public interest. Waiver of the operative delay will permit FLEX Traders to take advantage of the proposed flexibility and the potential for more efficient open outcry FLEX executions as soon as possible, which will ultimately benefit customers of floor brokers. The proposed rule change is not modifying the information that a Submitting FLEX Trader must provide to the Exchange, but rather is merely modifying the time at which Submitting FLEX Trader may provide certain information to the Exchange. As noted above, because the remainder of the trading crowd does not currently know the leg prices systematized by the Submitting FLEX Trader, the proposed rule change will have virtually no impact on other market participants, but may result in a timelier execution for customers of floor brokers. Because any leg prices of a complex FLEX order input upon systematization are only known to the Submitting FLEX Trader and not known to any other person in the trading crowd, the Exchange believes the proposed rule change will have no impact on the manner in which complex FLEX Orders are negotiated and executed in open outcry. The proposed rule change will have no impact on how, or the prices at which, a complex FLEX Order may execute in an open outcry FLEX Auction. The proposed rule change is not modifying how complex FLEX Orders may be executed in open outcry, or the information that FLEX Traders must provide to the Exchange. As described above, the Exchange will provide Trading Permit Holders with notice of the proposed rule change (including of an implementation date) and its related requirements.

(c) Not applicable.

(d) Not applicable.

**Item 8.        Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

**Item 9.        Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**Item 10.      Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**Item 11.      Exhibits**

Exhibit 1.      Completed Notice of Proposed Rule Change for publication in the Federal Register.



EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CBOE-2019-117]

[Insert date]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend Rule 5.72

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 [insert date], 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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Rule 5.72. The text of the proposed rule change is provided below.

(additions are underlined; deletions are [bracketed])

\* \* \* \* \*

Rules of Cboe Exchange, Inc.

\* \* \* \* \*

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

**Rule 5.72. FLEX Trading**

(a) No change.

(b) *FLEX Orders*. A FLEX Option series is only eligible for trading if a FLEX Trader (the “Submitting FLEX Trader”) (i) submits a FLEX Order for that series into an electronic FLEX Auction pursuant to paragraph (c) of this Rule, (ii) represents the FLEX Order in an open outcry FLEX Auction pursuant to paragraph (d) of this Rule, or (iii) submits the FLEX Order to a FLEX AIM or SAM Auction pursuant to Rule 5.73 or 5.74, respectively.

(1) No change.

(2) *Complex FLEX Order*. A FLEX Order for a FLEX Option complex strategy submitted to the System must satisfy the criteria for a complex FLEX Order set forth in Rule 5.70(b) and include size, side of the market, and a net debit or credit price, and a bid or offer price for each leg of the FLEX Order, which leg prices must add together to equal the net price]. Additionally, each leg of the FLEX Option complex strategy must include all terms for a FLEX Option series set forth in Rule 4.21 (including that a non-FLEX Option series with identical terms is not listed for trading), subject to the order entry requirements set forth in Rule 5.7.

(A) A complex FLEX Order submitted into the System for an electronic FLEX Auction pursuant to paragraph (c) below must include a bid or offer price for each leg, which leg prices must add together to equal the net price.

(B) A complex FLEX Order submitted into the System prior to representation in an open outcry FLEX Auction pursuant to paragraph (d) below may include a bid or offer price on one or more of the legs (subject to a FLEX Trader’s responsibilities pursuant to Rule 5.91 and Chapter 9). The execution leg prices must be entered or modified, as necessary, via PAR following execution of the order, which prices must add together to equal the net execution price.

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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 Exchange proposes to amend Rule 5.72(b) regarding the information required in a FLEX Order<sup>5</sup> for a FLEX Option complex strategy submitted to the System for execution in an open outcry FLEX Auction.<sup>6</sup> A FLEX Option series is only eligible for trading if a FLEX Trader (the "Submitting FLEX Trader") submits a FLEX Order for that series into an electronic FLEX Auction pursuant to Rule 5.72(c) or represents the FLEX Order in an open outcry FLEX Auction pursuant to Rule 5.72(d).<sup>7</sup> Currently, Rule 5.72(b) provides that a FLEX Order for a FLEX Option complex strategy submitted to the System must satisfy the criteria for a complex FLEX Order set forth in Rule 5.70(b)<sup>8</sup> and include size, side of the market, a net debit or credit price, and a bid or offer price for each leg of the FLEX Order,

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<sup>5</sup> A "FLEX Order" is an order submitted in a FLEX Option. See Rule 5.70(a). A "FLEX Option" means a flexible exchange option. See Rule 1.1.

<sup>6</sup> See Rule 5.72(d) for a description of the open outcry FLEX Auction process.

<sup>7</sup> See Rule 5.72(b). A FLEX Option series may also be eligible for trading if the Submitting FLEX Trader submits the FLEX Order to a FLEX Automated Improvement Mechanism auction or FLEX Solicitation Auction Mechanism auction pursuant to Rule 5.73 or 5.74, respectively.

