SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89313; File No. SR-CboeBZX-2020-054)

July 14, 2020

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Adopt Rules Regarding Off-Floor Transactions and Transfers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 30, 2020, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b-4(f)(6) thereunder.[4] 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 BZX Exchange, Inc. (the "Exchange" or "BZX") proposes to adopt rules regarding off-floor transactions and transfers. 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://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(iii).

4 17 CFR 240.19b-4(f)(6).

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

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

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

1. Purpose

The Exchange proposes to adopt new rules regarding off-floor transactions and transfers.

Prohibition on Off-Floor Transactions

Rules 19c-1 and 19c-3 under the Securities Exchange Act of 1934 (the "Act') describe rule provisions that each national securities change must include in its Rules regarding the ability of members to engage in transactions off an exchange. While the Exchange's rules, stated policies, and practices are consistent with these provisions of the Act, the Exchange Rules do not currently include these provisions. Therefore, the proposed rule change adopts these provisions in new Rule 20.9 in accordance with Rules 19c-1 and 19c-3 under the Act.[5]

Off-Floor Position Transfers

Today, the Exchange does not permit off-floor transfers of options positions and has no rule that specifically addresses off-floor transfers. The Exchange proposes to adopt Rule 20.10 to specify the limited circumstances under which a Member ("Member") may effect transfers of their options

5 See CFR §§ 240.19c-1 and 240.19c-3; see also Cboe Options, Inc. ("Cboe Options") Rule 5.12(d) and (e).

positions without first exposing the order.[6] This rule would permit market participants to move positions from one account to another without first exposure of the transaction on the Exchange. This Rule would permit transfers upon the occurrence of significant, non-recurring events. This Rule states that a Member must be on at least one side of the transfer.

Specifically, proposed Rule 20.10(a) states:

> Notwithstanding Rule 20.9, existing positions in options listed on the Exchange of a Member or of a Non-Member that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange (an "off-floor transfer") if the off-floor transfer involves one or more of the following events:
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> > (1) an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;
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> > (2) the transfer of positions from one account to another account where no change in ownership is involved (i.e., accounts of the same person (as defined in Rule 1.5)), provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;
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> > (3) the consolidation of accounts where no change in ownership is involved;
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> > (4) a merger, acquisition, consolidation, or similar non-recurring transaction for a person;
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> > (5) the dissolution of a joint account in which the remaining Member assumes the positions of the joint account;
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> > (6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;
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> > (7) positions transferred as part of a Member's capital contribution to a new joint account, partnership, or corporation;

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6 See Securities and Exchange Act Release No. 88424 (March 19, 2020), 85 FR 16981 (March 25, 2020) (SR-Cboe-2019-035) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers); see also Cboe Options Rule 6.7.

(8) the donation of positions to a not-for-profit corporation;

(9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or

(10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.[7]

The proposed rule change makes clear that the transferred positions must be on, from, or to the books of a Clearing Member. The proposed rule change states that existing positions of a Member or a non-Member may be subject to a transfer, except under specified circumstances in which a transfer may only be effected for positions of a Member.[8] The Exchange notes transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.[9] Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

Proposed Rule 20.10(b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment, unless otherwise permitted by proposed paragraph (f). No position may net against another position ("netting"), and no position transfer may result in preferential margin or haircut treatment.[10] Netting occurs when long positions and short positions in the same series "offset" against each other, leaving no or a reduced position. For example, if a Member wanted to transfer 100 long calls to

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7 See proposed Rule 20.10(a); see also Cboe Options Rule 6.7(a).

8 See proposed Rule 20.10(a)(5) and (7).

9 See proposed Rule 20.10(h).

10 For example, positions may not transfer from a customer, joint back office, or firm account to a Market-Maker account. However, positions may transfer from a Market-Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs). See also Cboe Options Rule 6.7(b).

another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the proposed Rule, the Member could not transfer the offsetting series, as they would net against each other and close the positions.[11]

However, netting is permitted for transfers on behalf of a Market-Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market-Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market-Maker account at the Clearing Corporation. In such instances, all Market-Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market-Maker account (commonly referred to as a "universal account") at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market-Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market-Maker may have a nominee with an appointment in class XYZ on Cboe Options, and have another nominee with an appointment in class XYZ on the Exchange, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Cboe Options transactions and another for Exchange transactions) at the Clearing Corporation rather into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market-Maker's universal account in this circumstance to achieve this purpose.

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11 See Cboe Options Rule 6.7(b).

Proposed Rule 20.10(c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an transfer is effected may be: (1) the original trade prices of the positions that appear on the books of the trading Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date[12]; or (4) the then-current market price of the positions at the time the transfer is effected.[13]

This proposed rule change provides market participants that effect transactions with flexibility to select a transfer price based on circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Proposed Rule 20.10(d) requires a Member and its Clearing Member (to the extent that the Member is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an transfer from or to the account of a Member(s).[14] The notice

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12 For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

13 See Cboe Options Rule 6.7(c).

14 This notice provision applies only to transfers involving a Member's positions and not to positions of non-Member parties, as they are not subject to the Rules. In addition, no

must indicate: the Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange.[15] The proposed notice will ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules.

Additionally, requiring notice from the Member(s) and its Clearing Member(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of a transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Rule 20.10. Notwithstanding submission of written notice to the Exchange, Members and Clearing Members that effect transfers that do not conform to the requirements of proposed Rule 20.10 will be subject to appropriate disciplinary action in accordance with the Rules.

