

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90319; File No. SR-CBOE-2020-014]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt the Delta-Adjusted at Close Order Instruction

November 3, 2020.

I. Introduction

On February 18, 2020, Cboe Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to introduce the Delta-Adjusted at Close (“DAC”) Order Instruction on the Exchange. The proposed rule change was published for comment in the **Federal Register** on March 9, 2020.³ On April 13, 2020, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.⁴ On May 12, 2020, the Exchange submitted Amendment No. 1 to the proposed rule change.⁵ On June 3, 2020, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁶ On September 3, 2020, the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷ The Commission has received one comment on the proposed rule change.⁸ This order approves the proposed rule change, as modified by Amendment No. 1.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 88312 (March 3, 2020), 85 FR 13686 (“Notice”).

⁴ See Securities Exchange Act Release No. 88622, 85 FR 21490 (April 17, 2020).

⁵ See <https://www.sec.gov/comments/sr-cboe-2020-014/sr-cboe2020014-7180918-216787.pdf>.

⁶ See Securities Exchange Act Release No. 88997, 85 FR 35351 (June 9, 2020) (“Order Instituting Proceedings”).

⁷ See Securities Exchange Act Release No. 89765, 85 FR 55905 (September 10, 2020).

⁸ See Letter from Kurt Eckert, Partner, Wolverine Execution Services, LLC, to Vanessa Countryman, Secretary, Commission, dated June 24, 2020 (“WEX Letter”), available at <https://www.sec.gov/comments/sr-cboe-2020-014/sr-cboe2020014-7343517-218670.pdf>.

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

A. Proposed DAC Order Instruction—Generally

As modified by Amendment No. 1, the Exchange proposes to implement a DAC order instruction that a User⁹ may only apply to an order upon System¹⁰ entry (including each leg of a complex order) for an option on an Exchange Traded Product (“ETP”) or index for execution in a FLEX electronic or open outcry auction.¹¹ A DAC order could execute throughout the trading day. After the close of trading and upon receipt of the official closing price or value for the underlying ETP or index from the primary listing exchange or index provider, as applicable, the System would adjust the original execution price of the order based on a pre-determined delta value applied to the change in the underlying reference price between the time of execution and the market close.

The Exchange states that there can be substantial activity in an underlying near the market close that may create wider spreads and increased price volatility in the underlying, which may attract additional trading activity from market participants seeking arbitrage opportunities and further increase volatility. This activity near market close makes it difficult to execute FLEX option orders based on the exact closing price or value of the underlying (“execution risk”).¹² The Exchange states that the DAC order is designed to allow Users to incorporate into the pricing of their FLEX options the closing price or value of the underlying ETP or index on the transaction date based on how much the price or value changed during the trading day. The Exchange also represents that DAC orders will have unique message characteristics such that contra-side interest will be aware of, and may choose whether to interact with, the DAC order. Finally, the Exchange believes that the DAC order would be particularly useful for investors that

⁹ The term “User” means any TPH or Sponsored User who is authorized to obtain access to the System pursuant to Rule 5.5. See Rule 1.1.

¹⁰ The term “System” means the Exchange’s hybrid trading platform that integrates electronic and open outcry trading of option contracts on the Exchange, and includes any connectivity to the foregoing trading platform that is administered by or on behalf of the Exchange, such as a communications hub. See Rule 1.1.

¹¹ For a more detailed description of the proposed rule change, as modified by Amendment No. 1, see Order Instituting Proceedings, *supra* note 6. See also *supra* note 5.

¹² See Order Instituting Proceedings, *supra* note 6, at 35352.

participate in defined outcome strategies, including defined-outcome exchange-traded funds (“ETFs”), other managed funds, unit investment trusts (“UITs”), index funds, structured annuities, and other such funds or instruments that are indexed.

