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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88312; File No. SR-CBOE-2020-014)

March 3, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Adopt a Delta-Adjusted at Close (DAC) Order Instruction that a User may Apply to an Order when Entering it into the System for Execution in an Electronic or Open Outcry Auction

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 February 18, 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 adopt a Delta-Adjusted at Close ("DAC") order instruction that a User may apply to an order when entering it into the System[3] for execution in an electronic or open outcry auction. The text of the proposed rule change is provided in Exhibit 5.

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

2 17 CFR 240.19b-4.

3 See Rule 1.1, which defines the System as 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.

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

The Exchange proposes to adopt a Delta-Adjusted at Close or DAC order instruction that a User may apply to an order when entering it into the System for execution in an electronic or open outcry auction. In particular, if a DAC order executes during the trading day, upon receipt of the official closing price or value for the underlying from the primary listing exchange or index provider, respectively, the System will adjust the original execution price of a DAC order based on a delta value applied to the change in the underlying reference price between the time of execution and the market close. As proposed, DAC orders will allow Users the opportunity to incorporate into the pricing of their options the closing price or value of the underlying on the transaction date based on how much the price or value changed during the trading day.

Near the market close, the Exchange has observed that significant numbers of market participants interact in the equity markets, which may substantially impact the price or value, as applicable, of the underlying at the market close. For example, shares of exchange-traded funds

("ETFs") that track indexes, which are increasingly popular, often trade at or near the market close in order to better align with the indexes they track and attempt to align the market price of shares of the ETF as close to the net asset value ("NAV")[4] per share as possible. Further, the Exchange understands that market makers and other liquidity providers seek to balance their books before the market close and contribute to increased price discovery surrounding the market close. The Exchange also believes it is common for other market participants to seek to offset intraday positions and mitigate exposure risks based on their predictions of the closing underlying prices or underlying indexes (which represent the settlement prices of options on those underylings). The Exchange understands this substantial activity near the market close may create wider spreads and increased price volatility, which may attract further trading activity from those participants seeking arbitrage opportunities and further drive prices. In light of the significant liquidity and price/value movements in equity shares that can occur near the market close, option closing and settlement prices may deviate significantly from option execution prices earlier that trading day. The proposed DAC order instruction is designed to allow investors to incorporate any upside market moves that may occur following execution of the order up to the market close while limiting downside risk. Additionally, the Exchange has noted that there have been a number of managed funds that recognize the benefits to their investors in employing certain strategies that allow for their investors to mitigate risk at the market close while also participating in beneficial market moves at the close. The proposed DAC order would provide such funds with an additional method to attempt to meet their objectives through options strategies, thereby benefitting their investors.

4 The NAV is an ETF's total assets minus its total liabilities. ETFs generally must calculate their NAV at least once every business day, and typically do so after market close. See 17 C.F.R. 270.2a-4.

As stated, the System will adjust the original execution price of a DAC order based on a delta value applied to the change in the price of the underlying from the time of order execution to the market close. 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 x delta value = anticipated price move in the option). Delta changes as the price or value of the underlying stock or index changes and as time changes, thus giving a User an estimate of how an option will behave if the price of the underlying moves in either direction. 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. The Exchange understands that investors use delta as an important hedging and risk management tool in options trading. For example, by trading an option with a lower delta, an investor's underlying position will be exposed to more downside risk if price or value of the underlying fall. Therefore, the Exchange believes the proposed DAC order instruction will allow a market participant to maintain a full hedge of its position taken upon intraday execution of a DAC order throughout the remainder of the trading day, which ultimately reduces the market participant's portfolio risk.

The Exchange proposes to make the DAC pricing instruction available for simple orders in Rule 5.30(a)(2), for complex orders in Rule 5.33(b)(5), for orders submitted in FLEX Options in Rule 5.70(a)(2), and, as indicated above, for orders submitted for open outcry trading pursuant to Rule 5.83(a)(2) (simple orders) and Rule 5.83(b)(2) (complex orders). As proposed, Rule 5.6(c) (Order Types, Order Instructions, and Times-in-Force) provides that a DAC order is an order for which the System delta-adjusts its execution price after the market close. Specifically, the delta-adjusted execution price equals 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”). Upon order entry for electronic execution, a User must designate a delta value and may designate a reference price. If no reference price is designated, the System will include the price or value, as applicable, of the underlying at the time of order entry as the reference price. Upon order entry for open outcry execution, a User may designate a delta value and/or a reference price. During the open outcry auction, in-crowd market participants will determine the final delta value and/or reference price, which may differ from any delta value or reference price designated by the submitting User. The final delta value and reference price would be reflected in the final terms of the execution.