Similarly, proposed Rule 20.10(e) requires each Member and each Clearing Member that is a party to a transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Member or Clearing Member provide.[16]

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notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

15 See Cboe Options Rule 6.7(d).

16 See Cboe Options Rule 6.7(e).

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the Member (with respect to the Member's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer, the President or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.[17]

The Exchange proposes within Rule 20.10(g) that the transfer procedure set forth in Rule 20.10 is intended to facilitate non-routine, nonrecurring movements of positions.[18] The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

The Exchange proposes within Rule 20.10(h) notes that the transfer procedure set forth in Rule 20.10 is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including

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17 See Cboe Options Rule 6.7(f).

18 See Cboe Options Rule 6.7(g).

rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.[19]

Off-Floor RWA Transfers

The Exchange proposes to adopt Rule 20.11 to facilitate the reduction of risk-weighted assets ("RWA") attributable to open options positions.[20] SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers) ("Net Capital Rules") requires registered broker-dealers, unless otherwise excepted, to maintain certain specified minimum levels of capital.[21] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[22]

Subject to certain exceptions, Clearing Members are subject to the Net Capital Rules.[23] However, a subset of Clearing Members are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S.-bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall

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19 See Cboe Options Rule 6.7(h).

20 See Cboe Options Rule 6.8; see also Securities Exchange Act Release No. 87107 (September 25, 2019), 84 FR 52149 (October 1, 2019) (SR-CBOE-2019-044).

21 17 CFR §240.15c3-1.

22 In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (e.g. vertical spreads).

23 In the event federal regulators modify bank capital requirements in the future, the Exchange will reevaluate the proposed rule change at that time to determine whether any corresponding changes to the proposed rule are appropriate.

Street Reform and Consumer Protection Act.[24] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[25] Generally, these rules, among other things, impose higher minimum capital and higher asset risk weights than were previously mandated for Clearing Members that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not fully permit deductions for hedged securities or offsetting options positions.[26] Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, Clearing Members that are subsidiaries of U.S. bank holding companies must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.

The Exchange is concerned with the ability of Market-Makers to provide liquidity in their appointed classes. The Exchange believes that permitting market participants to efficiently transfer existing options positions through an off-exchange transfer process would likely have a beneficial effect on continued liquidity in the options market without adversely affecting market quality. Liquidity in the listed options market is critically important. The Exchange believes that the

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24 H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. § 78c(a))).

25 12 CFR §50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

26 Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by broker-dealers, are risk limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined.

proposed rule change provides market participants with an efficient mechanism to transfer their open options positions from one clearing account to another clearing account and thereby increase liquidity in the listed options market. The Exchange currently has no mechanism that firms may use to transfer positions between clearing accounts without having to effect a transaction with another party and close a position.

The proposed rule provides that existing positions in options listed on the Exchange of a Member or non-Member (including an affiliate of a Member) may be transferred on, from, or to the books of a Clearing Member off the Exchange if the transfer establishes a net reduction of RWA attributable to those options positions (an "RWA Transfer"). Proposed paragraph (a)(1) adds examples of two transfers that would be deemed to establish a net reduction of RWA, and thus qualify as a permissible RWA Transfer:

- A transfer of options positions from Clearing Corporation member A to Clearing Corporation member B that net (offset) with positions held at Clearing Corporation member B, and thus closes all or part of those positions (as demonstrated in the example below)[27]; and
- A transfer of options positions from a bank-affiliated Clearing Corporation member to a non-bank-affiliated Clearing Corporation member.[28]

These transfers will not result in a change in ownership, as they must occur between accounts of the same person.

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27 This transfer would establish a net reduction of RWA attributable to the transferring person, because there would be fewer open positions and thus fewer assets subject to Net Capital Rules.

28 This transfer would establish a net reduction of RWA attributable to the transferring Person, because the non-bank-affiliated Clearing Corporation member would not be subject to Net Capital Rules, as described above.

"Person" is defined in Rule 1.5(p) a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government. In other words, RWA transfers may only occur between the same individual or legal entity. RWA transfers are merely transfers from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank – the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

For example, Market-Maker A clears transactions on the Exchange into an account it has with Clearing Member X, which is affiliated with a U.S-bank holding company. Market-Maker A opens a clearing account with Clearing Member Y, which is not affiliated with a U.S.-bank holding company. Clearing Member X has informed Market-Maker A that its open positions may not exceed a certain amount at the end of a calendar month, or it will be subject to restrictions on new positions it may open the following month. On August 28, Market-Maker A reviews the open positions in its Clearing Member X clearing account and determines it must reduce its open positions to satisfy Clearing Member X's requirements by the end of August. It determines that transferring out 1000 short calls in class ABC will sufficiently reduce the RWA capital requirements in the account with Clearing Member X to avoid additional position limits in September. Market-Maker A wants to retain the positions in accordance with its risk profile. Pursuant to the proposed rule change, on August 31, Market-Maker A transfers 1000 short calls in class ABC to its clearing account with Clearing Member Y. As a result, Market-Maker A can continue to provide the same level of liquidity in class ABC during September as it did in previous months.

A Member must give up a Clearing Member for each transaction it effects on the Exchange, which identifies the Clearing Member through which the transaction will clear.[29] A Member may change the give up for a transaction within a specified period of time.[30] Additionally, a Member may also change the Clearing Member[31] for a specific transaction. The transfer of positions from an account with one clearing firm to the account of another clearing firm pursuant to the proposed rule change has a similar result as changing a give up or CMTA, as it results in a position that resulted from a transaction moving from the account of one clearing firm to another, just at a different time and in a different manner.[32] In the above example, if Market-Maker A had initially given up Clearing Member Y rather than Clearing Member X on the transactions that resulted in the 1000 long calls in class ABC, or had changed the give-up or CMTA to Clearing Member Y pursuant to Rule 6.30 the ultimate result would have been the same. There are a variety of reasons why firms give up or CMTA transactions to certain clearing firms (and not to non-bank affiliate clearing firms) at the time of a transaction, and the proposed rule change provides firms with a mechanism to achieve the same result at a later time.

