

Required fields are shown with yellow backgrounds and asterisks.

Filing by Cboe Exchange, Inc.
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
 Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information
 Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Laura Last Name * Dickman
 Title * VP, Associate General Counsel
 E-mail * [REDACTED]
 Telephone * [REDACTED] Fax [REDACTED]

Signature
 Pursuant to the requirements of the Securities Exchange Act of 1934,
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.
 (Title *)
 Date 11/02/2020 VP, Associate General Counsel
 By Laura G. Dickman [REDACTED]
 (Name *)
 NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Rule 5.24. The Exchange initially submitted this rule filing SR-CBOE-2020-055 to the Securities and Exchange Commission (“Commission”) on June 12, 2020 (the “Initial Rule Filing”), submitted Amendment No. 1 to this rule filing SR-CBOE-2020-055 to the Commission on July 23, 2020, and submitted Amendment No. 2 to this rule filing SR-CBOE-2020-055 to the Commission on August 21, 2020. This Amendment No. 3 supersedes the Initial Rule Filing and Amendment Nos. 1 and 2 and replaces them in their entirety. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on May 12, 2020.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Laura G. Dickman, (312) 786-7572, Cboe Exchange, Inc., 400 South LaSalle, Chicago, Illinois 60605.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) 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 currently not be available in the event the trading floor becomes inoperable.¹

Rule 5.24(e)(1) currently states in the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable System Rules, except that open outcry Rules would not be in force, including but not limited to the Rules (or applicable portions) in Chapter 5, Section G,² and that all non-trading rules of the Exchange would continue to apply. The Exchange recently adopted several rule changes that would apply during a time in which the trading floor is inoperable, which are effective until August 31, 2020.³ The Exchange believes these Rules were necessary to

¹ 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.

² 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.

³ See Securities Exchange Act Release Nos. 88386 (March 13, 2020), 85 FR 15823 (March 19, 2020) (SR-CBOE-2020-019); 88447 (March 20, 2020) (SR-CBOE-2020-023); 88490 (March 26, 2020), 85 FR 18318 (April 1, 2020) (SR-CBOE-2020-026); 88530 (March 31, 2020), 85 FR 19182 (April 6, 2020) (SR-CBOE-

implement to maintain a fair and orderly market while the trading floor was not operable in order to create an all-electronic trading environment similar to the otherwise unavailable open outcry trading environment.

On March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of COVID-19.⁴ The Exchange operated in an all-electronic configuration until it reopened its trading floor on June 15, 2020, at which time the Exchange returned to operating as a hybrid exchange with electronic and open outcry trading. However, given the uncertainty related to the ongoing pandemic, which includes the possibility of the Exchange having to close its trading floor again, and given the possibility that the Exchange's trading floor may be inoperable for other reasons in the future, the Exchange believes it is appropriate to continue to review and enhance its business continuity plans. While the recent amendments to Rule 5.24(e)(1) allowed all-electronic trading to occur more similarly to open outcry trading, an all-electronic trading environment cannot fully replicate open outcry trading.⁵ Therefore, the Exchange continues to evaluate potential enhancements that it believes would permit trading while the trading floor is inoperable to more closely replicate its trading environment that exists during normal operations.

2020-031); 88886 (May 15, 2020), 85 FR 31008 (May 21, 2020) (SR-CBOE-2020-047); 89307 (July 14, 2020), 85 FR 43938 (July 20, 2020) (SR-CBOE-2020-066); and 90174 (October 14, 2020), 85 FR 66617 (October 20, 2020) (SR-CBOE-2020-092).

⁴ On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic and to slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses.

⁵ The Exchange continues to consider other enhancements to the all-electronic trading configuration that it believes may permit this configuration to further replicate the open outcry trading environment. The Exchange would submit separate rule filings for any such proposed enhancements.

There are certain features of open outcry trading that are difficult to replicate in an electronic trading environment, particularly the human interaction that permits persons to negotiate pricing and to facilitate executions of larger orders and high-risk and complicated strategies. For example, from January 2 through March 13, 2020 (the last day on which the trading floor was open), complex orders for SPX options with more than six legs represented approximately 5.3% of the total SPX complex order average daily volume (“ADV”) during that timeframe. However, from March 16, 2020 (the first day on which the trading floor was closed) through April 30, 2020, complex orders for SPX options with more than six legs represented only approximately 2.2% of the total SPX complex order ADV during that similar timeframe. Similarly, the corresponding ADV percentages for VIX options complex orders were approximately 6.2% (prior to the trading floor closing) and 1.8% (after the trading floor closing), respectively. This data, taken into consideration with feedback from customers, demonstrates the difficulty market participants have with executing high-risk and complex strategies in an all-electronic trading environment that does not allow for human interaction.

The Exchange believes the proposed rule change would further enhance the Exchange’s trading environment when the trading floor is inoperable by permitting market participants that generally operate on the trading floor to continue to interact in a substantially similar manner as they do on the trading floor. Specifically, the Exchange proposes to adopt Rule 5.24(e)(3) to permit it to make available an audio and video communication program to serve as a “virtual trading floor” in one or more option

classes⁶ if the physical trading floor is inoperable.⁷ In the program, the Exchange will create “virtual trading pits,” in each of which the Exchange will determine which options class(es) will be available for trading. This is similar to the Exchange’s authority with respect to open outcry trading on the physical trading floor.⁸ TPHs will access virtual trading pits via “zones.”⁹ Multiple classes may trade in a single virtual trading pit, available for trading in a single zone. This is similar to the physical trading floor, where multiple classes may be assigned to the same trading pit. For example, due to the limited number of floor participants in equity options, numerous equity options currently trade in the same trading pit on the physical trading floor.

Additionally, for a class in which a larger number of TPHs are generally present in the trading pit for that class on the physical trading floor, the Exchange may determine to divide a virtual trading pit for that class into multiple zones. Currently, if the Exchange were to implement the virtual trading floor, it plans to have eight zones for the SPX pit, in which nearly 200 individuals are generally present. The Exchange will assign

⁶ Like open outcry trading on the trading floor, open outcry trading on the virtual trading floor would be available only during Regular Trading Hours.

⁷ The proposed rule regarding the virtual trading floor is located in the Exchange’s broader rule regarding disaster recovery and business continuity, as the Exchange currently only plans to use the virtual trading floor tool for business continuity purposes if the trading floor becomes inoperable. If the Exchange were to determine to use the virtual trading floor in more permanent manner, it would submit a separate rule filing.

⁸ Pursuant to Rule 5.50(h), the Exchange may determine for each options class traded on the Exchange whether the class should be appointed to a trading crowd and which trading crowd should be appointed the class, and to determine the location on the Exchange’s trading floor of each trading crowd.

⁹ A “zone” is a virtual room within the communication program in which a subset of participants on the virtual trading floor will be visible. For example, in the communication program Zoom, a zone is created using breakout room functionality.

each Floor Broker to a zone, and each Market-Maker may determine in which zone it will be present. This is also similar to the arrangement of a physical trading pit. For example, the current SPX trading pit on the trading floor is operating in a modified state. The Exchange has significantly expanded the physical size of the SPX trading pit so the Exchange could implement safety protocols such as social distancing due to the COVID-19 pandemic. As a result, the Exchange has assigned spaces to all floor market participants – in general, there is a Floor Broker surrounded by Market-Makers in various spaces (physical equivalents to virtual zones) throughout the modified SPX trading pit. Floor Brokers have PAR workstations “hardwired” in their trading spaces, which corresponds to Floor Brokers being assigned to zones in the virtual trading floor. While technically if a Market-Maker was able to hear a Floor Broker located in a separate area of the trading pit represent an order, the Market-Maker may attempt to trade with that order. However, practically, the vast majority of a Market-Makers trades are with the nearest Floor Brokers, which corresponds to Market-Makers trading with Floor Brokers assigned to the zones in which the Market-Makers are present. Even when the SPX pit is operating in its standard state, while market participants are much close together, the Exchange understands that Market-Makers similarly “surround” Floor Brokers and execute the vast majority of their trades with those nearby Floor Brokers.

The Exchange believes virtual zones closely replicate this structure, as a zone will include certain Floor Brokers, and the Exchange expects Market-Makers will enter zones in which the Floor Brokers with whom they generally trade are present. Because a Market-Maker may exit one zone and enter another zone, the virtual trading floor will still permit a Market-Maker to trade with any Floor Broker in a virtual trading pit. In

fact, the flexibility to change zones may make it easier to a Market-Maker to trade with Floor Brokers that are otherwise too far away on the physical trading floor for them to trade (as movement inside a trading pit is practically not possible, and is currently not permitted while the physical trading floor operates in a modified state). Additionally, while each authorized individual receives only one log-in and may be present in only one zone at a time, a TPH organization may be represented by multiple individuals, permitting that TPH to participate in multiple zones (and thus with multiple brokers). The Exchange believes this virtual solution is a practical replication of the structure of the physical trading floor that will allow market participants to interact in nearly the same manner as they do on the physical trading floor if it were to become inoperable. In a virtual trading pit, each TPH authorized to access the virtual trading floor (as described below) that enters the virtual trading pit will be visible to all other TPHs in that virtual trading pit. Additionally, all TPHs in that virtual trading pit may speak to each other through the program. This will allow the same communication capabilities TPHs generally have on the physical trading floor so that they may conduct open outcry trading on the virtual trading floor in the same manner as they do on the physical trading floor.

