

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>15</sup>

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2021-74 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-Phlx-2021-74. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2021-74 and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-93819; File No. SR-CBOE-2021-071]

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt a New Trading Session That Will Operate After the Close of the Regular Trading Hours Session**

December 17, 2021.

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 December 15, 2021, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to adopt a new trading session that will operate after the close of the Regular Trading Hours session. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

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

**1. Purpose**

The Exchange proposes to amend its Rules to allow trading on the Exchange during a new forty-five-minute trading session called the "Curb Trading Hours" or "Curb" session. The proposed rule change to adopt a third trading session aims to increase the overlap in time that SPX, VIX and Mini-SPX Index ("XSP") options are open alongside the related futures contracts.<sup>3</sup>

<sup>3</sup> For example, related futures products such as Cboe Volatility Index (VX) Futures are currently available for trading on Cboe Futures Exchange, LLC ("CFE") during an extended trading hours session from 4:00 p.m. to 5:00 p.m. Eastern Time (ET) Monday through Friday. See CFE Rule 1202, which sets forth the trading hours for VX futures (times referenced in CFE Rule 1202 are Central Standard Time (CT)). Related future contracts are also offered on the Chicago Mercantile Exchange ("CME") during the proposed hours of Curb. See <https://www.cmegroup.com/trading-hours.html#equityIndex> and <https://www.cmegroup.com/markets/equities/sp/e-mini-sandp500.html> which reflects, among other things, that E-mini S&P 500 Futures trade between 6:00 p.m. Sunday through 5:00 p.m. Friday ET (5:00 p.m.-4:00 p.m. CT) with a daily maintenance period from 5:00 p.m.-6:00 p.m. ET (4:00 p.m.-5:00 p.m. CT).

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

By way of background, the Exchange currently offers two trading sessions.<sup>4</sup> Regular Trading Hours (“RTH”) and Global Trading Hours (“GTH”). Rule 5.1 currently sets forth the trading hours for the Exchange’s RTH and GTH trading sessions. Particularly, RTH for transactions in equity options (including options on individual stocks, ETFs, ETNs, and other securities) are the normal business days and hours set forth in the rules of the primary market currently trading the securities underlying the options, except for options on ETFs, ETNs, Index Portfolio Shares, Index Portfolio Receipts, and Trust Issued Receipts the Exchange designates to remain open for trading beyond 4:00 p.m.<sup>5</sup> but in no case later than 4:15 p.m.<sup>6</sup> RTH for transactions in index options are from 9:30 a.m. to 4:15 p.m., subject to certain exceptions.<sup>7</sup> The GTH session currently begins at 8:15 p.m. (previous day) and goes until 9:15 a.m. on Monday through Friday.<sup>8</sup> The Exchange’s Rules provide that the Exchange may designate as eligible for trading during GTH any exclusively listed index option designated for trading under Chapter 4, Section B. Currently, SPX, VIX and XSP are approved for trading during GTH.<sup>9</sup>

By way of further background, the Exchange originally adopted the GTH trading session due to global demand from investors to trade SPX and VIX options, as alternatives for hedging and other investment purposes, particularly as a complementary investment tool to VIX futures.<sup>10</sup> In response to customer demand for additional options to trade during the GTH trading session for similar purposes, the Exchange later designated XSP options to be eligible for trading during GTH.<sup>11</sup> The current GTH session allows market participants to engage in trading SPX, XSP and VIX

options in conjunction with trading VIX futures on CFE during extended hours, as VIX futures are open for trading on CFE nearly 23 hours a day, 5 days a week.<sup>12</sup> The proposed rule change seeks to further maximize the overlap in time that SPX, XSP and VIX options may be open alongside the related futures contracts, as futures markets, including CFE, operate extended trading hours that overlap with the proposed Curb Trading Hours. The proposed rule change to adopt an additional trading session therefore provides market participants with expanded access to trade SPX, XSP and VIX options.

The proposed Curb session will provide an extra forty-five-minute electronic only session for trading between 4:15 p.m. and 5:00 p.m. for designated classes, which will be added Monday through Friday. Unlike the current RTH and GTH trading sessions, there will be no opening auction process that initiates the Curb trading session. Rather, RTH will seamlessly transition to the Curb trading session at 4:15 p.m., which is when RTH for index options products ends. Any unexecuted orders that are eligible to trade during the Curb trading session that remain on the Book at the end of the RTH trading session will remain on the Book and be eligible for execution during Curb. Transactions effected during the Curb session will have the same trade date as the immediately preceding RTH session (*i.e.*, the day on which the transactions were effected). The Curb trading session will however still be a separate trading session from RTH and GTH and while most of the Exchange Rules apply to trading during all three trading sessions, certain differences will apply as further described below.<sup>13</sup> For example, unlike the RTH session, there will be no open outcry trading on the floor during the Curb trading session and only designated index options will be available for trading (similar to GTH). As such, Chapter 4, Sections A, D, E, F and G will not apply as those cover Equity and ETP Options, Corporate Debt Securities Options, Credit Options, Government Security Options, and Interest Rate Options, respectively, which will be not available during Curb. Similarly, Chapter 5, Section G will not apply as such rules pertain to manual order handling and open-outcry trading. The Exchange also notes that all Trading Permit Holders (“TPHs”) may

participate in Curb. TPHs will not need to apply or take any additional steps to participate in Curb. Additionally, because the Exchange will use the same servers and hardware during Curb as it uses for RTH and GTH, TPHs may use the same ports and connections to the Exchange for all trading sessions. The Book used during Curb will be the same Book used during RTH and GTH. The Exchange proposes to amend various rules to adopt provisions relating to the proposed Curb session and conform existing rules accordingly, as described more fully below.

#### Curb Session

As discussed above, Rule 5.1 (Trading Days and Hours) currently sets forth the trading hours for RTH and GTH. The Exchange proposes to adopt Rule 5.1(d),<sup>14</sup> which will set forth the trading hours and rules applicable to trading during the proposed Curb trading session. Specifically, proposed Rule 5.1(d) will provide that except under unusual conditions as may be determined by the Exchange, Curb Trading Hours are from 4:15 p.m. to 5:00 p.m. on Monday through Friday.<sup>15</sup> Proposed Rule 5.1(d)(1) provides that the Exchange may designate as eligible for trading during Curb Trading Hours any exclusively listed option that the Exchange has designated for trading under Chapter 4, Section B. The Exchange proposes to approve SPX, XSP and VIX for trading on the Exchange during Curb session, which are all classes that are currently approved for trading during GTH (*i.e.*, an “All Sessions Class”<sup>16</sup>).<sup>17</sup> FLEX Options with the same underlying index will also be deemed eligible for trading during the Curb session.<sup>18</sup>

<sup>14</sup> Current Rule 5.1(d) (Holidays) will be renumbered to Rule 5.1(e). In connection with the proposed numbering change, the Exchange also proposes to update a cross reference to Rule 5.1(d) in Rule 4.22 to reflect the new rule number of Rule 5.1(e).

<sup>15</sup> For example, the Exchange may modify its business days and trading hours to not be open for business or to have shortened trading hours due to unusual circumstances or in connection with terrorism, acts of war, loss or interruption of facilities utilized by the Exchange, or a period of mourning. The Exchange notes there will also be no Curb Trading Hours where the RTH session closes early due to a holiday (*e.g.*, on Christmas Eve).

<sup>16</sup> See Proposed Rule 1.1 (All Sessions Class) which means an options class the Exchange lists for trading during all trading sessions.

<sup>17</sup> Although the Exchange is proposing to approve XSP as eligible to trade during Curb, it does not intend to initially list XSP during Curb, as it is also approved, but not currently listed, during GTH. The Exchange however anticipates listing XSP during Curb and GTH at some point in the future.

<sup>18</sup> Delta-Adjusted at Close (“DAC”) will not be available during the Curb trading session (nor are they available currently during GTH) as the

<sup>4</sup> The term “trading session” means the hours during which the Exchange is open for trading for Regular Trading Hours or Global Trading Hours (each of which may referred to as a trading session). Unless otherwise specified in the Rules or the context otherwise indicates, all Rules apply in the same manner during each trading session. See Rule 1.1 (Definitions).

<sup>5</sup> All times referenced herein are Eastern Time.

<sup>6</sup> See Rule 5.1(b)(1).

<sup>7</sup> See Rule 5.1(b)(2).

<sup>8</sup> See Rule 5.1(c).

<sup>9</sup> If the Exchange designates a class of index options as eligible for trading during GTH, FLEX Options with the same underlying index are also deemed eligible for trading during GTH. See Rule 5.1(c). The Exchange also notes that although eligible, XSP is not currently listed for trading during GTH.

<sup>10</sup> See Securities Exchange Act Release No. 34–73017 (September 8, 2014), 79 FR 54758 (September 12, 2014) (SR–CBOE–2014–062).

<sup>11</sup> See Securities Exchange Act Release No. 34–914 (September 14, 2015), 80 FR 522 (September 18, 2015) (SR–CBOE–2015–079).

<sup>12</sup> See CFE Rule 1202(b).

<sup>13</sup> For example, business conduct rules in Chapter 8 and rules related to doing business with the public in Chapter 9 will apply during the Curb trading session. Additionally, a broker-dealer’s due diligence and best execution obligations apply during the Curb trading session.

