

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-NASDAQ-2020-035 and should be submitted on or before July 20, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>44</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89131; File No. SR-CBOE-2020-055]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 5.24

June 23, 2020.

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 June 12, 2020, 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.

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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend Rule 5.24. 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 Rule 5.24 regarding the Exchange's business continuity and disaster recovery plans. Rule 5.24 describes which Trading Permit Holders ("TPHs") are required to connect to the Exchange's backup systems as well as certain actions the Exchange may take as part of its business continuity plans so that it may maintain fair and orderly markets if unusual circumstances occurred that could impact the Exchange's ability to conduct business. This includes what actions the Exchange would take if its trading floor became inoperable. Specifically, Rule 5.24(e) states if the Exchange trading floor becomes inoperable, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor facility is inoperable. The Exchange would operate using that

configuration only until the Exchange's trading floor facility became operational. Open outcry trading would currently not be available in the event the trading floor becomes inoperable.<sup>3</sup>

Rule 5.24(e)(1) currently states in the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable System Rules, except that open outcry Rules would not be in force, including but not limited to the Rules (or applicable portions) in Chapter 5, Section G,<sup>4</sup> and that all non-trading rules of the Exchange would continue to apply. The Exchange recently adopted several rule changes that would apply during a time in which the trading floor is inoperable, which are effective until June 30, 2020.<sup>5</sup> The Exchange believes these Rules were necessary to implement to maintain a fair and orderly market while the trading floor was not operable in order to create an all-electronic trading environment similar to the otherwise unavailable open outcry trading environment.

As of March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of COVID-19<sup>6</sup> and is currently operating in an all-electronic configuration. The Exchange has continued to operate in an all-electronic configuration but currently plans to reopen its trading floor on June 15, 2020, at which time the Exchange will return to its normal operations as a hybrid exchange with electronic and open outcry trading. However, given the uncertainty related to the ongoing pandemic, which includes the possibility of the Exchange having to close its trading floor again, and given the possibility that the Exchange's trading floor may be inoperable for other reasons in the future, the Exchange

<sup>3</sup> Pursuant to Rule 5.26, the Exchange may enter into a back-up trading arrangement with another exchange, which could allow the Exchange to use the facilities of a back-up exchange to conduct trading of certain of its products. The Exchange currently has no back-up trading arrangement in place with another exchange.

<sup>4</sup> Chapter 5, Section G of the Exchange's rulebook sets forth the rules and procedures for manual order handling and open outcry trading on the Exchange.

<sup>5</sup> See Securities Exchange Act Release Nos. 88386 (March 13, 2020), 85 FR 15823 (March 19, 2020) (SR-CBOE-2020-019); 88447 (March 20, 2020) (SR-CBOE-2020-023); 88490 (March 26, 2020), 85 FR 18318 (April 1, 2020) (SR-CBOE-2020-026); 88530 (March 31, 2020), 85 FR 19182 (April 6, 2020) (SR-CBOE-2020-031); and 88886 (May 15, 2020), 85 FR 31008 (May 21, 2020) (SR-CBOE-2020-047).

<sup>6</sup> On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic and to slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses.

<sup>44</sup> 17 CFR 200.30-3(a)(12).

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

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

believes it is appropriate to continue to review and enhance its business continuity plans. While the recent amendments to Rule 5.24(e)(1) allowed all-electronic trading to occur more similarly to open outcry trading, an all-electronic trading environment cannot fully replicate open outcry trading.<sup>7</sup> Therefore, the Exchange continues to evaluate potential enhancements that it believes would permit trading while the trading floor is inoperable to more closely replicate its trading environment that exists during normal operations.