All Rules related to open outcry trading, including those in Chapter 5, Section G, will apply to open outcry trading on the virtual floor in the same manner as they apply to open outcry trading on the physical trading floor, except as the context otherwise requires¹⁰ and as set forth in proposed subparagraph (e)(3). Proposed subparagraph

¹⁰ For example, Rule 5.80(d)(4)(1) requires a clerk to remain at a booth subject to certain exceptions. The concept of a booth is specific to the physical trading floor so has no applicability to the virtual trading floor. Additionally, as the virtual trading floor has no physical trading space, Rule 5.93 regarding trading crowd space disputes has no applicability to the virtual trading floor.

(e)(3)(A) lists certain terms in the Rules related to open outcry trading on the physical trading floor that will be deemed to refer to corresponding terms related to open outcry trading on the virtual trading floor. Specifically:

- References in the Rules to the “floor,” “trading floor,” and “Exchange floor” (and any other terms with the same meaning) will be deemed to refer to the “virtual trading floor.”
- References in the Rules to “pit,” “trading station,” and “trading post” (and any other terms with the same meaning) will be deemed to refer to a “virtual trading pit.”
- References in the Rules to “physical presence” (any other terms with the same meaning) in a pit or on the trading floor will be deemed to refer “presence” in a virtual trading pit or on the virtual trading floor, respectively.
- The terms “in-crowd market participant” and “ICMP” mean a Market-Maker, a Designated Primary Market-Maker (“DPM”) or Lead Market-Maker (“LMM”) with an allocation in a class, or a Floor Broker or PAR Official representing an order in a virtual pit on the virtual trading floor.¹¹
- References to an “on-floor DPM” or “on -floor LMM” will be deemed to refer to a DPM or LMM, respectively, in a virtual pit for its allocated class(es).

The proposed rule change clarifies in Rule 5.24(e)(1) and proposed Rule 5.24(e)(3) that the temporary rules set forth in Rule 5.24(e)(1) will not be applicable to trading in classes in which the Exchange makes a virtual trading floor available when the physical trading floor is inoperable. As noted above, the temporary rules in Rule 5.24(e)(1) are

¹¹ This is substantially similar to the definition of ICMP in Rule 1.1.

intended to make electronic trading more similar to open outcry trading when open outcry trading is not available by replicating certain features of open outcry trading in an electronic environment. However, the virtual trading floor will permit open outcry trading to continue in a separate environment if the physical trading floor becomes inoperable. Therefore, trading opportunities that are generally only available in open outcry trading will continue to be available on the virtual trading floor, making the temporary rules in Rule 5.24(e)(1) unnecessary when the virtual trading floor is available.

Access to the virtual trading floor will be substantially similar to access to the physical trading floor. Currently, admission to the physical trading floor is limited to Trading Permit Holders, Exchange employees, clerks employed by Trading Permit Holders and registered with the Exchange, service personnel, Exchange visitors that receive authorized admission to the trading floor pursuant to Exchange policy, and any other persons that the Exchange¹² authorizes admission to the trading floor.¹³ Proposed subparagraph (3)(B) provides the same persons with access to the virtual trading floor, except for service personnel and visitors. While clerks may access the virtual trading floor, they may only perform the same functions for their associated Floor Broker TPH organizations in connection with open outcry trading on the virtual trading floor as they do for open outcry trading on the physical trading floor. The Exchange understands permitting clerks to access the virtual trading floor will provide them with access to the information that they normally have access to on the physical trading floor, which will make it more

¹² Rule 5.80(a) provides the President or a designee with this authority. However, decisions regarding admission to the floor are generally made by appropriate Exchange staff, which may include the President. The Exchange believes use of the term “Exchange” is, therefore, more appropriate.

¹³ See Rule 5.80(a).

efficient for them to perform their tasks. Clerks will continue to be unable to enter into transactions on the Exchange.¹⁴ Additionally, as there is no physical equipment that would need service on the virtual trading floor, and no purpose for a visitor to observe the virtual trading floor, the proposed rule change excludes service personnel and visitors from accessing the virtual trading floor.¹⁵

As is the case with the physical trading floor, the Exchange will provide access to the virtual trading floor to TPHs the Exchange has approved to perform a trading floor function (including Floor Brokers and Market-Makers).¹⁶ This includes TPHs (and individuals that represent TPH organizations) that are currently authorized to perform trading floor functions, as well as any additional TPHs that receive such authorization in the future. Each authorized individual will receive one log-in to the virtual trading floor and may be present in only one virtual trading pit/zone at one time, which is consistent with the ability to be located in only one physical spot in a trading pit on the physical trading floor. The Exchange does not currently require a minimum number of Market-Makers to be present on the physical trading floor and does not believe it is necessary to impose any such requirement for the virtual trading floor.¹⁷ The Exchange tracks which

¹⁴ See Rule 5.80(d) and (e).

¹⁵ While the Exchange does not anticipate granting any other individuals with access to the virtual trading floor outside of TPHs and Exchange personnel (such as PAR Officials and Regulatory Division staff), the Exchange believes the flexibility to permit Exchange personnel to access the virtual trading floor is appropriate, such as to permit access to make updates to the communication program.

¹⁶ See Rule 5.80(e), pursuant to which only those TPHs the Exchange has approved to perform a floor trading function (including Floor Brokers and Market-Makers) may enter into transactions on the trading floor.

¹⁷ See Letter from Kevin Kennedy, Senior Vice President, North American Markets, Nasdaq, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated July 10, 2020, at 2.

individuals participate in the virtual trading floor, including when they log in and log out.¹⁸

TPHs are not required to display badges on the virtual trading floor, as the size of the view on the communication program may not permit badges to be visible.¹⁹ Currently, on the physical trading floor, a Market-Maker has an appointment to trade open outcry in all classes trading on the Exchange (and must be physically present in the trading crowd to trade in open outcry).²⁰ Similarly, any Market-Maker authorized to act on the physical trading floor will receive access to each virtual trading pit on the virtual trading floor and may determine which virtual trading pits it wants to enter to trade.

As set forth in Rule 5.81(a), subject to the requirements in that Rule, TPHs may use any communication device (e.g., any hardware or software related to a phone, system, or other device, including an instant messaging system, e-mail system, or similar device) on the trading floor and in any trading crowd of the Exchange (which it must register with the Exchange). Pursuant to proposed subparagraph (3)(C), TPHs may use any equipment to access the virtual trading floor. However, TPHs must use Exchange-provided equipment to access PAR workstations while transacting on the virtual trading floor for security purposes.²¹ This equipment is Exchange property, and the Exchange has sole authority to permission to provide individuals with access to a PAR workstation for purposes of participating in the virtual trading floor. The Exchange has already

¹⁸ Pursuant to proposed subparagraph (e)(3)(F), the Exchange will maintain records of its logs of participants in the virtual trading floor.

¹⁹ The virtual trading floor program will identify the TPH organization of each participant in a virtual trading pit.

²⁰ See Rule 5.50(e).

²¹ Hardware for access to the PAR workstation will be the only Exchange-provided equipment related to use of the virtual trading floor.

distributed to TPHs the necessary equipment for accessing PAR for purposes of the virtual trading floor.²² PAR will be used and work in the same manner for the virtual trading floor as it is on the physical trading floor.²³ Specifically, a Floor Broker may perform the following functions on a PAR workstation being used for the virtual trading floor in the same manner as it would perform these functions on a PAR workstation being used on the physical trading floor:

- Once an order is systematized and routed to PAR, a Floor Broker may manage all of its orders located on its PAR workstation. The Floor Broker may represent the order to the in-crowd market participants in the virtual trading pit (or in the zone in which the Floor Broker is located if the pit has been divided into zones), recording the time of representation on its PAR workstation.
- For orders executed in open outcry, the Floor Broker can then record the time of trade and report the trade to OPRA from its PAR workstation.
- A Floor Broker may route an order from its PAR workstation to the electronic book for execution.
- A Floor Broker may trade with Priority Customer orders resting at the top of the electronic book prior to executing an order in open outcry at the price of that order, as required by Rule 5.85.

²² See Cboe Exchange Notice C2020090301, *Cboe Options Virtual Trading Floor Environment* (September 3, 2020), available at https://cdn.cboe.com/resources/release_notes/2020/Cboe-Options-Virtual-Trading-Floor-Environment.pdf.

²³ See Rule 5.82. The Exchange notes TPHs similarly use Exchange-provided hardware to access PAR on the physical trading floor.

- A Floor Broker may cancel an order resting on its PAR workstation.

By making PAR workstations available for the virtual trading floor, a Floor Broker's workflow with respect to orders will be the same in the virtual trading floor as it is on the physical trading floor.

Prior to using a communications device for business purposes not provided by the Exchange (such as hardware for PAR workstations) on the trading floor of the Exchange, Trading Permit Holders must register the communications device by identifying (in a form and manner prescribed by the Exchange) the hardware (i.e., headset, cellular telephone, tablet, or other similar hardware). Because individuals on the virtual trading floor will not be on the Exchange premises (and thus will not be using Exchange-provided bandwidth to be shared with all market participants and do not pose the same security risks), the proposed rule change will not require TPHs to register devices they use while on the virtual trading floor. Rule 5.81(a) will otherwise apply in the same manner to the virtual trading floor as it does to the physical trading floor (to the extent the context requires). This includes requirements related to audit trail and record retention, prohibition on using any device for the purpose of recording activities in the virtual trading pit or maintaining an open line of continuous communication whereby a non-associated person not located in the trading crowd may continuously monitor the activities in the trading crowd, and the prohibition on using devices to disseminate quotes or last sale reports.