Proposed paragraph (a)(2) states RWA Transfers may occur on a routine, recurring basis. As noted in the example above, clearing firms may impose restrictions on the amount of open positions. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future

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29 See Rule 6.30.

30 See Rule 6.31.

31 The Clearing Member Trade Assignment ("CMTA") process at OCC facilitates the transfer of option trades/positions from one OCC clearing member to another in an automated fashion. Changing a CMTA for a specific transaction would allocate the trade to a different OCC clearing member than the one initially identified on the trade.

32 The transferred positions will continue to be subject to OCC rules, as they will continue to be held in an account of an OCC member.

options activity. Additionally, proposed paragraph (a)(6) provides that no prior written notice to the Exchange is required for RWA Transfers. Because of the potential routine basis on which RWA Transfers may occur, and because of the need for flexibility to comply with the restrictions described above, the Exchange believes it may interfere with the ability of investors firms to comply with any Clearing Member restrictions describe above, and may be burdensome to provide notice for these routine transfers.

Proposed paragraph (a)(3) states RWA Transfers may result in the netting of positions. Netting occurs when long positions and short positions in the same series "offset" against each other, leaving no or a reduced position. For example, if there were 100 long calls in one account, and 100 short calls of the same option series were added to that account, the positions would offset, leaving no open positions. Currently, the Exchange permits off-exchange transfers on behalf of a Market-Maker account for transactions in multiply listed options series on different exchanges, but only if the Market-Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market-Maker account at OCC. In such instances, all Market-Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market-Maker account (commonly referred to as a "universal account") at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other.

While RWA Transfers are not occurring because of limitations related to trading on different exchanges, similar reasoning for the above exception applies to why netting should be permissible for the limited purpose of reducing RWA. Firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they

trade, their risk management procedures, and for capital purposes. If a Market-Maker clears all transactions into a universal account, offsetting positions would automatically net. However, if a Market-Maker has multiple accounts into which its transactions cleared, they would not automatically net. While there are times when a firm may not want to close out open positions to reduce RWA, there are other times when a firm may determine it is appropriate to close out positions to accomplish a reduction in RWA.

In the example above, suppose after making the RWA Transfer described above, Market-Maker A effects a transaction on September 25 that results in 1000 long calls in class ABC, which clears into its account with Clearing Member X. If Market-Maker A had not effected its RWA Transfer in August, the 1000 long calls would have offset against the 1000 short calls, eliminating both positions and thus any RWA capital requirements associated with them. At the end of August, Market-Maker A did not want to close out the 1000 short calls when it made its RWA Transfer. However, given changed circumstances in September, Market-Maker A has determined it no longer wants to hold those positions. The proposed rule change would permit Market-Maker A to effect an RWA Transfer of the 1000 short calls from its account with Clearing Member Y to its account with Clearing Member X (or vice versa), which results in elimination of those positions (and a reduction in RWA associated with them). As noted above, such netting would have occurred if Market-Maker A cleared the September transaction directly into its account with Clearing Member Y or had not effected an RWA Transfer in August. Netting provides market participants with appropriate flexibility to conduct their businesses as they see fit while having the ability to reduce RWA capital requirements when necessary.

RWA Transfers may not result in preferential margin or haircut treatment.[33] Additionally, RWA Transfers may only be effected for options listed on the Exchange and will be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations (including OCC).[34]

In-Kind Exchange of Options Positions and Fund Shares and UIT Interests

The Exchange proposes to adopt Rule 20.12 regarding in-kind exchanges of options positions and exchange-traded fund ("Fund") shares and unit investment trust ("UIT") interests.[35] As discussed further below, the ability to effect "in kind" transfers is a key component of the operational structure of a Fund and a UIT. Currently, in general, Funds and UITs can effect in-kind transfers with respect to equity securities and fixed-income securities. The in-kind process is a major benefit to Fund shareholders and UIT unit holders, in general, the means by which assets may be added to or removed from Funds and UITs. In-kind transfers protect Fund shareholders and UIT unit holders from the undesirable tax effects of frequent "creations and redemptions" (described below) and improve the overall tax efficiency of the products. However, currently, the Rules do not provide for Funds and UITs to effect in-kind transfers of options off of the Exchange, resulting in

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33 See proposed paragraph (a)(4).

34 See proposed introductory paragraph and proposed paragraph (a)(7). Transfers of non-Exchange listed options and other financial instruments are not governed by this proposed rule. All RWA transfers will be subject to all applicable recordkeeping requirements applicable to Members and Clearing Members under the Act, such as Rules 17a-3 and 17a-4.

35 See Cboe Options Rule 6.9; see also Securities Exchange Act Release Nos. 87340 (October 17, 2019) (SR-CBOE-2019-048) (Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to Adopt Rule 6.9 (In-Kind Exchange of Options Positions and ETF Shares)); and 88786 (April 30, 2020), 85 FR 26998 (May 6, 2020) (SR-CBOE-2020-042) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 6.9 To Permit In-Kind Transfers of Positions Off of the Exchange in Connection With Unit Investment Trusts ("UITs")).

tax inefficiencies for Funds and UITs that hold them. As a result, the use of options by Funds and UITs is substantially limited.