B. DAC Orders and FLEX Options

As stated above, the use of the DAC order instruction is limited to the trading of an option on an ETP or index for execution in a FLEX electronic or open outcry auction, and would be handled and executed in the same manner as any other FLEX option order pursuant to the applicable FLEX auction rules, including pricing, priority, and allocation rules.¹³ Specifically, pursuant to Rules 5.72, 5.73, and 5.74, FLEX Orders (including proposed DAC orders) may only execute in a FLEX electronic or open outcry auction which would include the FLEX Automated Improvement Auction,¹⁴ the FLEX Solicitation Auction Mechanism or,¹⁵ a FLEX order submitted for manual handling in an open outcry auction on the Exchange’s trading floor.¹⁶ Pursuant to proposed Rule 5.33(b)(5), a DAC order instruction may be used in conjunction with complex orders that are submitted for execution in a FLEX complex electronic or open outcry auctions pursuant to proposed Rule 5.72.

The DAC order instruction may not be used with all FLEX orders. Specifically, proposed Rule 5.70(a)(2) sets forth that a User may not apply the DAC order instruction to a FLEX order for a FLEX option series with an exercise price formatted as a percentage of the closing value of the underlying on the trade date. In other words, the exercise price of a DAC order must be expressed as a fixed price in dollars and decimals because otherwise, according to the Exchange, the formatting would not be compatible with the DAC order instruction. Proposed Rule 5.70(a)(2) also prohibits the use of the DAC order instruction with FLEX Option series that are Asian or Cliquet-settled because DAC orders would be based on the movement of the underlying on the transaction date but the prices for Asian or Cliquet-settled options are determined by averaging a pre-set number of closing index values or summing the monthly returns,

¹³ See Rules 5.72(b), (c), and (d).

¹⁴ See Rule 5.73.

¹⁵ See Rule 5.74.

¹⁶ See Rule 5.72(d).

respectively, on specified monthly observation dates.¹⁷

C. Delta and Reference Prices

As stated above, the original execution price of a DAC order that executes during the trading day would be delta-adjusted at the market close upon receipt of the official closing price or value for the underlying ETP or index from the primary listing exchange or index provider, as applicable.¹⁸ Delta is the measure of the change in the option price as it relates to a change in the price of the underlying security or value of the underlying index, as applicable. For example, an option with a 50 delta (which is generally represented as 0.50) would result in the option moving \$0.50 per \$1.00 move in the underlying (*i.e.*, price move in the underlying \times delta value = anticipated price move in the option). The delta changes as a result from the passage of time and changes to the price or value of the underlying stock or index changes, and provide Users with an estimate of how an option reacts to movement, in either direction, of the underlying. For example, call option deltas are positive (ranging from 0 to 1), because as the underlying increases in price so does a call option. Conversely, put option deltas are negative (ranging from -1 to 0), because as the underlying increases in price the put option decreases in price. Specifically, the delta-adjusted execution price would equal the original execution price plus the delta value times the difference between the official closing price or value of the underlying on the transaction date and the reference price or index value of the underlying (“reference price”).

A User entering a DAC order for a FLEX electronic auction must designate a delta value and may designate a reference price.¹⁹ If no reference price is designated, the System would include the price or value, as applicable, of the underlying at the time of order entry as the reference price.²⁰ A User entering a DAC order for a FLEX open outcry auction may, but is not required to, designate a delta value and/or a reference price.²¹ During the FLEX open outcry auction, the User designated delta value or reference price may differ

from the final terms of the order because in-crowd market participants²² can negotiate the final delta value and/or reference price.²³ A User entering a complex order with a DAC order instruction into a FLEX electronic auction is required to designate a delta value for each leg of the complex order pursuant to proposed Rule 5.33(b)(5).²⁴

User-designated reference prices will be subject to a reasonability check to determine if the DAC order would be cancelled or rejected by the System for being more than an Exchange-determined amount away from the underlying price or value at the time of submission.²⁵ In addition, if a DAC order is submitted without a reference price, the System would automatically input a reference price equal to the price or value of the underlying at the time of order entry.²⁶ The ultimate delta value and reference price would be reflected in the final terms of the execution.²⁷

The Exchange represents that its electronic and open outcry FLEX auctions currently last between three seconds to five minutes as designated by the Submitting/Initiating FLEX Trader.²⁸ Accordingly, to the extent a DAC order executes in a FLEX auction, it would do so within the three second to five minute timeframe which should limit the impact of time on the delta and reference price and help investors meet their goal of limiting downside risk while still being able to participate in any upward movement in the market.