There are certain features of open outcry trading that are difficult to replicate in an electronic trading environment, particularly the human interaction that permits persons to negotiate pricing and to facilitate executions of larger orders and high-risk and complicated strategies. For example, from January 2 through March 13, 2020 (the last day on which the trading floor was open), complex orders for SPX options with more than six legs represented approximately 5.3% of the total SPX complex order average daily volume (“ADV”) during that timeframe. However, from March 16, 2020 (the first day on which the trading floor was closed) through April 30, 2020, complex orders for SPX options with more than six legs represented only approximately 2.2% of the total SPX complex order ADV during that similar timeframe. Similarly, the corresponding ADV percentages for VIX options complex orders were approximately 6.2% (prior to the trading floor closing) and 1.8% (after the trading floor closing), respectively. This data, taken into consideration with feedback from customers, demonstrates the difficulty market participants have with executing high-risk and complex strategies in an all-electronic trading environment that does not allow for human interaction.

The Exchange believes the proposed rule change would further enhance the Exchange’s trading environment when the trading floor is inoperable by permitting market participants that generally operate on the trading floor to continue to interact in a substantially similar manner as they do on the trading floor. Specifically, the Exchange proposes to adopt Rule 5.24(e)(3) to permit it to make available an audio and video communication program to serve as a “virtual trading floor” in one or

<sup>7</sup> The Exchange continues to consider other enhancements to the all-electronic trading configuration that it believes may permit this configuration to further replicate the open outcry trading environment. The Exchange would submit separate rule filings for any such proposed enhancements.

more option classes<sup>8</sup> if the physical trading floor is inoperable or operating in a modified state (as further discussed below). In the program, the Exchange will create “virtual trading pits,” in each of which the Exchange will determine which options class(es) will be available for trading. This is similar to the Exchange’s authority with respect to open outcry trading on the physical trading floor.<sup>9</sup>

The Exchange will use a communication program that has audio and video capabilities, as well as “chat” functionality.<sup>10</sup> In a virtual trading pit, each TPH authorized to access the virtual trading floor (as described below) that enters the virtual trading pit will be visible to all other TPHs in that virtual trading pit. Additionally, all TPHs in that virtual trading pit may speak to each other through the program. This will allow the same communication capabilities TPHs generally have on the physical trading floor so that they may conduct open outcry trading on the virtual trading floor in the same manner as they do on the physical trading floor.

All Rules related to open outcry trading, including those in Chapter 5, Section G, will apply to open outcry trading on the virtual floor in the same manner as they apply to open outcry trading on the physical trading floor, except as the context otherwise requires<sup>11</sup> and as set forth in proposed subparagraph (e)(3). Proposed subparagraph (e)(3)(A) lists certain terms in the Rules related to open outcry trading on the physical trading floor that will be deemed to refer to corresponding terms related to open outcry trading on the virtual trading floor. Specifically:

- References in the Rules to the “floor,” “trading floor,” and “Exchange floor” (and any other terms with the same meaning) will be deemed to refer to the “virtual trading floor.”

<sup>8</sup> Like open outcry trading on the trading floor, open outcry trading on the virtual trading floor would be available only during Regular Trading Hours.

<sup>9</sup> Pursuant to Rule 5.50(h), the Exchange may determine for each options class traded on the Exchange whether the class should be appointed to a trading crowd and which trading crowd should be appointed the class, and to determine the location on the Exchange’s trading floor of each trading crowd.

<sup>10</sup> Currently available programs with this functionality include Zoom, Webex, Microsoft Teams, and others.

<sup>11</sup> For example, Rule 5.80(d)(4)(1) requires a clerk to remain at a booth subject to certain exceptions. The concept of a booth is specific to the physical trading floor so has no applicability to the virtual trading floor. Additionally, as the virtual trading floor has no physical trading space, Rule 5.93 regarding trading crowd space disputes has no applicability to the virtual trading floor.

- References in the Rules to “pit,” “trading station,” and “trading post” (and any other terms with the same meaning) will be deemed to refer to a “virtual trading pit.”

- References in the Rules to “physical presence” (any other terms with the same meaning) in a pit or on the trading floor will be deemed to refer “presence” in a virtual trading pit or on the virtual trading floor, respectively.

