

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 40	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 005	Amendment No. (req. for Amendments *)
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Filing by Cboe Exchange, Inc.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

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

The Exchange proposes a rule change to adopt an automated process pursuant to which an option will open if it is open for trading on another exchange after a specified amount of time.

**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 * VP, Associate General Counsel	
E-mail * ldickman@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 01/11/2021	VP, Associate General Counsel
By Laura G. Dickman	
(Name *)	



ldickman@cboe.com

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.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF 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 \***

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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 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**

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Exhibit Sent As Paper Document

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

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 its opening process for simple orders. The text of the proposed rule change is provided in Exhibit 5.

(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 December 9, 2020. The Exchange will announce the implementation date of the proposed rule change in accordance with Rule 1.5.

(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 5.31 regarding its opening process for simple orders. Currently, following the occurrence of an opening rotation trigger pursuant to Rule 5.31(d), the System conducts an opening rotation for an option series. Following the opening rotation trigger, the System conducts the Maximum Composite Width Check pursuant to Rule 5.31(e)(1) to determine if a series is eligible to open. If the Composite

Market<sup>1</sup> of a series is not crossed, and the Composite Width<sup>2</sup> of the series is less than or equal to the Maximum Composite Width (as defined in Rule 5.31(a)), the series is eligible to open. Additionally, if the Composite Market of a series is not crossed, and the Composite Width of the series is greater than the Maximum Composite Width, but there are (i) no non-M Capacity (a) market orders or (b) buy (sell) limit orders with prices higher (lower) than the Composite Market midpoint and (ii) no orders or quotes marketable against each other, the series is eligible to open. Once a series become eligible to open, the System conducts the opening auction for the series (*i.e.* determines the opening trade price pursuant to Rule 5.31(e)(2) and opens the series pursuant to Rule 5.31(e)(3)). The Exchange may also determine to compel a series to open in the interest of fair and orderly markets, including if the opening width is wider than the Maximum Composite Width, pursuant to Rule 5.31(h).

Currently, if a series cannot satisfy these conditions described above (and thus is not eligible to open), or if the Composite Market of a series is crossed, the series is ineligible to open.<sup>3</sup> When that occurs, the Queuing Period<sup>4</sup> for the series continues (including the

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<sup>1</sup> The term “Composite Market” means the market for a series comprised of (1) the higher of the then-current best appointed Market-Maker bulk message bid on the Exchange and the away best bid (“ABB”) (if there is an ABB) and (2) the lower of the then-current best appointed Market-Maker bulk message offer on the Exchange and the away best offer (“ABO”) (if there is an ABO). The term “Composite Bid (Offer)” means the bid (offer) used to determine the Composite Market. See Rule 5.31(a).

<sup>2</sup> The term “Composite Width” means the width of the Composite Market (*i.e.*, the width between the Composite Bid and the Composite Offer) of a series. See Rule 5.31(a).

<sup>3</sup> See Rule 5.31(e)(1)(C). The proposed rule change codifies in this provision that a series is not eligible to open if there is no Composite Market. This is true today and implied by the current rule text. If there were no Composite Market, the System would be unable to perform the Maximum Composite Width Check, thus meaning the series could not satisfy that check and thus would not be eligible to open. This proposed change merely adds this detail to the Rules for additional transparency.

dissemination of opening auction updates) until the Maximum Composite Width Check is satisfied or the Exchange determines to open the series pursuant to Rule 5.31(h). The proposed rule change adds that such a series may open pursuant to a forced opening as set forth in proposed Rule 5.31(f).<sup>5</sup> Specifically, as proposed, if a series in an equity or exchange-traded product (“ETP”) option class<sup>6</sup> is unable to open because it does not satisfy the Maximum Composite Width Check described above within a time period (which the Exchange determines for all equity and ETP option classes)<sup>7</sup> after the occurrence of the opening rotation trigger for the class pursuant to Rule 5.31(d), and the Composite Market is not crossed, the System forces the series to open after that time period upon the System’s observation of an away best bid and offer (“ABBO”) (with a non-zero offer)<sup>8</sup> for the series.<sup>9</sup> For a series subject to a forced opening, the opening trade price determination and series open set forth in Rule 5.31(e)(2) and (3) (i.e., the opening auction) do not occur; instead, the System opens the series without a trade. This will permit a series to open for trading on the

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<sup>4</sup> The term “Queuing Period” means the time period prior to the initiation of an opening rotation during which the System accepts orders and quotes in the Queuing Book (the book into which Users may submit orders for participation in the opening rotation) for participation in the opening rotation for the applicable trading session. See Rule 5.31(a).

<sup>5</sup> The proposed forced opening process has no impact on the modified opening auction process set forth in Rule 5.31(j).

<sup>6</sup> The proposed rule change is limited to series in equity and ETP option classes because these classes are eligible for listing on all U.S. options exchanges.

<sup>7</sup> See Rule 1.5 (which permits the Exchange to announce determinations by, among other things, notice, regulatory circular, and specification).

<sup>8</sup> Such an ABBO would indicate that an away exchange is open, as it would have disseminated an opening quote.

<sup>9</sup> The Exchange currently has a similar forced opening after a specified amount of time for complex order strategies. See Rule 5.33(c)(2)(C).

Exchange if the series is open for trading on at least one other options exchange, even though the market for the series on the Exchange may be wide.