D. Time-in-Force

Proposed Rule 5.6(c) sets forth that a DAC order submitted for execution in open outcry may only have a Time-in-Force of Day.²⁹ If not executed, an order with a Time-in-force of Day would

expire at Regular Trading Hours (“RTH”) market close. Proposed Rule 5.6(c) also provides that a User may not designate a DAC order as All Sessions (*i.e.*, eligible for RTH and Global Trading Hours),³⁰ as the adjustment calculation for DAC orders is linked to the RTH market close for the underlying securities and indexes.³¹ The Exchange explained that the proposed Time-in-Force of Day requirement for DAC orders submitted for execution in open outcry correlates with the need for any execution to occur within a limited timeframe after the order’s entry in order to achieve the result desired by the broker’s customer.³²

E. Trade Reporting

When a DAC order is executed, the time of the execution, original execution price, the reference price and delta value will be provided to all transaction parties on all fill reports (*i.e.*, an “unadjusted DAC trade”).³³ Unadjusted DAC trade information will also be sent to the Options Clearing Corporation (“OCC”) and disseminated to Options Price Reporting Agency (“OPRA”).³⁴ Like all FLEX Orders, DAC order trade information will be reported via a text message to OPRA³⁵ reflecting the (1) execution of a DAC order, (2) delta, and (3) reference price.³⁶ Like all complex orders, the individual legs of DAC complex orders would be reported with an identifier to indicate that they are part of a complex order.³⁷ At the market close, when the execution price is delta-adjusted, all transactions parties will be sent fill restatements. Matched trades with the delta-adjusted price will also be sent to the OCC and OPRA once the restatement process is complete. The prior unadjusted DAC trade report that was sent to the OCC and disseminated to OPRA will be cancelled and replaced with a trade report reflecting the delta-adjusted execution price. The remaining information (*i.e.*, time of the execution, delta, and reference price) would be unchanged.³⁸ A new DAC order text message would be disseminated to OPRA with the same information included in the original text plus the closing price. The Exchange states that

²² The Exchange states that in-crowd participants currently have delta values built into their own analytics and pricing tools and that there is generally only a slight difference of values across participants. See Order Instituting Proceedings, *supra* note 6, at 35353, n. 25.

²³ See *id.*

²⁴ See proposed Rule 5.72(b)(2)(A).

²⁵ The System will use the most recent last sale (or disseminated index value) as the reference price. See proposed Rule 5.34(c)(12).

²⁶ See proposed Rules 5.6(c) and 5.33(b)(5).

²⁷ See *id.* The Exchange provided examples to demonstrate how the System would apply the delta adjustment formula to DAC orders at the market close. See Order Instituting Proceedings, *supra* note 6, at 35353–54.

²⁸ See Rules 5.72(c), 5.73(c)(3) and 5.74(c)(3).

²⁹ The Exchange notes that electronically submitted DAC orders will be submitted through the electronic auctions, and either executed or cancelled upon the conclusion of an auction, making an instruction regarding the time the System will hold an order unnecessary. Therefore, the Exchange believes that a requirement to apply a Time-in-Force of Day is not necessary for electronic DAC orders.

³⁰ See Rule 1.1.

³¹ See proposed Rules 5.6(c) and 5.33(b)(5).

³² See Order Instituting Proceedings, *supra* note 6, at 35354–55.

³³ See *id.*

³⁴ See *id.*

³⁵ See *id.*

³⁶ See *id.*

³⁷ See *id.*

³⁸ The Exchange notes that this restatement process is the same for an order that has been adjusted or nullified and subsequently restated pursuant to the Exchange’s obvious error rules. See Rule 6.5.