Proposed Rule 5.1(d)(2) will provide that the Exchange may list for trading during the Curb trading session any series in eligible classes that it may list pursuant to Rule 4.13.<sup>19</sup> Any series in eligible classes that were open for trading during RTH are expected to be open for trading during the Curb trading session on that same trading day (subject to Rule 5.31).<sup>20</sup> The Exchange notes however that it will not list any p.m.-settled series during Curb on a series' expiration date as such series would continue to expire prior to the start of the Curb trading session at 4:00 p.m. on such date.<sup>21</sup> A.M.-settled options will cease trading at the conclusion of the Curb session the business day preceding the last day of trading in the underlying securities prior to expiration.<sup>22</sup>

Proposed Rule 5.1(d)(3) will provide that the Exchange will not report a value of an index underlying an index option trading during Curb because the value of the underlying index will not be recalculated during or at the close of Curb. Pursuant to Rules 4.10(f) and (g), to list options on a broad-based index (currently, the only options that are proposed to trade during Curb), current indexes values must be widely disseminated at least once every 15 seconds. Because index reporting

adjustment calculation for DAC orders is linked to the RTH market close for the underlying securities and indexes. See Current Rule 5.6(c) ("Delta-Adjusted at Close or DAC" Definition), which provides a User may not designate a DAC order as All Sessions. See also proposed Rule 5.6(c) which will similarly provide a User may also not designate a DAC order as RTH and Curb.

<sup>19</sup> FLEX Options (that are not Cliquet-settled) with an exercise price that is a percentage of the closing value of the underlying index on the trade date will not be available during Curb (nor are they available currently during GTH), as the exercise price is linked to the RTH market close for the underlying index.

<sup>20</sup> Rule 5.31 describes the opening auction process. Although the Exchange does not intend to conduct an opening rotation under the normal course of business, an opening rotation may be utilized under certain circumstances as described further below and in such instances, the availability of a series being available for trading during Curb will be subject to Rule 5.31.

<sup>21</sup> See Rule 5.1(b)(2)(C).

<sup>22</sup> See Rule 4.13(a)(4) and 4.13(a)(5)(C). Pursuant to Rules 4.13(a)(4) and 4.13(a)(5)(C), the last day of trading for A.M.-settled index options (such as standard SPX and VIX, respectively) shall be the business day preceding the last day of trading in the underlying securities prior to expiration. Accordingly, for example, A.M.-settled SPX options that expire on a Friday will continue to cease trading at the close of the business day on the preceding Thursday (albeit now at 5:00 p.m. instead of 4:15 p.m. since the business day as proposed ends at the conclusion of Curb). Similarly, VIX options (which are A.M.-settled) that expire on a Wednesday will normally continue to cease trading at the close of the business day on the preceding Tuesday (albeit now at 5:00 p.m. instead of 4:15 p.m. since, as noted above, the business day as proposed ends at the conclusion of Curb).

authorities do not currently plan to disseminate updated values during the proposed Curb Trading Hours, the Exchange proposes to address the lack of dissemination of index values during Curb under proposed Rule 5.1(d)(3), which will supersede the requirements under Rules 4.10(f) and (g). The Exchange notes authority to decide when and how frequently to calculate and disseminate index values lies solely with a reporting authority. The reporting authority for the S&P 500 Index, S&P Dow Jones Indices LLC ("S&P"), does not intend to calculate or disseminate current values of the S&P 500 Index during the proposed Curb trading session. Similarly, Cboe Global Indices, LLC ("CGI"), the reporting authority for the Cboe Volatility Index (the "VIX Index")<sup>23</sup> does not intend to calculate or disseminate current values of the VIX Index during the proposed Curb trading session. Particularly, VIX is intended to represent the market's expectation of S&P 500 volatility over the next 30 days. The accuracy of the calculation for VIX indicative (or spot) values depends on the quality of bid and offer quotes for constituent SPX options series. As the proposed additional Curb trading session has yet to be implemented, CGI cannot currently know that the SPX option quotes displayed during those hours will be sufficient to calculate accurate and meaningful VIX indicative values in the same manner it does during RTH or the GTH session.<sup>24</sup> Indeed, the Exchange expects that initially there will be overall lower levels of trading during the proposed Curb session as compared to both RTH and the GTH session (between 3:00 a.m. and 9:15 a.m.). Therefore, CGI has determined to not calculate VIX spot values during the proposed Curb Trading Hours. Moreover, the Exchange notes that the proposed Curb Trading Hours is a significantly shorter trading session than RTH or GTH (only 45 minutes versus several hours) and the Exchange does not believe it is as meaningful or beneficial to disseminate the index for the session given the short length of the session. However, after the launch of the Curb Trading Hours, to the extent CGI as index calculator determines that SPX quotes during such session will support accurate VIX indicative values, CGI will reconsider whether to calculate and disseminate these values during Curb

<sup>23</sup> CGI is an affiliate of the Exchange.

<sup>24</sup> The Exchange only disseminates VIX indicative values during GTH between 3:00 a.m.–9:15 a.m. The Exchange will not report a value of VIX during GTH from 8:15 p.m. (previous day) to 3:00 a.m., because the value of the underlying index will not be recalculated during this time. See Rule 5.1(c)(3).

(and the Exchange would submit rule filings to amend the rules, as necessary). The Exchange notes that it similarly did not report a value of an index underlying an index option trading during GTH when the GTH session was first adopted.<sup>25</sup> Moreover, the Exchange recently extended the GTH session and amended its rules to provide that it will not report a value of an index underlying an index option trading during those new additional hours.<sup>26</sup> Additionally, as discussed further below, the Exchange proposes to amend Rule 9.20, to make clear that any TPH that accepts orders for customers for execution during Curb must disclose to those customers various risks related to trading during that trading session, including the risk that an updated underlying index or portfolio value or intraday indicative value may not be calculated or publicly disseminated during Curb.<sup>27</sup> Further, the closing value of the index from the immediately preceding RTH session will still be available for TPHs that trade during Curb. Proposed Rule 5.1(d)(3) (*i.e.*, the lack of dissemination of index values during Curb) will also have no impact on trading during Curb.

Lastly proposed Rule 5.1(d)(4) provides trading during Curb Trading Hours is electronic only on the System. There will be no open outcry trading on the floor during Curb Trading Hours. If in accordance with the Rules and User's instructions an order would route to PAR, the System will return the order to the TPH during Curb Trading Hours. The Exchange notes that the provisions of proposed Rule 5.1(d) are substantively similar to the corresponding rules for GTH.

<sup>25</sup> See Securities Exchange Act Release No. 34–73704 (November 28, 2014), 79 FR 72044 (December 4, 2014) (SR–CBOE–2014–062) (order granting accelerated approval of proposed rule change, as modified by Amendments Nos 1 and 2, to adopt Extended Trading Hours for SPX and VIX). Particularly, the Exchange proposed to adopt Rule 6.1A(k), which provided "[t]he Exchange will not report a value of an index underlying an index option trading during Extended Trading Hours, because the value of the underlying index will not be recalculated during or at the close of Extended Trading Hours."

<sup>26</sup> See Securities Exchange Act Release No. 34–93403 (October 22, 2021), 86 FR 59824 (October 28, 2021) (SR–CBOE–2021–061).

<sup>27</sup> The Exchange proposes to make a clarifying update to Rule 9.20 to make clear that the underlying index or portfolio value and Intraday Indicative Value "may not" be (as opposed to "will not" be) calculated or widely disseminated during GTH or Curb. The Exchange believes the proposed change will reduce potential confusion given current values of VIX are in fact widely disseminated during GTH at least once 15 seconds for a portion of the GTH session (*i.e.*, between 3:00 a.m. to 9:15 a.m.). See Rule 5.1(c)(3).

## Definitions

The Exchange proposes to adopt and amend various definitions under Rule 1.1 (Definitions) in connection with the proposed Curb trading session as follows:

- “All Sessions Class.” An “All Sessions” class is a class that is currently eligible to trade during both GTH and RTH. The Exchange proposes to amend the definition so that such term applies to an options class the Exchange lists for trading during all three trading sessions (*i.e.*, RTH, GTH and Curb).<sup>28</sup>

- “Book and Simple Book.” As noted above, the Book used during Curb will be the same Book used during RTH and GTH. The Exchange therefore proposes to amend this definition so that such terms mean the electronic book of simple orders and quotes maintained by the System, which single book will be used during all three trading sessions, including Curb.

- “Business Day and Trading Day.” The Exchange proposes to reflect that a business day or trading day includes all trading sessions on that day (which includes GTH, RTH and Curb). Further, the Exchange will clarify that if the Exchange is not open for RTH on a day, then it will not be open for either GTH or Curb trading sessions on that day.

- “Curb Trading Hours and Curb.” The Exchange proposes to adopt a new term and definition for the new trading session and specifically proposes to provide the terms “Curb Trading Hours” and “Curb” mean the trading session consisting of the hours outside of RTH and GTH during which transactions in options may be effected on the Exchange and are set forth in Rule 5.1. Having a separate definition for each trading session allows the Exchange Rules to reflect these differences and the separation of the trading sessions.

- “Global Trading Hours and GTH.” The Exchange also proposes to update the definition to add a reference to the new Curb Trading Hours.

- “Trading Session.” The Exchange lastly proposes add a reference to Curb Trading Hours in this definition to provide that trading sessions will refer to the hours during which the Exchange is open for trading for RTH, GTH or Curb.