The proposed change to Rule 5.31(f) provides that in the event of a forced opening of a series pursuant to proposed Rule 5.31(e)(4) or a compelled opening of a series pursuant to paragraph (h), the System enters all of a User's orders in that series in the Queuing Book into the Book in the manner set forth in current Rule 5.31(f), unless a User instructs the System to cancel its market orders or all of its orders, in which case the System enters only the non-cancelled orders into the Book in this manner. Specifically, they will be processed in accordance with Rule 5.32 (as unexecuted orders and quotes are handled following the conclusion of the opening rotation), which describes how the System processes, handles, and executes orders. If any order or quote in the Queuing Book is marketable upon the forced opening (and the User does not instruct the System to cancel it as proposed), the System would execute marketable orders subject to the priority rules set forth in Rule 5.32. If an order is marketable against away interest and is eligible for routing, the System may route the order for execution to an away exchange. Any non-marketable order would enter the Book or cancel, subject to the User instructions. This proposed change provides Users with flexibility for automated handling of their orders in the event a series opens with a wide market or is otherwise manually opened when the opening conditions may not otherwise be standard.

If a series satisfies the Maximum Composite Width Check prior to the System's observation of an ABBO for the series, the series opens pursuant to Rule 5.31(d)(2) and (3) (i.e., the standard opening auction process occurs for the series). For example, suppose the Exchange determined the "forced opening" timer to be three minutes. If the opening trigger

for a series occurs at 9:30:05 Eastern time but the series does not satisfy the Maximum Composite Width Check after the trigger, the System will force the series open after 9:33:05 Eastern time if it has received an ABBO by that time. However, if the series satisfies the Maximum Composite Width Check at 9:32:30, the series will open in accordance with the normal opening auction process.

Finally, the proposed rule change amends the definitions of “Maximum Composite Width” and “Opening Collar” in Rule 5.31(a). The term “Maximum Composite Width” means the amount that the Composite Width of a series may generally not be greater than for the series to open (subject to certain exceptions set forth in Rule 5.31(e)(1)). The term “Opening Collar” means the price range that establishes limits at or inside which the System determines the Opening Trade Price for a series. The Opening Collar is determined by determining the midpoint of the Composite Market, and adding and subtracting half of the applicable width amount above and below, respectively, that midpoint. The amounts for the Maximum Composite Width and Opening Collar each apply on a Composite Bid basis and are currently the same for all classes (and the Maximum Composite Width amounts are the same as the Opening Collar amounts).

The Maximum Composite Width and Opening Collar amounts are currently specified in these defined terms. The proposed rule change deletes these specified amounts and instead states that the Exchange determines each on a class and Composite Bid basis, which amount the Exchange may modify during the opening auction process (which modifications the Exchange disseminates to all subscribers to the Exchange’s data feeds that

deliver opening auction updates).<sup>10</sup> The Exchange believes having flexibility to set these amounts is appropriate so that it may consider the different market models and characteristics of different classes, as well as modify amounts in response to then-current market conditions. The Rules currently permit the Exchange to modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates). This proposed change merely permits the Exchange to modify these amounts at any time as it deems necessary and appropriate. The Exchange notes several options exchanges are able to change the amounts of valid opening widths by notice or circular and do not need to submit a rule filing to the Commission to do so.<sup>11</sup>

(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>12</sup> Specifically, the Exchange believes the proposed rule change is consistent with the

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<sup>10</sup> The Exchange would announce the determinations (and any changes to those determinations) in accordance with Rule 1.5.

<sup>11</sup> See, e.g., Nasdaq Options Market ("NOM") Options 3, Section 8(a)(6), Cboe EDGX Options Exchange, Inc. ("EDGX") Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar); Cboe BZX Options Exchange, Inc. ("BZX") Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar); Cboe C2 Exchange Inc. ("C2") Rule 6.11(a) (definitions of Maximum Composite Width and Opening Collar); see also Miami Securities Exchange, Inc. ("MIAX") Rule 503(f)(2) (which permits MIAX to determine by circular an acceptable range in which openings are permissible if there is no valid width national best bid or offer ("NBBO")).

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



Section 6(b)(5)<sup>13</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>14</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 forced opening process for simple orders will remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors. The proposed rule change will provide for series to open for trading on the Exchange sooner than they may open currently, as long as they are open for trading on other options exchanges. The Exchange believes the proposed rule change will benefit investors, because it may permit these options to open sooner and increase the times during which investors may conduct trading in these options. Additionally, this may increase liquidity in the market for a series that is otherwise open on another options exchange. While the market on the Exchange for a series may be wider than the Maximum Composite Width,<sup>15</sup> the Exchange believes it is reasonable to open the series if it opened for trading on another

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<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> Id.

<sup>15</sup> The Exchange notes pursuant to Rule 5.31(e)(1)(B), there are currently instances in which the Exchange will open for trading despite the Composite Market Width being larger than the Maximum Composite Width.

options exchange pursuant to that exchange's Commission-approved rules. Options exchanges have varying opening processes and have made separate determinations on what constitutes separate, reasonable opening market widths. The Exchange believes if other options exchanges opened a series with a market width, it is reasonable to open the series for trading on the Exchange as well (as orders submitted to other exchanges may be trading at those widths). Since orders may not trade outside of the disseminated NBBO (which defines the then-current market for the series), any orders resting in the Queuing Book that may execute following the forced opening will receive protection against executions at potentially erroneous prices. Additionally, the proposed ability of Users to cancel orders in the event of a forced opening will provide Users with additional protection. Additionally, the Exchange believes opening series for trading on the Exchange that are open for trading on other options exchanges will put Exchange Users on equal footing with other market participants, as it will provide Users' orders that are otherwise resting in the Queuing Book and awaiting execution with the ability to get into the market for potential execution.