Proposed Rule 20.12 would add a circumstance under which off-Exchange transfers of options positions would be permitted to occur, in addition to the circumstances in proposed Rules 20.10 and 20.11. Specifically, under proposed Rule 20.12, positions in options listed on the Exchange would be permitted to be transferred off the Exchange by a Member in connection with transactions (a) to purchase or redeem "creation units" of Fund Shares between an "authorized participant"[36] and the issuer[37] of such Fund Shares[38] or (b) to create or redeem units of a UIT between a broker-dealer and the issuer[39] of such UIT units, which transfers would occur at the price used to calculate the net asset value ("NAV") of such Fund Shares or UIT units, respectively. This proposed new exception, although limited in scope, would have a significant impact in that it would help protect Fund Shareholders and UIT holders from undesirable tax consequences and facilitate tax-efficient operations. The frequency with which Funds and authorized participants, and UITs and

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36 The Exchange is proposing that, for purposes of proposed Rule 20.12, the term "authorized participant" would be defined as an entity that has a written agreement with the issuer of Fund Shares or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units (i.e., specified numbers of Fund Shares). While an authorized participant may be a Member and directly effect transactions in options on the Exchange, an authorized participant that is not a Member may effect transactions in options on the Exchange through a Member on its behalf.

37 The Exchange proposes that, for purposes of proposed Rule 20.12, any issuer of Fund Shares would be registered with the Commission as an open-end management investment company under the Investment Company Act of 1940 (the "1940 Act").

38 A Fund Share is a share or other security principally traded on a national securities exchange and defined as an NMS stock, which includes interest in open-end management investment companies. See Rule 19.3(i).

39 The Exchange proposes that, for purposes of proposed Rule 20.12, any issuer of UIT units would be a trust registered with the Commission as a unit investment trust under the 1940 Act.

sponsors, would rely on the proposed exception would depend upon such factors as the number of Funds and UITs, respectively, holding options positions traded on the Exchange, the market demand for the shares of such Funds and units of such UITs, the redemption activity of authorized participants and sponsors, respectively, and the investment strategies employed by such Funds and UITs.

While the Exchange recognizes that, in general, the execution of options transactions on exchanges provides certain benefits, such as price discovery and transparency, based on the circumstances under which proposed Rule 20.12 would apply, the Exchange does not believe that such benefits would be compromised. In this regard, as discussed more fully below, the Exchange notes that in conjunction with the creation and redemption process, positions would be transferred at a price(s) used to calculate the NAV of such Fund Shares and UIT units. In addition, although options positions would be transferred off of the Exchange, they would not be closed or "traded." Rather, they would reside in a different clearing account until closed in a trade on the Exchange or until they expire. Further, as discussed below, proposed Rule 20.12 would be clearly delineated and limited in scope, given that the proposed exception would only apply to transfers of options effected in connection with the creation and redemption process.

Funds

As described in further detail below, while Funds do not sell and redeem individual shares to and from investors, they do sell large blocks of their shares to, and redeem them from, authorized participants in conjunction with what is known as the Fund creation and redemption process. Under the proposed exception, Funds that hold options listed on the Exchange would be permitted to effect creation and redemption transactions with authorized participants on an "in-kind" basis, which is the process that may generally be utilized by Funds for other asset types. This ability would allow such

Funds to function as more tax-efficient investment vehicles to be benefit of investors that hold Fund Shares. In addition, it may also result in transaction cost savings for the Funds, which may be passed along to investors.

Due to their ability to effect in-kind transfers with authorized participants in conjunction with the creation and redemption process described below, Funds have the potential to be significantly more tax-efficient than other pooled investment products, such as mutual funds.[40] Funds issue shares that may be purchased or sold during the day in the secondary market at market-determined prices. Similar to other types of investment companies, Funds invest their assets in accordance with their investment objectives and investment strategies, and Fund Shares represent interests in a Fund's underlying assets. Funds are, in certain respects, similar to mutual funds in that they continuously offer their shares for sale. In contrast to mutual funds, however, Funds do not sell or redeem individual shares. Rather, through the creation and redemption process referenced above, authorized participants have contractual arrangements with a Fund and/or its service provider (e.g., its distributor) purchase and redeem shares directly from that Fund in large aggregations known as "creation units." In general terms, to purchase a creation unit of Fund Shares from a Fund, in return for depositing a "basket" of securities and/or other assets identified by the Fund on a particular day, the authorized participant will receive a creation unit of Fund Shares. The basket deposited by the

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40 This summary of the Fund creation and redemption process is based largely on portions of the discussion set forth in Investment Company Act Release No. 33140 (June 28, 2018), 83 FR 37332 (July 31, 2018) (the "Proposed ETF Rule Release") in which the Commission proposed a new rule under the 1940 Act that would permit Funds registered as open-end management investment companies that satisfy certain conditions to operate without the need to obtain an exemptive order. The proposed rule was adopted on September 25, 2019. See Investment Company Act Release No. 33646 (September 25, 2019).

authorized participant is generally expected to be representative of the Fund's portfolio[41] and, when combined with a cash balancing amount (i.e., generally an amount of cash intended to account for any difference between the value of the basket and the NAV of a creation unit), if any, will be equal in value to the aggregate NAV of the shares of the Fund comprising the creation unit. The NAV for Fund Shares is represented by the traded price for Funds holding options positions on days of creation or redemption, and an options pricing model on days in which creations and redemptions do not occur. After purchasing a creation unit, an authorized participant may then hold individual shares of the Fund and/or sell them in the secondary market. In connection with effecting redemptions, the creation process described above is reversed. More specifically, the authorized participant will redeem a creation unit of Fund Shares to the Fund in return for a basket of securities and/or other assets (along with any cash balancing account).