Likewise, the proposed definition in Rule 5.33(b)(5) (Types of Complex Orders) provides for essentially the same definition, differing only in that: it applies to complex orders; upon order entry for electronic execution a User must designate a delta value per leg, and for open outcry execution may designate a delta value for one or more legs; a DAC complex order may only be submitted for execution in a complex electronic auction pursuant to Rules 5.33(d), 5.38, and 5.40 or in open outcry trading on the Exchange’s trading floor pursuant to Rule 5.85; and a DAC complex order is not eligible to rest in the Complex Order Book (“COB”).

Users will enter into the System all DAC orders as they would any other order pursuant to Rule 5.7 (governing the order entry of simple and complex orders) or 5.72(b) (governing the order entry of FLEX orders), as applicable, and the applicable auction rules. As defined above, a User may designate the reference price of the underlying upon submitting a DAC order.

Proposed Rule 5.34(c)(12) (Order and Quote Price Protection Mechanisms and Risk Controls) provides that a User-designated reference price will be subject to a reasonability check. Specifically, if a User submits a DAC order to the System with a reference price more than an Exchange-determined amount away from the underlying price or value at the time of submission of the DAC order, the System cancels or rejects the order.[5] Moreover, if a User chooses to submit a DAC order without a reference price, the System will automatically input the price or value of the underlying at the time of order entry as the reference price.

For a DAC order submitted for electronic execution, a User will be required to designate a delta value upon order entry (including for each leg of a DAC complex order as set forth in proposed Rule 5.33(b)(5)).[6] A User may designate a delta value upon entry of a DAC order submitted for open outcry execution. As noted above, delta are either between 0 and 1 for calls, and 0 and -1 for puts.[7] The Exchange notes that 1.0000 is the equivalent of a 100 delta. Pursuant to the general principles by which deltas function, the delta for a call leg(s) must be greater than zero and the delta for a put option leg(s) must be less than zero. Additionally, the delta for call (put) legs must be less (greater) than or equal to the delta for the adjacent call (put) leg (i.e. the leg with the next largest strike price) of the same expiration as the strike price increases. This is also consistent with the general manner in which deltas function, and ensures that the deltas on the same leg type within the same expiration trend away from zero as the strike value increases.

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5 The System will use the most recent last sale (or disseminated index value) as the reference price.

6 The same requirement would apply for a FLEX DAC complex order. See proposed Rule 5.72(b)(2)(A).

7 Note the Exchange will permit delta values to be input up to four decimals, as prices for the underlying securities and index values may be expressed in four decimals. However, bids and offers may only be input in accordance with Rule 5.4, which bids and offers the System will use to rank and allocate orders and auction responses.

Typically, a User submits an electronic complex order (including a DAC complex order, as proposed) with a net price, and the System then uses the Book and the NBBO as a benchmark in determining leg prices based on the net execution price of a complex order (which leg prices may not be outside of the best prices of orders and quotes in the book for those legs).[8] However, as the delta value will be applied at market close as part of the calculation to adjust the DAC order, that is, after the System has already determined and populated the leg prices intraday based on the net execution price of a complex order, the System will need to be able to apply a delta value per each of the leg prices to properly calculate the DAC by adjusting the execution price of each leg.