The Exchange currently has the authority to deviate from the standard opening process, including to temporarily increase the Maximum Composite Width amounts (*i.e.*, widen the permissible opening market) and to compel a series open, even if the Maximum Composite Width check is not satisfied, but that may only happen manually if the Exchange determines it is necessary in the interests of a fair and orderly market.<sup>16</sup> Currently, if a series is open on another exchange but not on the Exchange, the Exchange generally manually increases the Maximum Composite Width for the series until the

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<sup>16</sup> See Rule 5.31(h); see also definition of Maximum Composite Width and Opening Collar in Rule 5.31(a).

series opens. Manually increasing the Maximum Composite Width for a series until the series open is a different manual process than compelling the series to open, but ultimately achieves the same result of causing a series that does not satisfy the Maximum Composite Width check to otherwise open. The Exchange believes it is in the interests of a fair and orderly market to deviate from the opening process to systematically force a series to open, despite a wide Exchange market, if the series is open for trading on another exchange to provide investors with orders in that series resting on the Exchange's Queuing Book to have the same execution opportunities as other investors who submitted orders to other options exchanges with different opening conditions. The proposed rule change is consistent with this authority and creates an automated compelled opening in certain circumstances to replace the manual process currently used. This will benefit investors by providing additional transparency to the Rules regarding when a series may open despite not satisfying the Maximum Composite Width check as well as remove impediments to and perfect the mechanism of a free and open market and a national market system by automating an otherwise manual process.

The Exchange believes the proposed rule change to permit Users to give the System a standing instruction regarding how to handle their orders when a forced or manually compelled (for simple orders) opening of series occurs will benefit investors, as it will give them an additional tool to manage their orders in connection with the opening of series. Users may currently cancel any of their orders resting in the Queuing Book prior to the opening of a series, and they may cancel any orders that do not execute at the open once those orders are in the Book or COB, as applicable. Because the Exchange market may be wider in these situations, the Exchange believes it is appropriate to

provide Users with the ability to cancel market orders so they don't execute at the wider market prices once in the Book or cancel all of their orders if they prefer.

Additionally, the Exchange believes the proposed rule change to permit the Exchange to determine the amounts of the Maximum Composite Width and Opening Collar on a class and Composite Bid basis will remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors, because it will provide the Exchange with flexibility to consider the different market models and characteristics of different classes, and respond to then-current market conditions. The Rules currently permit the Exchange to modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates). This proposed change merely permits the Exchange to modify these amounts at any time as it deems necessary and appropriate. The Exchange notes several options exchanges are able to change the amounts of valid opening widths by notice or circular and do not need to submit a rule filing to the Commission to do so, and the proposed rule change would provide the Exchange with the same flexibility to determine maximum opening widths that other exchanges have.<sup>17</sup>

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<sup>17</sup> See, e.g., NOM Options 3, Section 8(a)(6), EDGX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), BZX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), and C2 Rule 6.11(a) (definitions of Maximum Composite Width and Opening Collar); see also MIAX Rule 503(f)(2) (which permits MIAX to determine by circular an acceptable range in which openings are permissible if there is no valid width NBBO).

**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 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 all Users may trade in any series that opens subject to the proposed forced opening process. The Exchange believes it is appropriate to limit the forced opening to equity and ETP options, as those may be multiply listed on exchanges. Additionally, all Users will have the opportunity to instruct the System to cancel its market orders or all open orders in the event of a forced or otherwise manual opening. Cancellation of some or all of a User's orders in the event of such an opening would be voluntary and completely within the User's discretion. The Exchange believes the proposed rule change to determine the amounts of the Maximum Composite Width and Opening Collar on a class and Composite Bid basis will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the determined amounts (by Composite Bid) for each class will apply to all orders of all market participants in the applicable class in the same manner. The Exchange believes it is appropriate to be able to determine different amounts on a class basis (it already determines different amounts on a Composite Bid basis), because it will provide the Exchange with flexibility to consider the different market models and characteristics of different classes, and respond to then-current market conditions. The Rules currently permit the Exchange to modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange disseminates to all subscribers to the

Exchange's data feeds that deliver opening auction updates). This proposed change merely permits the Exchange to modify these amounts at any time as it deems necessary and appropriate.

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 the proposed forced opening process will permit series to open on the Exchange that are otherwise open for trading on other options Exchange, which may increase liquidity and competition in those series sooner. Additionally, the Exchange believes opening series for trading on the Exchange that are open for trading on other options exchanges will put Exchange Users on equal footing with other market participants, as it will provide Users' orders that are otherwise resting in the Queuing Book and awaiting execution with the ability to get into the market for potential execution. The proposed flexibility for Users to instruct the System how to handle their orders in the event of a forced or manual opening applies only to how a Users' orders on the Exchange will be handled in such a circumstance. The Exchange does not believe the proposed rule change to permit the Exchange to determine the amounts of the Maximum Composite Width and Opening Collar on a class and Composite Bid basis will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Several options exchanges are able to change the amounts of valid opening widths by notice or circular and do not need to submit a rule filing to the

Commission to do so, and the proposed rule change would provide the Exchange with the same flexibility to determine maximum opening widths that other exchanges have.<sup>18</sup>

**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>19</sup> and Rule 19b-4(f)(6)<sup>20</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

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<sup>18</sup> See, e.g., NOM Options 3, Section 8(a)(6), EDGX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), BZX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), and C2 Rule 6.11(a) (definitions of Maximum Composite Width and Opening Collar); see also MIAX Rule 503(f)(2) (which permits MIAX to determine by circular an acceptable range in which openings are permissible if there is no valid width NBBO).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