The Exchange will use a communication program that has audio and video capabilities, as well as “chat” functionality.²⁴ Proposed subparagraph (3)(E) provides that the Exchange may determine to require any Market-Maker or Floor Broker in a virtual trading pit that wants to trade against an order represented for execution to express its bid or offer in a chat available in the virtual trading pit.²⁵ Chats will be visible to all participants in a zone and will not be permitted directly between individual participants (i.e., the Exchange will disable direct messaging functionality within the communication program). TPHs on the physical trading floor only verbalize their interest to trade against a represented order, so not requiring bids and offers to be included in a chat conforms to current practice on the trading floor. However, given potential limitations of communication software (such as limitations on how many people may be heard at the same time in a virtual pit or potential buffering or echoing), the Exchange believes it may be appropriate to require market participants to use a chat tool in the communication program to indicate their interest in participating in a trade so that the representing Floor Broker is able to know the market from the trading crowd and fairly allocate the trade pursuant to the Rules. The Exchange believes the flexibility to impose this requirement in a virtual trading pit is appropriate, as these limitations may ultimately not interfere with a Floor Broker’s ability to hear all interest (particularly in virtual trading pits with few participants) and thus the additional requirement may potentially slow down

²⁴ Currently available programs with this functionality include Zoom, Webex, Microsoft Teams, and others. The Exchange currently intends to use Zoom for the virtual trading floor.

²⁵ The Exchange will announce to all TPHs any determination to require bids and offers to be expressed in a chat within the communication program pursuant to Rule 1.5 (such as by Exchange notice or regulatory circular). The Exchange will provide such notice with sufficient advance notice.

executions. Flexibility will permit the Exchange to balance system limitations with the additional burden of a new workflow step for each class, some of which have different open outcry trading environments than others. The communication program also has functionality that will permit Floor Brokers and Market-Makers in a zone to see an electronic blotter containing a running list of unexecuted orders that have been represented by Floor Brokers in that zone. As noted above, Floor Brokers record the times at which they verbally represent orders on the trading floor using their PAR workstations. The communication program has been connected to PAR to “read” and display the terms of orders on each Floor Broker’s PAR workstation (once an order is fully executed, it would no longer be included on the workstation and thus would no longer be in the blotter). This information is generally only verbally available on the physical trading floor. However, similar to why the Exchange is making chat functionality available in the virtual trading floor, the Exchange believes the additional information included in the blotter will benefit virtual trading floor participants given potential limitations of communication software (such as limitations on how many people may be heard at the same time in a virtual pit or potential buffering or echoing). For example, if a Market-Maker’s personal device momentarily freezes, causing the Market-Maker to miss the terms of an order represented by a Floor Broker, the Market-Maker will still be able to see the terms of the order in the blotter and determine whether it wants to seek to trade with the order.

The Exchange notes that, regardless of whether it requires the chat function to be used, the Exchange will maintain records of all chats in the virtual trading floor²⁶ in accordance with its self-regulatory organization record retention obligations, as these are “correspondence” records subject to those obligations, as set forth in proposed subparagraph (e)(3)(F).²⁷ Specifically, proposed Rule 5.24(e)(3)(F) states the Exchange will retain records of the chats, participant logs, and any other records related to the virtual trading floor that are subject to the Exchange’s record retention obligations under the Exchange Act. The Exchange does not currently plan to make video recordings of the virtual trading floor because the Exchange believes video is not subject to its record retention obligations. However, if the Exchange determined to make video recordings of the virtual trading floor, it would retain those video recordings in accordance with its record retention obligations.²⁸

Floor Officials will have access to all zones in the virtual trading floor. Floor Officials will have the same authority to act in the virtual trading floor as they do on the physical trading floor. Additionally, a Cboe employee will be available in each zone to provide technical and operational support (in addition to regular Exchange support staff for floor operations) if participants in the virtual trading floor need assistance. If there was an issue with the communication program making the virtual trading floor unavailable, the Exchange would operate in an all-electronic configuration (as it did

²⁶ The Exchange notes the information that will be displayed in the blotter is already retained as part of the PAR order audit trail.

²⁷ See 15 U.S.C. 78q(a).

²⁸ Id. The Exchange notes it will disable the ability of TPHs to record the virtual trading floor through the communication program.

earlier in 2020 when the trading floor was unavailable) until the communication program was available again.

The Exchange has conducted several town halls with TPHs in which the Exchange presented the functionality of the virtual trading floor and has made the virtual trading floor available for testing so that the Exchange will be ready to implement it if necessary.²⁹ The Exchange has received positive feedback from TPHs regarding the tool and will continue to make updates as necessary and appropriate in response to comments it receives to make the virtual trading floor replicate the open outcry trading experience on the physical trading floor as much as possible. The Exchange believes this will provide the opportunity for as seamless a rollout as possible if circumstances cause the Exchange to make the virtual trading floor available.

While open outcry trading on the virtual trading floor will occur with in-crowd market participants interacting with each other remotely through a computer communication program, all trading that occurs on the virtual trading floor will occur in the same manner as it does on the physical trading floor. Specifically, open outcry trading on the virtual trading floor will be subject to the same priority and allocation rules as open trading on the physical trading floor, as set forth in Rule 5.85. Any risk controls and price protection mechanisms in Rule 5.34 that apply to open outcry trading on the physical trading floor will apply in the same manner to open outcry trading on the virtual trading floor. The Exchange will make the same order types and instructions available on the virtual trading floor as it makes available on the physical trading floor pursuant to

²⁹ See supra note 22.

Rule 5.83.³⁰ Floor Brokers will be subject to the responsibilities set forth in Rule 5.91 on the virtual trading floor, as they are on the physical trading floor.

In addition, TPHs participating on the virtual trading floor will be subject to the same regulatory requirements on the virtual trading floor as they are on the physical trading floor, including those set forth in Chapters 8 and 9. Orders must be systematized³¹ and represented,³² and transactions reported,³³ in connection with the virtual trading floor in the same manner as they are when trading on the physical trading floor. Therefore, the audit trail for open outcry trading on the virtual trading floor will capture the same information that it does for open outcry trading on the physical trading floor. The Regulatory Division will be able to utilize preexisting floor surveillances to surveil for the activity occurring on the virtual trading floor. Specifically, the Regulatory Division monitors open outcry trading using various automated surveillances, which incorporate systematized order and trade execution information and applicable time stamps, as well as other elements of the audit trail from the floor broker's order entry system(s), the Exchange's PAR workstations and the Cboe matching engine. Because in-crowd market participants will use the same tools to systematize and execute orders on the virtual trading floor that they would use on the physical trading floor, and will be

³⁰ Pursuant to Rule 5.83(b), the Exchange may determine whether to make complex orders types available for open outcry trading. The Exchange will not make a Multi-Class Spread order available on the virtual trading floor unless the Exchange has made the virtual trading floor available for both classes represented in the order, as such an order must be represented at both trading stations (or virtual trading pits in the context of the virtual trading floor) to be executed. See Rule 5.85(d).

³¹ See Rule 5.7(f).

³² See Rule 5.91(a)(4).

³³ See Rule 6.1(c).

subject to the same trading rules and requirements, the Regulatory Division's automated surveillances applicable to open outcry trading will incorporate the same audit trail information from open outcry trading on the virtual trading floor that they do from open outcry trading on the physical trading floor. Additionally, as noted above, Regulatory Division staff may access the virtual trading floor if it deems necessary and appropriate, including records of any chats from the virtual trading floor if that functionality is used.

(b) 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.³⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³⁵ 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)³⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

³⁴ 15 U.S.C. 78f(b).

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ Id.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, as it will permit open outcry trading to continue in the event the Exchange's trading floor is inoperable. As discussed above, while the Exchange has adopted Rules that have allowed all-electronic trading to occur more similarly to open outcry trading, there are certain features of open outcry trading that are difficult to replicate in an electronic trading environment. The Exchange has observed, and understands from various market participants, that they have had difficulty executing certain orders, such as larger orders and high-risk and complicated strategies, in an all-electronic trading configuration without the element of human interaction to negotiate pricing for these orders. The proposed rule change would provide an environment in which this interaction would be available despite the inoperability of the physical trading floor. The Exchange believes the proposed rule change may facilitate continued trading of these orders if and when the trading floor is inoperable. As a result, the Exchange believes providing continuous access to open outcry trading when the physical trading floor is inoperable will remove impediments to a free and open market and will ultimately benefit investors, particularly those desiring to execute high-risk and complex trading strategies.

The Exchange also believes the proposed rule change will promote just and equitable principles of trade, as open outcry trading on a virtual trading floor will occur in accordance with the same trading rules and be subject to the same regulatory requirements that apply to open outcry trading on the physical trading floor, all of which have previously been filed with the Commission. The proposed rule change will merely

permit this open outcry trading to occur in a virtual setting rather than a physical setting (which may be appropriate for health and safety purposes) – in other words, open outcry trading on a virtual trading floor will occur while market participants operate remotely as they do when they trade electronically. Specifically, open outcry trading on the virtual trading floor will be subject to the same priority and allocation rules as open trading on the physical trading floor, as set forth in Rule 5.85. As is the case for open outcry trading on the physical trading floor, open outcry trading on the virtual trading floor is consistent with Section 11(a) of the Act, as Rule 5.85(a)(2)(E) (which will apply to open outcry trading on the virtual trading floor) requires TPHs relying on Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder (the so called “G exemption rule”) as an exemption must yield priority to any bid (offer) at the same price of Priority Customer orders and broker-dealer orders resting in the Book, as well as any other bid (offer) that has priority over those broker-dealer orders under this Rule. The Exchange may make the same order types and instructions available on the virtual trading floor as it makes available on the physical trading floor pursuant to Rule 5.83. Floor Brokers will be subject to the responsibilities set forth in Rule 5.91 on the virtual trading floor, as they are on the physical trading floor.

