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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90174; File No. SR-CBOE-2020-092]

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

October 14, 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 October 1, 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<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Rule 5.24.

The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

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

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

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

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

Rules of Cboe Exchange, Inc.

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**Rule 5.24. Disaster Recovery**

(a) – (d) No change.

(e) Loss of Trading Floor. 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 will operate using this configuration only until the Exchange’s trading floor facility is operational. Open outcry trading will not be available in the event the trading floor becomes inoperable, except in accordance with paragraph (2) below and pursuant to Rule 5.26, as applicable.

(1) Applicable Rules. In the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable System Rules, except that open outcry Rules will not be in force, including but not limited to the Rules (or applicable portions of the Rules) in Chapter 5, Section G, and as follows (subparagraphs (A) through ([E]D) will be effective until [September 30]December 31, 2020):

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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 not be available in the event the trading floor becomes inoperable.<sup>5</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>6</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 September 30, 2020.<sup>7</sup> The Exchange

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<sup>5</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>6</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>7</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), 85 FR 17129 (March 26, 2020) (SR-CBOE-2020-023); 88490 (March 26, 2020), 85 FR 18318 (April 1, 2020)

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>8</sup> The trading floor remained closed until June 15, 2020. During the time when the trading floor was closed, the Exchange operated in an all-electronic trading environment and the temporary rules in Rule 5.24(e)(1) applied to that electronic trading environment. The Exchange believes that, while those temporary rules did not fully replicate open outcry trading, they allowed all-electronic trading to occur more similarly to open outcry trading.<sup>9</sup>

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(SR-CBOE-2020-026); 88530 (March 31, 2020), 85 FR 19182 (April 6, 2020) (SR-CBOE-2020-031); 88886 (May 15, 2020), 85 FR 31008 (May 21, 2020) (SR-CBOE-2020-047); 89307 (July 14, 2020), 85 FR 43938 (July 20, 2020) (SR-CBOE-2020-066); and 89789 (September 8, 2020), 85 FR 56658 (September 14, 2020) (SR-CBOE-2020-081). The Exchange recently adopted permanent Related Futures Cross (“RFC”) orders and deleted subparagraph (E), pursuant to which the Exchange could offer RFC orders in the even the trading floor was inoperable. See Securities Exchange Act Release No. 89768 (September 4, 2020), 85 FR 55869 (September 10, 2020) (SR-CBOE-2020-060). In the rule filing to permanently adopt RFC orders, the Exchange deleted the temporary version of RFC orders in subparagraph (E), but inadvertently did not change the applicability of subparagraph (e)(1) to subparagraphs (A) through (D) rather than (A) through (E) (as subparagraph (E) was deleted in its entirety). Therefore, the proposed rule change makes this update.

<sup>8</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>9</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. The Exchange notes it recently submitted a separate rule filing to adopt a virtual trading floor, which the Exchange may determine to make available if the trading floor becomes inoperable. See Securities Exchange Act Release No. 89131 (June 23, 2020), 85 FR 38951 (June 29, 2020) (SR-CBOE-2020-055). If the Commission approves that filing, and the trading floor subsequently becomes inoperable

The trading floor is currently open for open outcry trading, and the Exchange is operating pursuant to its normal hybrid trading rules. The Exchange implemented numerous health and safety measures in connection with the reopening of the trading floor on June 15, 2020 to help protect the safety and welfare of the trading floor community and help prevent the continued spread of COVID-19.<sup>10</sup> However, the Exchange recognizes the ongoing nature of the COVID-19 pandemic in the United States, which may cause the Exchange to once again close its trading floor.

