

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

J. Matthew DeLesDernier,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88579; File No. SR-NSCC-2020-009]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Remove Access to the Fund/SERV Service by Data Services Only Members in Rule 52 and Revise the Defined Term for Fund/SERV in the NSCC Rules

April 7, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 2, 2020, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and subparagraph (f)(4) of Rule 19b-4 thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

(a) The proposed rule change of NSCC is annexed hereto as Exhibit 5 and consists of modifications to NSCC’s Rules & Procedures (“Rules”) in order to (i) remove access to the Fund/Serv service (“Fund/SERV”) by Data Services Only Members in Rule 52 of the Rules and (ii) revise the term “Fund/Serv” to “Fund/SERV” in the Rules to reflect conventional use of the term, as described in greater detail below.<sup>5</sup>

#### II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### (A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

###### Background—Data Services Only Members

In 2001, NSCC established a new membership category, called the Data Services Only Member.<sup>6</sup> Data Services Only Members are permitted to participate solely in the transmission of data and information and have access to only those services specifically enumerated under NSCC’s Rules.<sup>7</sup> The Data Services Only Members are not permitted to settle any transactions through NSCC.<sup>8</sup> Initially the Data Services Only Members were only permitted to access Networking services in Mutual Fund Services.<sup>9</sup> Data Services Only Members were initially granted permission to access Networking in order to make inquiries regarding their customer accounts in an automated format using a communications-translation interface in Extensible Markup Language or “XML”.<sup>10</sup>

In 2002, the Data Services Only Member access was expanded to include access to Fund/SERV.<sup>11</sup> Data

Services Only Members were provided access to Fund/SERV in connection with a new function of Fund/SERV called Fund/SPEED which was launched to provide firms and financial advisors with an ability to obtain information on, and transmit, their clients’ mutual fund purchase and redemption transactions through Fund/SERV in an automated format, with settlement conducted directly between counterparties and outside of NSCC.<sup>12</sup> Fund/SPEED was a combination of the XML inquiry functionality that had been provided to Data Services Only Members for Networking and an XML communications interface used to transmit data to Fund/SERV.<sup>13</sup>

The Fund/SPEED functionality was discontinued prior to 2013.<sup>14</sup> Following the discontinuation of Fund/SPEED, a similar functionality has not been added to Fund/SERV for Data Services Only Members.

NSCC does not believe that there is a need to continue to permit Data Services Only Members to have access to Fund/SERV because the Fund/SPEED functionality, which was used by Data Services Only Members to access and transmit Fund/SERV data, was discontinued. NSCC does not believe that any Data Services Only Members have utilized Fund/SERV since Fund/SPEED was discontinued and there are currently no active Data Services Only Members that access the Fund/SERV service. In addition, Fund/SERV is primarily a service designed for settlement of mutual fund transactions and Data Services Only Members are not permitted to settle transactions through NSCC.<sup>15</sup> As such, NSCC is proposing to remove the ability of Data Services Only Members to access Fund/SERV.

#### Fund/SERV®

NSCC is also proposing to change the term “Fund/Serv” to “Fund/SERV” in several places in the Rules to reflect current conventional use of the name of the service and the registered trademark of the service. In addition, the registered trademark symbol would be placed on the term in Rule 52 in the heading for Section A to reflect that it is a registered trademark.

enumerated in Rule 52 to process and/or settle, as the case may be, on an automated basis purchase and redemption orders and transactions in interests in Fund/Serv Eligible Funds. See Rule 52, *supra* note 5.

<sup>12</sup> See SR-NSCC-2001-18, *supra* note 10.

<sup>13</sup> *Id.*

<sup>14</sup> See Securities Exchange Act Release No. 68562 (January 2, 2013), 78 FR 1292 (January 8, 2013) (SR-NSCC-2012-11) (removing the fees relating to Fund/SPEED because Fund/SPEED was discontinued).

<sup>15</sup> See Section 2(ii)(a) of Rule 2, *supra* note 5.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

<sup>5</sup> Terms not defined herein are defined in the Rules, available at [https://dtcc.com/~media/Files/Downloads/legal/rules/nsccl\\_rules.pdf](https://dtcc.com/~media/Files/Downloads/legal/rules/nsccl_rules.pdf).