<sup>8</sup> Rule 5.70(b) requires each leg of a complex FLEX Order to: (1) be for a FLEX Option series authorized for FLEX trading with the same underlying equity security or index; (2) must have the same exercise style (American or European); and (3) for a FLEX Index Option, may have a different settlement type (a.m.-settled or p.m.-settled), except each leg must have the same settlement type if designated as Asian-settled or Cliquet-settled.

which leg prices must add together to equal that net price. This applies to complex FLEX Orders submitted for both electronic and open outcry execution.

The proposed rule change removes the requirement that a FLEX Order submitted into the System prior to representation in an open outcry FLEX Auction include leg prices at the time of order submission.<sup>9</sup> Specifically, proposed Rule 5.72(b)(2)(B) states a complex FLEX Order submitted into the System prior to representation in an open outcry FLEX Auction pursuant to paragraph (d) of Rule 5.72 may include a bid or offer price on one or more of the legs (subject to a FLEX Trader's responsibilities pursuant to Rule 5.91 (which describes responsibilities of a floor broker) and Chapter 9 (which describes obligations on Trading Permit Holders that do business with the public)). The execution leg prices must be entered or modified, as necessary, via PAR following execution of the order, which prices must add together to equal the net execution price.

When a floor broker (which is the Submitting FLEX Trader with respect to open outcry FLEX trading) receives an order from a customer, the floor broker must systematize the terms of that order, including any limit price (which is the net price with respect to a complex order).<sup>10</sup> As noted above, current Rule 5.72(b)(2) requires a Submitting FLEX

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<sup>9</sup> The proposed rule change has no impact on complex FLEX Orders submitted for electronic execution. The proposed rule change moves the requirement that a complex FLEX Order submitted into the System for an electronic FLEX Auction pursuant to Rule 5.72(c) include a bid or offer price for each leg, which leg prices must add together to equal the net price, to proposed Rule 5.72(b)(2)(A).

<sup>10</sup> See Rule 5.7(f) (which requires systemization of the terms of an order, which would include the limit price if a limit order); see also Rule 5.6(b) (which defines a "limit order" as an order to buy or sell a stated number of option contracts at a specified price or better). Customers that trade complex limit orders generally only provide a limit price for the net price, as they are ultimately looking for execution of the entire package to occur at a certain price (or better). However, it is possible (although uncommon) that a customer may provide a limit price for one or more of the legs, which the floor broker would also be required to

Trader (i.e., a floor broker with respect to open outcry trading) to systematize prices of all legs of a complex order upon submission. The Exchange imposed this requirement for both electronic and open outcry FLEX orders for consistency within the Rules.

Additionally, the Exchange believed this requirement to be appropriate due to the lack of electronic leg markets in FLEX options. In the non-FLEX market, there is no requirement to systematize leg prices upon submission of a complex order. In a non-FLEX market, there is a book and a national best bid or offer, and as a result, the System has a benchmark to use to determine execution leg prices based on the net execution price of a complex order (which leg prices may not be outside of the best prices of orders and quotes in the book for those legs). This is not the case in the FLEX market, in which there is no market in the leg series of complex orders that the System can use to calculate appropriate execution prices of the legs of a complex strategy (for which there are countless combinations of prices). Therefore, the Exchange believed requiring the leg prices to be input upon submission of a complex FLEX order would provide the System with this benchmark information to use when determining leg execution prices based on the net execution price. Because of the automatic execution of an electronic FLEX order following the electronic FLEX auction, which auction is based on the net execution price, the Exchange continues to believe the requirement to input leg prices upon submission of an

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systematize upon entry as a term of the order. In addition to the definition of a limit order, which may not trade at a price worse than the limit price, floor brokers are required to use due diligence to execute an order at the best prices available, as well as in accordance with the rules (including the definition of a limit order) and general floor broker responsibilities. See Rule 5.91(a); see also Rule 5.91(c) (which provides that an order entrusted to a floor broker is considered not held, which (as defined in Rule 5.6(c)) gives a floor broker discretion as to the price and time at which an order is to be executed, subject to a client's specified instruction).

order to an electronic FLEX auction is appropriate. However, in open outcry FLEX trading (as well as open outcry non-FLEX trading), the FLEX auction process functions as a price negotiation through which the net execution price, as well as the leg execution prices (that add up to that net execution price) are determined. Since the open outcry FLEX Auction process can be used to determine leg prices for a complex FLEX order after the parties agree to a net execution price, the Exchange believes it is reasonable to permit a Submitting FLEX Trader to input leg prices into the System either upon submission of a complex FLEX Order (and adjusted as necessary following execution), or only following execution. If a Submitting FLEX Trader includes leg prices in a complex FLEX Order upon submission of the order, the execution prices of those legs may be modified following the auction (subject to any limit price for a leg as instructed by a customer), as long as they add up to the net execution price.

