

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 24

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2022 - \* 028

Amendment No. (req. for Amendments \*)

Filing by Cboe Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) \*

☐

Section 806(e)(2) \*

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Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) \*

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Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

The Exchange proposes to extend the temporary remote inspection relief for Trading Permit Holders office inspections for calendar years 2020 and 2021 to include calendar year 2022 through December 31, 2022.

### Contact Information

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

First Name *	Rebecca	Last Name *	Tenuta
Title *	Senior Counsel		
E-mail *	rtenuta@cboe.com		
Telephone *	(312) 786-7068	Fax	

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, Cboe Exchange, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 06/09/2022

(Title \*)

By Laura G. Dickman

(Name \*)

VP, Associate General Counsel

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Laura Dickman

Date: 2022.06.09  
12:40:31 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

Add Remove View

22-028 (Remote Inspection Extension)

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

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

22-028 (Remote Inspection Extension)

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

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

Add Remove View

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

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

Add Remove View

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

☐

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

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

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Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

Add Remove View

22-028 (Remote Inspection Extension)

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

**Partial Amendment**

Add Remove View

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

**Item 1.        Text of the Proposed Rule Change**

(a)     Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to extend the temporary remote inspection relief for Trading Permit Holder’s office inspections for calendar years 2020 and 2021 to include calendar year 2022 through December 31, 2022. The text of the proposed rule change is provided in Exhibit 5.

(b)     Not applicable.

(c)     Not applicable.

**Item 2.        Procedures of the Self-Regulatory Organization**

(a)     The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on May 31, 2022.

(b)     Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Rebecca Tenuta, (312) 786-7068, Cboe Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

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

(a)     Purpose

The Exchange proposes to amend Rule 9.2, Supervision of Accounts, to extend the temporary remote inspection relief for Trading Permit Holders (“TPHs”) to complete their branch office inspections for the calendar years 2020 and 2021 to include calendar year 2022 through December 31, 2022.

The COVID-19 pandemic has caused a host of operational disruptions to the securities industry and impacted Trading Permit Holders (“TPHs”), regulators, investors and other stakeholders. In response to the pandemic, the Exchange began providing temporary relief to

TPHs from specified Exchange Rules and requirements, including Rule 9.2(d) (Annual Branch Inspections). In November 2020, the Exchange adopted a provision in Rule 8.16(f) (Office Inspections), which has expired by its terms, that extended the time by which TPHs must complete their calendar year 2020 inspection obligations under Rule 8.16(f) to March 31, 2021, without an on-site visit to the office or location.<sup>1</sup> The Exchange also adopted Rule 9.2(d)(5) to provide firms the option of satisfying their inspection obligations under Rule 8.16(f) and 9.2(d) remotely for calendar years 2020 and 2021, subject to specified conditions,<sup>2</sup> due to the logistical challenges of going on-site while public health and safety concerns related to COVID-19 persisted. In December 2021, due to the ongoing impact of COVID 19, the Exchange extended the temporary remote inspection relief in Rule 9.2(d)(5) for TPH's office inspections for calendar years 2020 and 2021 to include calendar year 2022 through June 30, 2022. The Exchange notes that these temporary rules, currently and as proposed herein, are substantively identical to the temporary inspection extension and remote relief rules filed by the Financial Industry Regulatory Authority ("FINRA").<sup>3</sup>

While there are signs of improvement, much uncertainty remains. The emergence of the COVID 19 variants,<sup>4</sup> dissimilar vaccination rates throughout the United States, and the

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<sup>1</sup> See Securities Exchange Act Release No. 90583 (December 7, 2020), 85 FR 80207 (December 12, 2020) (SR-CBOE-2020-112).

<sup>2</sup> See *id.*

<sup>3</sup> See Securities and Exchange Act Release Nos. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (SR-FINRA-2020-019); 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-040); 93002 (September 15, 2021), [86 FR 52508](#) (September 21, 2021) (File No. SR-FINRA-2021-023); and 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (SR-FINRA-2022-001).

