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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89128; File No. SR-CBOE-2020-053]

### **Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 6.1 in Order to Provide for a Consistent Documentation of Open Outcry Execution Information in the Event of an Exchange System Malfunction or Disruption**

June 23, 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 June 10, 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**

The Exchange proposes to amend Rule 6.1 in order to provide for a consistent documentation of open outcry execution information in the event of an Exchange system malfunction or disruption.

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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).

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 amend Rule 6.1 in order to provide for a consistent documentation of open outcry execution information in the event of an Exchange system malfunction or disruption.

Specifically, Rule 6.1(a) requires that a Trading Permit Holder ("TPH") in each transaction to be designated by the Exchange must report or ensure the transaction is reported to the Exchange within 90 seconds of the execution in a form and manner prescribed by the Exchange so that the trade information may be reported to time and sales reports.<sup>5</sup> Pursuant to Rule 6.1(c)(1), the seller (or buyer if designated by the Exchange) must submit the transaction report through an electronic data transmission link approved by the Exchange in order to fulfill

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<sup>5</sup> The Exchange notes that for trades executed electronically through the System, trade information is immediately submitted to the Exchange so that it may be reported to the tape.

the Rule 6.1(a) reporting requirement. Additionally, Rule 6.1(c) provides that participants (both the buyer and the seller) must immediately record on a card or ticket or enter in an electronic data storage medium acceptable to the Exchange certain requisite transaction information. Such transaction information includes, among other things, the time of the transaction obtained from a source designated by the Exchange,<sup>6</sup> and must be included in the transaction report. Currently, TPHs submit transaction reports through Public Automated Routing System (“PAR”)<sup>7</sup> workstations. In practice, generally, when an order is executed in open outcry, a participant nearly contemporaneously with the execution enters the requisite trade information into a PAR workstation, including the transaction time and presses a “trade” button, which both reports the trade to the Exchange and constitutes the entry of requisite trade information in an electronic data storage medium pursuant to Rule 6.1(c).

Rule 6.1(a) currently allows for designated late reporting, however, a pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade and subject to fines or discipline under Exchange Rules.<sup>8</sup> Therefore, in the event an Exchange system experiences a malfunction or disruption so that a participant is unable to electronically submit the requisite transaction information and report open outcry transaction information within the 90 second window (i.e. an “outage”), a late reporting designation is considered acceptable and the participant is able to electronically submit

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<sup>6</sup> The Exchange notes that there are universal clocks on the trading floor which brokers may use when recording outage reports.

<sup>7</sup> See Rule 5.82.

<sup>8</sup> See also Rule 6.1(j)(2), which provides that in the event a Clearing Trading Permit Holder attempts to send trade information by electronic transmission but is unable to get through to the Exchange computer system, the Clearing Trading Permit Holder may contact the Exchange’s Trade Desk Department to inquire if the Exchange’s system is ready to receive such Clearing Trading Permit Holder’s transmission.

the trade information and simultaneously report the transaction upon resolution of the malfunction or disruption and resumption of the impacted Exchange system. Although pursuant to Rule 6.1(c), a participant is able to record the transaction information on a card or ticket, and may currently do so in the case of an outage (and following the outage is then able to electronically enter the trade information and submit the transaction report), the Exchange Rules do not currently provide for a specific manner and form in which a participant should report transaction information, including the transaction time, in the event that an outage impedes a participant's ability to submit an electronic transaction record within the required time period.<sup>9</sup> As such, the Exchange now proposes to amend Rule 6.1(a) to provide additional clarity and consistency regarding the documentation and submission of transaction reports for open outcry executions that occur during an outage.

Specifically, the proposed change adopts subparagraph (a)(2)<sup>10</sup> to Rule 6.1, which provides that in the event of an Exchange system malfunction or disruption such that a participant is unable to electronically report trade information pursuant to subparagraph (c) of Rule 6.1 for orders executed in open outcry (an "outage"), a participant will record execution information, including the transaction time, for orders executed in open outcry in a manner and form determined by the Exchange. Upon the resolution of the outage, a participant must resume electronic submission of transaction reports within the 90 second time frame and must use best efforts to input electronically into the Exchange's system the execution information required by

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<sup>9</sup> In connection with past outages, participants have reported this information to the Exchange, but have done so in different manners. The proposed rule change will require participants to report this information to the Exchange in the same manner as designated by the Exchange.