- The terms “in-crowd market participant” and “ICMP” mean a Market-Maker, a Designated Primary Market-Maker (“DPM”) or Lead Market-Maker (“LMM”) with an allocation in a class, or a Floor Broker or PAR Official representing an order in a virtual pit on the virtual trading floor.<sup>12</sup>

- References to an “on-floor DPM” or “on-floor LMM” will be deemed to refer to a DPM or LMM, respectively, in a virtual pit for its allocated class(es).

Access to the virtual trading floor will be substantially similar to access to the physical trading floor. Currently, admission to the physical trading floor is limited to Trading Permit Holders, Exchange employees, clerks employed by Trading Permit Holders and registered with the Exchange, service personnel, Exchange visitors that receive authorized admission to the trading floor pursuant to Exchange policy, and any other persons that the Exchange<sup>13</sup> authorizes admission to the trading floor.<sup>14</sup> Proposed subparagraph (3)(B) provides the same persons with access to the virtual trading floor, except for clerks, service personnel, and visitors. Clerks may continue to perform the same functions for their associated Floor Broker TPH organizations in connection with open outcry trading on the virtual trading floor as they do for open outcry trading on the physical trading floor, but they will not receive access to enter (*i.e.* log into) the virtual trading floor, as they do not need that access to perform those functions. Additionally, as there is no physical equipment that would need service on the virtual trading floor, and no purpose for a visitor to observe the virtual trading floor, the proposed rule change excludes service personnel and visitors from accessing the virtual trading floor.<sup>15</sup>

<sup>12</sup> This is substantially similar to the definition of ICMP in Rule 1.1.

<sup>13</sup> Rule 5.80(a) provides the President or a designee with this authority. However, decisions regarding admission to the floor are generally made by appropriate Exchange staff, which may include the President. The Exchange believes use of the term “Exchange” is, therefore, more appropriate.

<sup>14</sup> See Rule 5.80(a).

<sup>15</sup> While the Exchange does not anticipate granting any other individuals with access to the

As is the case with the physical trading floor, the Exchange will provide access to the virtual trading floor to TPHs the Exchange has approved to perform a trading floor function (including Floor Brokers and Market-Makers).<sup>16</sup> TPHs are not required to display badges on the virtual trading floor, as the size of the view on the communication program may not permit badges to be visible.<sup>17</sup> Currently, on the physical trading floor, a Market-Maker has an appointment to trade open outcry in all classes trading on the Exchange (and must be physically present in the trading crowd to trade in open outcry).<sup>18</sup> Similarly, any Market-Maker authorized to act on the physical trading floor will receive access to each virtual trading pit on the virtual trading floor and may determine which virtual trading pits it wants to enter to trade.

As set forth in Rule 5.81(a), subject to the requirements in that Rule, TPHs may use any communication device (e.g., any hardware or software related to a phone, system, or other device, including an instant messaging system, email system, or similar device) on the trading floor and in any trading crowd of the Exchange (which it must register with the Exchange). Pursuant to proposed subparagraph (3)(C), TPHs may use any equipment to access the virtual trading floor. However, TPHs must use Exchange-provided equipment to access PAR workstations while transacting on the virtual trading floor for security purposes. PAR will be used and work in the same manner for the virtual trading floor as it is on the physical trading floor.<sup>19</sup> Prior to using a communications device for business purposes on the trading floor of the Exchange, Trading Permit Holders must register the communications device by identifying (in a form and manner prescribed by the Exchange) the hardware (i.e., headset, cellular telephone, tablet, or other similar hardware). Because individuals on the virtual trading floor will not be on the Exchange premises (and thus will not be

virtual trading floor outside of TPHs and Exchange personnel (such as PAR Officials and Regulatory Division staff), the Exchange believes the flexibility to permit Exchange personnel to access the virtual trading floor is appropriate, such as to permit access to make updates to the communication program.

<sup>16</sup> See Rule 5.80(e), pursuant to which only those TPHs the Exchange has approved to perform a floor trading function (including Floor Brokers and Market-Makers) may enter into transactions on the trading floor.

<sup>17</sup> The virtual trading floor program will identify the TPH organization of each participant in a virtual trading pit.

<sup>18</sup> See Rule 5.50(e).