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 forced opening process for simple orders will not significantly affect the protection of investors or the public interest. The Exchange believes the proposed rule change will provide for series to open for trading on the Exchange sooner than they may open currently, as long as they are open for trading on other options exchanges. The Exchange believes the proposed rule change will benefit investors, because it may permit these options to open sooner and increase the times during which investors may conduct trading in these options. Additionally, this may increase liquidity in the market for a series that is otherwise open on another options exchange. While the market on the Exchange for a series may be wider than the Maximum Composite Width, the Exchange believes it is reasonable to open the series if it opened for trading on another options exchange pursuant to that exchange's Commission-approved rules. Options exchanges have varying opening processes and have made separate determinations on what constitutes separate, reasonable opening market widths. The Exchange believes if other options exchanges opened a series, it is reasonable to open the series for trading on the Exchange as well (as orders submitted to other exchanges may be trading at widths permitted under those exchanges' rules). The Exchange believes the requirement that orders not be permitted to trade outside of the NBBO (which defines the then-current market for the series) will provide protection for any orders resting in the Queuing Book that may execute following the forced opening, as well as providing the proposed ability to Users to cancel orders in the event of a forced



opening) will continue to provide Users with protection against executions at potentially erroneous prices.<sup>21</sup>

The proposed rule change is not novel, as the Exchange currently has the authority to deviate from the standard opening process, including to temporarily increase the Maximum Composite Width amounts (*i.e.*, widen the permissible opening market) and to compel a series open, even if the Maximum Composite Width check is not satisfied, but that may only happen manually if the Exchange determines it is necessary in the interests of a fair and orderly market.<sup>22</sup> Currently, if a series is open on another exchange but not on the Exchange, the Exchange generally manually increases the Maximum Composite Width for the series until the series opens. Manually increasing the Maximum Composite Width for a series until the series open is a different manual process than compelling the series to open, but ultimately achieves the same result of causing a series that does not satisfy the Maximum Composite Width check to otherwise open. The Exchange believes it is in the interests of a fair and orderly market to deviate from the opening process to cause a series to open, despite a wide Exchange market, if the series is open for trading on another exchange to provide investors with orders in that series resting on the Exchange's Book to have the same execution opportunities as other investors who submitted orders to other options exchanges with different opening conditions.

Additionally, the Exchange believes the proposed rule change to permit Users to give the System a standing instruction regarding how to handle their orders when a forced

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<sup>21</sup> As noted above, the Exchange currently has a similar forced opening after a specified amount of time for complex order strategies. See Rule 5.33(c)(2)(C).

<sup>22</sup> See Rule 5.31(h); see also definitions of Maximum Composite Width and Opening Collar in Rule 5.31(a).

or manually compelled (for simple orders) opening of series occurs will not significantly affect the protection of investors or the public interest, as it will give them an additional tool to manage their orders in connection with the opening of series. The proposed rule change is not novel, as Users may currently manually cancel any of their orders resting in the Queuing Book prior to the opening of a series, and they may manually cancel any orders that do not execute at the open once those orders are in the Book or COB, as applicable. Because the Exchange market may be wider in these situations, the Exchange believes it is appropriate to provide Users with the ability to cancel market orders so they don't execute at the wider market prices once in the Book or cancel all of their orders if they prefer.

The Exchange also believes the proposed rule change to permit the Exchange to determine the amounts of the Maximum Composite Width and Opening Collar on a class and Composite Bid basis will not significantly affect the protection of investors or the public interest, because it will provide the Exchange with flexibility to consider the different market models and characteristics of different classes, and respond to then-current market conditions. The Rules currently permit the Exchange to modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates). This proposed change merely permits the Exchange to modify these amounts at any time as it deems necessary and appropriate.

The Exchange does not believe that the proposed rule change will impose any significant burden on competition because all Users may trade in any series that opens

subject to the proposed forced opening process. The Exchange believes it is appropriate to limit the forced opening to equity and ETP options, as those may be multiply listed on exchanges. Additionally, all Users will have the opportunity to instruct the System to cancel its market orders or all open orders in the event of a forced or otherwise manual opening. Cancellation of some or all of a User's orders in the event of such an opening would be voluntary and completely within the User's discretion. The proposed flexibility for Users to instruct the System how to handle their orders in the event of a forced or manual opening applies only to how a Users' orders on the Exchange will be handled in such a circumstance. The Exchange believes opening series for trading on the Exchange that are open for trading on other options exchanges will put Exchange Users on equal footing with other market participants, as it will provide Users' orders that are otherwise resting in the Queuing Book and awaiting execution with the ability to get into the market for potential execution. The Exchange does not believe the proposed rule change to permit the Exchange to determine the amounts of the Maximum Composite Width and Opening Collar on a class and Composite Bid basis will impose any significant burden on competition, because several options exchanges are able to change the amounts of valid opening widths by notice or circular and do not need to submit a rule filing to the Commission to do so, and the proposed rule change would provide the Exchange with the same flexibility to determine maximum opening widths that other exchanges have.<sup>23</sup>

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<sup>23</sup> See, e.g., NOM Options 3, Section 8(a)(6), EDGX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), BZX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), and C2 Rule 6.11(a) (definitions of Maximum Composite Width and Opening Collar); see also MIAX Rule 503(f)(2) (which permits MIAX to determine by circular an acceptable range in which openings are permissible if there is no valid width NBBO).

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. As discussed above, the proposed rule change is not novel, as the Exchange currently has the authority to deviate from the standard opening process, including to temporarily increase the Maximum Composite Width amounts (*i.e.*, widen the permissible opening market) and to compel a series open, even if the Maximum Composite Width check is not satisfied, but that may only happen manually if the Exchange determines it is necessary in the interests of a fair and orderly market.<sup>24</sup> The proposed rule change is merely automating a process which it currently has the authority to perform manually. The Exchange believes waiver of the operative delay will protect investors, because it will permit series to open for trading on the Exchange when those series are already open for trading on other options exchanges (which would have opened on other exchanges pursuant to those exchanges’ Commission-approved rules), and thus put Exchange Users on equal footing with other market participants as soon as possible.

