SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95344; File No. SR-CBOE-2022-036)

July 21, 2022

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend Rule 5.6 and Rule 5.33 to Allow Delta-Adjusted at Close Orders to be Submitted in Equity Options

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 July 8, 2022, Cboe Exchange, Inc. ("Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("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 5.6 and Rule 5.33 to allow Delta-Adjusted at Close ("DAC") orders to be submitted in equity options. The text of the proposed rule change is provided in Exhibit 5.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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

2 17 CFR 240.19b-4.

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 5.6 and Rule 5.33 to allow DAC orders to be submitted in equity options.[3]

A DAC order is an order for which the System delta-adjusts its execution price after the market close. The DAC order instruction is available for simple and complex orders and allows Users to incorporate into their options pricing the closing price or value of the underlying on the transaction date based on how much that price or value changed during the trading day. Specifically, pursuant to the DAC order definition under Rule 5.6(c) (for simple DAC orders) and Rule 5.33(b)(5) (for complex DAC orders), the delta-adjusted execution price equals the original execution price plus the delta value times the difference between the official closing price or value of the underlying on the transaction date and the reference price or index value of the underlying ("reference price"). Upon order entry for electronic execution, a User must designate a delta value (per leg for complex DAC orders) and may designate a reference price. If no reference price is designated, the System will include the price or value, as applicable, of the underlying at the time of order entry as the reference price. Upon order entry for open outcry

3 The Exchange notes that reference to equity options and equity securities herein this proposal means options on securities that are not exchange-traded products ("ETPs") and equity securities that are not ETPs (i.e., single-name securities or single stocks), respectively. As noted below, DAC orders will continue to be available only for FLEX options.

execution, a User may designate a delta value (for one or more legs for complex DAC orders) and/or a reference price. During the open outcry auction, in-crowd market participants will determine the final delta value(s) and/or reference price, which may differ from any delta value or reference price designated by the submitting User. The final delta value(s) and reference price would be reflected in the final terms of the execution. A DAC order (simple and complex) may only be submitted in options on ETPs and indexes for execution in a FLEX electronic auction or open outcry auction on the Exchange's trading floor pursuant to Rule 5.72.[4]

The Exchange proposes to make the DAC order instruction available for orders submitted in any FLEX option, including equity options. In particular, the proposed rule change amends the definition of a DAC order (simple and complex) to allow for DAC orders to be submitted in equity options by removing the restriction that a DAC order may only be submitted in options on ETPs and indexes. In particular, the proposed rule change to the definition of a simple DAC order under Rule 5.6(c) provides that a DAC order may only be submitted for execution in a FLEX electronic auction or open outcry auction on the Exchange's trading floor pursuant to Rule 5.72, and the proposed rule change to the definition of a complex DAC order under Rule 5.33(b)(5) provides that a complex DAC order may only be submitted for execution in a FLEX electronic auction or open outcry auction on the Exchange's trading floor pursuant to Rule 5.72. In addition to this, the proposed rule change adds to the definition of a simple DAC order under Rule 5.6(c) that a DAC order submitted in a single stock equity option may not be submitted until 45 minutes prior to the market close. A DAC order may not be submitted in a single stock equity option on its expiration day.

[4] Additionally, pursuant to the definition of a DAC order under Rule 5.6(c) and Rule 5.33(b)(5), a DAC order submitted for execution in open outcry may only have a Time-in-Force of Day. A User may not designate a DAC order as All Sessions.

DAC orders are designed to allow investors to incorporate any upside market moves that may occur following execution of the order up to the market close while limiting downside risk. Significant numbers of market participants interact in the equity markets near the market close, which may substantially impact the price of an underlying equity security at the market close. For example, the Exchange understands that market makers and other liquidity providers seek to balance their books before the market close and contribute to increased price discovery surrounding the market close. The Exchange also understands it is common for other market participants to seek to offset intraday positions and mitigate exposure risks based on their predictions of the closing underlying prices. This substantial activity near the market close may create wider spreads and increased price volatility, which may attract further trading activity from those participants seeking arbitrage opportunities and further drive prices. The significant liquidity and price/value movements in securities, including equity securities, that can occur near the market close, may cause option closing and settlement prices to deviate significantly from option execution prices earlier that trading day. As such, the Exchange wishes to provide its investors with the same opportunities to incorporate any upside market moves that may occur following execution of the order up to the market close while limiting downside risk in their equity options trading as currently provided for their ETP and index options trading by making DAC orders available in equity options.