<sup>4</sup> See The Centers for Disease Control and Prevention ("CDC"), What You Need to Know about Variants (stating, in part, that "the Delta variant causes more infections and spreads faster than earlier forms of the virus that causes COVID19."),

uptick in transmissions in many locations indicate that COVID-19 remains an active and real public health concern.<sup>5</sup> The Exchange understands that firms have delayed their return to office plans due to the continued pandemic and are considering implementing or have implemented hybrid work arrangements dependent on functions and regulatory requirements.<sup>6</sup> To that end, in order to address ongoing industry-wide concerns regarding having to conduct in-person office inspections while safety concerns related to the pandemic persist and to align with pandemic-related regulatory relief provided by FINRA, which has already extended their substantively identical temporary remote inspection rules,<sup>7</sup> the Exchange proposes to extend Rule 9.2(d)(5) through December 31, 2022. The proposed extension would provide clarity to firms on regulatory requirements and account for the time needed for many firms to carefully assess when and how to have their employees safely return

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<https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html> (updated April 26, 2022). See also CDC, The Possibility of COVID-19 Illness after Vaccination: Breakthrough Infections (stating, in part, that “COVID-19 vaccines are effective at preventing infection, serious illness, and death. Most people who get COVID-19 are unvaccinated. However, since vaccines are not 100% effective at preventing infection, some people who are fully vaccinated will still get COVID-19. . . People who get vaccine breakthrough infections can be contagious.”), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html> (updated December 17, 2022).

<sup>5</sup> See e.g., Press Briefing by White House COVID-19 Response Team and Public Health Officials (May 18, 2022), which discusses the sustained high number of infections driven by “incredibly contagious subvariants” and the limited funding in being able to provide a new generation of vaccines to every American in the fall/winter of 2022; and see generally CDC, Unpacking Variants (updated April 22, 2022)..

<sup>6</sup> The Exchange notes that a majority of its TPHs are FINRA member firms as well, and that through FINRA’s ongoing monitoring the Exchange has learned that many of its TPHs have delayed plans to require a full return to the office and that most continue to operate in a remote or hybrid environment.

<sup>7</sup> See Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (File No. SR-FINRA-2022-001).

to their offices in light of vaccination coverage in the U.S. and transmission levels of the virus, including any emergent variants throughout the country.

By extending Rule 9.2(d)(5) through December 31, 2022, the Exchange does not propose to amend the other conditions of the temporary rule. The proposed amendments to Rule 9.2(d)(5) simply provide that for calendar year 2022, a TPH has the option to conduct those inspections remotely through December 31, 2022. The current conditions of Rule 9.2(d)(5) for firms that elect to conduct remote inspections would remain unchanged: such firms must amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the required documentation. The additional period of time would also enable the Exchange to further monitor the effectiveness of remote inspections and their impacts – positive or negative – on firms' overall supervisory systems in the evolving workplace. Notwithstanding the proposed temporary rule change, a TPH remains subject to the requirements of Rule 8.16(f) and Rule 9.2(d).

The Exchange continues to believe this temporary remote inspection option is a reasonable alternative to provide to firms to fulfill their Rule 8.16(f) and 9.2(d) obligations during the pandemic and is designed to achieve the investor protection objectives of the inspection requirements under these unique circumstances. Firms should consider whether, under their particular operating conditions, reliance on remote inspections would be reasonable under the circumstances. For example, firms with offices that are open to the public or that are otherwise doing business as usual should consider whether some form of in-person inspections would be feasible and appropriately contribute to a supervisory system that is

reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules.

The Exchange again notes that FINRA has already put in place the same extension period of their remote relief rule,<sup>8</sup> which is substantively identical to Rule 9.2(d)(5).<sup>9</sup>

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>8</sup> See supra note 7.

<sup>9</sup> See supra notes 1 and 3.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> Id.

In particular, the Exchange believes that, in recognition of the ongoing impact of COVID-19 on performing the on-site inspection component of Rules 8.16(f) and 9.2(d), the proposed rule change is intended to provide firms a temporary regulatory option to conduct inspections of offices and locations remotely during calendar year 2022. This temporary remote relief rule and the proposed extension thereof does not relieve firms from meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules that directly serve investor protection. In a time when faced with ongoing challenges resulting from the COVID-19 pandemic, the Exchange believes that the proposed rule change provides sensibly tailored relief that will afford firms the ability to assess when and how to implement their work re-entry plans as measured against the health and safety of their personnel, while continuing to serve and promote the protection of investors and the public interest.

**Item 4. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed temporary rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act, because the proposed extension of the temporary remote inspection relief rule will apply equally to all TPHs required to conduct office and location inspections in calendar year 2022 through December 31, 2022. The Exchange further does not believe that the proposed extension to the temporary rule will impose any burden on intermarket



competition because it relates only to the extension of the remote manner in which inspections for 2022 may be conducted. Additionally, and as stated above, FINRA has already extended its substantively identical temporary remote relief rule for its members in the same manner.

**Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

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

**Item 6. Extension of Time Period for Commission Action**

Not applicable.

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

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder.