<sup>19</sup> See Rule 5.82. The Exchange notes TPHs similarly use Exchange-provided hardware to access PAR on the physical trading floor.

using Exchange-provided bandwidth to be shared with all market participants and do not pose the same security risks), the proposed rule change will not require TPHs to register devices they use while on the virtual trading floor. Rule 5.81(a) will otherwise apply in the same manner to the virtual trading floor as it does to the physical trading floor (to the extent the context requires). This includes requirements related to audit trail and record retention, prohibition on using any device for the purpose of recording activities in the virtual trading pit or maintaining an open line of continuous communication whereby a non-associated person not located in the trading crowd may continuously monitor the activities in the trading crowd, and the prohibition on using devices to disseminate quotes or last sale reports.

Proposed subparagraph (3)(D) provides that the Exchange may determine to require any Market-Maker or Floor Broker in a virtual trading pit that wants to trade against an order represented for execution to express its bid or offer in a chat available in the virtual trading pit.<sup>20</sup> TPHs on the physical trading floor only verbalize their interest to trade against a represented order, so not requiring bids and offers to be included in a chat conforms to current practice on the trading floor. However, given potential limitations of communication software (such as limitations on how many people may be heard at the same time in a virtual pit or potential buffering or echoing), the Exchange believes it may be appropriate to require market participants to use a chat tool in the communication program to indicate their interest in participating in a trade so that the representing Floor Broker is able to know the market from the trading crowd and fairly allocate the trade pursuant to the Rules. The Exchange believes the flexibility to impose this requirement in a virtual trading pit is appropriate, as these limitations may ultimately not interfere with a Floor Broker's ability to hear all interest (particularly in virtual trading pits with few participants) and thus the additional requirement may potentially slow down executions. Flexibility will permit the Exchange to balance system limitations with the additional burden of a new workflow step for each class, some of which have different open

<sup>20</sup> The Exchange will announce to all TPHs any determination to require bids and offers to be expressed in a chat within the communication program pursuant to Rule 1.5 (such as by Exchange notice or regulatory circular). The Exchange will provide such notice with sufficient advance notice.

outcry trading environments than others.

As noted above, the Exchange may determine to make the virtual trading floor available if the physical trading floor is operating in a modified state. Proposed subparagraph (e)(3)(E) provides that if the Exchange determines to operate the trading floor in a modified state that requires the Exchange to limit the number of individuals that may access the trading floor,<sup>21</sup> the Exchange may provide a virtual trading for an impacted class. Effective June 15, 2020, the Exchange will modify the configuration of certain trading crowds in order to ensure compliance with state and local health and safety guidelines, as well as ensure the safety and welfare of any individual that accesses the trading floor (i.e., operating in a modified state). Specifically, the Exchange anticipates having to not only relocate and modify the physical area of at least one trading crowd, but also intends to require floor participants to stand in such trading crowd in order to comply with state and local health and safety guidelines, including social distancing (i.e., provide for at least 6 feet between individuals). As a result, with respect one trading class (the SPX options pit), there will be a smaller number of available trading spaces than are generally available in the normal SPX options pit. Therefore, certain individuals that normally trade in the SPX options pit will be unable to do so while the Exchange operates its trading floor in the modified state. Additionally, the Exchange understands certain individuals that normally trade on the physical trading floor have indicated they do not plan to initially return to the trading floor due to their own health and safety concerns.<sup>22</sup>

If the Exchange makes a virtual trading floor available while the physical trading floor operates in a modified state, persons authorized but unable to access the physical trading floor will be provided with access to the virtual trading floor. For example, given the current expected reconfiguration of

<sup>21</sup> For example, as the Exchange intends to do upon reopening the physical trading floor on June 15, 2020, the Exchange may temporarily relocate or resize a trading pit for safety and welfare purposes. See Exchange Notice C2020060300, Schedule Update—Cboe Options Trading Floor Re-Opening June 15, 2020, available at [https://cdn.cboe.com/resources/release\\_notes/2020/C1-Trading-Floor-Re-Opening-Second-Reminder-and-Update.pdf](https://cdn.cboe.com/resources/release_notes/2020/C1-Trading-Floor-Re-Opening-Second-Reminder-and-Update.pdf).