In line with its proposed definition, a User may apply the DAC order instruction to:

- a simple order submitted into the Automated Improvement Mechanism ("AIM" or "AIM Auction")[9] or the Solicitation Auction Mechanism ("SAM" or "SAM Auction")[10];
- a complex order submitted into a Complex Order Auction ("COA"),[11] the Complex Automated Improvement Auction "C-AIM" or "C-AIM Auction"),[12] or the Complex Solicitation Auction Mechanism ("C-SAM" or "C-SAM Auction")[13];
- a FLEX order submitted into an electronic FLEX auction,[14] the FLEX Automated Improvement Auction ("FLEX AIM" or FLEX AIM Auction")[15] or the FLEX Solicitation Auction Mechanism ("FLEX SAM" or "FLEX SAM Auction")[16]; or

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8 There is no requirement to systematize leg prices upon submission of a complex order. See generally Rule 5.7(f).

9 See Rule 5.37.

10 See Rule 5.39.

11 See Rule 5.33(d).

12 See Rule 5.38.

13 See Rule 5.40.

- a simple, complex, or FLEX order submitted for manual handling in an open outcry auction on the Exchange's trading floor.[17]

A DAC order will be handled and executed in all of these auctions in the same manner as any other order pursuant to the applicable auction rules, including pricing, priority, and allocation rules.[18] Similarly, a DAC order submitted for open outcry trading will execute in the same manner as any other order executed in open outcry pursuant to Chapter 5, Section G of the Rules (and Rule 5.72(d) with respect to FLEX Options).

As proposed, a DAC order submitted for electronic execution will not be eligible to rest in the Book, and may only execute in an electronic auction. The delta and reference price appended to a DAC order would be based on data regarding the underlying at the time of order entry. As those values change as the price or value of the underlying change, the reference price and delta at the time of submission would achieve the desired delta-adjusted price result only if the DAC order executes almost immediately upon submission. To allow a DAC order to rest on the Book and potentially execute after a significant amount of time has passed since entry, underlying price and related delta at the time a DAC order would eventually execute would be different and thus not achieve the User's desired result. By only permitting a DAC order to execute in an electronic auction, the proposed rule ensures that, if a DAC orders executes, it will do so within a short time following submission. Indeed, the Exchange's electronic auctions last for a brief, defined period, the length of which is currently 100 milliseconds for non-FLEX

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14 See Rule 5.72(c).

15 See Rule 5.73.

16 See Rule 5.74.

17 See Rules 5.72(d) and 5.85.

18 See id.

electronic auctions[19] and, for FLEX electronic auctions, between three seconds to five minutes as designated by the Submitting/Initiating FLEX Trader.[20] As such, the Exchange believes that permitting DAC orders submitted for electronic execution to execute only in electronic auctions is consistent with the intended purpose of a DAC order.

Pursuant to the proposed definitions in Rules 5.6(c) and 5.33(b)(5) (as well as proposed Rule 5.72(b)(2)(B) for FLEX DAC orders), for DAC orders submitted for execution in open outcry, a User has the option to designate a delta value (per one or more legs for DAC complex orders) and/or a reference price. In-crowd market participants then determine the final delta value(s)[21] and/or reference price during the open outcry auction. That is, they would negotiate the delta value(s)/reference price as terms of the order (in conjunction with their negotiation of the price of the order) and reflect the ultimately agreed upon delta value(s)/reference price in the final terms of the DAC order. This is consistent with the manner that the terms (including execution price) of any other order are currently negotiated and ultimately reflected for open outcry executions. For similar reasons why the proposed rule change will not permit DAC orders to rest in the Book, the proposed rule change does not require a User to include a delta value or reference price when submitting a DAC order for open outcry execution. A floor broker may be

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19 See Cboe Tradedesk Updates, No. C2019102100 (October 21, 2019), available at: https://cdn.cboe.com/resources/release_notes/2019/Update-to-Auction-Response-Time-Interval-for-Cboe-Options-Exchanges.pdf. See also Rules 5.37(c); 5.38(c); 5.39(c); and 5.40(c), which provide that an auction period is a period of time determined by the Exchange, which may be no less than 100 milliseconds and no more than one second, for AIM, C-AIM, SAM, and C-SAM, respectively; and Rule 5.33(d)(3), which provides that for a COA the Exchange determines the duration of the Response Time Interval, which may not exceed 500 milliseconds.