(b) The Exchange designates that the proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange has given 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.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

The Exchange does not believe that the proposed extension of the temporary remote relief rule will significantly affect the protection of investors or the public interest because they do not relieve TPHs from meeting their existing regulatory obligations to establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules, which directly serve investor protection. The proposed extension of the temporary rule is intended to support investor protection by providing TPHs a temporary regulatory option to conduct inspections of offices and locations remotely for calendar year 2022, as they were permitted for 2020 and 2021. The proposed extension of the temporary rule is designed to protect investors and the public interest generally by providing appropriately tailored relief that will afford TPHs the ability to observe the recommendations of public health officials to provide for the health and safety of their personnel, while also satisfying their inspection obligations.

The Exchange does not believe that the proposed rule change will impose any significant burden on competition because the extension of the remote inspection relief rule will apply equally to all TPHs required to conduct office and location inspections in calendar year 2022 through December 31, 2022. The proposed rule change is not competitive in nature as it relates only to the extension of the remote manner in which inspections may be conducted. In addition to this, the Exchange again notes that FINRA has already extended in the same manner its substantively identical temporary remote relief rule for its members.

For the foregoing reasons, this rule filing qualifies as a “non-controversial” rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon

filing with the Commission. At any time within 60 days of the filing of this 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. The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. As stated above, the proposed extension will provide TPHs with a temporary regulatory option to conduct inspections of offices and locations remotely for calendar year 2022, as they were permitted in 2020 and 2021, which will afford TPH the ability to observe the recommendations of public health officials to provide for the health and safety of their personnel, while also satisfying their inspection obligations, thereby serving investor protection. The proposed extension will not adversely impact the protection of investors as they do not relieve TPHs from meeting their existing regulatory obligations to establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules. Additionally, FINRA has already extended its identical temporary remote inspection relief through December 31, 2022. Waiver of the operative delay would allow the proposed change to be in effect on the date of filing to provide extension of the temporary remote inspection relief prior to the date (June 30, 2022) for which such relief currently expires. As such, and for the reasons described above, the Exchange believes that it is appropriate for the Commission to waive the operative delay.

(c) Not applicable.

(d) Not applicable.

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

The proposed rule change is substantively identical to FINRA Rule 3110.17.<sup>15</sup>

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

Not applicable.

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

Not applicable.

**Item 11. Exhibits**

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

Exhibit 5. Proposed rule text.

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<sup>15</sup> See supra notes 3 and 7.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CBOE-2022-028]

[Insert date]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Temporary Remote Inspection Relief for Trading Permit Holder's Office Inspections for Calendar Years 2020 and 2021 to Include Calendar Year 2022 through December 31, 2022

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [insert date], Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to extend the temporary remote inspection relief for Trading Permit Holder's office inspections for calendar years 2020 and 2021 to include calendar year 2022 through December 31, 2022. The text of the proposed rule change is provided in Exhibit 5.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

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

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

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

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

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

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

**1. Purpose**

The Exchange proposes to amend Rule 9.2, Supervision of Accounts, to extend the temporary remote inspection relief for Trading Permit Holders ("TPHs") to complete their branch office inspections for the calendar years 2020 and 2021 to include calendar year 2022 through December 31, 2022.

The COVID-19 pandemic has caused a host of operational disruptions to the securities industry and impacted Trading Permit Holders ("TPHs"), regulators, investors and other stakeholders. In response to the pandemic, the Exchange began providing temporary relief to TPHs from specified Exchange Rules and requirements, including Rule 9.2(d) (Annual Branch Inspections). In November 2020, the Exchange adopted a provision in Rule 8.16(f) (Office Inspections), which has expired by its terms, that extended the time by which TPHs must complete their calendar year 2020 inspection obligations under Rule 8.16(f) to March

31, 2021, without an on-site visit to the office or location.<sup>5</sup> The Exchange also adopted Rule 9.2(d)(5) to provide firms the option of satisfying their inspection obligations under Rule 8.16(f) and 9.2(d) remotely for calendar years 2020 and 2021, subject to specified conditions,<sup>6</sup> due to the logistical challenges of going on-site while public health and safety concerns related to COVID-19 persisted. In December 2021, due to the ongoing impact of COVID 19, the Exchange extended the temporary remote inspection relief in Rule 9.2(d)(5) for TPH's office inspections for calendar years 2020 and 2021 to include calendar year 2022 through June 30, 2022. The Exchange notes that these temporary rules, currently and as proposed herein, are substantively identical to the temporary inspection extension and remote relief rules filed by the Financial Industry Regulatory Authority ("FINRA").<sup>7</sup>

While there are signs of improvement, much uncertainty remains. The emergence of the COVID 19 variants,<sup>8</sup> dissimilar vaccination rates throughout the United States, and the

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<sup>5</sup> See Securities Exchange Act Release No. 90583 (December 7, 2020), 85 FR 80207 (December 12, 2020) (SR-CBOE-2020-112).