<sup>22</sup> There may be other reasons why the Exchange operates its trading floor in a modified state. For example, if there was a fire on the trading floor, the Exchange may need to relocate and modify the size of one or more trading crowds, which could similarly require it to limit the number of individuals that may access the physical trading floor.

the SPX options pit, approximately half of the Floor Brokers and Market-Makers that normally trade in the SPX options pit will not be able to trade in the modified SPX options pit. The proposed rule change would provide these Floor Brokers and Market-Makers with access to the virtual trading floor.

The virtual trading floor would essentially supplement the physical trading floor. Specifically, the physical and virtual trading pit for a class will together constitute a single trading pit for that class, and each will be visible and audible to the other. This will permit any orders represented and bids and offers made on the physical trading floor to be available for execution against orders represented and bids and offers made on the virtual trading floor, and vice versa. In order to integrate the physical and virtual trading pits for a class, the Exchange intends to add screens and speakers to the physical trading floor that would permit ICMPs on the physical trading floor to see and hear individuals on the virtual trading floor. Additionally, the Exchange intends to add cameras and microphones to the physical trading floor that would permit ICMPs on the virtual trading floor to see and hear individuals on the physical trading floor.

The Exchange believes offering a virtual trading floor to supplement the physical trading floor for any class impacted by the Exchange's operation of the physical trading floor in a modified state will provide access to open outcry trading for all individuals that normally trade on the physical trading floor, which could increase liquidity available in the trading pits within which fewer persons may physically participate. Because all participants will have access to the same pool of liquidity while the trading floor operates in this modified state, customer orders represented for execution within the single pit will have access to the best prices available, regardless of whether those prices are expressed on the physical trading floor or virtual trading floor.

While open outcry trading on the virtual trading floor will occur with in-crowd market participants interacting with each other remotely through a computer communication program, all trading that occurs on the virtual trading floor will occur in the same manner as it does on the physical trading floor. Specifically, open outcry trading on the virtual trading floor will be subject to the same priority and allocation rules as open trading on the physical trading floor, as set forth in Rule 5.85. The Exchange will make the same order types and instructions available on the

virtual trading floor as it makes available on the physical trading floor pursuant to Rule 5.83.<sup>23</sup> Floor Brokers will be subject to the responsibilities set forth in Rule 5.91 on the virtual trading floor, as they are on the physical trading floor. Additionally, TPHs participating on the virtual trading floor will be subject to the same regulatory requirements on the virtual trading floor as they are on the physical trading floor, including those set forth in Chapters 8 and 9. Orders must be systematized<sup>24</sup> and represented,<sup>25</sup> and transactions reported,<sup>26</sup> in connection with the virtual trading floor in the same manner as they are when trading on the physical trading floor. Therefore, the audit trail for open outcry trading on the virtual trading floor will capture the same information that it does for open outcry trading on the physical trading floor. The Regulatory Division will be able to utilize preexisting floor surveillances to surveil for the activity occurring on the virtual trading floor. As noted above, Regulatory Division staff may access the virtual trading floor if it deems necessary.

## 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>27</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>28</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

<sup>23</sup> Pursuant to Rule 5.83(b), the Exchange may determine whether to make complex orders types available for open outcry trading. The Exchange will not make a Multi-Class Spread order available on the virtual trading floor unless the Exchange has made the virtual trading floor available for both classes represented in the order, as such an order must be represented at both trading stations (or virtual trading pits in the context of the virtual trading floor) to be executed. See Rule 5.85(d).

<sup>24</sup> See Rule 5.7(f).

<sup>25</sup> See Rule 5.91(a)(4).

<sup>26</sup> See Rule 6.1(c).