## Exchange Determinations

Generally, trading during the Curb trading session will occur in the same

<sup>28</sup> At this time, SPX, XSP and VIX are the only classes that will be designated as eligible for trading during Curb. Because these classes are also eligible to trade during RTH and GTH, they will be considered “All Sessions classes”.

manner as it occurs during the RTH trading session. However, because the Curb market may have different characteristics than the RTH market (such as all electronic trading, lower trading levels, reduced liquidity, and fewer participants), the Exchange may deem it appropriate to make different determinations for trading rules for each trading session. For similar reasons as it relates to GTH, Rule 1.5(b) currently states to the extent the Rules allow the Exchange to make a determination, including on a class-by-class or series-by-series basis or a group basis, if the Exchange determines to list SPX or VIX on a group basis pursuant to Rule 4.13,<sup>29</sup> the Exchange may make a determination for GTH that differs from the determination it makes for RTH. The Exchange proposes to amend Rule 1.5(b) to similarly allow the Exchange to make a determination for Curb that differs from the determination it makes for RTH or GTH (*i.e.*, the Exchange will be allowed to make a determination on a trading session-by-trading session basis). The Exchange maintains flexibility with respect to certain rules so that it may apply different settings and parameters to address the specific characteristics of that class and its market.<sup>30</sup> The Exchange represents that it will have appropriate personnel available during Curb to make any

<sup>29</sup> The Exchange may list SPX or VIX on a group basis. See Rule 4.13(f). When determining whether to list a class on a group basis, the Exchange intends to generally select series with common expirations or classifications (*e.g.*, end-of-week series or end-of-month series, short-term option series, long-term option series, or series that expire on a particular expiration date) and trade them under individual listing symbols. For example, the Exchange currently lists SPX options in two groups. Particularly, the Exchange lists SPX options with A.M.-settled standard third-Friday expirations under symbol “SPX” and lists options on the S&P 500 Index with P.M.-settled standard third-Friday expirations and nonstandard expirations with all other expirations under symbol “SPXW.” If the Exchange lists SPX or VIX on a group basis, the Exchange may apply different trading parameters (including different allocation algorithms) to each group. The Exchange may also determine the eligible categories of Market-Maker participants for each group (Designated Primary Market-Makers (“DPMs”), Lead Market-Makers (“LMMs”), or Market-Makers).

<sup>30</sup> For example, Rule 5.32(a) allows the Exchange to determine electronic allocation algorithms on a class-by-class basis; Rule 5.52(e)(2) allows the Exchange to determine bid/ask differential requirements on a class-by-class basis; Rules 5.34(a)(2), 5.34(a)(4)(C), 5.34(a)(5), 5.34(b)(6), and Rules 5.34(c)(1) and (10) allow the Exchange to set certain price reasonability checks on a class-by-class basis; and Rules 5.37(a)(1), 5.38(a)(1), 5.39(a)(1), and 5.40(a)(1), allow the Exchange to activate various auctions on a class-by-class basis. Because trading during Curb will be electronic only, and because trading during Curb may be different than RTH (such as lower trading levels, reduced liquidity and fewer participants), the Exchange believes it is appropriate to extend this flexibility to each trading session.

determinations that Rules provide the Exchange or Exchange personnel will make (such as trading halts, opening series, and obvious errors).

## Exchange Order Types, Order Instructions and Times-in-Force

The Exchange next proposes to amend various exchange rules relating to available order types, order instructions and times-in-force the Exchange may make available during Curb. First, the Exchange proposes to amend Rule 5.6 (Order Types, Order Instructions and Times-in-Force) to make clear that all order types, order instructions, and times-in-force the Exchange makes available in an All Sessions class for RTH electronic trading are available in that class for Curb electronic trading (just as it is for GTH electronic trading), except as otherwise specified in the Rules.<sup>31</sup> The Exchange notes that it may not permit certain order types or order instructions to be applied to orders during Curb that it does permit during RTH and/or GTH (*i.e.*, the Exchange has the discretion to not make available certain order types or Order Instructions otherwise listed under Rules 5.30(a) and (b) and proposed Rule 5.30(c)).

## Order Types

The Exchange proposes to amend Rule 5.6(b) to provide that Users may not designate a market order as RTH and Curb.<sup>32</sup> Currently, market orders are not eligible for trading during GTH and as such, any order designated as “All Sessions” cannot be designated a market order. Similar to GTH, the Exchange notes there may be reduced liquidity, higher volatility, and wider spreads during Curb. Therefore, the Exchange believes it is appropriate to not allow these orders to participate in Curb trading in order to protect customers should wide price fluctuations occur due to the potential illiquid and volatile nature of the market or other factors that could impact market activity.

## Order Instructions

The Exchange first proposes to update the “All Sessions” order description under Rules 5.6(c) and 5.33(b)(5) to make clear that orders designated as “All Sessions” (simple and complex, respectively) are eligible to trade in all

<sup>31</sup> For example, market orders, stop, and stop-limit orders will not be eligible for trading during Curb, just as they are not eligible for trading during GTH. See Rules 5.6(b) and (c).

<sup>32</sup> The Exchange also proposes to correct an inadvertent marking error that resulted in an incorrect rule reference to Rule 6.8(c) instead of Rule 5.5(c) in the definition of “Market Order” under Rule 5.6(b). See Securities Exchange Act Release No. 34-87320 (October 16, 2019), 84 FR 56501 (October 22, 2019) (SR-CBOE-2019-033).

trading sessions (*i.e.*, RTH, GTH and Curb). The Exchange also proposes to update the “All Sessions” description under Rules 5.6(c) and 5.33(b)(5) to further clarify what happens to unexecuted All Sessions orders at the end of the RTH and Curb trading sessions. Currently, Rule 5.6(c) specifies that an unexecuted All Sessions order on the GTH Book<sup>33</sup> at the end of a GTH session enters the RTH Queuing Book and becomes eligible for execution during the RTH opening rotation and trading session on that same trading day (subject to a User’s instructions). The Exchange proposes to further amend Rule 5.6(c) to clarify that (i) an unexecuted All Sessions order on the Book at the end of the RTH trading session remains on the Book and becomes eligible for execution during the Curb trading session on that same trading day, subject to a User’s instructions and (ii) an unexecuted All Sessions order on the Book at the end of the Curb trading session enters the GTH Queuing Book and becomes eligible for execution during the GTH opening rotation and trading session on the next day, subject to a User’s instructions.<sup>34</sup> The Exchange proposes to also add for clarity language providing that All Sessions “Day” orders on the Book at the conclusion of the Curb session will be canceled. Similar to Rule 5.6(c), Rule 5.33(b)(5) provides that an unexecuted All Sessions complex order resting in the Complex Order Book (“COB”) at the end of a GTH trading session remains in the COB and becomes eligible for execution during the RTH COB Opening Process or trading session on that same trading day, subject to a User’s instructions. Similar to the proposed changes to Rule 5.6(c), the Exchange proposes to update the “All Sessions” description under Rule 5.33(b)(5) to make clear that (i) an unexecuted All Sessions complex order resting in the COB at the end of the RTH trading session remains in the COB and becomes eligible for execution during the Curb trading session on that same trading day, subject to a User’s instructions and (ii) an unexecuted All Sessions complex order resting in the COB at the end of a Curb trading session

<sup>33</sup> Since the term “Book” refers to a single book that is used during all trading sessions, the Exchange proposes to eliminate references to “GTH” or “RTH” preceding the term Book to avoid potential confusion.

<sup>34</sup> An unexecuted RTH Only simple order would not persist into the Curb or GTH sessions at the end of the RTH trading session as such orders are not eligible to trade during either of those sessions. Similarly, an unexecuted RTH and Curb simple order would not persist into the GTH session at the end of the Curb trading session as such orders will not be eligible to trade during GTH.

remains in the COB and becomes eligible for execution during the GTH COB Opening Process or trading session on the next trading day, subject to a User’s instructions.<sup>35</sup> The Exchange also proposes to add for clarity language providing that All Sessions “Day” complex orders resting in the COB at the conclusion of the Curb session will be canceled.

The Exchange also proposes to amend certain other order descriptions under Rules 5.6(c) and Rule 5.33(b)(5) (Complex Orders). Particularly, the Exchange proposes to amend the descriptions of “All-or-None or AON” under Rule 5.6(c), “Delta-Adjusted at Close or DAC” under Rules 5.6(c) and 5.33(b)(5), and “Stop (Stop-Loss)” and “Stop-Limit” under Rule 5.6(b) to provide that Users may not designate the foregoing orders as RTH and Curb. Users similarly cannot designate such orders as All Sessions (*i.e.*, they are not currently eligible for GTH). The Exchange also proposes to amend the description of “RTH Only” orders under Rules 5.6(c) and 5.33(b)(5) to clarify that such orders are those that a User designates as eligible to trade only during RTH, or that are not designated as All Sessions or RTH and Curb. Additionally, the Exchange proposes to clarify that unexecuted RTH Only orders with a Time-in-Force of GTC or GTD on the Book (or COB) at the end of an RTH trading session are not eligible for execution during the Curb trading session on the same trading day (in addition to the current reference to not being eligible for the GTH trading session on the following trading day).<sup>36</sup>

To provide investors with the flexibility to have their orders and quotes execute during (i) RTH, (ii) RTH, GTH and Curb or only (iii) RTH and Curb, the proposed rule change adds a “RTH and Curb” order to the rules. More specifically, the Exchange proposes to adopt a description of “RTH and Curb” orders under both Rule 5.6(c)

<sup>35</sup> An unexecuted RTH Only complex order on the COB would not persist into the Curb or GTH sessions at the end of the RTH trading session as such orders are also not eligible to trade during either of those sessions. Similarly, an unexecuted RTH and Curb complex order would not persist into the GTH session at the end of the Curb trading session as such orders will not be eligible to trade during GTH.