<sup>6</sup> See id.

<sup>7</sup> See Securities and Exchange Act Release Nos. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (SR-FINRA-2020-019); 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-040); 93002 (September 15, 2021), [86 FR 52508](#) (September 21, 2021) (File No. SR-FINRA-2021-023); and 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (SR-FINRA-2022-001).

<sup>8</sup> See The Centers for Disease Control and Prevention ("CDC"), What You Need to Know about Variants (stating, in part, that "the Delta variant causes more infections and spreads faster than earlier forms of the virus that causes COVID19."), <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html> (updated April 26, 2022). See also CDC, The Possibility of COVID-19 Illness after Vaccination: Breakthrough Infections (stating, in part, that "COVID-19 vaccines are effective at preventing infection, serious illness, and death. Most people who get COVID-19 are unvaccinated. However, since vaccines are not 100% effective at preventing infection, some people who are fully vaccinated will still get COVID-19. . . People who get vaccine breakthrough infections can be contagious."), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why->

uptick in transmissions in many locations indicate that COVID-19 remains an active and real public health concern.<sup>9</sup> The Exchange understands that firms have delayed their return to office plans due to the continued pandemic and are considering implementing or have implemented hybrid work arrangements dependent on functions and regulatory requirements.<sup>10</sup> To that end, in order to address ongoing industry-wide concerns regarding having to conduct in-person office inspections while safety concerns related to the pandemic persist and to align with pandemic-related regulatory relief provided by FINRA, which has already extended their substantively identical temporary remote inspection rules,<sup>11</sup> the Exchange proposes to extend Rule 9.2(d)(5) through December 31, 2022. The proposed extension would provide clarity to firms on regulatory requirements and account for the time needed for many firms to carefully assess when and how to have their employees safely return to their offices in light of vaccination coverage in the U.S. and transmission levels of the virus, including any emergent variants throughout the country.

By extending Rule 9.2(d)(5) through December 31, 2022, the Exchange does not propose to amend the other conditions of the temporary rule. The proposed amendments to

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[measure-effectiveness/breakthrough-cases.html](#) (updated December 17, 2022).

<sup>9</sup> See e.g., Press Briefing by White House COVID-19 Response Team and Public Health Officials (May 18, 2022), which discusses the sustained high number of infections driven by “incredibly contagious subvariants” and the limited funding in being able to provide a new generation of vaccines to every American in the fall/winter of 2022; and see generally CDC, Unpacking Variants (updated April 22, 2022)..

<sup>10</sup> The Exchange notes that a majority of its TPHs are FINRA member firms as well, and that through FINRA’s ongoing monitoring the Exchange has learned that many of its TPHs have delayed plans to require a full return to the office and that most continue to operate in a remote or hybrid environment.

<sup>11</sup> See Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (File No. SR-FINRA-2022-001).



Rule 9.2(d)(5) simply provide that for calendar year 2022, a TPH has the option to conduct those inspections remotely through December 31, 2022. The current conditions of Rule 9.2(d)(5) for firms that elect to conduct remote inspections would remain unchanged: such firms must amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the required documentation. The additional period of time would also enable the Exchange to further monitor the effectiveness of remote inspections and their impacts – positive or negative – on firms’ overall supervisory systems in the evolving workplace. Notwithstanding the proposed temporary rule change, a TPH remains subject to the requirements of Rule 8.16(f) and Rule 9.2(d).

The Exchange continues to believe this temporary remote inspection option is a reasonable alternative to provide to firms to fulfill their Rule 8.16(f) and 9.2(d) obligations during the pandemic and is designed to achieve the investor protection objectives of the inspection requirements under these unique circumstances. Firms should consider whether, under their particular operating conditions, reliance on remote inspections would be reasonable under the circumstances. For example, firms with offices that are open to the public or that are otherwise doing business as usual should consider whether some form of in-person inspections would be feasible and appropriately contribute to a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules.

The Exchange again notes that FINRA has already put in place the same extension period of their remote relief rule,<sup>12</sup> which is substantively identical to Rule 9.2(d)(5).<sup>13</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>14</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>15</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>16</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that, in recognition of the ongoing impact of COVID-19 on performing the on-site inspection component of Rules 8.16(f) and 9.2(d), the proposed rule change is intended to provide firms a temporary regulatory option to

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<sup>12</sup> See supra note 11.

<sup>13</sup> See supra notes 5 and 7.