The Fund creation and redemption process, coupled with the secondary market trading of Fund Shares, facilitates arbitrage opportunities that are intended to help keep the market price of Fund Shares at or close to the NAV per share of the Fund. Authorized participants play an important role because of their ability, in general terms, to add Fund Shares to, or remove them from, the market. In this regard, if shares of a Fund are trading at a discount (i.e., below NAV per share), an authorized participant may purchase Fund Shares in the secondary market, accumulate enough shares for a creation unit and then redeem them from the Fund in exchange for the Fund's more valuable redemption basket. Accordingly, the authorized participant will profit because it paid less for the Fund Shares than it received for the underlying assets. The reduction in the supply of Fund

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41 Under certain circumstances, however, and subject to the provisions of its exemptive relief from various provisions of the 1940 Act obtained from the Commission, a Fund may substitute cash and/or other instruments in lieu of some or all of the Fund's portfolio holdings. For example, today, positions in options traded on the Exchange would be generally substituted with cash.

Shares available on the secondary market, together with the sale of the Fund's basket assets, may cause the price of Fund Shares to increase, the price of the basket assets to decrease, or both, thereby causing the market price of the Fund Shares and the value of the Fund's holdings to move closer together. In contrast, if the Fund Shares are trading at a premium (i.e., above NAV per share), the transactions are reversed (and the authorized participant would deliver the creation basket in exchange for Fund Shares), resulting in an increase in the supply of Fund Shares which may also help to keep the price of the shares of a Fund close to the value of its holdings.

In comparison to other pooled investment vehicles, one of the significant benefits associated with a Fund's in-kind redemption feature is tax efficiency. In this regard, by effecting redemptions on an in-kind basis (i.e., delivering certain assets from the Fund's portfolio instead of cash), there is no need for the Fund to sell assets and potentially realize capital gains that would be distributed to shareholders. As indicated above, however, because the Rules currently do not allow Funds to effect in-kind transfers of options off of the Exchange, Funds that invest in options traded on the Exchange are generally required to substitute cash in lieu of such options when effecting redemption transactions with authorized participants. Because they must sell the options to obtain the requisite cash, such Funds (and therefore, investors that hold shares of those Funds) are not able to benefit from the tax efficiencies afforded by in-kind transactions.

An additional benefit associated with the in-kind feature is the potential for transaction cost savings. In this regard, by transacting on an in-kind basis, Funds may avoid certain transaction costs they would otherwise incur in connection with purchases and sales of securities and other assets. Again, however, this benefit is not available today to Funds with respect to their options holdings.

UITs

Although UITs operate differently than Funds in certain respects, as described below, the anticipated potential benefits to UIT investors (i.e., greater tax efficiencies and transaction cost savings) from the proposed exemption would be similar as discussed below. Specifically, under the 1940 Act,[42] a UIT is an investment company organized under a trust indenture or similar instrument that issues redeemable securities, each of which represents an undivided interest in a unit of specified securities.[43] A UIT's investment portfolio is relatively fixed, and, unlike a Fund, a UIT has a fixed life (a termination date for the trust is established when the trust is created). Similar to other types of investment companies (including Funds), UITs invest their assets in accordance with their investment objectives and investment strategies, and UIT units represent interests in a UIT's underlying assets. Like Funds, UITs do not sell or redeem individual shares, but instead, through the creation and redemption process, a UIT's sponsor (a broker-dealer) may purchase and redeem shares directly from the UIT's trustee in aggregations known as "units." A broker-dealer purchases a unit of UIT shares from the UIT's trustee by depositing a basket of securities and/or other assets identified by the UIT. These transactions are largely effected by "in-kind" transfers, or the exchange of securities, non-cash assets, and/or other non-cash positions. The basket deposited by the broker-dealer is generally expected to be representative of the UIT's units and will be equal in value to the aggregate NAV of the shares of the UIT comprising a unit.[44] The UIT then issues units that are publicly offered and sold. Unlike Funds,

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42 15 U.S.C. 80a-4(2).

43 The Exchange also notes that, though a majority of Funds are structured as open-ended funds, some Funds are structured as UITs, and currently represent a significant amount of assets within the Fund industry. These include, for example, SPDR S&P 500 ETF Trust ("SPY") and PowerShares QQQ Trust, Series 1 ("QQQ").

44 The NAV is an investment company's total assets minus its total liabilities. UITs must calculate their NAV at least once every business day, typically after market close. See §270.2a-4(c), which provides that any interim determination of current net asset value between calculations made as of the close of the New York Stock Exchange on the

UITs typically do not continuously offer their shares for sale, but rather, make a one-time or limited public offering of only a specific, fixed number of units like a closed-end fund (i.e., the primary period, which may range from a single day to a few months). Similar to the process for Funds, UITs allow investor-owners of units to redeem their units back to the UIT's trustee on a daily basis and, upon redemption, such investor-owners are entitled to receive the redemption price at the UIT's NAV. While UITs provide for daily redemptions directly with the UIT's trustee, UIT sponsors frequently maintain a secondary market for units, also like that of Funds, and will buy back units at the applicable redemption price per unit. To satisfy redemptions, a UIT typically sells securities and/or other assets, which results in negative tax implications and an incurrence of trading costs borne by remaining unit holders.

Proposed Rule

The Exchange believes that it is appropriate to permit off-Exchange transfers of options positions in connection with the creation and redemption process and recognizes that the prevalence and popularity of Funds have increased greatly. Currently, Funds serve both as popular investment vehicles and trading tools[45] and, as discussed above, the creation and redemption process, along with the arbitrage opportunities that accompany it, are key Fund features. Although Funds and UITs operate differently in certain respects, the ability to effect in-kind transfers is also significant for

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preceding business day and the current business day may be estimated so as to reflect any change in current net asset value since the closing calculation on the preceding business day. This, however, is notwithstanding the requirements of §270.2a-4(a), which provides for other events that would trigger computation of a UIT's NAV.