The Exchange further believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by permitting the Exchange to establish zones, particularly in classes with larger number of participants on the trading floor. As discussed above, the zones are intended to replicate the trading floor organization and will permit market participants to interact in a substantially similar way

as they do on the trading floor. The zones will also encourage interaction of a reasonable number of people within the communication program. While the zones will include additional functionality that is not otherwise available on the trading floor, such as the chat and blotter functionality, the Exchange believes the creation of zones and inclusion of this functionality will create a virtual environment that promotes fair and orderly trading given the potential limitations of communication software.

Additionally, TPHs participating on the virtual trading floor will be subject to the same regulatory requirements on the virtual trading floor as they are on the physical trading floor, including those set forth in Chapters 8 and 9. Orders must be systematized and represented, and transactions reported, in connection with the virtual trading floor in the same manner as they are when trading on the physical trading floor. Therefore, the audit trail for open outcry trading on the virtual trading floor will capture the same information that it does for open outcry trading on the physical trading floor. The Regulatory Division will be able to utilize preexisting floor surveillances to surveil for the activity occurring on the virtual trading floor. Specifically, the Regulatory Division monitors open outcry trading using various automated surveillances, which incorporate systematized order and trade execution information and applicable time stamps, as well as other elements of the audit trail from the floor broker's order entry system(s), the Exchange's PAR workstations, and the Cboe matching engine. Because in-crowd market participants will use the same tools to systematize and execute orders on the virtual trading floor that they would use on the physical trading floor, and will be subject to the same trading rules and requirements, the Regulatory Division's automated surveillances applicable to open outcry trading will incorporate the same audit trail information from

open outcry trading on the virtual trading floor that they do from open outcry trading on the physical trading floor. Additionally, as noted above, Regulatory Division staff may access the virtual trading floor if it deems necessary and appropriate, including records of any chats from the virtual trading floor if that functionality is used. The Exchange believes it will promote just and equitable principles of trading for all open outcry trading to occur in substantially the same manner, whether it occurs while market participants are in the same physical setting or in remote settings being connected through a technological solution.

In addition, the Exchange believes the proposed rule change will not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, as all individuals authorized to act on the physical trading floor (both TPH organizations authorized at the time the physical trading floor becomes inoperable and any TPH organization that becomes authorized after the physical trading floor becomes inoperable) will be provided with access to the virtual trading floor.

Item 4. 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, as all TPH organizations authorized by the Exchange, or that become authorized by the Exchange, to transact on the trading floor will receive access to the virtual trading floor. 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, as it relates solely to the location of open outcry

trading on the Exchange. The proposed rule change will merely permit open outcry trading that generally occurs while market participants are located in the same physical setting to occur while market participants are in a remote setting, connected by a technological solution (as electronic trading does).

The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. The Exchange believes the proposed rule change will provide market participants with continuous access to open outcry trading when the physical trading floor is inoperable. The Exchange believes this may facilitate continued, competitive price negotiations and trading of orders that the Exchange understands are more difficult to execute in an all-electronic trading environment without human interaction. Additionally, the proposed rule change will provide customer orders represented for open outcry execution with access to the same pool of liquidity when the trading floor is inoperable to which those orders would have access when the trading floor is operating in its normal state. Maintenance of this level of liquidity at all times, even when the trading floor is inoperable, may promote competition by providing these customer orders with increased liquidity than may otherwise be available, and thus increased execution opportunities and price discovery.

Item 5. 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.

Item 6. Extension of Time Period for Commission Action

Not applicable.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) The proposed rule change is filed for accelerated effectiveness pursuant to Section 19(b)(2) of the Act.³⁷ The Exchange requests that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act so that it may be operative as soon as practicable. The Exchange believes accelerated approval of the proposed rule change is appropriate, because it will protect investors and the public interest by permitting open outcry trading to continue in the event the Exchange's trading floor is inoperable. As discussed above, while the Exchange has adopted Rules that have allowed all-electronic trading to occur more similarly to open outcry trading, there are certain features of open outcry trading that are difficult to replicate in an electronic trading environment. The Exchange has observed, and understands from various market participants, that they have had difficulty executing certain orders, such as larger orders and high-risk and complicated strategies, in an all-electronic trading configuration without the element of human interaction to negotiate pricing for these orders. The proposed rule change would provide an environment in which this interaction would be available despite the inoperability of the physical trading floor. The Exchange believes the proposed rule change may facilitate continued trading of these orders if and when the trading floor is inoperable or. As a result, the Exchange

³⁷ 15 U.S.C. 78s(b)(2).

believes providing continuous access to open outcry trading when the physical trading floor is inoperable, which will ultimately benefit investors, particularly those desiring to execute high-risk and complex trading strategies. The proposed rule change will provide customer orders represented for open outcry execution with access to the same pool of liquidity when the trading floor is inoperable to which those orders would have access when the trading floor is operating in its normal state. Maintenance of this level of liquidity under circumstances that may cause the trading floor to be inoperable may promote competition by providing these customer orders with increased liquidity than may otherwise be available under those circumstances, and thus increased execution opportunities and price discovery, which ultimately benefits investors.

The Exchange notes all individuals authorized by the Exchange, or that become authorized by the Exchange, to transact on the trading floor will receive access to the virtual trading floor. The Exchange believes the proposed rule change will provide market participants with continuous access to open outcry trading when the physical trading floor is inoperable. The Exchange believes this may facilitate continued, competitive price negotiations and trading of orders that the Exchange understands are more difficult to execute electronically without human interaction. The proposed rule change does not modify the manner in which TPHs may conduct open outcry trading, but rather relates solely to the location of individuals engaging in open outcry trading on the Exchange.

While the concept of conducting open outcry trading not on an Exchange's premises is novel, the actual open outcry trading that will occur on the proposed virtual trading floor is not novel, as open outcry trading on a virtual trading floor will occur in

accordance with the same trading rules and be subject to the same regulatory requirements that apply to open outcry trading on the physical trading floor, all of which have previously been filed with the Commission. Additionally, market participants trading from remote locations is not novel, as market participants currently trade electronically from remote locations. The proposed rule change will merely permit open outcry trading that generally occurs while market participants are located in the same physical setting to occur while market participants are in a remote setting, connected by a technological solution (as electronic trading does).

The Exchange requests accelerated approval of Amendment No. 3. Amendment No. 3 makes no substantive changes to the proposal to permit the Exchange to operate a virtual trading floor if the Exchange's physical trading floor is inoperable. Rather, Amendment No. 3 also adds detail and clarifying language regarding the operation of the communication program that will be used for the virtual trading floor. Additionally, Amendment No. 3 includes additional descriptions of the Exchange's self-regulatory organization record-keeping requirements and Exchange support of the virtual trading floor. These additions have no impact on the proposed rule change and merely add detail and support for the proposal. As noted above, the Exchange reopened its trading floor on June 15, 2020. Given the ongoing pandemic and recent surge in COVID-19 cases throughout the country, including in Chicago, it is possible the Exchange may determine it is necessary to close the trading floor again for health and safety purposes, which could occur at any time. Accelerated approval of the proposed rule change and Amendment No. 3 would permit the Exchange to offer a virtual trading floor solution in that situation if it were to occur in the near future. This would permit the Exchange to provide market participants

with continuous access to open outcry trading while the trading floor is unavailable, which would increase the ability of market participants to execute certain orders that are more difficult to execute in an all-electronic configuration, as discussed above. Continuous access to the full pool of liquidity that is generally available on the trading floor when it operates in a normal state will provide customers with continuous access to the price discovery and execution opportunities resulting from that liquidity.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 4. Marked copy of changes to the rule text proposed in Amendment No. 3 compared against the Initial Rule Filing, as amended by Amendment No. 2.

Exhibit 5. Proposed rule text.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CBOE-2020-055]

[Insert date]

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

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 [insert date], 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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 currently not be available in the event the trading floor becomes inoperable.³

Rule 5.24(e)(1) currently states in the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable System Rules, except that

³ 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.

open outcry Rules would not be in force, including but not limited to the Rules (or applicable portions) in Chapter 5, Section G,⁴ and that all non-trading rules of the Exchange would continue to apply. The Exchange recently adopted several rule changes that would apply during a time in which the trading floor is inoperable, which are effective until August 31, 2020.⁵ The Exchange believes these Rules were necessary to implement to maintain a fair and orderly market while the trading floor was not operable in order to create an all-electronic trading environment similar to the otherwise unavailable open outcry trading environment.

On March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of COVID-19.⁶ The Exchange operated in an all-electronic configuration until it reopened its trading floor on June 15, 2020, at which time the Exchange returned to operating as a hybrid exchange with electronic and open outcry trading. However, given the uncertainty related to the ongoing pandemic, which includes the possibility of the Exchange having to close its trading floor again, and given the possibility that the Exchange's trading floor may be inoperable for other reasons in the future, the Exchange

⁴ 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.