¹⁷ See Rule 4.21(b)(5)(B).

¹⁸ According to the Exchange, like the execution price of any option, a delta-adjusted price may never be zero or negative and the System would instead set the delta-adjusted price to the minimum permissible increment if such a calculation were to occur. See Order Instituting Proceedings, *supra* note 6, at 35353.

¹⁹ See proposed Rules 5.6(c) and 5.33(b)(5).

²⁰ See *id.*

²¹ See proposed Rules 5.6(c) and 5.33(b)(5).

OCC and OPRA are aware of, and deem acceptable, this proposed restatement process.³⁹

F. System Capacity and Surveillance

The Exchange represents that it believes: (1) The Exchange and OPRA have the necessary systems capacity to handle any additional order traffic, and the associated restatements, that may result from the use of DAC orders, and (2) its surveillance program is adequately robust to monitor orders with delta-adjusted pricing, and (3) the DAC order will not have any impact on pricing or price discovery at or near the market close.⁴⁰

III Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴¹ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,⁴² which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange proposes to introduce the DAC order instruction for use with both simple and complex orders for FLEX options on ETPs and indexes in electronic or open outcry auctions. The DAC order would execute during the trading day and the original execution price would be adjusted after receipt of the official closing price/value for the underlying ETP or index from the primary listing exchange or index provider, as applicable, based on a delta value applied to the change in the underlying reference price between the time of execution and the market close. The Exchange states that the introduction of the DAC order instruction will allow market participants to incorporate into the

pricing of their FLEX options the closing price of the underlying ETP or index on the transaction date, based on the amount in which the price or value of the underlying ETP or index changes intraday. The Exchange also states that the DAC order will be useful to investors that engage in defined-outcome strategies and that certain market participants, managed funds in particular, already use similar strategies at the market close.

The Commission received one comment letter supporting the Exchange's proposal.⁴³ The commenter agrees with the Exchange that there may be dislocations in the closing price of a FLEX option and its execution price,⁴⁴ and that the DAC order would eliminate such dislocations while limiting downside risk and allowing users to incorporate any upside market moves that may occur following the execution of the order up to the market close.⁴⁵ The commenter also believes that the DAC order will improve the efficiency of the options market.⁴⁶

The Commission believes that the DAC order instruction is designed to remove impediments to and perfect the mechanism of a free and open market by allowing market participants to more effectively incorporate the closing price of the underlying ETP or index into the execution price of the FLEX option, which should facilitate the ability of market participants to execute certain investment strategies. Specifically, as the Exchange notes, the DAC order instruction would allow FLEX option orders to be executed anytime during the trading day, eliminating execution risk near the market close and thereby realizing the objective of pricing based on the exact underlying closing prices. The Commission believes that the proposal is designed to protect investors by providing them with a mechanism designed to ensure FLEX option pricing certainty based on the closing price of the underlying ETP or index and to eliminate execution risk near the market close, which should effectively implement their investment strategies. The Commission agrees with the Exchange that, at this time, it is appropriate to limit the use of the DAC order instruction to FLEX options on ETPs and indexes as the stated goal of the DAC order instruction is to assist investors that participate in defined-outcome investment strategies, including defined-outcome ETFs, other managed funds, UITs, index funds,

structured annuities, and other such funds or instruments that are indexed.

The Commission believes that DAC orders are designed promote just and equitable principles of trade as their operation should be transparent to market participants and the implementation of DAC orders should not raise any new or novel order entry, allocation, and execution processes. For instance, DAC orders will be entered and processed pursuant to the existing FLEX rules like any other order that is submitted into a FLEX electronic or open outcry auction.⁴⁷ The Commission also believes that the proposed delta adjustment of DAC orders is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market because it is consistent with the general manner in which deltas function. The Exchange has designed the proposal to limit the period between entry and execution of a DAC order. Because the Exchange's electronic and open outcry FLEX auctions currently last between three seconds to five minutes, DAC orders should generally execute within a timeframe that limits the impact of the passage of time on the delta and reference price. Taken together, the Commission believes that the DAC order is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors by providing a mechanism to effectively implement certain investment strategies to market participants that should have familiarity with the design and strategy of the order type.