45 As noted in the Proposed ETF Rule Release, during the first quarter of 2018, trading in U.S.-listed Funds comprised approximately 18.75% of U.S. equity trading by share volume and 28.2% of U.S. equity trading by dollar volume (based on trade and quote data from the New York Stock Exchange and Trade Reporting Facility data from the Financial Industry Regulatory Authority, Inc. (FINRA)). See Proposed ETF Rule Release at 83 FR 37334.

UITs. As described above, UITs and Funds are situated in substantially the same manner; the key differences being a UIT's fixed duration, and that a UIT generally makes a one-time public offering of only a specific, fixed number of units. Negative tax implication and trading costs for remaining unit holders would be mitigated by allowing a UIT sponsor or another broker-dealer to receive an in-kind distribution of options upon redemption. Accordingly, the Exchange believes that providing for an additional, narrow circumstance to make it possible for Funds and UITs that invest in options to effect creations and redemptions on an in-kind basis is justified.

The Exchange submits that its proposal is clearly delineated and limited in scope and not intended to facilitate "trading" options off of the Exchange. In this regard, the proposed circumstance would be available solely in the context of transfers of options positions effected in connection with transactions to purchase or redeem creation units of Fund Shares between Funds and authorized participants,[46] and units of UITs between UITs and sponsors. As a result of this process, such transfers would occur at the price(s) used to calculate the NAV of such Fund Shares and UIT units (as discussed above), which removes the need for price discovery on an Exchange for pricing these transfers. Moreover, as described above, Funds and authorized participants, and UITs and sponsors, are not seeking to effect the opening or closing of new options positions in connection with the creation and redemption process. Rather, the options positions would reside in a different clearing account until closed in a trade on the Exchange or until they expire.

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46 See supra note 37. The term "authorized participant" is specific and narrowly defined. As noted in the Proposed ETF Rule Release, the requirement that only authorized participants of a Fund may purchase creation units from (or sell creation units to) a Fund "is designed to preserve an orderly creation unit issuance and redemption process between [Funds] and authorized participants." Furthermore, an "orderly creation unit issuance and redemption process is of central importance to the arbitrage mechanism." See Proposed ETF Rule Release at 83 FR 37348.

The proposed transfers, while occurring between two different parties, will occur off the Exchange and will not be considered transactions (as is the case for current off-Exchange transfers permitted by proposed Rule 20.10(a)). While the prices of options transactions effected on the Exchange are disseminated to OPRA, back-office transfers of options positions in clearing accounts held at OCC (in accordance with OCC Rules)[47] are not disseminated to OPRA or otherwise publicly available, as they are considered position transfers, rather than executions.[48] The Exchange believes that price transparency is important in the options markets. However, the Exchange expects any transfers pursuant to the proposed rule will constitute a minimal percentage of the total average daily volume of options. Today, the trading of Funds and UITs that invest in options is substantially limited on the Exchange, primarily because the current rules do not permit Funds or UITs to effect in-kind transfers of options off the Exchange. The Exchange continues to expect that any impact this proposal could have on price transparency in the options market is minimal because proposed Rule 20.12 is limited in scope and is intended to provide market participants with an efficient and effective means to transfer options positions under clearly delineated, specified circumstances. Additionally, as noted above, the NAV for Fund and UIT transfers will generally be based on the disseminated closing price for an options series on the day of a creation or redemption, and thus the price (although not the time or quantity of the transfer) at which these transfers will generally be effected will be publicly available.[49] Further, the Exchange generally expects creations or

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47 OCC has informed the Exchange that it has the operational capabilities to effect the proposed position transfers. All transfers pursuant to proposed Rule 20.12 would be required to comply with OCC rules

48 For example, any transfers that would be effected pursuant to proposed Rule 20.10(a) are not disseminated to OPRA.

49 If there is no disseminated closing price, the Fund or UIT would price according to a pricing model or procedure as described in the fund's prospectus.

redemptions to include corresponding transactions by the authorized participant that will occur on an exchange and be reported to OPRA.[50] Therefore, the Exchange expects that any impact the proposed rule change could have on price transparency in the options market would be de minimis.

Other than the transfers covered by the proposed rule, transactions involving options, whether held by a Fund or an authorized participant, or a UIT or a sponsor would be fully subject to all applicable trading Rules.[51] Accordingly, the Exchange does not believe that the proposed new exception would compromise price discovery or transparency.

Further, the Exchange believes that providing an additional exception to make it possible for Funds and UITs that invest in options to effect creations and redemptions on an in-kind basis is justified because, while the proposed exception would be limited in scope, the benefits that may flow to Funds that hold options and their investors may be significant. Specifically, the Exchange expects such Funds and UITs and their investors would benefit from increased tax efficiencies and potential transaction cost savings. By making such Funds and UITs more attractive to both current and prospective investors, the proposed rule change would enable them

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50 The Exchange notes that for in-kind creations, an authorized participant will acquire the necessary options positions in an on-exchange transaction that will be reported to OPRA. For in-kind redemptions, the Exchange generally expects that an authorized participant will acquire both the shares necessary to effect the redemption and an options position to offset the position that it will receive as proceeds for the redemption. Such an options position would likely be acquired in an on-exchange transaction that would be reported to OPRA. Such transactions are generally identical to the way that creations and redemptions work for equities and fixed income transactions – while the transfer between the authorized participant and the fund is not necessarily reported, there are generally corresponding transactions that would be reported, providing transparency into the transactions.

51 As indicated above, the operation of the arbitrage mechanism accompanying the creation and redemption process generally contemplates ongoing interactions between authorized participants and the market in transactions involving both Fund Shares and the assets comprising a Fund's creation/redemption basket.

to compete more effectively with other Funds and UITs that, due to their particular portfolio holdings, may effect in-kind creations and redemptions without restriction.