<sup>10</sup> The proposed change also separates the late reporting provisions in current Rule 6.1(a) into subparagraph (a)(1) (and titles the proposed subparagraph "Late Reports") for formatting consistency and ease of reading and following Rule 6.1(a) generally.

subparagraph (c) of Rule 6.1 for the order(s) executed in open outcry during the outage not later than the close of business on the day that the malfunction or disruption ceases.

By providing that the Exchange determines the manner and form that participants must report transaction information for executions that occur during an outage,<sup>11</sup> the proposed rule change will provide for consistency among all participants with respect to their electronic submission of transaction reports to the Exchange after the system malfunction or disruption is resolved. The proposed rule will also provide additional clarity in the Rules regarding the procedure participants must use to submit transaction information to the Exchange following the resolution of an outage. A uniform approach will also provide for more consistency of information in the Exchange's audit trail.

The Exchange also notes that a similar process is currently in place pursuant to the Exchange Rules in the event of a malfunction or disruption of the Exchange's systems such that a Trading Permit Holder is unable to systematize an order, wherein each order transmitted to the Exchange during a malfunction or disruption of the Exchange's systems must be recorded legibly in a written form that has been approved by the Exchange,<sup>12</sup> and the Trading Permit Holder receiving such order must record the time of its receipt on the floor and legibly record the terms of the order, in written form.<sup>13</sup> Such rules also permit the retroactive entry of order receipt information following the cessation of the malfunction or disruption.

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<sup>11</sup> Pursuant to Rule 1.5, the Exchange will announce its determination of the manner and form via: (1) specifications, Notices, or Regulatory Circulars with appropriate advanced notice, which are posted on the Exchange's website, or as otherwise provided in the Rules; (2) electronic message; or (3) other communication method as provided in the Rules.

<sup>12</sup> The Exchange notes that a legible record is a manner in which it intends to determine that a participant will be required to record execution information upon an outage, as proposed.

<sup>13</sup> See Rule 5.7(f)(2)(C)(i).

## 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>14</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>15</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 is consistent with the Section 6(b)(5)<sup>16</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, by requiring participants to report open outcry transaction information for orders executed during an outage in a specific manner and form determined by the Exchange, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and national market system and help to ensure the maintenance of a fair and orderly market, thereby protecting investors, as it provides for consistency and additional clarity regarding the documentation and form of submission of transaction information for open outcry executions that occur during an outage, and the form of the reports of that information to the Exchange following resolution of the outage. The Exchange

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<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> Id.

further believes the proposed rule change may prevent fraudulent and manipulative acts and otherwise promote just and equitable principles of trade. Particularly, the proposed rule change will require a uniform approach to the documentation and reporting procedures of transaction information for orders executed during an outage, which will provide for consistency in the Exchange's audit trail.

The Exchange does not believe that documentation of certain trade information in a manner and form determined by the Exchange and the procedure regarding retroactive submission of certain trade information in the event of a system malfunction or disruption would present any new or novel issues or reporting policies for participants, as similar procedures are already in place under the Exchange Rules in the event a system malfunction or disruption results in participants' inability to systematize their orders upon receipt.

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 Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would apply equally to all participants. In addition, the Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is not competitive in nature nor does it relate to trading on the Exchange. Rather, it relates solely to the manner and form of reporting transaction information to the Exchange in outage scenarios.

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>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>19</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>20</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. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it is substantially similar to the process that is currently in place pursuant to the Exchange Rule 5.7<sup>21</sup> in the event of a malfunction or disruption of the Exchange's systems such that a Trading Permit Holder is unable to systematize an order. The Exchange notes that wherein each order transmitted to the Exchange during a malfunction or disruption of the Exchange's systems must be recorded legibly in a written form that has been approved by the Exchange, and the Trading Permit Holder

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</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 Exchange has satisfied this requirement.

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>21</sup> See supra note 13..

receiving such order must record the time of its receipt on the floor and legibly record the terms of the order, in written form. The Exchange states that the proposed rule change merely requires participants currently report transaction information to the Exchange with respect to orders executed during an outage, and to continue to do so in a uniform manner. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not modify the information that participants must report, nor does it change how open outcry trading will occur. The Commission believes the proposed rule change will provide consistency and clarity in the Cboe Rules regarding how to report transaction information to the Exchange in the event of an outage, which will benefit investors. Waiver of the operative delay will also permit the Exchange to implement the proposed rule change in connection with the current proposed reopening of its trading floor on June 15, 2020. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.<sup>22</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.

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<sup>22</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).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2020-053 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-2020-053. 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-2020-053 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>23</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>23</sup> 17 CFR 200.30-3(a)(12).

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