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

21 The Exchange notes that in-crowd participants currently have delta values built into their own analytics and pricing tools and that generally such values only slightly differ across participants.

unable to execute an order until well after it received the order for manual handling. Given that the delta and reference price may move during that time, the proposed rule provides the ability of market participants to agree to appropriate terms given the then-current underlying price or value at the time of execution. Unlike in the electronic market, in-crowd market participants are able to negotiate and agree to these terms as part of open outcry trading. As a result, the delta-adjusted price may achieve the desired result of the broker's customer.

For any DAC order that executes during a trading day, upon receipt of the official closing price for the underlying from the primary listing exchange or index provider, the System will adjust the original execution price based on the delta applied to the absolute change in the underlying between the time of execution and the market close. The Exchange notes that, like the execution price of any option, a delta-adjusted price may never be zero or negative. If this occurs as a result of the DAC calculation, the System will set the delta-adjusted price to the minimum permissible increment.

The delta adjustment formula that will be applied at the close will be as follows:

The delta-adjusted price = the original execution price + (the change in the underlying price x delta) or P2 = P1 + (U – R) * D, where:

- P1 = Original execution price
- P2 = Delta-adjusted price calculated at the close
- R = Reference price
- U = price of the underlying at the market close
- D = Delta

Example 1: A DAC call order is submitted for execution in an electronic auction or PAR and the price of the underlying increases from the time of execution to the market close.

- P1 = $1.00
- R = $100.00
- U = $101.00
- D = .4000

Therefore, P2 = ($1.00 + (($101 - $100) * .4000) = $1.40

Example 2: A DAC put order in a penny class is submitted for execution in an electronic auction or PAR and the price of the underlying increases from the time of execution to the market close.

- P1 = $1.00
- R = $100.00
- U = $103.00
- D = - .4000

Therefore, P2 = ($1.00 + ((103 - $100) * -.4000) = -$0.20. However, because an execution price, including a delta-adjusted execution price, may not be negative, the System would adjust P2 = $0.01 (the minimum permissible increment).

The Exchange notes a User may only apply the DAC order instruction to a FLEX Order for a FLEX Option series with an exercise price expressed as a fixed price in dollars and decimals. The proposed change to Rule 5.83(a)(2) and (b)(2) specifies 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, as this functionality is not compatible with the DAC order instruction.[22] The System will need a fixed execution price at the time of order execution that will be delta-adjusted (which delta value is

[22] See Rule 4.21(b)(6)(A).

based on dollar price movements in the underlying) following the market close. However, a FLEX order for a series with an exercise price formatted as a percentage of the closing value will execute at a percentage rather than a fixed price, which would not be determined until the market close. Therefore, execution price of such a FLEX order will incorporate the closing price or value of the underlying in a different manner, and the System would not have an execution price to adjust. Similarly, the proposed change to Rule 5.83(a)(2) and (b)(2) specifies a User will not be able to designate a FLEX Order in a FLEX Option series that is Asian- or Cliquet-settled. The settlement prices for these options are determined by averaging a pre-set number of closing index values or summing the monthly returns, respectively, on specified monthly observation dates.[23] The transaction prices for these options reflect these terms, and delta-adjustment of those transaction prices would be based on the movement of the underlying on only the transaction date. These settlement types are, as a result, inconsistent with the DAC order instruction.

The proposed definition of DAC orders in Rule 5.6(c) also states that a DAC order submitted through PAR has a Time-in-Force of Day.[24] A Time-in-force of Day for an order so designated means that the order, if not executed, expires at RTH market close. Thus, this proposed Time-in-Force for DAC orders submitted for execution in open outcry ensures that such orders will execute in line with their intended purpose - intraday and as close in time as possible to the time in which it was submitted to achieve the desired result of the broker's customer. Moreover, the proposed DAC definition provides that a User may not designate a DAC order as All Sessions (i.e. eligible for Regular Trading Hours ("RTH") and Global Trading

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[23] See Rule 4.21(b)(5)(B).

[24] The Exchange again 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, a requirement to apply a Time-in-Force of Day is not necessary for electronic DAC orders.