<sup>36</sup> The Exchange also proposes to make a clarifying change to the description of “RTH Only” orders under Rule 5.33(b)(5) to explicitly reference the “COB Opening Process” in order to make clear that any unexecuted RTH Only order with a Time-in-Force of GTC or GTD on the COB at the end of a RTH trading session remains on the COB and becomes eligible for execution during the RTH COB Opening Process, which is what happens today. The language is consistent with the definition of “RTH Only” for simple orders under Rule 5.6(c).

and Rule 5.33(b)(5) which will describe orders that are designated to trade only during RTH and Curb trading sessions. Particularly, an RTH and Curb Order will be an order (including a bulk message) a User designates as eligible to trade only during RTH and Curb or not designated as All Sessions or RTH Only. An unexecuted RTH and Curb order with a Time-in-Force of GTC or GTD on the Book (or COB) at the end of an RTH trading session remains in the Book (or COB) and becomes eligible for execution during the Curb trading session on the same trading day (but not during the GTH trading session on the following trading day), subject to a User’s instructions. An unexecuted RTH and Curb order with a Time-in-Force of GTC or GTD on the Book (or COB) at the end of a Curb trading session enters the RTH Queuing Book (or COB) and becomes eligible for execution during the RTH opening rotation (or COB Opening Process) and trading session on the following trading day (but not during the GTH trading session on the following trading day), subject to a User’s instructions. Additionally, all RTH and Curb Day orders resting on the Book (or COB) at the conclusion of the Curb trading session will be canceled.

#### Times-in-Force

The Exchange proposes to update the time times-in-force description of a “Day” order or quote under Rule 5.6(c) to make clear that any order or quote so designated, if not executed, will expire at the RTH market close for RTH Only orders (as such orders are not eligible for Curb or GTH) and expire at Curb market close for all All Sessions and RTH and Curb orders (as Curb is the last trading session of a given trading day).

The Exchange lastly proposes to update the Limit-on-Close (“LOC”) definition to provide that a User may not designate an LOC order as All Sessions or RTH and Curb, as the execution of LOC orders is linked to the RTH market close.

#### Availability of Orders and Quotes for Electronic Processing

The Exchange next proposes to amend Rule 5.30 (Availability of Orders and Quotes for Electronic Processing) to adopt new subparagraph (c), which will specify which order types, order instructions and times-in-force the Exchange may choose to make available during the Curb session. Specifically, the Exchange proposes to provide the Exchange may make the following available during Curb (the Exchange notes it also currently may make all these (other than RTH and Curb) available during GTH):

(1) *Order Types*: Limit order.

(2) *Order Instructions*: Attributable, Book Only, All Sessions, Cancel Back, Compression/PCC, Electronic Only, Match Trade Prevention (“MTP”) Modifier, Minimum Quantity, Non-Attributable, Post Only, Price Adjust, Reserve Order, and RTH and Curb.

(3) *Times-in-Force*: Day, Fill-or-Kill (“FOK”), Good-til-Cancelled (“GTC”), Good-til-Date (“GTD”), Immediate-or-Cancel (“IOC”), At the Open (“OPG”).<sup>37</sup>

(4) *Complex Orders*: Complex orders (see Rule 5.33 for types of complex orders) with a ratio greater than or equal to one-to-three (.333) and less than or equal to three-to-one (3.00) (except for Index Combo orders).

The Exchange also proposes to amend Rule 5.70, which sets forth order types, order instructions and times-in-force available for FLEX options, to add “RTH and Curb” to the list of available order instructions.

#### Entry of Orders and Quotes

The Exchange proposes to amend Rule 5.7 (Entry of Orders and Quotes) to clarify that Users can enter orders and quotes into the system or cancel previously entered orders and quotes from 8:00 p.m. until Curb market close (instead of RTH market close). Further, the Exchange proposes to update the time under Rule 5.7(e) that Users may cancel orders and quotes with Time-in-Force of GTC or GTD that remain on the book from 4:45 p.m. to 5:15 p.m. The Exchange notes that the proposed rule change would allow Users to cancel any GTC and GTD orders until 5:15 p.m., not just orders in All Sessions classes. The Exchange believes the proposed rule change provides Users with additional flexibility to manage their orders in all classes that remain in the Book following the Curb market close. In particular, the proposed rule change will provide Users with All Sessions and RTH and Curb GTC and GTD orders with the same time period following the end of Curb to cancel orders and provide Users with RTH Only GTC and GTD orders with additional time to cancel orders. The Exchange notes that cancelling a RTH Only GTC or GTD order at 5:15 p.m. has the same effect as cancelling that order at 4:45 p.m.—ultimately it accommodates the User’s goal of cancelling an order prior to it potentially executing during the RTH Opening Process the following morning (*i.e.*, it merely provides 30 additional

<sup>37</sup> Orders designated as OPG for the Curb session will generally be rejected unless circumstances require an opening rotation to occur in which case, they will be accepted. As discussed more fully below, the Curb session does not normally have an opening rotation, however an opening rotation may occur if the Exchange determines to start Curb after 4:15 p.m. or after any trading halt during the Curb session.

minutes to cancel a RTH Only GTC or GTH order).

#### Trading Halts

The Exchange next proposes to amend Rule 5.20 (Trading Halts). By way of background, Rule 5.20(a) provides that any two Floor Officials, in consultation with a designated senior executive officer of the Exchange, may halt trading in any security in the interests of a fair and orderly market and to protect investors and sets forth several different factors that may be considered in making the foregoing determination. Rule 5.20(b) provides that trading in a security that has been the subject of a halt under paragraph (a) above may be resumed (as described in Rule 5.31(g))<sup>38</sup> upon a determination by two Floor Officials, in consultation with a designated senior executive officer of the Exchange, that the interests of a fair and orderly market are best served by a resumption of trading. It also states that among the factors to be considered in making this determination are whether the conditions which led to the halt are no longer present. Rule 5.20(d) sets forth exceptions relating to trading halts and resumptions in index options. In particular, Rule 5.20(d) provides that when the hours of trading of the underlying primary securities market for an index option do not overlap or coincide with those of the Exchange, and during Global Trading Hours, Rule 5.22 (which describes market-wide trading halts due to extraordinary market volatility) and subparagraphs (a)(3) and (5) (the factors applicable to index options) and subparagraph (b) of Rule 5.20 do not apply, except for subparagraph (a)(6).<sup>39</sup> By way of further background, Rule 5.20(a)(3) provides that in the case of an index option, the Exchange may consider: (A) The extent to which trading is not occurring in the stocks or options underlying the index; (B) the current calculation of the index derived from the current market prices of the stocks is not available; or (C) the “current index level,” which is the

<sup>38</sup> Rule 5.31(g) describes the opening auction process that takes place upon the resumption of trading following a trading halt and is applicable to all trading sessions.

<sup>39</sup> The Exchange proposes to eliminate the reference to Rule 5.20(a)(6) in Rule 5.20(d). Pursuant to Rule 5.20(a)(6) the Exchange may consider whether other unusual conditions or circumstances are present, including the activation of price limits on futures exchanges or the halt of trading in related futures with respect to index options. The Exchange notes that Rule 5.20(a)(6) will continue to apply during GTH (and Curb) notwithstanding the proposed rule change. The Exchange believes the applicability of Rule 5.20(a)(6) is implied and otherwise clear and that it is not necessary to explicitly reference this provision under subparagraph (d) of Rule 5.20.

implied forward level based on volatility index (security) futures prices, for a volatility index is not available or the cash (spot) value for a volatility index is not available. Rule 5.20(a)(5) provides that the Exchange may consider the extent to which the opening process pursuant to Rule 5.31 has been completed or other factors regarding the status of the opening process.

Generally, in connection with Rule 5.20, the Exchange considers halting trading only in response to unusual conditions or circumstances, as it wants to interrupt trading as infrequently as possible and only if necessary, to maintain a fair and orderly market. The proposed rule change amends Rule 5.20(d) to indicate that subparagraph (a)(3) of Rule 5.20 also does not apply to Curb (just as it does not apply during GTH). In particular at least one of the primary listing markets is not open during the proposed Curb session.<sup>40</sup> Additionally, as discussed above, the index values (including the spot value for VIX) will not be calculated during Curb.<sup>41</sup> Thus, the Exchange believes it is appropriate to exclude Curb from the application of Rule 5.20(a)(3) because the factors in that provision will always be true during Curb, whereas during RTH, it would be unusual, for example, for stocks or options underlying an index to not be trading or the current calculation of the index to not be available. Exclusion of Curb from this provision will allow trading during Curb to occur despite the existence of those conditions (if the Exchange considered the existence of those conditions during Curb, trading during Curb could be halted every day). It is appropriate for the Exchange to consider any unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market during Curb, which may, for example, include whether the underlying primary securities market was halted at the close of the preceding RTH session (in which case the Exchange will evaluate whether the condition that led to the halt has been resolved or would not impact trading

<sup>40</sup> For example, the New York Stock Exchange, LLC (“NYSE”) does not offer trading hours during the proposed hours of the Curb session. See NYSE Rules 1.1 and 7.34. Specifically, NYSE Rule 1.1 defines “Core Trading Hours” as the hours between 9:30 a.m. through 4:00 p.m. ET and NYSE Rule 7.34 provides the Exchange has two trading sessions each day: (1) The “Early Trading Session” which begins at 7:00 a.m. and concludes at the commencement of the Core Trading Session and (2) the Core Trading Session, which as defined in NYSE Rule 1.1, begins at 9:30 a.m. and concludes at 4:00 p.m. ET.

<sup>41</sup> See proposed Rule 5.1(d)(3).

during Curb) or significant events that occur during Curb.

While the Exchange proposes to exclude application of Rule 5.20(a)(3) from the Curb session, the Exchange does not believe there are any distinguishing factors between Curb (or GTH) and RTH that warrants subparagraph (a)(5) (the provision that allows the Exchange to consider the extent to which the opening process has been completed) or Rule 5.20(b) (*i.e.*, the provision that allows the Exchange to resume trading) to not apply. Indeed, the Exchange sees no reason why it should not consider the extent to which the opening process has been completed or other factors regarding the status of the opening process during either GTH or Curb. Although there will be no opening process to initiate the Curb session, there may still be an opening process pursuant to Rule 5.31(g) that may occur should a trading halt be declared during Curb. As such, the Exchange believes it's appropriate to not preclude this factor from being considered during either GTH or Curb. The Exchange also sees no reason why it should not allow the resumption of a halted security during GTH or Curb if a determination is made by two Floor Officials, in consultation with a designated senior executive officer of the Exchange, that the interests of a fair and orderly market are best served by a resumption of trading.