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.[52] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[53] 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)[54] 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 proposed Rule 20.9 is consistent with the Act, because it adopts provisions in the Rules specifically required by Rules 19c-1 and 19c-3 under the Act. The Exchange's rules, stated policies, and procedures currently comply with these provisions of the Rules under the Act, and the proposed rule will change will add transparency to the Rules, which will benefit investors.

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52 15 U.S.C. 78f(b).

53 15 U.S.C. 78f(b)(5).

54 Id.

The Exchange believes proposed Rule 20.10 regarding off-floor position transfers is consistent with the Section 6(b)(5)[55] requirements that the rules of an exchange be 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)[56] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting transfers under new Rule 20.10 in very limited circumstances is reasonable to allow a Member to accomplish certain goals efficiently. The proposed rule permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a Member that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a Member that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a Member may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts – even if there is no change in beneficial ownership as a result of the transfer – is inconsistent with the purposes for

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55 Id.

56 Id.

which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed Rule 20.10(f) that the transfer of positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

The proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will enable the Exchange to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a-3 and 17a-4 under the Act.

Similar to Cboe Options Rule 6.7, the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process.

Proposed Rule 20.10(f) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the

protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. These standards within proposed Rule 20.10(f) are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within Rule 20.10(f) which are intended to protect investors and the general public. While Cboe Options grants an exemption to the President (or senior-level designee),[57] the Exchange has elected to grant an exemption to Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated with the organization as senior-level individuals.

The Exchange believes proposed Rule 20.11 regarding RWA Transfers will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing liquidity in the listed options market. The Exchange believes providing market participants with an efficient process to reduce RWA capital requirements attributable to open positions in clearing accounts with U.S. bank-affiliated clearing firms may contribute to additional liquidity in the listed options market, which, in general, protects investors and the public interest.

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57 See Cboe Options Rule 6.7(f).

The proposed rule change, in particular the proposed changes to permit RWA transfers to occur on a routine, recurring basis and result in netting, also provides market participants with sufficient flexibility to reduce RWA capital requirements at times necessary to comply with requirements imposed on them by clearing firms. This will permit market participants to respond to then-current market conditions, including volatility and increased volume, by reducing the RWA capital requirements associated with any new positions they may open while those conditions exist. Given the additional capital that may become available to market participants as a result of the RWA Transfers, market participants will be able to continue to provide liquidity to the market, even during periods of increased volume and volatility, which liquidity ultimately benefits investors. It is not possible for market participants to predict what market conditions will exist at a specific time, and when volatility will occur. The proposed rule change to permit routine, recurring RWA Transfers (and to not provide prior written notice) will provide market participants with the ability to respond to these conditions whenever they occur. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. In addition, with respect to netting, as discussed above, firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Netting may otherwise occur with respect to a firm's positions if it structured its clearing accounts differently, such as by using a universal account. Therefore, the proposed rule change will permit netting while allowing firms to continue to maintain different clearing accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions occur on an exchange, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit RWA Transfers to occur off the exchange, as these benefits are inapplicable to RWA Transfers. RWA Transfers have a narrow scope and are intended to achieve a limited, benefit purpose. RWA Transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the purpose of the transfer is to reduce RWA asset capital requirements attributable to a market participants' positions. Unlike trades on an exchange, the price at which an RWA Transfers occurs is immaterial – the resulting reduction in RWA is the critical part of the transfer. RWA Transfers will result in no change in ownership, and thus they do not constitute trades with a counterparty (and thus eliminating the need for a counterparty guarantee). The transactions that resulted in the open positions to be transferred as an RWA Transfer were already guaranteed by an OCC clearing member, and the positions will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member. The narrow scope of the proposed rule change and the limited, beneficial purpose of RWA Transfers make allowing RWA Transfers to occur off the floor appropriate and important to support the provision of liquidity in the listed options market.

Proposed Rule 20.11 does not unfairly discriminate against market participants, as all Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements of Clearing Members.

The Exchange believes proposed Rule 20.12 to permit off-Exchange transfers in connection with the in-kind Fund and UIT creation and redemption process will promote just and

equitable principles of trade and help remove impediments to and perfect the mechanism of a free and open market and a national market system, as it would permit Funds and UITs that invest in options traded on the Exchange to utilize the in-kind creation and redemption process that is available for Funds and UITs that invest in equities and fixed-income securities. This process represents a significant feature of the Fund and UIT structure generally, with advantages that distinguish Funds and UITs from other types of pooled investment vehicles. In light of the associated tax efficiencies and potential transaction cost savings, the Exchange believes the ability to utilize an in-kind process would make such Funds and UITs more attractive to both current and prospective investors and enable them to compete more effectively with other Funds and UITs that, based on their portfolio holdings, may effect in-kind creations and redemptions without restriction. In addition, the Exchange believes that because it would permit Funds and UITs that invest in options traded on the Exchange to benefit from tax efficiencies and potential transaction cost savings afforded by the in-kind creation and redemption process, which benefits the Exchange expects would generally be passed along to investors that hold Fund Shares and UIT units, the proposed rule change would protect investors and the public interest.

Moreover, the Exchange submits that the proposed exception is clearly delineated and limited in scope and not intended to facilitate "trading" options off the Exchange. Other than the transfers covered by the proposed exception, transactions involving options, whether held by a Fund or an authorized participant, or a UIT or a sponsor, would be fully subject to the applicable trading Rules. Additionally, the transfers covered by the proposed exception would occur at a price(s) used to calculate the NAV of the applicable Fund Shares or UIT units, which removes the need for price discovery on the Exchange. Accordingly, the Exchange does not believe that the proposed rule change would compromise price discovery or transparency.