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<sup>24</sup> See Rule 5.31(h); see also definitions of Maximum Composite Width and Opening Collar in Rule 5.31(a).

The proposed functionality will provide Users' orders that are otherwise resting in the Queuing Book and awaiting execution with the ability to get into the market for potential execution. Additionally, several options exchanges are able to change the amounts of valid opening widths by notice or circular and do not need to submit a rule filing to the Commission to do so.<sup>25</sup> Waiver of the operative delay would provide the Exchange with the same flexibility to determine maximum opening widths that other exchanges have as soon as possible. The Exchange will announce the implementation date for the proposed rule change in accordance with Rule 1.5.

(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 to permit the Exchange to determine the amounts of the Maximum Composite Width and Opening Collar on a class and Composite Bid basis, which amount the Exchange may modify during the opening auction process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates), is identical to EDGX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), BZX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), and C2 Rule 6.11(a) (definitions of Maximum Composite Width and Opening Collar). Additionally, options exchanges have varying

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<sup>25</sup> See, e.g., NOM Options 3, Section 8(a)(6), EDGX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), BZX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), and C2 Rule 6.11(a) (definitions of Maximum Composite Width and Opening Collar); see also MIAX Rule 503(f)(2) (which permits MIAX to determine by circular an acceptable range in which openings are permissible if there is no valid width NBBO).

opening processes and have made separate determinations on what constitutes reasonable opening market widths, other options exchanges have the flexibility to determine the amounts of opening market widths.<sup>26</sup>

**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 5.      Proposed rule text.

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<sup>26</sup>      See, e.g., NOM Options 3, Section 8(a)(6).

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CBOE-2021-005]

[Insert date]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend its Opening Process for Simple Orders

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 its opening process for simple orders. The text of the proposed rule change is provided in Exhibit 5.

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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).

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 5.31 regarding its opening process for simple orders. Currently, following the occurrence of an opening rotation trigger pursuant to Rule 5.31(d), the System conducts an opening rotation for an option series. Following the opening rotation trigger, the System conducts the Maximum Composite Width Check pursuant to Rule 5.31(e)(1) to determine if a series is eligible to open. If the Composite Market<sup>5</sup> of a series is not crossed, and the Composite Width<sup>6</sup> of the series is less than or

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<sup>5</sup> The term "Composite Market" means the market for a series comprised of (1) the higher of the then-current best appointed Market-Maker bulk message bid on the Exchange and the away best bid ("ABB") (if there is an ABB) and (2) the lower of the then-current best appointed Market-Maker bulk message offer on the Exchange and the away best offer ("ABO") (if there is an ABO). The term "Composite Bid (Offer)" means the bid (offer) used to determine the Composite Market. See Rule 5.31(a).

<sup>6</sup> The term "Composite Width" means the width of the Composite Market (i.e., the width between the Composite Bid and the Composite Offer) of a series. See Rule



equal to the Maximum Composite Width (as defined in Rule 5.31(a)), the series is eligible to open. Additionally, if the Composite Market of a series is not crossed, and the Composite Width of the series is greater than the Maximum Composite Width, but there are (i) no non-M Capacity (a) market orders or (b) buy (sell) limit orders with prices higher (lower) than the Composite Market midpoint and (ii) no orders or quotes marketable against each other, the series is eligible to open. Once a series become eligible to open, the System conducts the opening auction for the series (*i.e.* determines the opening trade price pursuant to Rule 5.31(e)(2) and opens the series pursuant to Rule 5.31(e)(3)). The Exchange may also determine to compel a series to open in the interest of fair and orderly markets, including if the opening width is wider than the Maximum Composite Width, pursuant to Rule 5.31(h).

Currently, if a series cannot satisfy these conditions described above (and thus is not eligible to open), or if the Composite Market of a series is crossed, the series is ineligible to open.<sup>7</sup> When that occurs, the Queuing Period<sup>8</sup> for the series continues (including the dissemination of opening auction updates) until the Maximum Composite Width Check is satisfied or the Exchange determines to open the series pursuant to Rule 5.31(h). The proposed rule change adds that such a series may open pursuant to a forced opening as set

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5.31(a).

<sup>7</sup> See Rule 5.31(e)(1)(C). The proposed rule change codifies in this provision that a series is not eligible to open if there is no Composite Market. This is true today and implied by the current rule text. If there were no Composite Market, the System would be unable to perform the Maximum Composite Width Check, thus meaning the series could not satisfy that check and thus would not be eligible to open. This proposed change merely adds this detail to the Rules for additional transparency.

<sup>8</sup> The term “Queuing Period” means the time period prior to the initiation of an opening rotation during which the System accepts orders and quotes in the Queuing Book (the book into which Users may submit orders for participation in the opening rotation) for participation in the opening rotation for the applicable trading session. See Rule 5.31(a).

forth in proposed Rule 5.31(f).<sup>9</sup> Specifically, as proposed, if a series in an equity or exchange-traded product (“ETP”) option class<sup>10</sup> is unable to open because it does not satisfy the Maximum Composite Width Check described above within a time period (which the Exchange determines for all equity and ETP option classes)<sup>11</sup> after the occurrence of the opening rotation trigger for the class pursuant to Rule 5.31(d), and the Composite Market is not crossed, the System forces the series to open after that time period upon the System’s observation of an away best bid and offer (“ABBO”) (with a non-zero offer)<sup>12</sup> for the series.<sup>13</sup> For a series subject to a forced opening, the opening trade price determination and series open set forth in Rule 5.31(e)(2) and (3) (i.e., the opening auction) do not occur; instead, the System opens the series without a trade. This will permit a series to open for trading on the Exchange if the series is open for trading on at least one other options exchange, even though the market for the series on the Exchange may be wide.