The Exchange next proposes to amend Rule 5.20(d) with respect to a reference to Rule 5.22. Under Rule 5.22 (Market-wide Trading Halts due to Extraordinary Market Volatility), the Exchange will halt trading in all classes whenever a market-wide trading halt (commonly known as a circuit breaker) is initiated in response to extraordinary market conditions. Rule 5.22(b)(1) states that the Exchange will halt trading for 15 minutes if a Level 1 or Level 2 Market Decline occurs after 9:30 a.m. and up to and including 3:25 p.m. (or 12:25 p.m. for an early scheduled close). Additionally, the Exchange will not halt trading if a Level 1 or Level 2 Market Decline occurs after 3:25 p.m. (or 12:25 p.m., if applicable). Rule 5.22(b)(2) states that the Exchange will halt trading until the next trading day if a Level 3 Market Decline occurs. As referenced under Rule 5.20(d), Rule 5.22 does not currently apply during the GTH session. Particularly, Rule 5.22(b)(1) does not apply, as the beginning of GTH occurs past the 15-minute halt window for a Level 1 or Level 2 Market Decline. Rule 5.22(b)(2) also does not apply during GTH, as the GTH session is considered the next trading day and Rule 5.22(b)(2) requires

the Exchange to halt trading until the "next" trading day if a Level 3 Market Decline occurs at any time during the trading day. Unlike GTH however, the Curb session is considered the same trading day as the preceding RTH session, and therefore, unlike GTH, Rule 5.22(b)(2) can and should apply. Accordingly, the Exchange proposes to amend Rule 5.20(d) to make clear that the only applicable trading halt provisions that do not apply during GTH and Curb are Rules 5.22 and 5.20(a)(3), with the exception of Rule 5.22(b)(2) which will apply during Curb.

#### Opening Auction Process

As discussed above, the Exchange does not intend to adopt an opening auction process for either simple or complex orders to commence the Curb trading session as the proposed start time of Curb immediately follows the close of RTH. As such, there will be no Curb-specific queuing period or opening rotation trigger to initiate the Curb session. Instead, at 4:15 p.m., the RTH trading session will seamlessly transition directly into the Curb trading session, and any All Sessions orders resting on the Book will remain on the book and become eligible for execution during Curb subject to a User's instructions. In connection with the proposal, the Exchange proposes to amend Rules 5.31 and 5.33 to make clear that under normal circumstances there will be no opening rotation at the start of Curb. Particularly, the Exchange proposes to amend Rule 5.31(d), which sets forth various triggers upon which the System will initiate an opening rotation for the series in a class, by adopting new subparagraph (3) to explicitly provide that the System will not initiate an opening rotation at the start of the Curb Trading Hours. The Exchange also proposes to address what happens in the event Curb does not start immediately at 4:15 p.m. As noted above, proposed Rule 5.1(d) will provide that Curb will operate from 4:15 p.m. to 5:00 p.m., except under unusual conditions as may be determined by the Exchange. If such conditions result in a determination to start Curb sometime after 4:15 p.m., the Exchange will need to initiate an opening rotation to start the Curb session as there would then be a "gap" between RTH and Curb and the transition would no longer be seamless. As such, the Exchange proposes to also add language to proposed Rule 5.31(d)(3) which would provide that should the Exchange determine to start Curb after 4:15 p.m. due to unusual conditions as may be determined by the Exchange, the Exchange will utilize an opening rotation to initiate the session

at a time to be announced by the Exchange. Proposed Rule 5.31(d)(3) would also clarify that the queuing period for any such opening rotation would begin at 4:15 p.m. The Exchange also proposes to make clear in Rule 5.31(d)(3) that the Exchange will follow the opening auction process described in Rule 5.31(g) to resume trading following the declaration of a trading halt during Curb Trading Hours.

Similarly, the Exchange proposes to amend Rule 5.33(c), which describes the COB Opening Process, to clarify that the System will not initiate the COB Opening Process at the start of Curb. More specifically, Rule 5.33(c) currently provides that the COB Opening Process occurs at the beginning of each trading session and after a trading halt. The Exchange proposes to update Rule 5.33(c) to make clear that the COB Opening Process occurs only at the beginning of RTH and GTH (instead of "each" trading session). The Exchange notes that should a trading halt be declared during Curb, the Exchange will utilize the COB Opening Process described under Rule 5.33(c) upon a resumption of trading. Similar to proposed Rule 5.31(d)(3), the Exchange proposes to adopt new Rule 5.33(c)(3) to explicitly provide that there will be no COB Opening Process at the start of the Curb Trading Hours. Proposed Rule 5.33(c)(3) will also address what happens in the event Curb does not start immediately at 4:15 p.m. That is, if such conditions result in a determination to start Curb sometime after 4:15 p.m., the Exchange will initiate the COB Opening Process at a time to be announced by the Exchange. Proposed Rule 5.33(c)(3) would also clarify that the System will accept complex orders for inclusion in the COB Opening Process beginning at 4:15 p.m. The Exchange will also make clear in proposed Rule 5.33(c)(3) that the Exchange will follow the COB Opening Process described in Rule 5.33(c) to resume trading following the declaration of a trading halt during Curb Trading Hours. The Exchange believes the proposed rule changes relating to the opening processes for simple and complex orders (or lack thereof) provides transparency as to how the Exchange will initiate the Curb session under normal circumstances, as well as in the event unusual conditions result in the Curb session starting after 4:15 p.m.

#### Market-Maker Rules

Current Rule 5.50(a) (Market-Maker Appointments) provides that a Market-Maker's selected class appointment applies to classes during all trading sessions. In other words, if a Market-

Maker selects an appointment in SPX options, for example, that appointment would apply during both GTH, RTH and Curb (and thus, the Market-Maker would have an appointment to make markets in SPX during GTH, RTH and Curb). As a result, the Market-Maker continuous quoting obligations set forth in Rule 5.52(d) applies to the class for an entire trading day (including all three trading sessions). Pursuant to Rule 5.52(d), a Market-Maker must enter continuous bids and offers in 60% of the series of the Market-Maker's appointed classes, excluding any adjusted series, any intra-day add-on series on the day during which such series are added for trading, any Quarterly Option series, and any series with an expiration of greater than 270 days.<sup>42</sup> The Exchange calculates this requirement by taking the total number of seconds the Market-Maker disseminates quotes in each appointed class (excluding the series noted above) and dividing that time by the eligible total number of seconds each appointed class is open for trading that day. The Exchange also notes however, that pursuant to Rule 5.52(d)(2)(E), the obligations apply only when the Market-Maker is quoting in a particular class during a given trading day and the obligations are not applicable to an appointed class if a Market-Maker is not quoting in that appointed class. Accordingly, if a Market-Maker does not wish to quote during the proposed new Curb trading session, but does quote the current RTH hours, then so long as the Market-Maker doesn't log in and quote starting at 4:15 p.m., the time between 4:15 p.m. and 5:00 p.m. (the Curb session) won't be considered when determining a Market-Maker's compliance with the quoting obligations. Accordingly, the Exchange believes the addition of the proposed Curb Trading Hours session will have a de minimis, if any, impact on a Market-Maker's continuous quoting obligations, as they may continue to choose when to actively quote and have their obligations to their appointed classes apply.<sup>43</sup> Moreover, selecting an appointment in SPX or VIX options will be optional and within the discretion of a Market-Maker. Additionally, Market-Makers have the opportunity to quote during Curb (and receive the benefits of acting as a Market-Maker with respect to transactions it effects during that time) without obtaining an additional Trading Permit or creating additional connections to the Exchange. Given this ease of access to the Curb trading

session, the Exchange believes Market-Makers may be encouraged to quote during the trading session. The Exchange believes Market-Makers will continue to have an incentive to quote during Curb given the significance of the SPX and VIX within the financial markets, the expected demand, and given that the related futures also trading during those hours (which may permit execution of certain hedging strategies). The Exchange believes continuing to extend a Market-Maker's appointment to Curb notwithstanding the proposed extension of the trading session will enhance liquidity during that trading session, which benefits all investors during those hours. Therefore, the Exchange believes the proposed rule change provides customer trading interest with a net benefit and continues to maintain a balance of Market-Maker benefits and obligations.

With respect to Lead-Market-Makers ("LMMs"), the Exchange plans to utilize the same LMM structure it uses today during GTH. More specifically, Rule 3.55 (LMMs) currently provides that the Exchange may approve one or more Market-Makers to act as LMMs in each class during GTH. Further, subparagraph (b) of Rule 5.55 (LMMs) provides that if a LMM is approved to act as an LMM during GTH, then the LMM must comply with the continuous quoting obligation and other obligations of Market-Makers set forth in Rule 5.52(d)(2) but does not have to comply with the obligations under Rule 5.55(a). Additionally, subparagraph (a)(2)(B)(iv) of Rule 5.32 (Order and Quote Book Processing, Display, Priority and Execution) provides that the DPM/LMM/PM participation entitlement does not apply during GTH. Similar to GTH, the Exchange expects lower trading liquidity and trading levels during Curb as compared to RTH, and thus fewer opportunities for an LMM to receive a participation entitlement. As such, the Exchange does not expect that the RTH obligation/benefit structure would provide a similar incentive during Curb. More specifically, without the possibility of receiving a participation entitlement on a sufficient volume of trades, the Exchange believes there would be insufficient incentive for LMMs to undertake an obligation to quote at heightened levels, which could result in even lower levels of liquidity. The Exchange therefore proposes to amend Rules 3.55, 5.55 and 5.32 to add references to Curb such that the same LMM rules that are used during GTH will also apply during Curb.<sup>44</sup>

Accordingly, LMMs appointed in the Curb session will not be obligated to satisfy heightened continuous quoting and opening quoting standards during Curb, nor will they receive a benefit in exchange for satisfying an obligation (*i.e.*, LMMs will not receive a participation entitlement during Curb).<sup>45</sup>

The Exchange notes that to the extent the Exchange appoints a Designated Primary Market-Maker ("DPM") or Preferred Market-Maker ("PMM") to a class for the Curb trading session, the Exchange would similarly not use the obligation/benefit structure. As such, the Exchange also proposes to amend subparagraph (a)(2)(B)(iv) of Rule 5.32 (Order and Quote Book Processing, Display, Priority and Execution) to provide that the DPM/LMM/PM participation entitlement does not apply during GTH or Curb.