The proposed rule change permits a Submitting FLEX Trader to continue to input those leg prices upon submission of the order and modify them as necessary following execution, or input them after execution. The proposed rule change is not modifying how complex FLEX Orders may be executed in open outcry, or the execution information that must be provided to the Exchange. Any leg prices input upon systematization of an order are visible only to the FLEX Trader on its PAR workstation. Prior to representing a complex order to the trading crowd, a FLEX Trader will generally request a market from the trading crowd. FLEX Traders (generally market-makers) in the trading crowd will respond with a market for the net price. Market-makers price the orders and the legs based on their own pricing models – they do not know the net limit price or the leg price of the systematized order, as a floor broker does not announce the leg prices when it represents the

order on the trading floor. Once the crowd agrees on a net price, it then negotiates prices for the legs, which the Submitting FLEX Trader will input (or update, if applicable) into the order record on its PAR workstation. Therefore, whether a FLEX Trader inputs leg prices before an execution (and modifies them as necessary after execution to reflect floor negotiations during the open outcry auction (if necessary), or only inputs the execution leg prices after execution, has no impact on the open outcry FLEX auction or the prices at which FLEX complex orders (and the prices of the legs of those orders) trade. The proposed rule change is merely modifying the time at which FLEX Traders may provide the information to the Exchange.

The Exchange will issue an Exchange Notice announcing the implementation date for the proposed rule change, which date the Exchange expects to be within the next two weeks. This will permit the Exchange to implement the proposed rule change within its system and provide sufficient notice of the change and its related requirements to Trading Permit Holders.

## 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>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</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,

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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>13</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 remove impediments to and perfect the mechanism of a free and open market by providing Submitting FLEX Traders with the flexibility to input leg prices of complex strategies either upon entry of a complex FLEX Order or following execution. The Exchange believes this may lead to more efficient open outcry executions on behalf of a floor broker's customer, as a Submitting FLEX Trader will not be required to take the time to input leg prices upon submission of the order and then modify them after execution to reflect these negotiations, which ultimately benefits investors (as further discussed below). As noted above, because any leg prices of a complex FLEX order input upon systematization are only known to the Submitting FLEX Trader and not known to any other person in the trading crowd, the Exchange believes the proposed rule change will have no impact on the manner in which complex FLEX Orders are negotiated and executed in open outcry. The proposed rule change is not modifying how complex FLEX Orders may be executed in open outcry, or the information that Submitting FLEX Traders must provide to the Exchange. The proposed rule change is merely modifying the time at which Submitting FLEX Traders may provide certain information to the Exchange.

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<sup>13</sup> Id.



The Exchange believes the proposed rule change will protect investors, because it will permit a floor broker to request a market and execute a customer's order in open outcry in a more timely fashion. FLEX orders may include a substantial number of legs (they regularly include more than ten legs, but may include up to 100 legs). Inputting leg prices for a large number of legs may be a time-consuming exercise (and as noted above, it is ultimately unnecessary prior to an open outcry FLEX auction<sup>14</sup> given the negotiations that occur during such an auction), which may delay execution of the customer's order and potentially miss an opportunity for execution at prices based on then-current market conditions. While the proposed rule change has virtually no impact on other members of the trading crowd, the proposed rule change provides a floor broker with flexibility that may result in a timelier execution of its customer's FLEX order.

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 intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply to all Submitting FLEX Traders that represent complex FLEX Orders (i.e., floor brokers) in open outcry in the same manner. All Submitting FLEX Traders will have the option to input leg prices on a complex FLEX Order upon submission of the order to an open outcry FLEX Auction, or following execution of that FLEX Order. As noted above, because the remainder of the trading crowd does not currently know the leg prices systematized by the Submitting FLEX

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<sup>14</sup> This is subject to a floor broker's general obligation to adhere to its customers' instructions. See supra note 10.

Trader, the proposed rule change will have virtually no impact on other market participants. The proposed rule change is not modifying the information that FLEX Traders must provide to the Exchange – it is merely modifying the time at which FLEX Traders may provide the information to the Exchange. The Exchange believes applying the proposed rule change to open outcry FLEX auctions but not electronic FLEX auctions is reasonable given the ability for the trading crowd to negotiate the leg prices in open outcry, while the System has no ability to price the legs based on the net execution price without an electronic leg market.

The Exchange does not believe that 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 it relates solely to the timing of the input of leg prices of FLEX Orders that may be executed on the Exchange. The proposed rule change merely provides Submitting FLEX Traders with flexibility regarding when they may input leg prices for complex FLEX Orders submitted for open outcry execution – either upon submission of the order or following execution of the order. The proposed rule change will have no impact on how, or the prices at which, a complex FLEX Order may execute in an open outcry FLEX Auction.

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

The Exchange neither solicited nor received comments on the proposed rule change

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

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6)<sup>16</sup> 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2019-117 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.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-CBOE-2019-117. This file number should be included on the subject line if e-mail 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, D.C. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-117 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Secretary

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