Hours ("GTH")),[25] as the adjustment calculation for DAC orders is linked to the RTH market close for the underlying securities and indexes. Additionally, equities are not traded during the entire GTH session, and not all indexes have values disseminated during GTH, so there would not be a then-current reference price for DAC orders outside of RTH. Finally, the proposed definition provides that a User may not designate bulk messages as DAC. A bulk message is a bid or offer included in a single electronic message a User submits to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers.[26] The Exchange notes that the purpose of bulk messages is to encourage market-maker quoting and the provision of liquidity on the exchange throughout the trading day. As a DAC order will not be eligible to rest in the Book and, instead, execute almost immediately, allowing Users to designate their bulk messages as a DAC order would conflict with the intended purpose of a bulk message.[27]

The reference price and delta value, as well as the execution price, will be provided to all transaction parties on all fill reports at the time of the execution of a DAC order (i.e. an "unadjusted DAC trade"). Unadjusted DAC trade information will also be sent to the Options Clearing Corporation ("OCC") and disseminated to Options Price Reporting Agency ("OPRA"). Upon conclusion of the delta-adjustment of the execution price following the market close, fill restatements will be sent to all transaction parties. Matched trades will be sent to the OCC and OPRA once the restatement process is complete with the delta-adjusted price. The prior unadjusted trade reported to the OCC and disseminated to OPRA will be cancelled and replaced

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[25] See Rule 1.1.

[26] See id.

[27] The Exchange also notes that bulk messages are not currently available for complex orders (thus, not eligible to trade in the complex electronic auctions), not currently eligible to submit to any of the auctions.

with a trade report with all of the same information, except the original execution price will be replaced with the delta-adjusted price.[28] The Exchange has discussed with both the OCC and OPRA of its plans to adopt DAC orders and confirmed that adopting the proposed restatement process is acceptable. Additionally, the Exchange has analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle additional any additional order traffic, and the associated restatements, that may result from the adoption of DAC orders. Further, the Exchange represents it has an adequate surveillance program in place to monitor orders with DAC pricing and that the proposed pricing instruction will not have an adverse impact on surveillance capacity. Finally, the proposed order instruction will not have any impact on pricing or price discovery at or near the market close. A DAC order will execute intraday in the same manner as any other order, and its price will merely be automatically adjusted following determination of the final closing price or value of the underlying security or index, respectively.

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.[29] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[30] 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

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[28] 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.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

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)[31] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed DAC order will promote just and equitable principles of trade and will remove impediments to and perfect the mechanism of a free and open market and national market system, as it will allow market participants to incorporate into the pricing of their options the closing price of the underlying on the transaction date based on the amount in which the price or value of the underlying change intraday, thus, allowing investors to incorporate potential upside market moves that may occur following the execution of an order up to the market close while limiting downside risk. As described above, the market close is a time in which maximum significant numbers of participants interact on the equity markets. This activity may contribute to substantially increased liquidity and significant price volatility near the close of the equity markets, which can potentially cause the closing prices of the underlyings and, therefore, the settlement prices of options on those underlyings to greatly deviate from the average option execution prices traded earlier that trading day. The Exchange believes DAC orders will serve to protect investors by allowing them, through use of the underlying reference prices and delta, to fully hedge their options positions taken during the trading day through the market close and potentially benefit from price movements at the close. Also, as managed funds have recently begun utilizing strategies at the close in order to mitigate risk at the close and

31 Id.

participate in beneficial market moves at the same time, the Exchange believes that DAC orders will offer an additional method by which these funds will be able meet these objectives through the execution of options strategies, thereby benefiting investors that hold shares of these funds.

The Exchange further believes that the adoption of DAC orders on the Exchange will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system because DAC orders will be entered, priced, prioritized, allocated and execute as any other order would when submitted into any of the applicable electronic auctions or for open outcry trading. As such, market participants would not be subject to any new or novel order entry, pricing, allocation, and execution processes in relation to their DAC orders as such orders will be handled pursuant to the Exchange Rules governing the applicable auction processes or execution in open outcry, which have been previously approved by the Commission.

