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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88997; File No. SR-CBOE-2020-014]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt a Delta-Adjusted at Close Order Instruction

June 3, 2020.

I. Introduction

On February 18, 2020, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) 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 a Delta-Adjusted at Close (“DAC”) Order Instruction on Cboe Options. 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

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).

submitted Amendment No. 1 to the proposed rule change.⁵ The Commission has received no comments on the proposed rule change.

The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposal, as Modified by Amendment No. 1

As amended, the Exchange proposes to adopt a Delta-Adjusted at Close or DAC order instruction that a User⁷ may apply to an order for an option on an ETP or index when entering it into the System for execution in a FLEX 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 FLEX 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

⁵ See <https://www.sec.gov/comments/sr-cboe-2020-014/srcboe2020014-7180918-216787.pdf>

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ 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.

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”)⁸ 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 underlyings). 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

⁸ 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.

such funds with an additional method to attempt to meet their objectives through FLEX options strategies, thereby benefitting their investors. The Exchange understands that, for example, defined-outcome ETF issuers⁹ often times use multi-leg strategy orders when seeding their funds.¹⁰ The goal of these strategies is to price the execution of these orders at the close of the underlying; however, there is operational execution risk in attempting to fill an order late in the day to capture the underlying closing price. As such, a DAC complex order would allow the User to execute the order prior to the close and have its price adjusted at the close. Because multi-leg strategies themselves have delta offsets, the User is hedged, meaning that the User may realize a negative movement versus the initial execution on some legs, which is offset by a positive move in other legs. The Exchange notes that the strategies may or may not define an exact delta offset (“delta neutrality” occurs where the strategy defines an exact delta offset). Given the delta neutral nature of an order with exact offset, a User would be indifferent to any movement in the underlying from the time of execution to the close. Whether or not a User defines an exact delta offset, a User would anticipate a given amount of market exposure, either partial or none, depending on the strategy and combinations of buy/sell, call/put and quantity. A DAC complex order allows the order to be executed anytime, eliminating the execution risk, while realizing the objective of pricing based on the exact underlying close for those strategies that require pricing at the close or a defined amount of market exposure through the close.

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

⁹ The Exchange notes that defined outcome ETF issuers do not buy stocks directly, but instead, use options contracts to deliver the price gain or loss of an index (such as the S&P 500) over the course of a year, up to a preset cap.

¹⁰ Amendment No. 1 provides additional description regarding DAC complex order strategies and the purpose of such orders.

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 orders submitted in FLEX ETP and index options in Rule 5.70(a)(2).¹¹ As proposed, Rule 5.6(c) (Order

¹¹ Amendment No. 1 amends the Initial Rule Filing to provide that DAC orders are available only for ETP and index options and amends the Initial Rule Filing to remove the proposed availability of DAC orders for entry into non-FLEX auctions (electronic and open outcry). Thus, Amendment No. 1 removes from the proposed DAC definitions in Rule 5.6(c) and 5.33(b)(5) that DAC may trade in an electronic auction or in open outcry trading pursuant to specific non-FLEX auction Rules, as well as the provision that a DAC order is not eligible to rest in the Book (as there is no electronic book for resting FLEX Orders), and the provision regarding bulk messages (as bulk messages are not applicable

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 FLEX complex electronic auction or open outcry auction on the Exchange’s trading floor pursuant to Rule 5.72.

Users will enter into the System all DAC orders as they would any other FLEX Order pursuant to 5.72(b) (governing the order entry of FLEX orders) and the applicable FLEX auction rules. As such, the Exchange points out that FLEX DAC orders may only be submitted for series

to trading in FLEX Options). The Exchange intends to submit a proposal at a later date to permit the entry of DAC orders into non-FLEX auctions.

consistent with the FLEX rules.¹² 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.¹³ 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 into a FLEX electronic auction, 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)).¹⁴ A User may designate a delta value upon entry of a DAC order submitted into a FLEX open outcry auction. As noted above, delta is either between 0 and 1 for calls, and 0 and -1 for puts.¹⁵ 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

¹² See Rules 5.72(b), (c), and (d).

¹³ The System will use the most recent last sale (or disseminated index value) as the reference price.

¹⁴ See proposed Rule 5.72(b)(2)(A).

¹⁵ 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.

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.

Typically, a User submits an electronic complex order (including a DAC complex order, as proposed) with a net price, and, for a FLEX complex order, a User must include a price for each leg upon electronic submission.¹⁶ Therefore, upon electronic submission a User must also designate a delta value per leg along with the leg prices. At market close, the System will then be able to apply the delta value per each of the leg prices to properly calculate the DAC by adjusting the execution price of each leg.