⁵ See Securities Exchange Act Release Nos. 88386 (March 13, 2020), 85 FR 15823 (March 19, 2020) (SR-CBOE-2020-019); 88447 (March 20, 2020) (SR-CBOE-2020-023); 88490 (March 26, 2020), 85 FR 18318 (April 1, 2020) (SR-CBOE-2020-026); 88530 (March 31, 2020), 85 FR 19182 (April 6, 2020) (SR-CBOE-2020-031); 88886 (May 15, 2020), 85 FR 31008 (May 21, 2020) (SR-CBOE-2020-047); 89307 (July 14, 2020), 85 FR 43938 (July 20, 2020) (SR-CBOE-2020-066); and 90174 (October 14, 2020), 85 FR 66617 (October 20, 2020) (SR-CBOE-2020-092).

⁶ On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic and to slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses.

believes it is appropriate to continue to review and enhance its business continuity plans. While the recent amendments to Rule 5.24(e)(1) allowed all-electronic trading to occur more similarly to open outcry trading, an all-electronic trading environment cannot fully replicate open outcry trading.⁷ Therefore, the Exchange continues to evaluate potential enhancements that it believes would permit trading while the trading floor is inoperable to more closely replicate its trading environment that exists during normal operations.

There are certain features of open outcry trading that are difficult to replicate in an electronic trading environment, particularly the human interaction that permits persons to negotiate pricing and to facilitate executions of larger orders and high-risk and complicated strategies. For example, from January 2 through March 13, 2020 (the last day on which the trading floor was open), complex orders for SPX options with more than six legs represented approximately 5.3% of the total SPX complex order average daily volume (“ADV”) during that timeframe. However, from March 16, 2020 (the first day on which the trading floor was closed) through April 30, 2020, complex orders for SPX options with more than six legs represented only approximately 2.2% of the total SPX complex order ADV during that similar timeframe. Similarly, the corresponding ADV percentages for VIX options complex orders were approximately 6.2% (prior to the trading floor closing) and 1.8% (after the trading floor closing), respectively. This data, taken into consideration with feedback from customers, demonstrates the difficulty market participants have with executing high-risk and complex strategies in an all-electronic trading environment that does not allow for human interaction.

⁷ The Exchange continues to consider other enhancements to the all-electronic trading configuration that it believes may permit this configuration to further replicate the open outcry trading environment. The Exchange would submit separate rule filings for any such proposed enhancements.

The Exchange believes the proposed rule change would further enhance the Exchange's trading environment when the trading floor is inoperable by permitting market participants that generally operate on the trading floor to continue to interact in a substantially similar manner as they do on the trading floor. Specifically, the Exchange proposes to adopt Rule 5.24(e)(3) to permit it to make available an audio and video communication program to serve as a "virtual trading floor" in one or more option classes⁸ if the physical trading floor is inoperable.⁹ In the program, the Exchange will create "virtual trading pits," in each of which the Exchange will determine which options class(es) will be available for trading. This is similar to the Exchange's authority with respect to open outcry trading on the physical trading floor.¹⁰ TPHs will access virtual trading pits via "zones."¹¹ Multiple classes may trade in a single virtual trading pit, available for trading in a single zone. This is similar to the physical trading floor, where multiple classes may be assigned to the same trading pit. For example, due to the limited

⁸ Like open outcry trading on the trading floor, open outcry trading on the virtual trading floor would be available only during Regular Trading Hours.

⁹ The proposed rule regarding the virtual trading floor is located in the Exchange's broader rule regarding disaster recovery and business continuity, as the Exchange currently only plans to use the virtual trading floor tool for business continuity purposes if the trading floor becomes inoperable. If the Exchange were to determine to use the virtual trading floor in more permanent manner, it would submit a separate rule filing.

¹⁰ Pursuant to Rule 5.50(h), the Exchange may determine for each options class traded on the Exchange whether the class should be appointed to a trading crowd and which trading crowd should be appointed the class, and to determine the location on the Exchange's trading floor of each trading crowd.

¹¹ A "zone" is a virtual room within the communication program in which a subset of participants on the virtual trading floor will be visible. For example, in the communication program Zoom, a zone is created using breakout room functionality.

number of floor participants in equity options, numerous equity options currently trade in the same trading pit on the physical trading floor.

Additionally, for a class in which a larger number of TPHs are generally present in the trading pit for that class on the physical trading floor, the Exchange may determine to divide a virtual trading pit for that class into multiple zones. Currently, if the Exchange were to implement the virtual trading floor, it plans to have eight zones for the SPX pit, in which nearly 200 individuals are generally present. The Exchange will assign each Floor Broker to a zone, and each Market-Maker may determine in which zone it will be present. This is also similar to the arrangement of a physical trading pit. For example, the current SPX trading pit on the trading floor is operating in a modified state. The Exchange has significantly expanded the physical size of the SPX trading pit so the Exchange could implement safety protocols such as social distancing due to the COVID-19 pandemic. As a result, the Exchange has assigned spaces to all floor market participants – in general, there is a Floor Broker surrounded by Market-Makers in various spaces (physical equivalents to virtual zones) throughout the modified SPX trading pit. Floor Brokers have PAR workstations “hardwired” in their trading spaces, which corresponds to Floor Brokers being assigned to zones in the virtual trading floor. While technically if a Market-Maker was able to hear a Floor Broker located in a separate area of the trading pit represent an order, the Market-Maker may attempt to trade with that order. However, practically, the vast majority of a Market-Makers trades are with the nearest Floor Brokers, which corresponds to Market-Makers trading with Floor Brokers assigned to the zones in which the Market-Makers are present. Even when the SPX pit is operating in its standard state, while market participants are much close together, the

Exchange understands that Market-Makers similarly “surround” Floor Brokers and execute the vast majority of their trades with those nearby Floor Brokers.

The Exchange believes virtual zones closely replicate this structure, as a zone will include certain Floor Brokers, and the Exchange expects Market-Makers will enter zones in which the Floor Brokers with whom they generally trade are present. Because a Market-Maker may exit one zone and enter another zone, the virtual trading floor will still permit a Market-Maker to trade with any Floor Broker in a virtual trading pit. In fact, the flexibility to change zones may make it easier to a Market-Maker to trade with Floor Brokers that are otherwise too far away on the physical trading floor for them to trade (as movement inside a trading pit is practically not possible, and is currently not permitted while the physical trading floor operates in a modified state). Additionally, while each authorized individual receives only one log-in and may be present in only one zone at a time, a TPH organization may be represented by multiple individuals, permitting that TPH to participate in multiple zones (and thus with multiple brokers). The Exchange believes this virtual solution is a practical replication of the structure of the physical trading floor that will allow market participants to interact in nearly the same manner as they do on the physical trading floor if it were to become inoperable. In a virtual trading pit, each TPH authorized to access the virtual trading floor (as described below) that enters the virtual trading pit will be visible to all other TPHs in that virtual trading pit. Additionally, all TPHs in that virtual trading pit may speak to each other through the program. This will allow the same communication capabilities TPHs generally have on the physical trading floor so that they may conduct open outcry trading on the virtual trading floor in the same manner as they do on the physical trading floor.

All Rules related to open outcry trading, including those in Chapter 5, Section G, will apply to open outcry trading on the virtual floor in the same manner as they apply to open outcry trading on the physical trading floor, except as the context otherwise requires¹² and as set forth in proposed subparagraph (e)(3). Proposed subparagraph (e)(3)(A) lists certain terms in the Rules related to open outcry trading on the physical trading floor that will be deemed to refer to corresponding terms related to open outcry trading on the virtual trading floor. Specifically:

- References in the Rules to the “floor,” “trading floor,” and “Exchange floor” (and any other terms with the same meaning) will be deemed to refer to the “virtual trading floor.”
- References in the Rules to “pit,” “trading station,” and “trading post” (and any other terms with the same meaning) will be deemed to refer to a “virtual trading pit.”
- References in the Rules to “physical presence” (any other terms with the same meaning) in a pit or on the trading floor will be deemed to refer “presence” in a virtual trading pit or on the virtual trading floor, respectively.
- The terms “in-crowd market participant” and “ICMP” mean a Market-Maker, a Designated Primary Market-Maker (“DPM”) or Lead Market-Maker

¹² For example, Rule 5.80(d)(4)(1) requires a clerk to remain at a booth subject to certain exceptions. The concept of a booth is specific to the physical trading floor so has no applicability to the virtual trading floor. Additionally, as the virtual trading floor has no physical trading space, Rule 5.93 regarding trading crowd space disputes has no applicability to the virtual trading floor.

(“LMM”) with an allocation in a class, or a Floor Broker or PAR Official representing an order in a virtual pit on the virtual trading floor.¹³

- References to an “on-floor DPM” or “on -floor LMM” will be deemed to refer to a DPM or LMM, respectively, in a virtual pit for its allocated class(es).

The proposed rule change clarifies in Rule 5.24(e)(1) and proposed Rule 5.24(e)(3) that the temporary rules set forth in Rule 5.24(e)(1) will not be applicable to trading in classes in which the Exchange makes a virtual trading floor available when the physical trading floor is inoperable. As noted above, the temporary rules in Rule 5.24(e)(1) are intended to make electronic trading more similar to open outcry trading when open outcry trading is not available by replicating certain features of open outcry trading in an electronic environment. However, the virtual trading floor will permit open outcry trading to continue in a separate environment if the physical trading floor becomes inoperable. Therefore, trading opportunities that are generally only available in open outcry trading will continue to be available on the virtual trading floor, making the temporary rules in Rule 5.24(e)(1) unnecessary when the virtual trading floor is available.