When Congress charged the Commission with supervising the development of a "national market system" for securities, Congress stated its intent that the "national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed."[58] Consistent with this purpose, Congress and the Commission have repeatedly stated their preference for competition, rather than regulatory intervention to determine products and services in the securities markets.[59] This consistent and considered judgment of Congress and the Commission is correct, particularly in light of evidence of robust competition among exchanges. The fact that an exchange proposed something new is a reason to be receptive, not skeptical — innovation is the lifeblood of a vibrant competitive market —and that is particularly so given the continued internalization of the securities markets, as exchanges continue to implement new products and services to compete not only in the United States but throughout the world. Exchanges continuously adopt new and different products and trading services in response to industry demands in order to attract order flow and liquidity to increase their trading volume. This competition has led to a growth in investment choices, which ultimately benefits the marketplace and the public.

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58 See H.R. Rep. 94-229, at 92 (1975) (Conf. Rep.).

59 See S. Rep. No. 94-75, 94th Cong., 1st Sess. 8 (1975) ("The objective [in enacting the 1975 amendments to the Exchange Act] would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services."); Order Approving Proposed Rule Change Relating to NYSE Arca Data, Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) ("The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the [self-regulatory organizations] and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system."); and Regulation NMS, 70 FR at 37499 (observing that NMS regulation "has been remarkably successful in promoting market competition in [the] forms that are most important to investors and listed companies").

Currently, the Exchange Rules do not allow Funds or UITs to effect in-kind transfers of options off of the Exchange, resulting in tax inefficiencies for Funds and UITs that hold them. As a result, the use of options by Funds and UITs is substantially limited. While the proposed exception would be limited in scope, the Exchange believes the benefits that may flow to Funds and UITs that hold options and their investors may be significant. Specifically, the Exchange expects that such Funds and UITs and their investors could benefit from increased tax efficiencies and potential transaction cost savings. By making such Funds and UITs more attractive to both current and prospective investors, the proposed rule change would enable them to compete more effectively with other Funds and UITs, and other investment vehicles, that, due to their particular portfolio holdings, may effect in-kind creations and redemptions without restriction. This may lead to further development of Funds and UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public.

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 is not intended to be a competitive trading tool.

The Exchange does not believe the proposed rule change regarding off-floor position transfers will impose an undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the transfer procedure may be utilized by any Member and the rule will apply uniformly to all Members. Use of the transfer procedure is voluntary, and all Members may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a Member that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these

situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will enable the Exchange to be aware of transfers and monitor and review the transfers for compliance with the proposed rule.

Adopting an exemption, similar to Cboe Options Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to proposed Rule 20.9 prohibition if, in his or her judgment, does not impose an undue burden on competition. Circumstances where, due to unusual or extraordinary circumstances such as the market value of the person's positions would be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, would be taken into consideration in each case where, in the judgment of the Exchange's Chief Executive Officer or President (or senior-level designee), market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change regarding off-floor position transfers will impose an undue burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed position transfer procedure is not intended to be a competitive trading tool. The proposed rule change permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions. As provided for in proposed Rule 20.10(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Rule 20.10(g) specifically

provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Options Rule 6.7. The Exchange believes having similar rules related to transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

The Exchange does not believe the proposed rule change regarding off-floor RWA Transfers will impose an undue burden on intramarket competition that is not necessary or appropriate in furtherance of the Act, as use of the proposed process is voluntary. All Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements attributable to those positions. 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. RWA Transfers have a limited purpose, which is to reduce RWA attributable to open positions in listed options in order to free up capital. The Exchange believes the proposed rule change may relieve the burden on liquidity providers in the options market by reducing the RWA attributable to their open positions. As a result, market participants may be able to increase liquidity they provide to the market, which liquidity benefits all market participants.

The Exchange does not believe the proposed rule change regarding off-floor in-kind transfers will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Utilizing the proposed exception would be voluntary. As an alternative to the normal auction process, proposed Rule 20.12 would provide market participants with an efficient and effective means to transfer positions as part of the creation and redemption process for Funds and UITs under specified circumstances. The proposed exception would enable all Funds and UITs that hold options to enjoy the benefits of in-kind creations and redemptions already available to other Funds and UITs (and to pass these benefits along to investors). The proposed rule change would apply in the same manner to all authorized participants and sponsor broker-dealers that choose to use the proposed process.

The Exchange does not believe 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 indicated above, it is intended to provide an additional clearly delineated and limited circumstance in which options positions can be transferred off an exchange. Further, the Exchange believes the proposed rule change will eliminate a significant competitive disadvantage for Funds and UITs that invest in options. Furthermore, as indicated above, in light of the significant benefits provided (e.g., tax efficiencies and potential transaction cost savings), the proposed exception may lead to further development of Funds and UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public. Lastly, the Exchange notes that the proposed rule change is based on Cboe Rule 6.9. As such, the Exchange believes that its proposal enhances fair competition between markets by providing for additional listing venues for Funds that hold options to utilize the in-kind transfers proposed herein.

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

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

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[60] and Rule 19b-4(f)(6) thereunder.[61]

A proposed rule change filed under Rule 19b-4(f)(6)[62] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),[63] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to so that it may adopt the proposed position transfer rules as soon as possible which, according to the Exchange, would provide for fair competition among options exchanges. The proposed rule change does not present any unique or novel regulatory issues and is

60 15 U.S.C. 78s(b)(3)(A).

61 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

62 17 CFR 240.19b-4(f)(6).

63 17 CFR 240.19b-4(f)(6)(iii).

substantively similar to the rules of Cboe Options. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[64]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-CboeBZX-2020-054 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-CboeBZX-2020-054. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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64 For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-CboeBZX-2020-054 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.[65]

J. Matthew DeLesDernier
Assistant Secretary

65 17 CFR 200.30-3(a)(12).