#### FLEX

Subparagraph (b) of Rule 5.71 (Opening of FLEX Trading) currently sets forth the times that FLEX traders may begin submitting FLEX Orders into an electronic FLEX Auction, a FLEX AIM, or a FLEX SAM or initiate an open outcry FLEX Auction on the trading floor for the RTH and GTH sessions. The Exchange proposes to add the time FLEX traders may submit such orders during Curb, which is after 4:15 p.m. (which is the start time of the Curb trading session).

#### Catastrophic Errors

The Exchange next proposes to amend Rule 6.5 (Nullification and Adjustment of Option Transactions Including Obvious) to specify the time deadline relating to catastrophic error<sup>46</sup> notifications in subparagraph (d)(2) for Curb. First, Rule 6.5(d) provides that a party that believes that it participated in a transaction that was the result of a Catastrophic Error must notify the Exchange's Trade Desk. The Exchange proposes to update Rule 6.5(d) to clarify that like transactions occurring during

only GTH or Curb. The Exchange also notes that to the extent it determines to appoint LMMs in both GTH and Curb, such LMM may, but is not required to be, the same LMM for each trading session.

<sup>45</sup>The Exchange may determine in the future to adopt via a separate rule filing an incentive program that would provide appointed LMMs a rebate if they meet certain heightened continuous quoting standards during the proposed additional hours, if the Exchange believes it is necessary to encourage LMMs to provide significant liquidity during this time.

<sup>46</sup>A catastrophic error is deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amounts set forth under Rule 6.5(d)(1).

<sup>42</sup> See Rule 5.52(d)(2).

<sup>43</sup> See Proposed Rule 5.5(d)(2)(E).

<sup>44</sup> The Exchange notes that it may appoint LMMs in both GTH and Curb, neither GTH nor Curb or



RTH,<sup>47</sup> notification relating to trades executed during Curb must be received by the Exchange's Trade Desk by 8:30 a.m. on the first trading day following the execution. The Exchange also proposes to clarify in Rule 6.5(d)(2) the cutoff time for transactions in an expiring options series that take place on an expiration day. Currently Rule 6.5(d)(2) provides that for transactions in an expiring options series that take place on an expiration day, a party must notify the Exchange's Trade Desk within 45 minutes after the close of "trading that same day". In order to avoid confusion as to whether or not the close of trading refers to the close of the RTH session or the proposed Curb session, the Exchange proposes to clarify that such notification must be submitted by the close of the "RTH session". As discussed above, P.M.-settled options will continue to expire at 4:00 p.m. on the date of expiration. As such, the Exchange believes it's appropriate to continue to provide the same amount of time for notification as it does today.

#### Disclosure

Current Rule 9.20 currently requires TPHs to make certain disclosures to customers regarding material trading risks that exist during GTH. The Exchange proposes to similarly require that TPHs make similar disclosures to customers regarding material trading risks that also exist during Curb. Similar to GTH, the Exchange expects overall lower levels of trading during Curb compared to RTH. While trading processes during Curb will be substantially similar to trading processes during RTH (as noted above), the Exchange believes it is important for investors, particularly public customers, to be aware of any differences and risks that may result from lower trading levels and thus requires these disclosures. Accordingly, Rule 9.20 will be amended to require the same customer disclosures during Curb as are required during GTH. Specifically, no Trading Permit Holder may accept an order from a customer for execution during Curb without disclosing to that customer that trading during Curb involves material trading risks, including the possibility of lower liquidity (including fewer Market-Makers quoting), higher volatility, changing prices, an exaggerated effect from news announcements, wider spreads, the absence of an updated underlying index or portfolio value or intraday indicative value and lack of

regular trading in the securities underlying the index or portfolio and any other relevant risk. Rule 9.20 currently provides an example of these disclosures, which the Exchange proposes to amend to add references to Curb Trading Hours in addition to Global Trading Hours references. The Exchange believes that requiring TPHs to disclose these risks to non-TPH customers will facilitate informed participation in Curb.

The Exchange also intends to distribute to TPHs and make available on its website a Regulatory Circular regarding Curb that discloses, among other things, (1) that the current underlying index value may not be updated during Curb, (2) that lower liquidity during Curb may impact pricing, (3) that higher volatility during Curb may occur, (4) that wider spreads may occur during Curb, (5) the circumstances that may trigger trading halts during Curb, (6) required customer disclosures (as described above), and (7) suitability requirements. The Exchange believes that, with this disclosure, Curb Trading Hours are appropriate and beneficial to market participants that choose to participate in the session, notwithstanding the absence of a disseminated updated index value during those hours.

#### Discussion

As set forth above, the differences in the Rules between the trading process during Curb and RTH is that, similar to GTH, certain order types and instructions will not be available during Curb, values for indexes underlying index options will not be disseminated during Curb, and TPHs that accept orders from customers during Curb will be required to make certain disclosures to those customers. Additionally, as discussed, unlike either RTH or GTH, the Exchange will not use an opening auction process at the start of the Curb session. Other rules however, will apply in the same manner, but the Exchange may make different determinations between RTH and Curb, just as the Exchange may do between RTH and GTH. The Exchange believes these differences are consistent with the differences between the characteristics of each trading session. The Exchange also notes the following:

- All TPHs may, but will not be required to, participate during Curb.<sup>48</sup>

<sup>48</sup> Unlike GTH, Clearing TPHs do not need to be authorized by the Options Clearing Corporation ("OCC") to operate during the Curb session. As such, TPHs do not need separate letters of guarantee (i.e., in addition to any letters of guarantee on file for RTH) to also operate during the Curb trading session.

As noted above, while a Market-Maker's appointment to an All Sessions class will apply to that class whether it quotes in series in that class or not during Curb, the Exchange believes the proposed Curb trading session will have a *de minimis*, if any, impact on a Market-Maker's continuous quoting obligations, as they may continue to choose when to actively quote and have their obligations to their appointed classes apply. Additionally, even if a Market-Maker elects to not quote during all or part of Curb, its ability to satisfy its continuous quoting obligation will not be substantially impacted given the short length of Curb as well as the few classes that will be listed for trading during Curb.

- The Exchange will use the same connection lines, message formats, and feeds during RTH, GTH and Curb.<sup>49</sup> TPHs may use the same ports and EFIDs<sup>50</sup> for each trading session.<sup>51</sup>
- Order processing will operate in the same manner during Curb as it does during RTH or GTH. There will be no changes to the ranking, display, or allocation algorithms rules.
- There will be no changes to the processes for clearing, settlement, exercise, and expiration.<sup>52</sup>
- The Exchange will report Exchange quotation and last sale information to the Options Price Reporting Authority ("OPRA") pursuant to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (the "OPRA Plan") during the proposed Curb Trading Hours in the same manner it currently reports this information to OPRA during RTH and GTH today.<sup>53</sup>

<sup>49</sup> The same telecommunications lines used by TPHs during RTH and/or GTH may be used during Curb, and these lines will be connected to the same application server at the Exchange during all three trading sessions.

<sup>50</sup> The term "EFID" means an Executing Firm ID. The Exchange assigns an EFID to a TPH, which the System uses to identify the TPH and the clearing number for the execution of orders and quotes submitted to the System with that EFID.

<sup>51</sup> A TPH may elect to have separate ports or EFIDs for each trading session, but the Exchange will not require that.

<sup>52</sup> The Exchange has held discussions with the Options Clearing Corporation, which is responsible for clearance and settlement of all listed options transactions and has informed the Exchange that it will be able to clear and settle all transactions that occur on the Exchange and handle exercises of options during Curb.

<sup>53</sup> The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are trading on the participant exchanges. The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. See Securities Exchange Act Release No. 17638 (March 18, 1981). The full text of the OPRA Plan is available at <http://www.opraplan.com>. All operating U.S. options exchanges participate in the OPRA Plan. The Exchange will report its best bid

<sup>47</sup> For consistency in the Rulebook, the Exchange proposes to capitalize the reference to "regular trading hours" in Rule 6.5(d)(2).

Therefore, all TPHs that elect to trade during the proposed Curb session will have access to quote and last sale information during that trading session. Exchange proprietary data feeds will also be disseminated during Curb using the same formats and delivery mechanisms with which the Exchange disseminates them during RTH and GTH today. Use of these proprietary data feeds during Curb will be optional (as they are today during RTH and GTH).<sup>54</sup>

- The same TPHs that are required to maintain connectivity to a backup trading facility during RTH and GTH will be required to do so during Curb.<sup>55</sup> Because the same connections and servers will be used for both trading sessions, a TPH will not be required to take any additional action to comply with this requirement, regardless of whether the TPH chooses to trade during Curb.

- The Exchange will process all clearly erroneous trade breaks during Curb in the same manner it does during RTH and GTH and will have Exchange officials available to do so.