A User may apply the DAC order instruction to a FLEX order submitted into an electronic FLEX auction,¹⁷ the FLEX Automated Improvement Auction (“FLEX AIM” or FLEX AIM Auction”)¹⁸ or the FLEX Solicitation Auction Mechanism (“FLEX SAM” or “FLEX SAM Auction”)¹⁹; or a FLEX order submitted for manual handling in an open outcry auction on the Exchange’s trading floor.²⁰ A DAC order will be handled and executed in the FLEX auctions in the same manner as any other FLEX order pursuant to the applicable FLEX auction rules, including pricing, priority, and allocation rules.²¹ Similarly, a FLEX DAC order submitted for open outcry trading will execute in the same manner as any other FLEX order executed in open outcry pursuant to Rule 5.72(d). The Exchange also notes that DAC orders submitted to the

¹⁶ See Rule 5.72(b)(2)(A).

¹⁷ See Rule 5.72(c).

¹⁸ See Rule 5.73.

¹⁹ See Rule 5.74.

²⁰ See Rule 5.72(d).

²¹ See Rules 5.72(d).

Exchange will have unique message characteristics, indicative that the order is a DAC order. Therefore, contra-side interest will be aware of the specific order type and may then choose whether or not they wish to interact with DAC orders.²²

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. The Exchange believes it is appropriate for DAC orders to only execute in auctions. 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 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. If a DAC order executes in an auction, it will do so within a short time following submission. Indeed, the Exchange's electronic and open outcry FLEX auctions last for a brief, defined period, the length of which is currently between three seconds to five minutes as designated by the Submitting/Initiating FLEX Trader.²³ As such, the Exchange believes that the execution of DAC orders in FLEX auctions is consistent with the intended purpose of a DAC order.

In addition to this, the Exchange also believes that making DAC orders available only for options on ETPs and indexes is consistent with the intended purpose of a DAC order. As stated above, DAC orders are intended to allow investors to incorporate any market moves that may

²² Amendment No. 1 provides this additional detail to the Initial Regarding Filing regarding how a DAC order message will be indicative that an order is DAC.

²³ See Rules 5.72(c), 5.73(c)(3) and 5.74(c)(3).

occur following execution of the order up to the market close while limiting risk and to allow funds to employ certain strategies that would enable their investors to mitigate risk at the market close while also participating in beneficial market moves at the close. That is, a DAC order may assist investors that participate in defined-outcome investment strategies, including defined-outcome ETFs, other managed funds, unit investment trusts (“UITs”), index funds, structured annuities, and other such funds or instruments that are indexed. Therefore, the Exchange believes it is appropriate to, at present, limit the use of DAC orders to options on ETPs and indexes.²⁴

Pursuant to the proposed definitions in Rules 5.6(c), 5.33(b)(5), and Rule 5.72(b)(2)(B), for DAC orders submitted for execution in a FLEX open outcry auction, 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)²⁵ 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 FLEX Order are currently negotiated and ultimately reflected for open outcry executions. For similar reasons why the Exchange believes execution of DAC orders in FLEX auctions is appropriate, the proposed rule change does not require a User to include a delta value or reference price when

²⁴ The Exchange notes that if, at a later date, User demand warrants the availability of DAC orders for equity options and non-FLEX options, the Exchange could submit a proposal to make DAC orders available for equity options.

²⁵ 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.

submitting a DAC order for open outcry execution. A floor broker may be 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:²⁶

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

²⁶ Amendment No. 1 adds Example 3 and Example 4 below in order to provide additional detail and clarity regarding the execution and adjustment process in connection with complex strategies.

- $D = \text{Delta}$

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 increment 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).

Example 3: A DAC complex order has two legs, where leg 1 is buy call and leg 2 is buy put (straddle).²⁷

²⁷ The Exchange notes that the data in Example 3 is based on actual market data pulled for SPX with: an April 30, 2020 expiration; an initial SPX index value of 2875; a closing SPX index value of 2878; 2900 call at \$18; and a 2900 put at \$42.

Leg 1

- $P1 = \$18.00$
- $R = \$2875.00$
- $U = \$2878.00$
- $D = .5000$

Therefore, $P2 = (\$18.00 + ((\$2878 - \$2875) * .5000)) = \19.50

Leg 2

$P1 = \$42.00$

$R = \$2875.00$

$U = \$2878.00$

$D = -.5000$

Therefore, $P2 = (\$42.00 + ((\$2878 - \$2875) * -.5000)) = \40.50

As described above, the User would be indifferent to the move in the underlying due to the offsetting nature of the two legs. The initial execution price for the DAC complex order (P1) would be $\$18.00 + \$42.00 = \$60.00$, and the adjusted price calculated at the close (P2) for the DAC complex order would be $\$19.50 + \$40.50 = \$60.00$. As a result, the User in this Example 3 would be able to execute a hedged strategy earlier in the trading day and have it priced exactly in line with the underlying close without incurring any market risk or operational risk of trying to time the execution exactly at the close.