The Exchange believes the proposed differences regarding the requirements to enter DAC-specific pricing information for electronic and open outcry trading reflect the differences in those types of trading, and as a result, may assist investors in achieving the goals of DAC orders. The general delta value requirements are in line with just and equitable principles or trading and with the protection of investors because they are consistent with the manner in which a delta is commonly known to function and generally used in options trading. Further, the Exchange believes that proposed Rule 5.34(c)(12) provides System controls in connection with DAC orders that are designed to protect investors. The Exchange believes the proposed reference price reasonability check will mitigate risks associated submitting a DAC order with a reference price unintended by the User as a likely result of human or operational error. The Exchange also notes that similar mechanisms and controls are currently in place on the Exchange for various types of orders.[32]

In addition to this, the Exchange believes that permitting a DAC order submitted for electronic execution to execute only in an electronic auction will protect investors and serve to remove impediments to and perfect the mechanism of a free and open market and national market system, because it is consistent with the intended purpose of DAC orders. This would ensure that DAC orders that can execute would do so within a short time following submission and therefore in a manner that achieves a User's desired delta-adjusted price. As described above, the goal of a DAC order is to adjust the execution price based on a delta value applied to the change in the underlying price between the market close and the time of the trade. Therefore, a DAC order must be able to execute as close in time as possible to the time of order submission (i.e. the point in time a User designates a reference price and delta) so as to allow the reference price and related delta to remain in line with the underlying price information at the time of submission and achieve the User's desired result. This result may not occur for a DAC order resting in the Book for a significant amount of time. As such, a DAC order submitted through an electronic auction, like any order submitted in an auction, will be executed within a short time following submission. Thus, the Exchange believes that the proposed limitation to electronic auctions would protect investors by allowing DAC orders to execute in line with Users' expectations and a DAC order's intended purpose.

The Exchange believes that by providing 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

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32 See generally Rule 5.34, which provides for additional order and quote price protection mechanisms and risk controls for simple and complex orders, including similar reasonability checks set at Exchange-determined amounts.

percentage of the closing value of the underlying on the trade date or in options that are Asian-or Cliquet-settled will remove impediments to and perfect the mechanism of a free and open market and national market system and generally protect investors because these FLEX terms are inconsistent with the DAC order instruction and would conflict with the manner in which the System calculates the delta-adjusted price upon the market close. Similarly, the Exchange believes that the proposed rule designating DAC orders submitted for execution in open outcry with a Time-in-Force of Day, as well as not permitting a User to designate a DAC order as All Sessions will also protect investors because, execution on the following trading day, or during the GTH session would prevent achievement of the desired result of a DAC order. As discussed above, such executions would be inconsistent with the intended purpose of a DAC order. Also, the proposed provision that a User may not designate bulk messages as DAC will remove impediments to and perfect the mechanism of a free and open market and national market system because it will ensure bulk messages do not contain an instruction that would conflict with their intended purpose in encouraging the provision of liquidity on the Exchange throughout the trading day.

The Exchange notes that it has discussed with the OCC and OPRA its plan to adopt DAC orders, including the proposal to apply the restatement process described above to DAC orders. Moreover, the Exchange represents that the Exchange itself and OPRA have the necessary systems capacity to handle any additional order traffic and the related restatements that may result from the adoption of DAC orders, thereby ensuring the protection of investors. The Exchange also believes the additional restatements and adjustments for DAC orders would be manageable and that its existing surveillances are adequate to monitor trading of DAC orders thereby helping to ensure the maintenance of a fair and orderly market.

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 proposed rule change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because use of the DAC order instruction will be optional and available to all Users. Any User may determine whether to apply a DAC order instruction to the orders it submits to the Exchange, and the System will handle all DAC orders submitted by all Users to the Exchange in the same manner according to the proposed rule change. Users will not be required to apply a DAC order instruction to any orders, and may continue to apply any other currently available order instructions to their orders.

The proposed rule change will not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as it is intended to provide market participants with an additional means to manage risks in connection with potential volatility and downside price swings that may occur near the market close, while allowing them to receive potential benefits associated with any upside market moves near the market close. . The Exchange believes the proposed rule change may foster competition, as other options exchanges in their discretion may pursue the adoption of orders with similar purposes, which will result in additional choices for investors. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[33]

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 e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2020-014 on the subject line.

33 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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-2020-014. 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, 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-2020-014, 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.[34]

J. Matthew DeLesDernier
Assistant Secretary

[34] 17 CFR 200.30-3(a)(12).

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