The proposed change to Rule 5.31(f) provides that in the event of a forced opening of a series pursuant to proposed Rule 5.31(e)(4) or a compelled opening of a series pursuant to paragraph (h), the System enters all of a User’s orders in that series in the Queuing Book into the Book in the manner set forth in current Rule 5.31(f), unless a User instructs the System to cancel its market orders or all of its orders, in which case the System enters only

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<sup>9</sup> The proposed forced opening process has no impact on the modified opening auction process set forth in Rule 5.31(j).

<sup>10</sup> The proposed rule change is limited to series in equity and ETP option classes because these classes are eligible for listing on all U.S. options exchanges.

<sup>11</sup> See Rule 1.5 (which permits the Exchange to announce determinations by, among other things, notice, regulatory circular, and specification).

<sup>12</sup> Such an ABBO would indicate that an away exchange is open, as it would have disseminated an opening quote.

<sup>13</sup> The Exchange currently has a similar forced opening after a specified amount of time for complex order strategies. See Rule 5.33(c)(2)(C).

the non-cancelled orders into the Book in this manner. Specifically, they will be processed in accordance with Rule 5.32 (as unexecuted orders and quotes are handled following the conclusion of the opening rotation), which describes how the System processes, handles, and executes orders. If any order or quote in the Queuing Book is marketable upon the forced opening (and the User does not instruct the System to cancel it as proposed), the System would execute marketable orders subject to the priority rules set forth in Rule 5.32. If an order is marketable against away interest and is eligible for routing, the System may route the order for execution to an away exchange. Any non-marketable order would enter the Book or cancel, subject to the User instructions. This proposed change provides Users with flexibility for automated handling of their orders in the event a series opens with a wide market or is otherwise manually opened when the opening conditions may not otherwise be standard.

If a series satisfies the Maximum Composite Width Check prior to the System's observation of an ABBO for the series, the series opens pursuant to Rule 5.31(d)(2) and (3) (i.e., the standard opening auction process occurs for the series). For example, suppose the Exchange determined the "forced opening" timer to be three minutes. If the opening trigger for a series occurs at 9:30:05 Eastern time but the series does not satisfy the Maximum Composite Width Check after the trigger, the System will force the series open after 9:33:05 Eastern time if it has received an ABBO by that time. However, if the series satisfies the Maximum Composite Width Check at 9:32:30, the series will open in accordance with the normal opening auction process.

Finally, the proposed rule change amends the definitions of "Maximum Composite Width" and "Opening Collar" in Rule 5.31(a). The term "Maximum Composite Width"

means the amount that the Composite Width of a series may generally not be greater than for the series to open (subject to certain exceptions set forth in Rule 5.31(e)(1)). The term “Opening Collar” means the price range that establishes limits at or inside which the System determines the Opening Trade Price for a series. The Opening Collar is determined by determining the midpoint of the Composite Market, and adding and subtracting half of the applicable width amount above and below, respectively, that midpoint. The amounts for the Maximum Composite Width and Opening Collar each apply on a Composite Bid basis and are currently the same for all classes (and the Maximum Composite Width amounts are the same as the Opening Collar amounts).

The Maximum Composite Width and Opening Collar amounts are currently specified in these defined terms. The proposed rule change deletes these specified amounts and instead states that the Exchange determines each on a class and Composite Bid basis, which amount the Exchange may modify during the opening auction process (which modifications the Exchange disseminates to all subscribers to the Exchange’s data feeds that deliver opening auction updates).<sup>14</sup> The Exchange believes having flexibility to set these amounts is appropriate so that it may consider the different market models and characteristics of different classes, as well as modify amounts in response to then-current market conditions. The Rules currently permit the Exchange to modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange disseminates to all subscribers to the Exchange’s data feeds that deliver opening auction updates). This proposed change merely permits the Exchange to modify these amounts at any time as it

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<sup>14</sup> The Exchange would announce the determinations (and any changes to those determinations) in accordance with Rule 1.5.

deems necessary and appropriate. The Exchange notes several options exchanges are able to change the amounts of valid opening widths by notice or circular and do not need to submit a rule filing to the Commission to do so.<sup>15</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>16</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>17</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

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<sup>15</sup> See, e.g., Nasdaq Options Market (“NOM”) Options 3, Section 8(a)(6), Cboe EDGX Options Exchange, Inc. (“EDGX”) Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar); Cboe BZX Options Exchange, Inc. (“BZX”) Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar); Cboe C2 Exchange Inc. (“C2”) Rule 6.11(a) (definitions of Maximum Composite Width and Opening Collar); see also Miami Securities Exchange, Inc. (“MIAX”) Rule 503(f)(2) (which permits MIAX to determine by circular an acceptable range in which openings are permissible if there is no valid width national best bid or offer (“NBBO”).

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

the Section 6(b)(5)<sup>18</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 forced opening process for simple orders will remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors. The proposed rule change will provide for series to open for trading on the Exchange sooner than they may open currently, as long as they are open for trading on other options exchanges. The Exchange believes the proposed rule change will benefit investors, because it may permit these options to open sooner and increase the times during which investors may conduct trading in these options. Additionally, this may increase liquidity in the market for a series that is otherwise open on another options exchange. While the market on the Exchange for a series may be wider than the Maximum Composite Width,<sup>19</sup> the Exchange believes it is reasonable to open the series if it opened for trading on another options exchange pursuant to that exchange's Commission-approved rules. Options exchanges have varying opening processes and have made separate determinations on what constitutes separate, reasonable opening market widths. The Exchange believes if other options exchanges opened a series with a market width, it is reasonable to open the series for trading on the Exchange as well (as orders submitted to other exchanges may be trading at those widths). Since orders may not trade outside of the disseminated NBBO (which defines the then-current market for the series), any orders resting in the Queuing Book that may execute following the forced opening will receive protection

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<sup>18</sup> Id.