<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

proposed rule change is consistent with the Section 6(b)(5)<sup>29</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, as it will permit open outcry trading to continue in the event the Exchange's trading floor is inoperable. As discussed above, while the Exchange has adopted Rules that have allowed all-electronic trading to occur more similarly to open outcry trading, there are certain features of open outcry trading that are difficult to replicate in an electronic trading environment. The Exchange has observed, and understands from various market participants, that they have had difficulty executing certain orders, such as larger orders and high-risk and complicated strategies, in an all-electronic trading configuration without the element of human interaction to negotiate pricing for these orders. The proposed rule change would provide an environment in which this interaction would be available despite the inoperability of the physical trading floor. The Exchange believes the proposed rule change may facilitate continued trading of these orders if and when the trading floor is inoperable. As a result, the Exchange believes providing continuous access to open outcry trading when the physical trading floor is inoperable will remove impediments to a free and open market and will ultimately benefit investors, particularly those desiring to execute high-risk and complex trading strategies.

The proposed rule change will further remove impediments to a free and open market and will ultimately benefit investors when the Exchange operates the physical trading floor in a modified state that requires it to limit the number of individuals that may access the trading floor. In this circumstance, all individuals that are unable to access the trading floor (such as for health and safety purposes) may still participate in open outcry trading. This "supplemental" version of a virtual trading floor will provide customer orders represented on the trading floor with access to the same pool of liquidity to which it would have access if the trading floor was operating in its normal state. All orders represented within the pit for a class, whether represented by

<sup>29</sup> *Id.*

a Floor Broker on the physical trading floor or virtual trading floor, will be able to execute against any bid and offer expressed within the pit, regardless of whether expressed on the physical trading floor or virtual trading floor. Providing individuals authorized to act but unable to be on the physical trading floor with remote access to open outcry trading within the pit for a class, will therefore provide increased liquidity for orders represented for execution in open outcry, even if the Exchange is operating the physical trading floor in a modified state. This increase liquidity may increase price discovery and execution opportunities for customer orders represented in open outcry.

The Exchange also believes the proposed rule change will promote just and equitable principles of trade, as open outcry trading on a virtual trading floor will occur in accordance with the same trading rules and be subject to the same regulatory requirements that apply to open outcry trading on the physical trading floor, all of which have previously been filed with the Commission. The proposed rule change will merely permit this open outcry trading to occur in a virtual setting rather than a physical setting (which may be appropriate for health and safety purposes)—in other words, open outcry trading on a virtual trading floor will occur while market participants operate remotely as they do when they trade electronically. Specifically, open outcry trading on the virtual trading floor will be subject to the same priority and allocation rules as open trading on the physical trading floor, as set forth in Rule 5.85. As is the case for open outcry trading on the physical trading floor, open outcry trading on the virtual trading floor is consistent with Section 11(a) of the Act, as Rule 5.85(a)(2)(E) (which will apply to open outcry trading on the virtual trading floor) requires TPHs relying on Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder (the so called “G exemption rule”) as an exemption must yield priority to any bid (offer) at the same price of Priority Customer orders and broker-dealer orders resting in the Book, as well as any other bid (offer) that has priority over those broker-dealer orders under this Rule. The Exchange may make the same order types and instructions available on the virtual trading floor as it makes available on the physical trading floor pursuant to Rule 5.83. Floor Brokers will be subject to the responsibilities set forth in Rule 5.91 on the virtual trading floor, as they are on the physical trading floor. Additionally, TPHs participating

on the virtual trading floor will be subject to the same regulatory requirements on the virtual trading floor as they are on the physical trading floor, including those set forth in Chapters 8 and 9. Orders must be systematized and represented, and transactions reported, in connection with the virtual trading floor in the same manner as they are when trading on the physical trading floor. Therefore, the audit trail for open outcry trading on the virtual trading floor will capture the same information that it does for open outcry trading on the physical trading floor. The Regulatory Division will be able to utilize preexisting floor surveillances to surveil for the activity occurring on the virtual trading floor. As noted above, Regulatory Division staff may access the virtual trading floor if it deems necessary. The Exchange believes it will promote just and equitable principles of trading for all open outcry trading to occur in substantially the same manner, whether it occurs while market participants are in the same physical setting or in remote settings being connected through a technological solution.