Example 4: A defined outcome ETF uses a simple buffer protect strategy in connection with a seed trade. The User buys the at the money put and sells the 10% out of the money put while selling the 5% out of the money call.

Leg 1: Buy SPX May 2875 put at \$69.00 with 50 delta

- $P1 = \$69.00$
- $R = \$2875.00$
- $U = \$2878.00$
- $D = -.5000$

Therefore, $P2 = (\$69.00 + ((\$2878 - \$2875) * -.5000)) = \67.50

Leg 2: Sell SPX May 2590 put at \$15.00 with 12 delta

- $P1 = \$15.00$
- $R = \$2875.00$
- $U = \$2878.00$
- $D = -.1200$

Therefore, $P2 = (\$15.00 + ((\$2878 - \$2875) * -.1200)) = \14.64

Leg 3: Sell SPX May 3020 call at \$11.50 with 16 Delta

- $P1 = \$11.50$
- $R = \$2875.00$
- $U = \$2878.00$
- $D = -.1600$

Therefore, $P2 = (\$11.50 + ((\$2878 - \$2875) * -.1600)) = \11.98

The initial execution price for the order would be $\$69.00 - \$15.00 - \$11.50 = \42.50 . The adjusted execution price would be $\$67.50 - \$14.64 - \$11.98 = \40.88 . The strategy would have an overall delta of $-.54 (-.5000 + .1200 -.16)$. As a result, the fund would be seeded exactly at the closing price with exactly the delta exposure defined by the strategy, without incurring any operational execution risk. The User would be able to execute a hedged strategy earlier in the

trading day and have it priced exactly in line with the underlying close without incurring any unanticipated market risk or operational risk of trying to time the execution exactly at the close.

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 5.70(a)(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.²⁸ The System will need a fixed execution price at the time of order execution that will be delta-adjusted (which delta value is 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 5.70(a)(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.²⁹ The transaction prices for these options reflect these terms, and delta-adjustment of those transaction prices

²⁸ See Rule 4.21(b)(6)(A). The Exchange notes that the proposed language in connection with FLEX Option exercise prices as a percentage of the closing value and Asian-/Cliquet-settled series was originally proposed in Rules 5.83(a)(2) and (b)(2), however, the Exchange believes that moving the proposed language to Rule 5.70(a)(2), as well as the definition of complex orders, provides better clarity regarding the application of this proposed limitation on proposed DAC orders submitted to FLEX auctions.

²⁹ See Rule 4.21(b)(5)(B). See also id.

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.³⁰ 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 Hours ("GTH")),³¹ 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.

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"). Specifically for FLEX DAC orders, like for all FLEX Orders, trade information will be reported

³⁰ 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.

³¹ See Rule 1.1.

via a text message to OPRA. The Exchange notes that text messages for FLEX DAC orders will contain an indicator that the order was executed as DAC, as well as the delta and the reference price.³² The Exchange also notes that individual legs of a FLEX DAC complex order will be reported with an identifier that they are part of a complex order just like any complex order legs are reported today.³³ 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 with a trade report with all of the same information, except the original execution price will be replaced with the delta-adjusted price.³⁴ A new FLEX DAC order text message will be disseminated to OPRA with the same information included in the original text plus the closing price. 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.

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 Exchange does not believe the proposed order instruction will

³² Amendment No. 1 adds detail regarding the specific information that will be included in the FLEX text message report to OPRA in connection with the proposed DAC orders.

³³ See id.

³⁴ 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.

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.

III. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change, as Modified by Amendment No. 1

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act³⁵ to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the amended proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 1, to inform the Commission's analysis of whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,³⁶ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Exchange Act, which requires 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

³⁵ 15 U.S.C. 78s(b)(2)(B).

³⁶ Id.

market system, and, in general, to protect investors and the public interest.³⁷ Section 6(b)(5) of the Exchange Act also requires that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.³⁸

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning the proposed rule change, as modified by Amendment No. 1, including whether the proposal is consistent with Sections 6(b)(5) of the Exchange Act, any other provision of the Exchange Act, or any other rule or regulation under the Exchange Act. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.³⁹

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, as modified by Amendment No. 1, including whether the proposal should be approved or disapproved by **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**. Any person who wishes to file a rebuttal to any other person's

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ Id.

³⁹ Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

submission must file that rebuttal by **[INSERT DATE 35 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposed rule change, as modified by Amendment No. 1, in addition to any other comments they may wish to submit about the proposed rule change. 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.

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 these filings 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]**. Rebuttal comments should be submitted by **[INSERT DATE 35 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

J. Matthew DeLesDernier,

Assistant Secretary.

⁴⁰ 17 CFR 200.30-3(a)(57).