Additionally, DAC orders are intended to benefit investors that participate in defined-outcome investment strategies,[5] which, at the time the DAC order was adopted, existed only for indexes and ETPs. Particularly, DAC orders allow such funds to incorporate market moves that

[5] Including defined-outcome ETFs, other managed funds, unit investment trusts ("UITs"), index funds, structured annuities, and other such funds or instruments that are indexed managed funds.

may occur following execution of the order up to the market close while limiting risk and to allow such funds to employ certain FLEX options strategies that enable their investors to mitigate risk at the market close while also participating in beneficial market moves at the close.[6] The Exchange has recently been made aware that defined-outcome investment strategies are being created to provide exposure to individual equity securities and as a result has received growing customer demand to make DAC orders available in equity options.[7] The Exchange understands that, like defined-outcome strategies for ETPs and indexes, such funds for single-name equity securities would seek to use multi-leg strategy orders when seeding their funds,[8] and, like for any defined-outcome strategy, the goal of the strategies used by defined-outcome funds for single-name securities would be to price the execution of multi-leg strategy orders at the close of the underlying. Also, the Exchange understands that funds for multiple single-name equity securities would seek to use single-leg (i.e., simple) orders to create a strategy when seeding their funds.[9] However, there is operational execution risk in attempting to fill an order near the close to capture the underlying closing price. A DAC complex order currently allows the User to execute a strategy order in connection with a fund for an ETP or an index prior to the

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6 See Securities Exchange Act Release No. 88997 (June 3, 2020), 85 FR 35351 (June 9, 2020) (SR-CBOE-2020-014).

7 Indeed, in the proposal that adopted the DAC order instruction, the Exchange notes that if, at a later date, User demand warrants the availability of DAC orders for equity options, the Exchange could submit a proposal to make DAC orders available for equity options. See id.

8 The Exchange understands that, like defined-outcome ETFs for ETPs and indexes, issuers of defined-outcome ETFs for equity securities would not buy stocks directly, but instead, use options contracts to deliver the price gain or loss of the underlying over the course of a year, up to a preset cap.

9 The Exchange notes that funds for multiple single-name equity securities would seek to use simple orders across multiple single-name equity options when seeding their funds as multi-leg, multi-class strategies in single stock options are not available for trading on the Exchange.

close and have its price adjusted at the close. The proposed rule change would allow a User to execute strategy orders in connection with seeding a fund for an equity security in the same manner.[10] Like DAC complex orders for strategy orders in ETP and index options currently, DAC orders in equity options, either simple or complex depending on the structure of the fund, would allow the strategy order or orders to be executed at a time before the close, eliminating the execution risk, while realizing the objective of pricing based on the exact underlying close for those strategies that require pricing at the close or a defined amount of market exposure through the close. The proposed rule change would allow Users to participate in the same benefits — eliminating execution risk while realizing objective pricing—for their strategies in equity options as they are currently may for their strategies in ETP and index options.

As stated above, the proposed rule change also provides that a simple DAC order submitted in a single stock equity option may not be submitted until 45 minutes prior to the market close and may not be submitted on its expiration day. As a general rule, attempted manipulation of the price of a security encounters greater difficulty the more volume that is traded, and, generally, single name equity securities tend to be less liquid and experience greater price sensitivity and larger market moves than indexes or ETPs. The Exchange notes that on expiration day in particular, underlying equity securities may experience more price sensitivity than on non-expiration days and may be more susceptible to incentive to manipulate given that

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10 Because multi-leg strategies themselves may have delta offsets, the User is hedged, meaning that the User may realize a negative movement versus the initial execution on some legs, which is offset by a positive move in other legs. The Exchange notes that the strategies may or may not define an exact delta offset ("delta neutrality" occurs where the strategy defines an exact delta offset). Given the delta neutral nature of an order with exact offset, a User is indifferent to any movement in the underlying from the time of execution to the close. Whether or not a User defines an exact delta offset, a User anticipates a given amount of market exposure, either partial or none, depending on the strategy and combinations of buy/sell, call/put and quantity. See supra note 6 at 35352.