<sup>6</sup> Securities Exchange Act Release No. 44960 (October 19, 2001), 66 FR 54045 (October 25, 2001) (SR-NSCC-2001-14) (indicating that the new membership category is being added at the request of NSCC’s Fund Members and the Investment Company Institute in order to permit broker-dealers who otherwise do not qualify to be NSCC members to obtain access to customers account data in an automated format).

<sup>7</sup> See Section 2(ii)(a) of Rule 2, *supra* note 5 (provides that Data Services Only Members participate “solely in the transmission of data and information, and shall utilize only those features of services that the Corporation may, from time to time, expressly designate as eligible for access by a Data Services Only Member.”).

<sup>8</sup> *Id.*

<sup>9</sup> *Supra* note 6.

<sup>10</sup> See Securities Exchange Act Release No. 45560 (March 14, 2002), 67 FR 13200 (March 21, 2002) (SR-NSCC-2001-18) (“SR-NSCC-2001-18”). XML is a programming format that allows for the transfer of structured data between different applications.

<sup>11</sup> *Id.* Fund/SERV is a service provided by NSCC to allow Members and certain Limited Members

## Proposed Rule Change

In order to implement the proposal above, NSCC would remove all of the references to Data Services Only Member in Section A of Rule 52 of the Rules,<sup>16</sup> which is the section relating to Fund/SERV. In addition, NSCC would remove the sentence referring to orders being submitted by Data Services Only Members in Section 2 of Section A of Rule 52<sup>17</sup> as that sentence would no longer be applicable if Data Services Only Members are removed from having access to Fund/SERV. NSCC would also change the term “Fund/Serv” to “Fund/SERV” in several places in the Rules and the registered trademark symbol would be placed on the term in Rule 52 in the heading for Section A.<sup>18</sup>

### 2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>19</sup> NSCC believes that the proposed rule change is consistent with this provision because it would provide enhanced clarity and transparency for participants with respect to services offered by NSCC by updating the Rules to remove the ability to access a service that Data Services Only Members do not utilize and are unlikely to utilize in the future. Fund/SPEED, which was designed to provide participants access to, and the ability to transmit, certain Fund/SERV data without the ability to settle, was discontinued. Since Fund/SPEED has been discontinued, a similar functionality has not been added to Fund/SERV for Data Services Only Members and Fund/SERV is not being utilized by any Data Services Only Members. Since Fund/SERV is primarily a service designed to facilitate settlement of Fund/SERV Eligible Funds, which Data Services Only Members are not permitted to do through NSCC, NSCC does not believe that Data Services Only Members would utilize Fund/SERV in the future.<sup>20</sup> The proposed change of the defined term “Fund/Serv” to “Fund/SERV” in several places would also provide enhanced clarity for participants because “Fund/SERV” reflects the current conventional use of the name of

the service and is the registered trademark for the service.

Therefore, by providing enhanced clarity and transparency in the Rules regarding the services provided by NSCC and the services to which Data Services Only Members have access, NSCC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

#### *(B) Clearing Agency’s Statement on Burden on Competition*

NSCC does not believe that the proposed rule change would have any impact on competition. Since Fund/SPEED was discontinued, Data Services Only Members are not utilizing Fund/SERV. In addition, it is not anticipated that any Data Services Only Members will utilize Fund/SERV in the future because there has not been any functionality to replace Fund/SPEED for Data Services Only Members and Data Services Only Members are not entitled to use the settlement features of Fund/SERV which is its primary purpose. Therefore, the proposed rule change should have no effect on NSCC participants, other than to remove a right to have access to a service by Data Services Only Members that is unlikely to be utilized by Data Services Only Members. In addition, the changes of the term “Fund/Serv” to “Fund/SERV” and the inclusion of the registered trademark symbol would also not have any impact on competition because such changes are clarifications of the Rules and would not otherwise affect the rights or obligations of NSCC Members.