- The Exchange will perform all necessary surveillance coverage during Curb.

- The Exchange may halt and resume trading during Curb pursuant to Rule 5.20(a) and (b), respectively, in the interests of a fair and orderly market in the same manner it may during RTH and GTH. The proposed rule change amends Rule 5.20(d) to provide that the factors set forth under Rule 5.20(a)(3) will not apply during Curb just as they do not apply during GTH. Among the factors that may be considered in making the foregoing determinations are whether there has been an activation of price limits on futures exchanges or the halt of trading in related futures with respect to index options.<sup>56</sup> Further, the

and offer and executed trades to OPRA during the proposed Curb Trading Hours in the same manner that they are reported during RTH and GTH today. The operator of OPRA has also informed the Exchange that it intends to add a modifier to the disseminated information during Curb. Specifically, OPRA will use Message Type = 'v' between 4:15 p.m. ET and 5:00 p.m. ET.

<sup>54</sup> Any fees related to receipt of the OPRA data feed during Curb will be included on the OPRA fee schedule. Any fees related to receipt of the Exchange's proprietary data feeds during Curb will be included on the Exchange's fee schedule (and will be included in a separate rule filing) or the Exchange's market data website, as applicable.

<sup>55</sup> See Rule 5.24.

<sup>56</sup> See Rule 5.20(a)(6). As discussed above, futures markets operate an extended trading hours session that follows the regular trading hours session, with hours similar to what the Exchange is proposing. As such, should a halt of trading in related futures occur during Curb, then the Exchange may consider whether to halt during that session, just as it may do during regular GTH and RTH sessions.

proposed rule change will amend Rule 5.20(d) such that when determining whether to halt trading during Curb or GTH, the Exchange will also be able to consider the extent to which the opening process pursuant to Rule 5.31 has been completed or other factors regarding the status of the opening process, just as it is able to do for the RTH session.

- Under Rule 5.22 (Market-wide Trading Halts due to Extraordinary Market Volatility), the Exchange will halt trading in all classes whenever a market-wide trading halt (commonly known as a circuit breaker) is initiated in response to extraordinary market conditions. Rule 5.22(b)(1) states that the Exchange will halt trading for 15 minutes if a Level 1 or Level 2 Market Decline occurs after 9:30 a.m. and up to and including 3:25 p.m. (or 12:25 p.m. for an early scheduled close). Additionally, the Exchange will not halt trading if a Level 1 or Level 2 Market Decline occurs after 3:25 p.m. (or 12:25 p.m., if applicable). Rule 5.22(b)(2) states that the Exchange will halt trading until the next trading day if a Level 3 Market Decline occurs. The Exchange notes that Rule 5.22(b)(1) will not apply during the Curb session, just as it does not apply during GTH, as the beginning of Curb occurs past the 15-minute halt window for a Level 1 or Level 2 Market Decline. Rule 5.22(b)(2) however will apply to the Curb session, as the Curb session is considered the same trading day as the RTH session. As such, if a Level 3 Market Decline occurs at any time during RTH or Curb, the Exchange will halt trading in SPX and VIX until the next trading day.

The Exchange understands that systems and other issues may arise and is committed to resolving those issues as quickly as possible, including during the new Curb trading hours. Thus, the Exchange will have appropriate staff on-site and otherwise available as necessary during Curb to handle any technical and support issues that may arise during those hours. Additionally, the Exchange will have personnel available to address any trading issues that may arise during the additional Curb trading hours. The Exchange is also committed to fulfilling its obligations as a self-regulatory organization at all times, including during Curb, and will have appropriately trained, qualified regulatory staff in place during Curb to the extent it deems necessary to satisfy those obligations. The Exchange's surveillance procedures will be revised as necessary to incorporate transactions that occur, and orders and quotations that are submitted, during Curb. The

Exchange believes its surveillance procedures are adequate to properly monitor trading during Curb.

#### Implementation Date

The Exchange will announce the implementation date of the proposed rule change in accordance with Rule 1.5. The Exchange also notes that it first announced its proposal to adopt the proposed Curb Trading Hours session to market-participants via a Trade Desk notice back in January 2021.<sup>57</sup> Since then, the Exchange has issued numerous updated notices, FAQs and detailed technical specifications.

#### 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>58</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>59</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>60</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change to adopt Curb Trading Hours will remove impediments to and perfect the mechanism of a free and open market and a national market system. Particularly, Curb is a competitive initiative designed to improve the Exchange's marketplace for the benefit of investors, and the proposed rule change will allow the Exchange to provide a competitive marketplace for market participants to trade certain products in an additional 45-minute trading session. More specifically, the adoption of the Curb trading session is designed to increase the overlap in time

<sup>57</sup> See Exchange Notice C2021012501 "Cboe Options Exchange to Extended Global Trading Hours in Q4 2021".

<sup>58</sup> 15 U.S.C. 78f(b).

<sup>59</sup> 15 U.S.C. 78f(b)(5).

<sup>60</sup> *Id.*

that SPX, XSP and VIX options are open alongside the related futures contracts. Moreover, adopting an additional trading session during which market participants can trade SPX, XSP and VIX options is designed to better help meet growing investor demand for the ability to manage risk more efficiently, react to global macroeconomic events as they are happening and adjust SPX, XSP and VIX options positions outside of RTH. The Exchange believes that the proposed rule change is reasonably designed to provide an appropriate mechanism for trading outside of RTH and GTH while providing for appropriate Exchange oversight pursuant to the Act, trade reporting, and surveillance.

The Exchange also notes that it, along with some of its affiliated options exchanges, already allow for trading outside of the hours of RTH (*i.e.*, during the GTH trading session).<sup>61</sup> Furthermore, the Commission has authorized stock exchanges to be open for trading outside of regular trading hours.<sup>62</sup> Thus, the proposed rule change to adopt a trading session in addition to, and outside of, regular trading hours is not novel or unique. Additionally, as noted above, futures exchanges also operate outside of those hours and during the proposed Curb session, including the Exchange's affiliate, CFE, which has an extended trading hours session that overlaps with Exchange proposed Curb Trading Hours.<sup>63</sup>

As described in detail above, the vast majority of the Exchange's trading rules will apply during Curb in the same manner as during the Exchange's two other trading sessions (RTH and GTH), which rules have all been previously filed with the Commission as being consistent with the goals of the Act. Rules that will apply equally during Curb Trading Hours include rules that protect public customers, impose best execution requirements on TPHs, and prohibit acts and practices that are inconsistent with just and equitable principles of trade as well as fraudulent

and manipulative practices. The proposed rule change also provides opportunities for price improvement during Curb and applies the same allocation and priority rules that are available to the Exchange during RTH and GTH. The Exchange believes, therefore, that the rules that will apply during Curb will continue to promote just and equitable principles of trade and prevent fraudulent and manipulative acts.

The proposed rule change clearly identifies the ways in which trading during Curb will be different from trading during RTH and/or GTH (such as identifying order types and instructions that will not be available during Curb, clarifying that under the normal course of business there will be no opening auction process at the start of Curb, and the proposed absence of a disseminated updated index value during Curb). This ensures that investors are aware of any differences among trading sessions. The Exchange believes the differences are consistent with the expected differences in duration and timing of the trading session, liquidity, participation, and trading activity between RTH and Curb and GTH and Curb. For example, the Exchange believes it is reasonable to not adopt an opening auction process for Curb as the Curb session, unlike RTH and GTH, is proposed to start immediately following the trading session preceding it, and as such, the Exchange is able to seamlessly transition into Curb without a queuing period or opening rotation. The flexibility provided to the Exchange to make determinations for each trading session will allow the Exchange to apply settings and parameters to address the different market conditions that may be present during each trading session. Additionally, to further protect investors from any additional risks related to trading during Curb, the proposed rule change requires that disclosures be made to customers describing these potential risks, similar to the current requirement for such disclosures related to trading during GTH. The All Sessions order and RTH Only order, along with the proposed RTH and Curb order, will continue to protect investors by permitting investors who wish only to trade during RTH from having orders or quotes execute outside of the RTH session, including during the proposed Curb trading session. The RTH and Curb Order will provide investors with additional execution flexibility by providing them with an order that may execute during either daytime trading session but not

carryover (if unexecuted) in the following overnight session. Consistent with the goal of investor protection, the Exchange will not allow market orders during Curb due to the expected increased volatility and decreased liquidity during these hours, just as it does not currently allow such orders during GTH for the same reasons. The proposed rule change also only authorizes the Exchange to list for trading two classes during Curb. As the proposed rule change is a new Exchange initiative, the Exchange believes it is reasonable to trade a limited number of classes upon implementation for which demand is believed to be the highest during Curb.

Additionally, the Exchange believes that the proposed rule change will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as the Exchange will ensure that adequate staffing is available during Curb to provide appropriate trading support during those hours, as well as Exchange officials to make any necessary determinations under the rules during Curb (such as trading halts and trade nullification for obvious errors). The Exchange is also committed to fulfilling its obligations as a self-regulatory organization at all times, including during Curb. The Exchange's surveillance procedures will also be revised to incorporate transactions that occur and orders and quotations that are submitted during Curb Trading Hours. The Exchange believes its surveillance procedures are adequate to properly monitor trading during Curb. Clearing and settlement processes will be the same for Curb as they are for RTH or GTH transactions.

The proposed rule change further removes impediments to a free and open market and does not unfairly discriminate among market participants, as all TPHs with access to the Exchange may trade during Curb using the same connection lines, message formats data feeds, and EFIDs they use during RTH and GTH, minimizing any preparation efforts necessary to participate during Curb. TPHs will not be required to trade during Curb.