Access to the virtual trading floor will be substantially similar to access to the physical trading floor. Currently, admission to the physical trading floor is limited to Trading Permit Holders, Exchange employees, clerks employed by Trading Permit Holders and registered with the Exchange, service personnel, Exchange visitors that receive authorized admission to the trading floor pursuant to Exchange policy, and any other persons that the Exchange¹⁴ authorizes admission to the trading floor.¹⁵ Proposed

¹³ This is substantially similar to the definition of ICMP in Rule 1.1.

¹⁴ Rule 5.80(a) provides the President or a designee with this authority. However, decisions regarding admission to the floor are generally made by appropriate

subparagraph (3)(B) provides the same persons with access to the virtual trading floor, except for service personnel and visitors. While clerks may access the virtual trading floor, they may only perform the same functions for their associated Floor Broker TPH organizations in connection with open outcry trading on the virtual trading floor as they do for open outcry trading on the physical trading floor. The Exchange understands permitting clerks to access the virtual trading floor will provide them with access to the information that they normally have access to on the physical trading floor, which will make it more efficient for them to perform their tasks. Clerks will continue to be unable to enter into transactions on the Exchange.¹⁶ Additionally, as there is no physical equipment that would need service on the virtual trading floor, and no purpose for a visitor to observe the virtual trading floor, the proposed rule change excludes service personnel and visitors from accessing the virtual trading floor.¹⁷

As is the case with the physical trading floor, the Exchange will provide access to the virtual trading floor to TPHs the Exchange has approved to perform a trading floor function (including Floor Brokers and Market-Makers).¹⁸ This includes TPHs (and individuals that represent TPH organizations) that are currently authorized to perform

Exchange staff, which may include the President. The Exchange believes use of the term “Exchange” is, therefore, more appropriate.

¹⁵ See Rule 5.80(a).

¹⁶ See Rule 5.80(d) and (e).

¹⁷ While the Exchange does not anticipate granting any other individuals with access to the virtual trading floor outside of TPHs and Exchange personnel (such as PAR Officials and Regulatory Division staff), the Exchange believes the flexibility to permit Exchange personnel to access the virtual trading floor is appropriate, such as to permit access to make updates to the communication program.

¹⁸ See Rule 5.80(e), pursuant to which only those TPHs the Exchange has approved to perform a floor trading function (including Floor Brokers and Market-Makers) may enter into transactions on the trading floor.

trading floor functions, as well as any additional TPHs that receive such authorization in the future. Each authorized individual will receive one log-in to the virtual trading floor and may be present in only one virtual trading pit/zone at one time, which is consistent with the ability to be located in only one physical spot in a trading pit on the physical trading floor. The Exchange does not currently require a minimum number of Market-Makers to be present on the physical trading floor and does not believe it is necessary to impose any such requirement for the virtual trading floor.¹⁹ The Exchange tracks which individuals participate in the virtual trading floor, including when they log in and log out.²⁰

TPHs are not required to display badges on the virtual trading floor, as the size of the view on the communication program may not permit badges to be visible.²¹ Currently, on the physical trading floor, a Market-Maker has an appointment to trade open outcry in all classes trading on the Exchange (and must be physically present in the trading crowd to trade in open outcry).²² Similarly, any Market-Maker authorized to act on the physical trading floor will receive access to each virtual trading pit on the virtual trading floor and may determine which virtual trading pits it wants to enter to trade.

As set forth in Rule 5.81(a), subject to the requirements in that Rule, TPHs may use any communication device (e.g., any hardware or software related to a phone, system,

¹⁹ See Letter from Kevin Kennedy, Senior Vice President, North American Markets, Nasdaq, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated July 10, 2020, at 2.

²⁰ Pursuant to proposed subparagraph (e)(3)(F), the Exchange will maintain records of its logs of participants in the virtual trading floor.

²¹ The virtual trading floor program will identify the TPH organization of each participant in a virtual trading pit.

²² See Rule 5.50(e).

or other device, including an instant messaging system, e-mail system, or similar device) on the trading floor and in any trading crowd of the Exchange (which it must register with the Exchange). Pursuant to proposed subparagraph (3)(C), TPHs may use any equipment to access the virtual trading floor. However, TPHs must use Exchange-provided equipment to access PAR workstations while transacting on the virtual trading floor for security purposes.²³ This equipment is Exchange property, and the Exchange has sole authority to permission to provide individuals with access to a PAR workstation for purposes of participating in the virtual trading floor. The Exchange has already distributed to TPHs the necessary equipment for accessing PAR for purposes of the virtual trading floor.²⁴ PAR will be used and work in the same manner for the virtual trading floor as it is on the physical trading floor.²⁵ Specifically, a Floor Broker may perform the following functions on a PAR workstation being used for the virtual trading floor in the same manner as it would perform these functions on a PAR workstation being used on the physical trading floor:

- Once an order is systematized and routed to PAR, a Floor Broker may manage all of its orders located on its PAR workstation. The Floor Broker may represent the order to the in-crowd market participants in the virtual trading pit (or in the zone in which the Floor Broker is located if

²³ Hardware for access to the PAR workstation will be the only Exchange-provided equipment related to use of the virtual trading floor.

²⁴ See Cboe Exchange Notice C2020090301, *Cboe Options Virtual Trading Floor Environment* (September 3, 2020), available at https://cdn.cboe.com/resources/release_notes/2020/Cboe-Options-Virtual-Trading-Floor-Environment.pdf.

²⁵ See Rule 5.82. The Exchange notes TPHs similarly use Exchange-provided hardware to access PAR on the physical trading floor.

the pit has been divided into zones), recording the time of representation on its PAR workstation.

- For orders executed in open outcry, the Floor Broker can then record the time of trade and report the trade to OPRA from its PAR workstation.
- A Floor Broker may route an order from its PAR workstation to the electronic book for execution.
- A Floor Broker may trade with Priority Customer orders resting at the top of the electronic book prior to executing an order in open outcry at the price of that order, as required by Rule 5.85.
- A Floor Broker may cancel an order resting on its PAR workstation.

By making PAR workstations available for the virtual trading floor, a Floor Broker's workflow with respect to orders will be the same in the virtual trading floor as it is on the physical trading floor.

Prior to using a communications device for business purposes not provided by the Exchange (such as hardware for PAR workstations) on the trading floor of the Exchange, Trading Permit Holders must register the communications device by identifying (in a form and manner prescribed by the Exchange) the hardware (i.e., headset, cellular telephone, tablet, or other similar hardware). Because individuals on the virtual trading floor will not be on the Exchange premises (and thus will not be using Exchange-provided bandwidth to be shared with all market participants and do not pose the same security risks), the proposed rule change will not require TPHs to register devices they use while on the virtual trading floor. Rule 5.81(a) will otherwise apply in the same manner to the virtual trading floor as it does to the physical trading floor (to the extent the

context requires). This includes requirements related to audit trail and record retention, prohibition on using any device for the purpose of recording activities in the virtual trading pit or maintaining an open line of continuous communication whereby a non-associated person not located in the trading crowd may continuously monitor the activities in the trading crowd, and the prohibition on using devices to disseminate quotes or last sale reports.

The Exchange will use a communication program that has audio and video capabilities, as well as “chat” functionality.²⁶ Proposed subparagraph (3)(E) provides that the Exchange may determine to require any Market-Maker or Floor Broker in a virtual trading pit that wants to trade against an order represented for execution to express its bid or offer in a chat available in the virtual trading pit.²⁷ Chats will be visible to all participants in a zone and will not be permitted directly between individual participants (i.e., the Exchange will disable direct messaging functionality within the communication program). TPHs on the physical trading floor only verbalize their interest to trade against a represented order, so not requiring bids and offers to be included in a chat conforms to current practice on the trading floor. However, given potential limitations of communication software (such as limitations on how many people may be heard at the same time in a virtual pit or potential buffering or echoing), the Exchange believes it may be appropriate to require market participants to use a chat tool in the communication

²⁶ Currently available programs with this functionality include Zoom, Webex, Microsoft Teams, and others. The Exchange currently intends to use Zoom for the virtual trading floor.

²⁷ The Exchange will announce to all TPHs any determination to require bids and offers to be expressed in a chat within the communication program pursuant to Rule 1.5 (such as by Exchange notice or regulatory circular). The Exchange will provide such notice with sufficient advance notice.

program to indicate their interest in participating in a trade so that the representing Floor Broker is able to know the market from the trading crowd and fairly allocate the trade pursuant to the Rules. The Exchange believes the flexibility to impose this requirement in a virtual trading pit is appropriate, as these limitations may ultimately not interfere with a Floor Broker's ability to hear all interest (particularly in virtual trading pits with few participants) and thus the additional requirement may potentially slow down executions. Flexibility will permit the Exchange to balance system limitations with the additional burden of a new workflow step for each class, some of which have different open outcry trading environments than others. The communication program also has functionality that will permit Floor Brokers and Market-Makers in a zone to see an electronic blotter containing a running list of unexecuted orders that have been represented by Floor Brokers in that zone. As noted above, Floor Brokers record the times at which they verbally represent orders on the trading floor using their PAR workstations. The communication program has been connected to PAR to "read" and display the terms of orders on each Floor Broker's PAR workstation (once an order is fully executed, it would no longer be included on the workstation and thus would no longer be in the blotter). This information is generally only verbally available on the physical trading floor. However, similar to why the Exchange is making chat functionality available in the virtual trading floor, the Exchange believes the additional information included in the blotter will benefit virtual trading floor participants given potential limitations of communication software (such as limitations on how many people may be heard at the same time in a virtual pit or potential buffering or echoing). For example, if a Market-Maker's personal device momentarily freezes, causing the Market-

Maker to miss the terms of an order represented by a Floor Broker, the Market-Maker will still be able to see the terms of the order in the blotter and determine whether it wants to seek to trade with the order.