the exercise value of overlying options are contingent on the underlying closing price on expiration day. Options holders on expiration day, whether their positions were taken via a DAC execution or not, are subject to the risk of price swings in the underlying prior to the final close; however, options holders of positions taken via a DAC execution may potentially be more susceptible to such risk given the price adjustment at the close. For example, if a market participant executes a DAC order to buy calls on expiration day and a large price swing follows, in that, the underlying price is pushed significantly higher before the close, the DAC option holder would be forced to pay a much higher premium upon adjustment, and ultimately expiration. Therefore, in order to mitigate the potential risk associated with expiration day price swings, which may potentially expose DAC order users the gamma effect of options as they become more sensitive to underlying price changes as they approach expiration, particularly in options overlying less liquid securities, the proposed rule change restricts trading (regardless of opening or closing) in simple DAC orders in single stock options on expiration day. In addition to this, the proposed rule to require simple DAC orders in single stock options to be submitted no earlier than 45 minutes before the market close will reduce the amount of time during which the underlying price could potentially move; movements which, as stated above, may pose greater risk upon price adjustment at close to holders of DAC options. The Exchange notes that the same potential incentive to "push" the price of the underlying on expiration day in connection with the exercise price of an option is greatly diminished for multi-leg orders given that parties to multi-leg transactions are focused on the spread or ratio between the transaction prices for each of the legs (i.e., the net price of the entire complex trade).

The Exchange notes that the same rules regarding the entry, execution and processing of DAC orders submitted in ETP and index options will apply to DAC orders submitted in equity options.[11] Unadjusted and adjusted DAC trade information for DAC orders in equity options will be sent to the transacting parties, Options Clearing Corporation ("OCC") and Options Price Reporting Agency ("OPRA") in the same manner as such trade information for DAC orders in ETP and index options is currently sent today. The Exchange further notes that, similar to a DAC order instruction, the Exchange Rules already permit exercise prices for FLEX Equity Options series to be formatted as a percentage of the closing value of the underlying security.

The Exchange has analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle any additional order traffic, and the associated restatements, that may result from the submission of DAC orders in equity options and represents that it continues to have an adequate surveillance program in place to monitor orders with DAC pricing, including such orders in equity options. The Exchange additionally notes that it intends to further enhance its surveillances to, among other things, monitor for certain changes in delta and stock price between an original order and the final terms of execution and to generally monitor activity in the underlying potentially related to DAC trades. The Exchange notes that it has not observed any impact on pricing or price discovery at or near the market close as a result of DAC orders submitted in ETP and index options and does not believe that making DAC orders available in equity options will have any impact on pricing or price discovery at or near the market close. The Exchange also notes that it has not identified an impact on pricing or price discovery at or near the close as a result of exercise prices for FLEX

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[11] See Rule 5.6(c) (definition of simple DAC order), Rule 5.33(b)(5) (definition of complex DAC order), and Rule 5.34(c)(11) (DAC order reasonability check). The Exchange notes too that all DAC orders, currently and as proposed, are entered, priced, prioritized, allocated and execute as any other FLEX Order would when submitted into any FLEX electronic or open outcry auction and, like any FLEX Order, a FLEX DAC order may only be submitted into FLEX Options series eligible for trading pursuant to the FLEX Rules.

Equity Options series formatted as a percentage of the closing value of the underlying security, which is similar to a DAC order instruction and permitted on the Exchange today.

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.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] 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)[14] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that making DAC orders available in all FLEX options, including equity options, will promote just and equitable principles of trade and will remove impediments to and perfect the mechanism of a free and open market and national market system and, in general, protect investors, as it will allow investors to realize the same benefits in connection with their equity options trading that they may currently realize through

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12 15 U.S.C. 78f(b).

13 15 U.S.C. 78f(b)(5).