In addition, the Exchange believes the proposed rule change will not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, as all individuals authorized to act on the physical trading floor (both TPH organizations authorized at the time the physical trading floor becomes inoperable and any TPH organization that becomes authorized after the physical trading floor becomes inoperable) will be provided with access to the virtual trading floor. Additionally, the proposed rule change to permit the Exchange to provide a virtual trading floor if the Exchange is operating the physical trading floor in a modified state will provide individuals unable to trade on the physical trading floor as a result of the modified state to participate in open outcry trading remotely.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as all TPH organizations authorized by the Exchange, or that become authorized by the Exchange, to transact on the

trading floor will receive access to the virtual trading floor. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as it relates solely to the location of open outcry trading on the Exchange. The proposed rule change will merely permit open outcry trading that generally occurs while market participants are located in the same physical setting to occur while market participants are in a remote setting, connected by a technological solution (as electronic trading does).

The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. The Exchange believes the proposed rule change will provide market participants with continuous access to open outcry trading when the physical trading floor is inoperable. The Exchange believes this may facilitate continued, competitive price negotiations and trading of orders that the Exchange understands are more difficult to execute in an all-electronic trading environment without human interaction. Additionally, the proposed rule change will provide customer orders represented for open outcry execution with access to the same pool of liquidity when the trading floor is inoperable or operating in a modified state to which those orders would have access when the trading floor is operating in its normal state. Maintenance of this level of liquidity at all times, even when the trading floor is inoperable, may promote competition by providing these customer orders with increased liquidity than may otherwise be available, and thus increased execution opportunities and price discovery.

#### *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-2020-055 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-2020-055. 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-2020-055 and should be submitted on or before July 20, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89125; File No. SR-CboeBYX-2020-018]

### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Content of the Cboe One Feed Under Rule 11.22(i) to Identify the Primary Listing Market's Official Opening and Closing Price

June 23, 2020.

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 June 10, 2020, Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BYX Exchange, Inc. ("BYX" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change to amend the content of the Cboe One Feed under Rule 11.22(i) to identify the primary listing market's official opening and closing price. 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://markets.cboe.com/us/equities/regulation/rule\\_filings/byx/](http://markets.cboe.com/us/equities/regulation/rule_filings/byx/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

<sup>30</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

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

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

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

###### 1. Purpose

The Exchange proposes to amend the content of the Cboe One Feed under Rule 11.22(i) to identify the primary listing market's official opening and closing price.

The Cboe One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on BYX and its affiliated exchanges.<sup>5</sup> Among other things, the Cboe One Feed also includes consolidated volume for all listed equity securities regardless of where the transaction was executed and the Cboe One Opening Price and the Cboe One Closing Price.<sup>6</sup>

Now, in addition to the information currently provided in the Cboe One Feed, the Exchange is proposing to include the primary listing market's official opening and closing price for all listed equity securities as obtained directly from the securities information

<sup>5</sup> BYX's affiliated exchanges are the Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGA Exchange, Inc. ("EDGA"), and Cboe EDGX Exchange, Inc. ("EDGX", and together with BYX, BZX, and EDGA, the "Cboe Equity Exchanges"). See Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Cboe (formerly Bats) One Feed) ("Cboe One Approval Order").

<sup>6</sup> For securities listed on Cboe BZX Exchange, Inc. ("BZX"), the Cboe One Opening Price shall be the BZX Official Opening Price as defined in BZX Rule 11.23(a)(5) and the Cboe One Closing Price shall be the BZX Official Closing Price as defined in BZX Rule 11.23(a)(3). For securities not listed on BZX, the Cboe One Opening Price shall be the first last sale eligible trade that occurred on the Exchange or any of its affiliates after 9:30 a.m. Eastern Time, and the Cboe One Closing Price shall be the final last sale eligible trade to occur on the Exchange or any of its affiliates prior to 4:00 p.m. Eastern Time. See Exchange Rule 11.22(i).