The Exchange notes that, regardless of whether it requires the chat function to be used, the Exchange will maintain records of all chats in the virtual trading floor²⁸ in accordance with its self-regulatory organization record retention obligations, as these are “correspondence” records subject to those obligations, as set forth in proposed subparagraph (e)(3)(F).²⁹ Specifically, proposed Rule 5.24(e)(3)(F) states the Exchange will retain records of the chats, participant logs, and any other records related to the virtual trading floor that are subject to the Exchange’s record retention obligations under the Exchange Act. The Exchange does not currently plan to make video recordings of the virtual trading floor because the Exchange believes video is not subject to its record retention obligations. However, if the Exchange determined to make video recordings of the virtual trading floor, it would retain those video recordings in accordance with its record retention obligations.³⁰

Floor Officials will have access to all zones in the virtual trading floor. Floor Officials will have the same authority to act in the virtual trading floor as they do on the physical trading floor. Additionally, a Cboe employee will be available in each zone to provide technical and operational support (in addition to regular Exchange support staff for floor operations) if participants in the virtual trading floor need assistance. If there

²⁸ The Exchange notes the information that will be displayed in the blotter is already retained as part of the PAR order audit trail.

²⁹ See 15 U.S.C. 78q(a).

³⁰ Id. The Exchange notes it will disable the ability of TPHs to record the virtual trading floor through the communication program.

was an issue with the communication program making the virtual trading floor unavailable, the Exchange would operate in an all-electronic configuration (as it did earlier in 2020 when the trading floor was unavailable) until the communication program was available again.

The Exchange has conducted several town halls with TPHs in which the Exchange presented the functionality of the virtual trading floor and has made the virtual trading floor available for testing so that the Exchange will be ready to implement it if necessary.³¹ The Exchange has received positive feedback from TPHs regarding the tool and will continue to make updates as necessary and appropriate in response to comments it receives to make the virtual trading floor replicate the open outcry trading experience on the physical trading floor as much as possible. The Exchange believes this will provide the opportunity for as seamless a rollout as possible if circumstances cause the Exchange to make the virtual trading floor available.

While open outcry trading on the virtual trading floor will occur with in-crowd market participants interacting with each other remotely through a computer communication program, all trading that occurs on the virtual trading floor will occur in the same manner as it does on the physical trading floor. Specifically, open outcry trading on the virtual trading floor will be subject to the same priority and allocation rules as open trading on the physical trading floor, as set forth in Rule 5.85. Any risk controls and price protection mechanisms in Rule 5.34 that apply to open outcry trading on the physical trading floor will apply in the same manner to open outcry trading on the virtual trading floor. The Exchange will make the same order types and instructions available on

³¹ See supra note 24.

the virtual trading floor as it makes available on the physical trading floor pursuant to Rule 5.83.³² Floor Brokers will be subject to the responsibilities set forth in Rule 5.91 on the virtual trading floor, as they are on the physical trading floor.

In addition, TPHs participating on the virtual trading floor will be subject to the same regulatory requirements on the virtual trading floor as they are on the physical trading floor, including those set forth in Chapters 8 and 9. Orders must be systematized³³ and represented,³⁴ and transactions reported,³⁵ in connection with the virtual trading floor in the same manner as they are when trading on the physical trading floor. Therefore, the audit trail for open outcry trading on the virtual trading floor will capture the same information that it does for open outcry trading on the physical trading floor. The Regulatory Division will be able to utilize preexisting floor surveillances to surveil for the activity occurring on the virtual trading floor. Specifically, the Regulatory Division monitors open outcry trading using various automated surveillances, which incorporate systematized order and trade execution information and applicable time stamps, as well as other elements of the audit trail from the floor broker's order entry system(s), the Exchange's PAR workstations and the Cboe matching engine. Because in-crowd market participants will use the same tools to systematize and execute orders on

³² Pursuant to Rule 5.83(b), the Exchange may determine whether to make complex orders types available for open outcry trading. The Exchange will not make a Multi-Class Spread order available on the virtual trading floor unless the Exchange has made the virtual trading floor available for both classes represented in the order, as such an order must be represented at both trading stations (or virtual trading pits in the context of the virtual trading floor) to be executed. See Rule 5.85(d).

³³ See Rule 5.7(f).

³⁴ See Rule 5.91(a)(4).

³⁵ See Rule 6.1(c).

the virtual trading floor that they would use on the physical trading floor, and will be subject to the same trading rules and requirements, the Regulatory Division's automated surveillances applicable to open outcry trading will incorporate the same audit trail information from open outcry trading on the virtual trading floor that they do from open outcry trading on the physical trading floor. Additionally, as noted above, Regulatory Division staff may access the virtual trading floor if it deems necessary and appropriate, including records of any chats from the virtual trading floor if that functionality is used.

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.³⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³⁷ 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)³⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

³⁶ 15 U.S.C. 78f(b).

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ Id.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, as it will permit open outcry trading to continue in the event the Exchange's trading floor is inoperable. As discussed above, while the Exchange has adopted Rules that have allowed all-electronic trading to occur more similarly to open outcry trading, there are certain features of open outcry trading that are difficult to replicate in an electronic trading environment. The Exchange has observed, and understands from various market participants, that they have had difficulty executing certain orders, such as larger orders and high-risk and complicated strategies, in an all-electronic trading configuration without the element of human interaction to negotiate pricing for these orders. The proposed rule change would provide an environment in which this interaction would be available despite the inoperability of the physical trading floor. The Exchange believes the proposed rule change may facilitate continued trading of these orders if and when the trading floor is inoperable. As a result, the Exchange believes providing continuous access to open outcry trading when the physical trading floor is inoperable will remove impediments to a free and open market and will ultimately benefit investors, particularly those desiring to execute high-risk and complex trading strategies.

The Exchange also believes the proposed rule change will promote just and equitable principles of trade, as open outcry trading on a virtual trading floor will occur in accordance with the same trading rules and be subject to the same regulatory requirements that apply to open outcry trading on the physical trading floor, all of which have previously been filed with the Commission. The proposed rule change will merely

permit this open outcry trading to occur in a virtual setting rather than a physical setting (which may be appropriate for health and safety purposes) – in other words, open outcry trading on a virtual trading floor will occur while market participants operate remotely as they do when they trade electronically. Specifically, open outcry trading on the virtual trading floor will be subject to the same priority and allocation rules as open trading on the physical trading floor, as set forth in Rule 5.85. As is the case for open outcry trading on the physical trading floor, open outcry trading on the virtual trading floor is consistent with Section 11(a) of the Act, as Rule 5.85(a)(2)(E) (which will apply to open outcry trading on the virtual trading floor) requires TPHs relying on Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder (the so called “G exemption rule”) as an exemption must yield priority to any bid (offer) at the same price of Priority Customer orders and broker-dealer orders resting in the Book, as well as any other bid (offer) that has priority over those broker-dealer orders under this Rule. The Exchange may make the same order types and instructions available on the virtual trading floor as it makes available on the physical trading floor pursuant to Rule 5.83. Floor Brokers will be subject to the responsibilities set forth in Rule 5.91 on the virtual trading floor, as they are on the physical trading floor.

The Exchange further believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by permitting the Exchange to establish zones, particularly in classes with larger number of participants on the trading floor. As discussed above, the zones are intended to replicate the trading floor organization and will permit market participants to interact in a substantially similar way

as they do on the trading floor. The zones will also encourage interaction of a reasonable number of people within the communication program. While the zones will include additional functionality that is not otherwise available on the trading floor, such as the chat and blotter functionality, the Exchange believes the creation of zones and inclusion of this functionality will create a virtual environment that promotes fair and orderly trading given the potential limitations of communication software.

Additionally, TPHs participating on the virtual trading floor will be subject to the same regulatory requirements on the virtual trading floor as they are on the physical trading floor, including those set forth in Chapters 8 and 9. Orders must be systematized and represented, and transactions reported, in connection with the virtual trading floor in the same manner as they are when trading on the physical trading floor. Therefore, the audit trail for open outcry trading on the virtual trading floor will capture the same information that it does for open outcry trading on the physical trading floor. The Regulatory Division will be able to utilize preexisting floor surveillances to surveil for the activity occurring on the virtual trading floor. Specifically, the Regulatory Division monitors open outcry trading using various automated surveillances, which incorporate systematized order and trade execution information and applicable time stamps, as well as other elements of the audit trail from the floor broker's order entry system(s), the Exchange's PAR workstations, and the Cboe matching engine. Because in-crowd market participants will use the same tools to systematize and execute orders on the virtual trading floor that they would use on the physical trading floor, and will be subject to the same trading rules and requirements, the Regulatory Division's automated surveillances applicable to open outcry trading will incorporate the same audit trail information from

open outcry trading on the virtual trading floor that they do from open outcry trading on the physical trading floor. Additionally, as noted above, Regulatory Division staff may access the virtual trading floor if it deems necessary and appropriate, including records of any chats from the virtual trading floor if that functionality is used. The Exchange believes it will promote just and equitable principles of trading for all open outcry trading to occur in substantially the same manner, whether it occurs while market participants are in the same physical setting or in remote settings being connected through a technological solution.

In addition, the Exchange believes the proposed rule change will not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, as all individuals authorized to act on the physical trading floor (both TPH organizations authorized at the time the physical trading floor becomes inoperable and any TPH organization that becomes authorized after the physical trading floor becomes inoperable) will be provided with access to the virtual trading floor.