Additionally, as discussed above, while the proposed rule change increases the total time during which a Market-Maker with an appointment has the ability to quote in a selected class, the Exchange believes this increase has a de minimis, if any, impact on Market-Makers given that a Market-Maker's compliance with its continuous quoting obligation is based on all classes in which it has an appointment in the

<sup>61</sup> See Cboe Options Rule 5.1, Cboe C2 Exchange, Inc. Rule 5.1 and Cboe EDGX Exchange, Inc. Rule 21.2.

<sup>62</sup> See *e.g.*, Cboe BZX Exchange, Inc. Rule 1.5, which provides for an After Hours Trading Session which is a trading session from 4:00 p.m.–8:00 p.m. and follows the Regular Trading Hours session which takes place between 9:30 a.m. and 4:00 p.m. See also Exchange Act Release No. 59963 (May 21, 2009), 74 FR 25787 (May 29, 2009) (SR-BATS-2009-012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rules to Offer an After Hours Trading Session).

<sup>63</sup> See, *e.g.*, CFE Rule 1202, which outlines the trading schedule for futures on the Cboe Volatility Index and includes an extended trading session that operates from 4:00 p.m. to 5:00 p.m.

aggregate and based only when a Market-Maker is quoting it its appointed classes. Indeed, as noted above, if a Market-Maker who quotes during the RTH and/or GTH session today does not wish to quote during the proposed Curb Trading Hours, then so long as such Market-Maker does not log into the system and quote during that session (or whatever other time it wishes to begin quoting), there will be no impact with respect to the Market-Maker's ability to satisfy its continuous quoting obligations. Selecting an appointment in SPX and/or VIX options will continue to be optional and within the discretion of a Market-Maker. Additionally, Market-Makers continue to have the opportunity to quote during Curb (and receive the benefits of acting as a Market-Maker with respect to transactions it effects during that time) without obtaining an additional Trading Permit or creating additional connections to the Exchange. The Exchange believes Market-Makers will have an incentive to quote in SPX and VIX during the proposed Curb session given the significance of these products within the financial markets, the expected demand, and given that the related futures are also trading during those hours (which may permit execution of certain hedging strategies). The Exchange believes extending a Market-Maker's appointment to the Curb session will enhance liquidity during that trading session, which benefits all investors during those hours. The Exchange believes that any slight additional burden of extending the continuous quoting obligation to the proposed Curb trading session in the eligible classes would be outweighed by the Exchange's efforts to add liquidity during the Curb trading session in All Sessions classes, the minimal preparation a Market-Maker may require to participate in the Curb trading session, and the benefits to investors that may result from that liquidity. Therefore, the Exchange believes the proposed rule change provides customer trading interest with a net benefit and continues to maintain a balance of Market-Maker benefits and obligations.

While LMMs will only be required to meet the same obligations as Market-Makers during Curb, the Exchange believes it may be unduly burdensome to impose a heightened standard during Curb given the expected lower participation and trading volume and higher liquidity. The Exchange believes LMMs should have the flexibility to determine whether satisfying any heightened quoting standard and opening quoting standard is appropriate

for its business given the then-current market conditions during Curb. Because there are no additional obligations imposed on LMMs during Curb, they receive no additional benefits (*i.e.*, no participation entitlement) during Curb. Without the possibility of receiving a participation entitlement on a sufficient volume of trades, the Exchange does not expect that the current RTH obligation/benefit structure for LMMs would provide a similar incentive during Curb and therefore does not propose to implement it during Curb, just as it has not done so for GTH for similar reasons. As noted above, should the Exchange find it necessary in the future, it will submit a separate rule filing to adopt a rebate incentive program for Curb LMMs to encourage increased quoting to add liquidity during that session. LMMs that satisfy any proposed heightened continuous quoting standard under such an incentive program would receive a rebate pursuant to the Fees Schedule. Such a program would parallel the obligation/benefit structure that exists for LMMs during RTH (that is, LMMs that meet heightened quoting obligations during RTH receive a participation entitlement, which is merely a different form of financial benefit).

The proposed rule change is also consistent with Section 11A of the Act and Regulation NMS thereunder, because it provides for the dissemination of transaction and quotation information during Curb through OPRA, pursuant to the OPRA Plan, which the Commission approved and indicated to be consistent with the Act. While Section 11A and Regulation NMS contemplate an integrated system for trading securities, they also envision competition between markets, and innovation that provides marketplace benefits to attract order flow to an exchange does not result in unfair competition if other markets are free to compete in the same manner.<sup>64</sup>

As discussed, the Exchange, as well as other options exchanges, already offer trading sessions outside of regular

trading hours.<sup>65</sup> While there are some differences among the proposed Curb Trading Hours session and the Exchange's current GTH session, such as the length and time of the session and the absence of an opening auction process, the Exchange believes the proposed Curb trading session and proposed rules are still substantially similar to the current GTH trading session its corresponding rules, thereby providing consistency across all trading sessions with similar characteristics outside of RTH.

The Exchange also believes the proposed rule change to extend the time Users have to cancel all GTC and GTD orders, and not just those participating in Curb, is reasonable. In particular, it provides Users with RTH Only GTC and GTD orders with additional time to cancel orders. Further, the Exchange notes that cancelling a RTH Only GTC or GTD order at the proposed time of 5:15 p.m. has the same effect as cancelling that order at the current cutoff time of 4:45 p.m.—ultimately it accommodates the User's goal of cancelling an order prior to it potentially executing during the RTH Opening Process the following morning (*i.e.*, it merely provides 30 additional minutes to cancel a RTH Only GTC or GTD order). As such, the Exchange believes the proposed rule change provides Users with additional flexibility to manage their orders in all classes that remain in the Book following the Curb market close, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Finally, the Exchange believes the proposed changes to Rule 5.20(d) eliminate unnecessary distinctions between RTH and GTH//Curb as it relates to trading halt exceptions for index options. Particularly, the Exchange sees no reason why it should not allow the resumption of a halted security during GTH or Curb if a determination is made by two Floor Officials, in consultation with a designated senior executive officer of the Exchange, that the interests of a fair and orderly market are best served by a resumption of trading. Similarly, the Exchange does not believe there are distinguishing factors between (i) GTH and Curb and (ii) RTH that warrants precluding the Exchange from considering the factors under Rule 5.20(a)(5) (relating to whether the opening process has been completed or

<sup>64</sup> See Exchange Act Release Nos. 73704 (November 28, 2014), 79 FR 72044 (December 4, 2014) (SR-CBOE-2014-062) (approval of proposed rule change for Cboe Options to extend its trading hours outside of Regular Trading Hours); and 29237 (May 24, 1991), 46 FR 24853 (May 31, 1991) (SR-NYSE-1990-052 and SR-NYSE-1990-053) (approval of proposed rule change for NYSE to extend its trading hours outside of Regular Trading Hours). The Exchange also notes that no other U.S. options exchange provides for trading SPX or VIX options outside of RTH, so there is currently no need for intermarket linkage during GTH. If another Cboe Affiliated Exchange lists any options authorized to trade during GTH outside of RTH, trading of such options on the Exchange would comply with linkage rules.

<sup>65</sup> See, *e.g.*, Cboe Options Rule 5.1, C2 Rule 5.1 and Cboe EDGX. Rule 21.2.

the status of the opening process) in making a determination whether declaring a trading halt is appropriate. As is the case today, the Exchange is not required to take into consideration any of the factors listed under Rule 5.20(a), including subparagraph (5), when making a determination whether to halt trading. Moreover, the Exchange will continue to consider halting trading only in response to unusual conditions or circumstances, as it wants to interrupt trading as infrequently as possible and only if necessary, to maintain a fair and orderly market. Indeed, notwithstanding the proposed changes to Rule 5.20(d), the Exchange will continue to have the authority to manually halt trading during any trading session if it's determined to be in the interests of a fair and orderly market and to protect investors.

#### *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 to adopt Curb Trading Hours will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because all TPHs will be able, but not be required, to participate during Curb, and will be able to do so using the same connectivity as they use during RTH and GTH. As discussed, participation in Curb will be voluntary and within the discretion of TPHs. While the proposed rule change increases the total time during which a Market-Maker with either a SPX and/or VIX appointment may be able quote, the Exchange believes the proposal will have a de minimis, if any, impact on a Market-Maker's continuous quoting obligations, as they may continue to choose when to actively quote and have their obligations to their appointed classes apply. Furthermore, selecting an appointment in these options classes will be optional and within the discretion of a Market-Maker. Additionally, Market-Makers continue to have the opportunity to quote during Curb (and receive the benefits of acting as a Market-Maker with respect to transactions it effects during that time) without obtaining an additional Trading Permit or creating additional connections to the Exchange. The Exchange believes that extending the continuous quoting obligation to the Curb trading session in two classes is also outweighed by the Exchange's efforts to add liquidity during Curb in

All Sessions classes, the minimal preparation a Market-Maker may require to participate in the Curb trading session, and the benefits to investors that may result from that liquidity. Therefore, the Exchange believes the proposed rule change provides customer trading interest with a net benefit and continues to maintain a balance of Market-Maker benefits and obligations.

The Exchange does not believe that the proposed rule change to adopt Curb Trading Hours will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed rule change is a competitive initiative that will benefit the marketplace and investors. The Exchange believes the proposed rule change will enhance competition by providing a new service to investors that is not currently otherwise available for options. The Exchange further believes that the same level of competition among options exchanges will continue during RTH. Because the Exchange proposes to make only exclusively listed products available for trading during Curb, and because any All Sessions orders that do not trade during Curb will be eligible to trade during the RTH trading sessions in the same manner as all other orders during RTH, the proposed rule change will have no effect on the national best prices or trading during RTH.

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

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

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2021-071 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2021-071. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2021-071 and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>66</sup>

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

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<sup>66</sup> 17 CFR 200.30-3(a)(12).