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

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

<sup>16</sup> Id.

conduct inspections of offices and locations remotely during calendar year 2022. This temporary remote relief rule and the proposed extension thereof does not relieve firms from meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules that directly serve investor protection. In a time when faced with ongoing challenges resulting from the COVID-19 pandemic, the Exchange believes that the proposed rule change provides sensibly tailored relief that will afford firms the ability to assess when and how to implement their work re-entry plans as measured against the health and safety of their personnel, while continuing to serve and promote the protection of investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed temporary rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act, because the proposed extension of the temporary remote inspection relief rule will apply equally to all TPHs required to conduct office and location inspections in calendar year 2022 through December 31, 2022. The Exchange further does not believe that the proposed extension to the temporary rule will impose any burden on intermarket competition because it relates only to the extension of the remote manner in which inspections for 2022 may be conducted. Additionally, and as stated above, FINRA has already extended its substantively identical temporary remote relief rule for its members in the same manner.

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:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6)<sup>18</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2022-028 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-2022-028. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

should refer to File Number SR-CBOE-2022-028 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).

EXHIBIT 5(additions are underlined; deletions are [bracketed])

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## Rules of Cboe Exchange, Inc.

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**Rule 9.2. Supervision of Accounts**

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*(d) Annual Branch Office Inspections.*

(1)-(4) No change.

(5) Each Trading Permit Holder obligated to conduct an inspection of a branch office or non-branch location in calendar years 2020, 2021 and 2022 pursuant to Rule 8.16(f) and Rule 9.2(d), as applicable, may, subject to the requirements of this Rule 9.2(d)(5), satisfy such obligation by conducting the applicable inspection remotely, without an on-site visit to the office or location. In accordance with Rules 8.16(f) and 9.2(d)(4), inspections for calendar year 2020 must be completed on or before March 31, 2021. Inspections for calendar year 2021 must be completed on or before December 31, 2021. With respect to a Trading Permit Holder's obligation to conduct an inspection of an office or location in calendar year 2022, a Trading Permit Holder has the option to conduct those inspections remotely only through [June 30]December 31, 2022. Notwithstanding this Rule 9.2(d)(5), a Trading Permit Holder remains subject to the other requirements of Rules 8.16(f) and 9.2(d).

(A) *Written Supervisory Procedures for Remote Inspections.* Consistent with a Trading Permit Holder's obligations under Rule 8.16(f) and Rule 9.2(d), a Trading Permit Holder that elects to conduct its inspections remotely for any of the calendar years specified in this subparagraph (d)(5) must amend or supplement its written supervisory procedures to provide for remote inspections that are reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations, and with applicable Exchange Rules. Reasonably designed procedures for conducting remote inspections of offices or locations should include, among other things: (i) a description of the methodology, including technologies permitted by the Trading Permit Holder, that may be used to conduct remote inspections; and (ii) the use of other risk-based systems employed generally by the Trading Permit Holder to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, and of applicable Exchange Rules.

(B) *Effective Supervisory System.* The requirement to conduct inspections of offices and locations is one part of a Trading Permit Holder's overall obligation to have an effective supervisory system and therefore, a Trading Permit Holder must continue with its ongoing review of the activities and functions occurring at all offices and locations, whether or not the Trading Permit Holder conducts inspections remotely. A Trading Permit Holder's use of a remote inspection of an office or location will be held to the same standards for review as set forth under Rule 8.16(f) and Rule 9.2(d). Where a Trading Permit Holder's remote inspection of an office or location identifies any indicators of irregularities or misconduct (i.e., "red flags"), the Trading Permit Holder may need to impose additional supervisory procedures for that office or location or may need to provide for more frequent monitoring of that office or location, including potentially a subsequent physical, on-site visit on an announced or unannounced basis when the Trading Permit Holder's operational difficulties associated with COVID-19 abate, nationally or locally as relevant, and the challenges a Trading Permit Holder is facing in light of the public health and safety concerns make such on-site visits feasible using reasonable best efforts. The temporary relief provided by this Rule 9.2(d)(5) does not extend to a Trading Permit Holder's inspection requirements beyond [June 30]December 31, 2022 and such inspections must be conducted in compliance with Rule 9.2(d)(1) through (3).

(C) *Documentation Requirement.* A Trading Permit Holder must maintain and preserve a centralized record for each of calendar years 2020 and 2021, and for calendar year 2022 through [June 30]December 31, 2022 [only] that separately identifies: (1) all offices or locations that had inspections that were conducted remotely; and (2) any offices or locations for which the Trading Permit Holder determined to impose additional supervisory procedures or more frequent monitoring, as provided in Rule 9.2(d)(5)(B) above. A Trading Permit Holder's documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection.

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