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, as all TPH organizations authorized by the Exchange, or that become authorized by the Exchange, to transact on the trading floor will receive access to the virtual trading floor. 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, as it relates solely to the location of open outcry

trading on the Exchange. The proposed rule change will merely permit open outcry trading that generally occurs while market participants are located in the same physical setting to occur while market participants are in a remote setting, connected by a technological solution (as electronic trading does).

The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. The Exchange believes the proposed rule change will provide market participants with continuous access to open outcry trading when the physical trading floor is inoperable. The Exchange believes this may facilitate continued, competitive price negotiations and trading of orders that the Exchange understands are more difficult to execute in an all-electronic trading environment without human interaction. Additionally, the proposed rule change will provide customer orders represented for open outcry execution with access to the same pool of liquidity when the trading floor is inoperable to which those orders would have access when the trading floor is operating in its normal state. Maintenance of this level of liquidity at all times, even when the trading floor is inoperable, may promote competition by providing these customer orders with increased liquidity than may otherwise be available, and thus increased execution opportunities and price discovery.

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-2020-055 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-2020-055. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2020-055 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.³⁹

Secretary

³⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Additions set forth in the proposed rule text of original SR-CBOE-2020-055 are underlined and deletions set forth in the proposed rule text of original SR-CBOE-2020-055 are bracketed. Additions being made pursuant to Amendment No. 3 to SR-CBOE-2020-055 are double underlined and deletions are struck-through.

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Rules of Cboe Exchange, Inc.

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Rule 5.24. Disaster Recovery

(a) – (d) No change.

(e) *Loss of Trading Floor.* If the Exchange trading floor becomes inoperable and the Exchange does not make a virtual trading floor available in a class pursuant to subparagraph (3) below, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor facility is inoperable. The Exchange will operate using this configuration only until the Exchange’s trading floor facility is operational. Open outcry trading will not be available in the event the trading floor becomes inoperable, except [in accordance with paragraph (2)]as otherwise set forth in this paragraph (e) below and pursuant to Rule 5.26, as applicable.

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

* * * * *

(2) No change.

(3) *Virtual Trading Floor.* If the physical trading floor is inoperable, the Exchange may make available an audio and video communication program to serve as a “virtual trading floor” in one or more option classes during Regular Trading Hours. In the program, the Exchange will create “virtual trading pits,” in each of which the Exchange will determine which options class(es) will be available for trading. If the Exchange makes a virtual trading floor available in a class, the temporary rules in subparagraph (e)(1) above will not apply to that class. All Rules related to open outcry trading, including those in Chapter 5, Section G, will apply to open outcry trading on the virtual trading floor in the same manner as they apply to open outcry trading on the physical trading floor, except as the context otherwise requires and as follows:

(A) Terms.

(i) References in the Rules to the “floor,” “trading floor,” and “Exchange floor” (and any other terms with the same meaning) will be deemed to refer to the “virtual trading floor.”

(ii) References in the Rules to “pit,” “trading station,” and “trading post” (and any other terms with the same meaning) will be deemed to refer to a “virtual trading pit.”

(iii) References in the Rules to “physical presence” (and any other terms with the same meaning) in a pit or on the trading floor will be deemed to refer to “presence” in a virtual trading pit or on the virtual trading floor, respectively.

(iv) The terms “in-crowd market participant” and “ICMP” mean a Market-Maker, a DPM or LMM with an allocation in a class, or a Floor Broker or PAR Official representing an order in a virtual pit on the virtual trading floor.

(v) References to an “on-floor DPM” or “on-floor LMM” will be deemed to refer to a DPM or LMM, respectively, in a virtual pit for its allocated class(es).

(B) Access. Admission to the virtual trading floor is limited to Trading Permit Holders, clerks, Exchange employees, and any other persons the Exchange authorizes admission to the virtual trading floor. The Exchange will provide access to the virtual trading floor to TPHs the Exchange has approved to perform a trading floor function (including Floor Brokers and Market-Makers). Each authorized individual will receive one log-in to the virtual trading floor and may be present in only one virtual trading pit/zone at one time. The Exchange tracks which individuals participate in the virtual trading floor, including when they log in and log out. TPHs and clerks are not required to display badges on the virtual trading floor.

(C) Equipment. TPHs may use any equipment to access the virtual trading floor and do not need to register devices they use while on the virtual trading floor. TPHs must use Exchange-provided equipment to access PAR workstations while transacting on the virtual trading floor.

(D) Virtual Trading Pits and Zones. In the program, the Exchange will create “virtual trading pits,” in each of which the Exchange will determine which options class(es) will be available for trading. TPHs will access virtual trading pits via “zones.”

(i) Multiple classes may trade in a single virtual trading pit, available for trading in a single zone.

(ii) The Exchange may determine to divide a virtual trading pit for a single class into multiple zones given the number of TPHs generally present in the trading pit for that class on the physical trading floor. The Exchange will assign each Floor Broker to a zone, and each Market-Maker may determine in which zone it will be present.

(iii) In each zone, the Exchange will make visible an electronic blotter containing a running list of unexecuted orders that have been represented by Floor Brokers in that zone.

(E) Chats. The Exchange may determine to require any Market-Maker or Floor Broker in a virtual trading pit/zone that wants to trade against an order represented for execution to express its bid or offer in a chat available in the virtual trading pit. Chats will be visible to all participants in a zone and will not be permitted directly between individual participants.

(F) Records. The Exchange will retain records of the chats, participant logs, and any other records related to the virtual trading floor that are subject to the Exchange's record retention obligations under the Exchange Act.

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EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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Rules of Cboe Exchange, Inc.

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Rule 5.24. Disaster Recovery

(a) – (d) No change.

(e) *Loss of Trading Floor.* If the Exchange trading floor becomes inoperable and the Exchange does not make a virtual trading floor available in a class pursuant to subparagraph (3) below, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor facility is inoperable. The Exchange will operate using this configuration only until the Exchange's trading floor facility is operational. Open outcry trading will not be available in the event the trading floor becomes inoperable, except [in accordance with paragraph (2)]as otherwise set forth in this paragraph (e) below and pursuant to Rule 5.26, as applicable.

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

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(2) No change.

(3) *Virtual Trading Floor.* If the physical trading floor is inoperable, the Exchange may make available an audio and video communication program to serve as a "virtual trading floor" in one or more option classes during Regular Trading Hours. If the Exchange makes a virtual trading floor available in a class, the temporary rules in subparagraph (e)(1) above will not apply to that class. All Rules related to open outcry trading, including those in Chapter 5, Section G, will apply to open outcry trading on the virtual trading floor in the same manner as they apply to open outcry trading on the physical trading floor, except as the context otherwise requires and as follows:

(A) Terms.

(i) References in the Rules to the "floor," "trading floor," and "Exchange floor" (and any other terms with the same meaning) will be deemed to refer to the "virtual trading floor."

(ii) References in the Rules to “pit,” “trading station,” and “trading post” (and any other terms with the same meaning) will be deemed to refer to a “virtual trading pit.”

(iii) References in the Rules to “physical presence” (and any other terms with the same meaning) in a pit or on the trading floor will be deemed to refer to “presence” in a virtual trading pit or on the virtual trading floor, respectively.

(iv) The terms “in-crowd market participant” and “ICMP” mean a Market-Maker, a DPM or LMM with an allocation in a class, or a Floor Broker or PAR Official representing an order in a virtual pit on the virtual trading floor.

(v) References to an “on-floor DPM” or “on-floor LMM” will be deemed to refer to a DPM or LMM, respectively, in a virtual pit for its allocated class(es).

(B) *Access.* Admission to the virtual trading floor is limited to Trading Permit Holders, clerks, Exchange employees, and any other persons the Exchange authorizes admission to the virtual trading floor. The Exchange will provide access to the virtual trading floor to TPHs the Exchange has approved to perform a trading floor function (including Floor Brokers and Market-Makers). Each authorized individual will receive one log-in to the virtual trading floor and may be present in only one virtual trading pit/zone at one time. The Exchange tracks which individuals participate in the virtual trading floor, including when they log in and log out. TPHs and clerks are not required to display badges on the virtual trading floor.

(C) *Equipment.* TPHs may use any equipment to access the virtual trading floor and do not need to register devices they use while on the virtual trading floor. TPHs must use Exchange-provided equipment to access PAR workstations while transacting on the virtual trading floor.

(D) *Virtual Trading Pits and Zones.* In the program, the Exchange will create “virtual trading pits,” in each of which the Exchange will determine which options class(es) will be available for trading. TPHs will access virtual trading pits via “zones.”

(i) Multiple classes may trade in a single virtual trading pit, available for trading in a single zone.

(ii) The Exchange may determine to divide a virtual trading pit for a single class into multiple zones given the number of TPHs generally present in the trading pit for that class on the physical trading floor. The Exchange will assign each Floor Broker to a zone, and each Market-Maker may determine in which zone it will be present.

(iii) In each zone, the Exchange will make visible an electronic blotter containing a running list of unexecuted orders that have been represented by Floor Brokers in that zone.

(E) Chats. The Exchange may determine to require any Market-Maker or Floor Broker in a virtual trading pit/zone that wants to trade against an order represented for execution to express its bid or offer in a chat available in the virtual trading pit. Chats will be visible to all participants in a zone and will not be permitted directly between individual participants.

(F) Records. The Exchange will retain records of the chats, participant logs, and any other records related to the virtual trading floor that are subject to the Exchange's record retention obligations under the Exchange Act.

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