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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90165; File No. SR-CBOE-2020-098]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period Related to the Market-wide Circuit Breaker in Rule 5.22

October 13, 2020

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 8, 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 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[3] and Rule 19b-4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(iii).

4 17 CFR 240.19b-4(f)(6).

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 extend the pilot period related to the market-wide circuit breaker in Rule 5.22. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 5.22 describes the methodology for determining when to halt trading in all stock options due to extraordinary market volatility, i.e., market-wide circuit breakers ("MWCB"). The MWCB mechanism was approved by the Securities and Exchange Commission (the "Commission") to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the "LULD Plan"),[5] including any

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5 See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498

extensions to the pilot period for the LULD Plan. Though the LULD Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange has previously adopted and amended Rule 5.22[6] (as well as other options pilot rules) to ensure the option markets were not harmed as a result of the Plan's implementation and implemented such rule on a pilot basis that has coincided with the pilot period for the Plan.[7] The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 5.22 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[9] The Exchange subsequently amended Rule 5.22 to extend the pilot to the close of business on October

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(June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

6 In October 2019, the Exchange restructured its Rulebook and relocated previous Rule 6.3B, governing the MWCB mechanism, to current Rule 5.22. No substantive changes were made to the rule. See Securities Exchange Act Release No. 87224 (October 4, 2019), 84 FR 54652 (October 10, 2019) (SR-CBOE-2019-081).

7 See Securities Exchange Act Release Nos. 65438 (September 28, 2011), 76 FR 61447 (October 4, 2011) (SR-CBOE-2011-087) (amending Rule 5.22, prior Rule 6.3B, for determining when to halt trading in all stocks and stock options due to extraordinary market volatility); 68770 (January 30, 2013), 78 FR 8211 (February 5, 2013) (SR-CBOE-2013-011) (amending Rule 5.22, prior Rule 6.3B, to delay the operative date of the pilot to coincide with the initial date of operations of the Plan); and 85616 (April 11, 2019), 84 FR 16093 (April 17, 2019) (SR-CBOE-2019-020) (proposal to extend the pilot for certain options pilots, including Rule 5.22, prior Rule 6.3B).

8 See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

9 See Securities Exchange Act Release No. 85616 (April 11, 2019), 84 FR 16093 (April 17, 2019) (SR-CBOE-2019-020) (proposal to extend the pilot for certain options pilots, including Rule 5.22, prior Rule 6.3B).

18, 2020.[10] The Exchange now proposes to amend Rule 5.22 to extend the pilot to the close of business on October 18, 2021. This filing does not propose any substantive or additional changes to Rule 5.22.

The market-wide circuit breaker under Rule 5.22 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. As stated above, because all U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 ("MWCB Rules"), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity, the Exchange, too, adopted a MWCB mechanism on a pilot basis pursuant to Rule 5.22. Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 5.22, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-

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10 See Securities Exchange Act Release No. 87341 (October 18, 2019), 84 FR 57081 (October 24, 2019) (SR-CBOE-2020-100).

wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

Since the MWCB pilot was last extended in October 2019, the MWCB mechanism has proven itself to be an effective tool for protecting markets through turbulent times. In the Spring of 2020, at the outset of the worldwide COVID-19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index and resumed as intended 15 minutes later.

In response to these events, the previously-convened MWCB Taskforce ("Taskforce") reviewed the March 2020 halts and considered whether any immediate changes to the MWCB mechanism should be made. The Taskforce, consisting of representatives from equities exchanges, futures exchanges, FINRA, broker-dealers, and other market participants, had been assembled in early 2020 to consider more generally potential changes to the MWCB mechanism. The Taskforce held ten meetings in the Spring and Summer of 2020 that were attended by Commission staff to consider, among other things: (1) whether to retain the S&P 500 Index as the standard for measuring market declines; (2) whether halts that occur shortly after the 9:30 a.m. market open cause more harm than good; and (3) what additional testing of the MWCB mechanism should be done.

After considering data and anecdotal reports of market participants' experiences during the March 2020 MWCB events, the Taskforce did not recommend immediate changes be made to the use of the S&P 500 Index as the reference price against which market declines are measured, or to the current MWCB mechanism which permits halts even shortly after the 9:30 a.m. market open. The Taskforce recommended creating a process for a backup reference price in the event that the S&P 500 Index becomes unavailable and enhancing functional MWCB testing. The Taskforce also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%.

On September 17, 2020, the Director of the Division of Trading and Markets requested that the equities exchanges and FINRA prepare a more complete study of the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

In addition to the work of the Taskforce, the equities exchanges also moved forward in 2019 and 2020 with a plan to normalize their Day 2 opening procedures after a Level 3 MWCB halt, such that all exchanges would reopen on Day 2 with a standard opening process. The Exchange notes that its affiliated equities exchanges[11] filed rule changes to that effect in March 2020,[12] and successfully tested the implementation of those changes on September 12, 2020.

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11 The Exchange's affiliated equities exchanges include Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc.

12 See Securities Exchange Act Release Nos. 88417 (March 18, 2020), 85 FR 16702 (March 24, 2020) (SR-CboeBZX-2020-025); 88416 (March 18, 2020), 85 FR 16699 (March 24, 2020) (SR-CboeBYX-2020-009); 88420 (March 18, 2020), 85 FR 16696 (March 24, 2020) (SR-CboeEDGX-2020-012); 88419 (March 18, 2020),

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.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] 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)[15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The MWCB mechanism under Rule 5.22 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the MWCB pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, with the other SROs, study the design and operation of the MWCB mechanism and the

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85 FR 16716 (March 24, 2020) (SR-CboeEDGA-2020-008).

13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(5).

15 Id.

LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 5.22 should continue on a pilot basis because the MWCB will promote fair and orderly markets and protect investors and the public interest.

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 not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, in conjunction with the other SROs, study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)[16] of the Act and Rule 19b-4(f)(6)[17] thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b-4(f)(6)[19] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon

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16 15 U.S.C. 78s(b)(3)(A).

17 17 CFR 240.19b-4(f)(6).

18 In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

19 Id.

20 17 CFR 240.19b-4(f)(6)(iii).

filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot while the Exchange, FINRA, and the other exchanges conduct a study of the MWCB mechanism in consultation with market participants and determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or

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[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2020-098 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-2020-098. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange and on its Internet website. 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-2020-098 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

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22 17 CFR 200.30-3(a)(12).