<sup>19</sup> The Exchange notes pursuant to Rule 5.31(e)(1)(B), there are currently instances in which the Exchange will open for trading despite the Composite Market Width being larger than the Maximum Composite Width.

against executions at potentially erroneous prices. Additionally, the proposed ability of Users to cancel orders in the event of a forced opening will provide Users with additional protection. Additionally, the Exchange believes opening series for trading on the Exchange that are open for trading on other options exchanges will put Exchange Users on equal footing with other market participants, as it will provide Users' orders that are otherwise resting in the Queuing Book and awaiting execution with the ability to get into the market for potential execution.

The Exchange currently has the authority to deviate from the standard opening process, including to temporarily increase the Maximum Composite Width amounts (*i.e.*, widen the permissible opening market) and to compel a series open, even if the Maximum Composite Width check is not satisfied, but that may only happen manually if the Exchange determines it is necessary in the interests of a fair and orderly market.<sup>20</sup> Currently, if a series is open on another exchange but not on the Exchange, the Exchange generally manually increases the Maximum Composite Width for the series until the series opens. Manually increasing the Maximum Composite Width for a series until the series open is a different manual process than compelling the series to open, but ultimately achieves the same result of causing a series that does not satisfy the Maximum Composite Width check to otherwise open. The Exchange believes it is in the interests of a fair and orderly market to deviate from the opening process to systematically force a series to open, despite a wide Exchange market, if the series is open for trading on another exchange to provide investors with orders in that series resting on the Exchange's Queuing Book to have the same execution opportunities as other investors who submitted

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<sup>20</sup> See Rule 5.31(h); see also definition of Maximum Composite Width and Opening Collar in Rule 5.31(a).

orders to other options exchanges with different opening conditions. The proposed rule change is consistent with this authority and creates an automated compelled opening in certain circumstances to replace the manual process currently used. This will benefit investors by providing additional transparency to the Rules regarding when a series may open despite not satisfying the Maximum Composite Width check as well as remove impediments to and perfect the mechanism of a free and open market and a national market system by automating an otherwise manual process.

The Exchange believes the proposed rule change to permit Users to give the System a standing instruction regarding how to handle their orders when a forced or manually compelled (for simple orders) opening of series occurs will benefit investors, as it will give them an additional tool to manage their orders in connection with the opening of series. Users may currently cancel any of their orders resting in the Queuing Book prior to the opening of a series, and they may cancel any orders that do not execute at the open once those orders are in the Book or COB, as applicable. Because the Exchange market may be wider in these situations, the Exchange believes it is appropriate to provide Users with the ability to cancel market orders so they don't execute at the wider market prices once in the Book or cancel all of their orders if they prefer.

Additionally, the Exchange believes the proposed rule change to permit the Exchange to determine the amounts of the Maximum Composite Width and Opening Collar on a class and Composite Bid basis will remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors, because it will provide the Exchange with flexibility to consider the different market models and characteristics of different classes, and respond to then-current market



conditions. The Rules currently permit the Exchange to modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates). This proposed change merely permits the Exchange to modify these amounts at any time as it deems necessary and appropriate. The Exchange notes several options exchanges are able to change the amounts of valid opening widths by notice or circular and do not need to submit a rule filing to the Commission to do so, and the proposed rule change would provide the Exchange with the same flexibility to determine maximum opening widths that other exchanges have.<sup>21</sup>

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 all Users may trade in any series that opens subject to the proposed forced opening process. The Exchange believes it is appropriate to limit the forced opening to equity and ETP options, as those may be multiply listed on exchanges. Additionally, all Users will have the opportunity to instruct the System to cancel its market orders or all open orders in the event of a forced or otherwise manual opening.

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<sup>21</sup> See, e.g., NOM Options 3, Section 8(a)(6), EDGX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), BZX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), and C2 Rule 6.11(a) (definitions of Maximum Composite Width and Opening Collar); see also MIAX Rule 503(f)(2) (which permits MIAX to determine by circular an acceptable range in which openings are permissible if there is no valid width NBBO).

Cancellation of some or all of a User's orders in the event of such an opening would be voluntary and completely within the User's discretion. The Exchange believes the proposed rule change to determine the amounts of the Maximum Composite Width and Opening Collar on a class and Composite Bid basis will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the determined amounts (by Composite Bid) for each class will apply to all orders of all market participants in the applicable class in the same manner. The Exchange believes it is appropriate to be able to determine different amounts on a class basis (it already determines different amounts on a Composite Bid basis), because it will provide the Exchange with flexibility to consider the different market models and characteristics of different classes, and respond to then-current market conditions. The Rules currently permit the Exchange to modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates). This proposed change merely permits the Exchange to modify these amounts at any time as it deems necessary and appropriate.