14 Id.

the use of DAC orders in their ETP and index options trading, as previously approved by the Commission.[15] As stated above, the Exchange has received growing customer demand to make DAC orders available in equity options.[16] The proposed change to make DAC orders available in all options will benefit investors by allowing them to incorporate into the pricing of their equity options the closing price of the underlying on the transaction date based on the amount that the price of the underlying changes intraday. This allows investors to incorporate potential upside market moves that may occur following the execution of an order up to the market close while limiting downside risk in the same manner as may today for their ETP and index options. Also, offering DAC orders in equity options will allow investors to use the underlying reference prices and delta to fully hedge their equity options positions taken during the trading day through the market close and potentially benefit from price movements at the close as they are already able to do for their ETP and index option positions. In addition to this, as managed funds for single-name securities are expected to begin utilizing strategies at the close in order to mitigate risk at the close and participate in beneficial market moves at the same time, the Exchange believes that DAC orders in equity options will offer to managed funds for equity securities the same method by which such funds for ETPs and indexes are currently able to meet these objectives through the execution of FLEX options, thereby benefiting investors that hold shares of these funds. Additionally, the proposed restrictions in connection with the submission of simple DAC orders in equity options are designed to prevent fraudulent and manipulative acts and practices and protect investors by mitigating the potential risk associated with expiration day price swings, which may potentially expose DAC order users to the gamma effect of options as they become

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15 See Securities and Exchange Act Release No. 90319 (November 3, 2020), 85 FR 71361 (November 9, 2020) (SR-CBOE-2020-014).

16 See supra note 7.

more sensitive to underlying price changes as such options approach expiration, and reducing the amount of time during which the underlying price could potentially move. As described, single-name securities may experience greater price sensitivity and may experience larger price swings than compared to indexes and ETPs, and DAC options holders particularly may potentially be subject to a greater risk of paying much higher premiums given the price adjustment at close. The Exchange believes proposed will minimize any potential incentive to attempt to manipulate the equities that may underlie a DAC order, particularly those securities that may experience relatively lower volume, and will mitigate potential risk to holders of DAC options in single-name securities.

Further, the Exchange believes that 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, protect investors because the same rules regarding the entry, execution and processing of DAC orders submitted in ETP and index options will apply to DAC orders submitted in equity options,[17] and all DAC trade information for DAC orders in equity options will be sent to the transacting parties, OCC and OPRA in the same manner as such trade information for DAC orders in ETP and index options is currently sent today. The Exchange represents that the Exchange itself and OPRA have the necessary systems capacity to handle any additional order traffic and the related restatements that may result from making DAC orders available in equity options and represents that it continues to have an adequate surveillance program in place to monitor orders with DAC pricing, including such orders in equity options, thereby ensuring the protection of investors. In addition to this, the Exchange intends to further enhance its surveillances to, among other things, monitor for certain changes in delta and stock price

[17] See supra note 11.

between an original order and the final terms of execution and to generally monitor activity in the underlying potentially related to DAC trades. As noted above, the Exchange has not observed any impact on pricing or price discovery at or near the market close as a result of DAC orders submitted in ETP and index options, nor as a result of orders submitted in FLEX Equity Options series with exercise prices formatted as a percentage of the closing value of the underlying security, which are similar to DAC orders in equity options and currently permitted under the Exchange Rules. The Exchange does not believe that making DAC orders available in equity options will have any impact on pricing or price discovery at or near the market close.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because use of the DAC order instruction is optional and already available to all Users. The proposed rule change merely expands the availability of an optional order instruction to orders submitted in all FLEX options. The Exchange believes that making DAC orders available in FLEX equity options is consistent with current demand by market participants and will allow them to realize the same benefits in their equity options trading as they may currently realize for their ETP and index options trading through the use of DAC orders. Also, and as described above, the additional proposed parameters in connection with single-leg, single name DAC orders are designed to minimize any potential incentive to attempt to manipulate the equities that may underlie a DAC order, particularly those securities that may experience relatively lower volume, and will mitigate potential risk to holders of DAC options in single-name securities.

The proposed rule change will not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the Exchange already offers DAC order functionality—the proposed rule change merely expands the availability of the DAC order instruction to orders in all FLEX options. The proposed rule change it is intended to provide market participants in equity options with an additional means to manage risks in connection with potential volatility and downside price swings that may occur near the market close, while allowing them to receive potential benefits associated with any upside market moves near the market close. The Exchange believes the proposed rule change may foster competition, as other options exchanges in their discretion may pursue the adoption of similar orders applicable to equity options, which will result in additional choices for investors.

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-2022-036 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-2022-036. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2022-036, 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.[18]

J. Matthew DeLesDernier,

Deputy Secretary.

[18] 17 CFR 200.30-3(a)(12).