Finally, the Exchange represents that: (1) DAC orders will have unique message characteristics that will indicate to contra-side interest its status as a DAC order which will allow market participants to choose whether to interact with DAC orders, (2) the OCC and OPRA are able to accommodate the DAC restatement process, (3) the Exchange and OPRA have the necessary systems capacity to handle additional order traffic, and the associated restatements, that may result from the use of DAC orders, (4) the Exchange's surveillance program will monitor the pricing of DAC orders, and (5) DAC orders should not have any impact on pricing or price discovery in the underlying products at or near the market close.

Accordingly, for the foregoing reasons, the Commission believes that this proposed rule change, as modified

³⁹ See Order Instituting Proceedings, *supra* note 6, at 35355.

⁴⁰ See *id.*

⁴¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴² 15 U.S.C. 78f(b)(5).

⁴³ See WEX Letter, *supra* note 8.

⁴⁴ See *id.* at 1.

⁴⁵ See *id.*

⁴⁶ See *id.* at 2.

⁴⁷ See Rules 5.72(d).

by Amendment No. 1, is consistent with the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁸ that the proposed rule change (SR-CBOE-2020-014), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-24784 Filed 11-6-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-325, OMB Control No. 3235-0385]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Extension:

Rule 15g-9

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for extension of the previously approved collection of information discussed below.

Section 15(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the “Exchange Act”) authorizes the Commission to promulgate rules that prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative practices in connection with over-the-counter (“OTC”) securities transactions. Pursuant to this authority, the Commission in 1989 adopted Rule 15a&6, which was subsequently redesignated as Rule 15g-9, 17 CFR 240.15g-9 (the “Rule”). The Rule requires broker-dealers to produce a written suitability determination for, and to obtain a written customer agreement to, certain recommended transactions in penny stocks that are not registered on a national securities exchange, and whose issuers do not meet certain minimum financial standards. The Rule is intended to

prevent the indiscriminate use by broker-dealers of fraudulent, high pressure telephone sales campaigns to sell penny stocks to unsophisticated customers.

The Commission staff estimates that there are approximately 182 broker-dealers subject to the Rule. The burden of the Rule on a respondent varies widely depending on the frequency with which new customers are solicited. On the average for all respondents, the staff has estimated that respondents process three new customers per week, or approximately 156 new customer suitability determinations per year. We also estimate that a broker-dealer would expend approximately one-half hour per new customer in obtaining, reviewing, and processing (including transmitting to the customer) the information required by Rule 15g-9, and each respondent would consequently spend 78 hours annually (156 customers × .5 hours) obtaining the information required in the rule. We determined, based on the estimate of 182 broker-dealer respondents, that the current annual burden of Rule 15g-9 is 14,196 hours (182 respondents × 78 hours).

The broker-dealer must keep the written suitability determination and customer agreement required by the Rule for at least three years. Completing the suitability determination and obtaining the customer agreement in writing is mandatory for broker-dealers who effect transactions in penny stocks and do not qualify for an exemption, but does not involve the collection of confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: November 4, 2020.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-24838 Filed 11-6-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90330; File No. SR-NYSE-2020-73]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Exchange’s Co-Location Services To Establish Procedures for the Allocation of Cabinets to Its Co-Located Users

November 3, 2020.

On September 2, 2020, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to establish procedures as part of the Exchange’s co-location rules to allocate cabinets to its co-located users in situations where the Exchange cannot satisfy the user demand for cabinets. The proposed rule change was published for comment in the **Federal Register** on September 21, 2020.³ The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 5, 2020. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 89879 (September 15, 2020), 85 FR 59361 (SR-NYSE-2020-73).

⁴ 15 U.S.C. 78s(b)(2).

⁴⁸ 15 U.S.C. 78s(b)(2).

⁴⁹ 17 CFR 200.30-3(a)(12).