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 the proposed forced opening process will permit series to open on the Exchange that are otherwise open for trading on other options Exchange, which may increase liquidity and competition in those series sooner. Additionally, the Exchange believes opening series for trading on the Exchange that are open for trading

on other options exchanges will put Exchange Users on equal footing with other market participants, as it will provide Users' orders that are otherwise resting in the Queuing Book and awaiting execution with the ability to get into the market for potential execution. The proposed flexibility for Users to instruct the System how to handle their orders in the event of a forced or manual opening applies only to how a Users' orders on the Exchange will be handled in such a circumstance. The Exchange does not believe the proposed rule change to permit the Exchange to determine the amounts of the Maximum Composite Width and Opening Collar on a class and Composite Bid basis will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Several options exchanges are able to change the amounts of valid opening widths by notice or circular and do not need to submit a rule filing to the Commission to do so, and the proposed rule change would provide the Exchange with the same flexibility to determine maximum opening widths that other exchanges have.<sup>22</sup>

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;

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<sup>22</sup> See, e.g., NOM Options 3, Section 8(a)(6), EDGX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), BZX Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar), and C2 Rule 6.11(a) (definitions of Maximum Composite Width and Opening Collar); see also MIAX Rule 503(f)(2) (which permits MIAX to determine by circular an acceptable range in which openings are permissible if there is no valid width NBBO).

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>23</sup> and Rule 19b-4(f)(6)<sup>24</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-2021-005 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>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-CBOE-2021-005. 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-2021-005 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>25</sup>

Secretary

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<sup>25</sup> 17 CFR 200.30-3(a)(12).

## EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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## Rules of Cboe Exchange, Inc.

\* \* \* \* \*

**Rule 5.31. Opening Auction Process**

(a) *Definitions.* For purposes of the opening auction process in this Rule 5.31, the following terms have the meaning below. A term defined elsewhere in the Rules has the same meaning with respect to this Rule 5.31, unless otherwise defined below.

\* \* \* \* \*

**Maximum Composite Width**

The term “Maximum Composite Width” means the amount that the Composite Width of a series may generally not be greater than for the series to open (subject to certain exceptions set forth in subparagraph (e)(1)). The Exchange determines this amount on a class and Composite Bid basis, which amount the Exchange may modify during the opening auction process (which modifications the Exchange disseminates to all subscribers to the Exchange’s data feeds that deliver opening auction updates). [The Maximum Composite Widths for all classes are as follows (based on the Composite Bid for a series):]

[Composite Bid ]	[Maximum Composite Width]
[0 – 1.99]	[0.50]
[2.00 – 5.00]	[0.80]
[5.01 – 10.00]	[1.00]
[10.01 – 20.00]	[2.00]
[20.01 – 50.00]	[3.00]
[50.01 – 100.00]	[5.00]
[100.01 – 200.00]	[8.00]
[≥ 200.01]	[12.00]

[The Exchange may modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange disseminates to all subscribers to the Exchange’s data feeds that deliver opening auction updates).]

\* \* \* \* \*

**Opening Collar**

The term “Opening Collar” means the price range that establishes limits at or inside of which the System determines the Opening Trade Price for a series. The Exchange determines the width of

this price range on a class and Composite Bid basis, which range the Exchange may modify during the opening auction process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates). [The Opening Collar is determined by determining the midpoint of the Composite Market, and adding and subtracting half of the applicable width amount above and below, respectively, that midpoint. The Opening Collar widths for all classes are as follows (based on the Composite Bid for a series):]

[Composite Bid]	[Opening Collar Width]
[0 – 1.99]	[0.50]
[2.00 – 5.00]	[0.80]
[5.01 – 10.00]	[1.00]
[10.01 – 20.00]	[2.00]
[20.01 – 50.00]	[3.00]
[50.01 – 100.00]	[5.00]
[100.01 – 200.00]	[8.00]
[≥ 200.01]	[12.00]

[The Exchange may modify these amounts during the opening auction process when it deems necessary to maintain a fair and orderly opening process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates).]

\* \* \* \* \*

(e) *Opening Rotation.* After the System initiates the opening rotation for a series pursuant to paragraph (d) above, the System conducts the opening rotation as follows.

(1) *Maximum Composite Width Check.*

(A) – (B) No change.

(C) If the conditions in neither subparagraph (A) nor (B) are satisfied for a series, if there is no Composite Market, or if the Composite Market of a series is crossed, the series is ineligible to open. The Queuing Period for the series continues (including the dissemination of opening auction updates) until one of the conditions in subparagraph (A) or (B) for the series is satisfied, until the series opens pursuant to a forced opening as set forth in subparagraph (4) below, or the Exchange opens the series pursuant to paragraph (h).

(2) – (3) No change.

(4) *Forced Opening.* If a series in an equity or ETP option class is unable to open because it does not satisfy the Maximum Composite Width Check in subparagraph (1) above within a time period (which the Exchange determines for all equity or ETP option classes) after occurrence of the opening rotation trigger for the class pursuant to paragraph (d), and the Composite Market is not crossed, the System forces the series to open after that time period upon the System's observation of an ABBO (with a non-zero offer) for the series.

(A) The opening trade price determination and series opening set forth in subparagraphs (2) and (3) above do not occur; instead, the System opens the series without a trade.

(B) However, if a series satisfies the Maximum Composite Width Check prior to the System's observation of an ABBO for the series, the series opens pursuant to subparagraphs (2) and (3) above.

(f) *Unexecuted Orders and Quotes*. Following the conclusion of the opening rotation, the System enters any unexecuted orders and quotes (or remaining portions) from the Queuing Book into the Book in time sequence (subject to a User's instructions), where they may be processed in accordance with Rule 5.32. The System cancels any unexecuted OPG orders (or remaining portions) following the conclusion of the opening rotation. In the event of a forced opening of a series pursuant to subparagraph (e)(4) or a compelled opening of a series pursuant to paragraph (h), the System enters all of a User's orders in that series in the Queuing Book into the Book in this manner, unless a User instructs the System to cancel its market orders or all of its orders, in which case the System enters only the non-cancelled orders into the Book in this manner.

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