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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88486; File No. SR-CBOE-2020-022]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fees Schedule

March 26, 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 March 17, 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 amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this filing is to adopt the Flex Surcharge Fee for NDX and NDXP Orders, effective, March 17, 2020.

Currently, the Exchange assesses a FLEX Surcharge Fee of \$0.10-per-contract credit for DJX, MXEA, MXEF and XSP FLEX Options orders (all capacity codes) executed electronically. The FLEX Surcharge Fee is only charged up to the first 2,500 contracts per trade (\$250 per trade). The Exchange proposes to assess the FLEX Surcharge Fee to NDX and NDXP. The FLEX Surcharge Fee assists the Exchange in recouping the cost of developing and maintaining the FLEX system.

##### 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. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) 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 Section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes assessing a FLEX Surcharge Fee of \$0.10 per contract for all NDX and NDXP orders executed electronically on FLEX and capping it at \$250 (*i.e.*, first 2,500 contracts per trade) is reasonable because it is the same amount currently charged to other index products for the same transactions. The proposed Surcharge is also equitable and not unfairly discriminatory because the

amount will be assessed to all market participants to whom the FLEX Surcharge applies.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Cboe Options 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 believes that the proposed rule change will not impose any burden on intramarket competition because the proposed rule changes applies to market participants. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies only to a product currently only listed on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and paragraph (f) of Rule 19b-4<sup>4</sup> thereunder. 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

<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).

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

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2020-022 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-2020-022. This file number should be included on the subject line if email 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-2020-022 and should be submitted on or before April 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88490; File No. SR-CBOE-2020-026]

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

March 26, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 26, 2020, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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 amend Rule 5.24. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Rule 5.24 regarding the Exchange's business continuity and disaster recovery plans. Rule 5.24 describes which Trading Permit Holders ("TPHs") are required to connect to the Exchange's backup systems as well as certain actions the Exchange may take as part of its business continuity plans so that it may maintain fair and orderly markets if unusual circumstances occurred that could impact the Exchange's ability to conduct business. This includes what actions the Exchange would take if its trading floor became inoperable. Specifically, Rule 5.24(e) states if the Exchange trading floor becomes inoperable, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor facility is inoperable. The Exchange would operate using that configuration only until the Exchange's trading floor facility became operational. Open outcry trading would not be available in the event the trading floor becomes inoperable.<sup>3</sup> Rule 5.24(e)(1) also currently states in the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable System Rules, except that open outcry Rules would not be in force, including but not limited to the Rules (or applicable portions) in Chapter 5, Section G,<sup>4</sup> and that all non-trading rules of the Exchange would continue to apply. The Exchange recently proposed additional exceptions to Rules that would not apply during a time in which the trading floor in inoperable.<sup>5</sup>

As of March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of the novel coronavirus and is currently operating in an all-electronic configuration. While the trading floor was open, the

<sup>3</sup> Pursuant to Rule 5.26, the Exchange may enter into a back-up trading arrangement with another exchange, which could allow the Exchange to use the facilities of a back-up exchange to conduct trading of certain of its products. The Exchange currently has no back-up trading arrangement in place with another exchange.

<sup>4</sup> Chapter 5, Section G of the Exchange's rulebook sets forth the rules and procedures for manual order handling and open outcry trading on the Exchange.

<sup>5</sup> See Securities Exchange Act Release Nos. 88386 (March 13, 2020), 85 FR 15823 (March 19, 2020) (SR-CBOE-2020-019); and 88447 (March 20, 2020) (SR-CBOE-2020-023). The rule changes adopted in that filing are effective until May 15, 2020, unless extended. See Rule 5.24(e)(1).

<sup>1</sup> 17 U.S.C. 78s(b)(1).

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

<sup>5</sup> 17 CFR 200.30-3(a)(12).