In the event the Exchange did close its trading floor again, the Exchange believes it would be necessary to again apply the recently adopted temporary rules in Rule 5.24(e)(1) 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 noted above, Rule 5.24(e)(1) is effective only until September 30, 2020 (and the rules became inapplicable upon the reopening of the trading floor on June 15, 2020). Given the Exchange may believe it is appropriate to close the trading floor with little advanced notice and in a short timeframe to help protect the safety and welfare of the trading floor community, the Exchange proposes to extend the effectiveness of the temporary rules in Rule 5.24(e)(1) to December 31, 2020 (unless further extended). The Exchange believes this will permit the

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and the Exchange makes the virtual trading floor available, the temporary rules in Rule 5.24(e)(1) would not be in effect (the Exchange submitted partial Amendment No. 1 to SR-CBOE-2020-055 to make that clear). Separately, the Exchange believes the temporary rules in Rule 5.24(e)(1) should be effective for a period of time while the virtual trading floor is available, the Exchange will submit a separately rule filing to propose that change.

<sup>10</sup> See Exchange Notice C2020052601, Standards of Conduct related to the Reopening of the Cboe Options Trading Floor and COVID-19 (May 26, 2020), available at [https://cdn.cboe.com/resources/release\\_notes/2020/Standards-of-Conduct-related-to-the-Reopening-of-the-Cboe-Options-Trading-Floor-Notice-Final.pdf](https://cdn.cboe.com/resources/release_notes/2020/Standards-of-Conduct-related-to-the-Reopening-of-the-Cboe-Options-Trading-Floor-Notice-Final.pdf).

Exchange to as seamlessly as possible transition back to an all-electronic trading environment. The Exchange notes Rule 5.24(e)(1) will not apply to trading during times when the trading floor remains operable.

Previously when the temporary provisions of Rule 5.24(e)(1) were in place, the Exchange's Regulatory Division has continued its standard routine surveillance reviews for electronic trading and implemented a regulatory plan to surveil the rules in place in Rule 5.24(e)(1) when operating in a screen-based only environment. In the event the Exchange closes its trading floor again and the temporary provisions in Rule 5.24(e)(1) become applicable in an all-electronic trading environment, the Exchange's Regulatory Division would reimplement that regulatory plan to surveil those rules.

## 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>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

is consistent with the Section 6(b)(5)<sup>13</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, protect investors and the public interest by permitting the Exchange to as seamlessly as possible transition back to an all-electronic trading environment in the event the Exchange determines it is appropriate to again close its trading floor. The Exchange expects it would take this action if it believes necessary and appropriate to help protect the safety and welfare of the trading community. Such a determination may occur with little advance notice, and closure of the trading floor may need to occur in a short time frame. The Exchange continues to believe the recent amendments to Rule 5.24(e)(1) allowed all-electronic trading to occur more similarly to open outcry trading while the trading floor was closed. The Exchange believes the proposed rule change is necessary and appropriate to provide TPHs with execution opportunities in an all-electronic trading environment for orders that generally execute in open outcry trading. Additionally, the proposed rule change will provide TPHs with an all-electronic trading environment to which they became accustomed when the trading floor was previously closed, and therefore will provide investors with consistent rules that apply when the Exchange operates in an all-electronic environment. The proposed rule change will provide investors with definitive knowledge of what rules will apply when the trading floor is closed.

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

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Id.

proposed rule change is not intended as a competitive filing, but rather extends the effectiveness of temporary rules as part of the Exchange's business continuity plans, which are intended to allow the Exchange to continue to maintain fair and orderly markets while the Exchange's trading floor continues to be inoperable.

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

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

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

Because the foregoing proposed rule change does not: (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<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>16</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to 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 proposed rule change may become operative

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization 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 date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five business day notification requirement for this proposed rule change.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

immediately. The Exchange believes extension of the temporary rules put in place due to the ongoing COVID-19 pandemic will permit the Exchange to minimize disruptions in the market during a transition back to an all-electronic trading environment if the Exchange believes it is necessary and appropriate to help protect the safety and welfare of the trading community. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the temporary rules to continue with minimal interruption, thereby avoiding investor confusion that could result from an interruption in the effectiveness of the rules. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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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<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission also has 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2020-092 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-2020-092. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. 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-2020-092 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-23146 Filed: 10/19/2020 8:45 am; Publication Date: 10/20/2020]

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<sup>19</sup> 17 CFR 200.30-3(a)(12).