#### *(C) Clearing Agency’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments received by NSCC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>21</sup> of the Act and paragraph (f)<sup>22</sup> of Rule 19b-4 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.

### **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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2020-009 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-NSCC-2020-009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC’s website (<https://dtcc.com/legal/sec-rule-filings.aspx>). 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-NSCC-

<sup>16</sup> Section A of Rule 52, *supra* note 5.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>20</sup> See Section A.2. of Rule 52, *supra* note 1 (provides that “Orders submitted by Data Services Only Members shall not settle through the facilities of the Corporation.”)

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f).

2020-009 and should be submitted on or before May 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88575; File No. SR-CBOE-2020-025]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Interpretation and Policy .01 to Rule 5.24 in Connection with Business Continuity and Disaster Recovery Testing

April 7, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 26, 2020, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Interpretation and Policy .01 to Rule 5.24 in connection with business continuity and disaster recovery testing. The text of the proposed rule change is provided in Exhibit 5.

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

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

In its filing with the Commission, the Exchange included statements

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

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

##### 1. Purpose

The Exchange proposes to harmonize Interpretation and Policy .01 to Rule 5.24, in connection with business continuity and disaster recovery testing, with the corresponding rules of its affiliated options exchanges, Cboe BZX Exchange, Inc. (“BZX Options”), Cboe EDGX Exchange, Inc. (“EDGX Options”), and Cboe C2 Exchange, Inc. (“C2”).<sup>3</sup>

As background, Regulation Systems Compliance and Integrity (“Regulation SCI”)<sup>4</sup> applies to certain self-regulatory organizations (including the Exchange), alternative trading systems (“ATSs”), plan processors, and exempt clearing agencies (collectively, “SCI entities”). Specifically, Rule 1004 of Regulation SCI (“Reg SCI”) states that each SCI entity shall establish standards for the designation of members or participants that are necessary for the maintenance of fair and orderly markets in the event of the activation of the business continuity and disaster recovery plans, designate such members or participants in scheduled functional and performance testing of the operation of such plans no less than once every 12 months, and coordinate the testing of such plans on an industry- or sector-wide basis with other SCI entities.

In order to comply with the coordination requirement among SCI entities, the Exchange has conducted the required operational testing in parallel with the industry-led testing program coordinated by the Securities Industry and Financial Markets Association (“SIFMA”), which occurs on an annual basis. In particular, Rule 5.24(b) requires certain Trading Permit Holders (“TPHs”) to connect to the Exchange’s backup systems and participate in functional and

performance testing announced by the Exchange, which occurs every 12 months pursuant to Reg SCI. Subparagraphs (b)(1) and (b)(2) respectively require TPHs that the Exchange determine which TPHs contribute a meaningful percentage of the Exchange’s overall volume and the Exchange’s executed customer volume in SPX and VIX combined, which TPHs are required to connect to the Exchange’s backup systems and participate in the functional and performance testing. Interpretation and Policy .01 to Rule 5.24 currently provides that for purposes of determining which TPHs contribute a meaningful percentage of the Exchange’s overall volume and customer volume in SPX and VIX pursuant to subparagraphs (b)(1) and (2), respectively, the Exchange measures volume executed on the Exchange during a specified calendar quarter (the “measurement quarter”). Pursuant to Interpretation and Policy .01(a), the Exchange provides TPHs with reasonable advance notice of the applicable meaningful percentage and measurement quarter, which meaningful percentage may not apply retroactively to any measurement quarter completed or in progress, and, pursuant to Interpretation and Policy .01(b), the Exchange individually notifies all TPHs that are subject to paragraph (b) of Rule 5.24 based on the applicable meaningful percentage following the completion of the applicable measurement quarter. The Exchange provides these TPHs with reasonable advance notice that they must participate in the next annual functional and performance testing, which generally occurs in October. For example, TPHs could potentially receive notice they will be required to participate in the annual functional and performance testing based on their activity in the third or fourth quarter of the preceding year.

In order to harmonize its business continuity and disaster recovery testing provisions with that of its affiliated options exchanges, the Exchange proposes to amend the application of the meaningful percentage to a specified quarter’s volume, as well as the timing for which the Exchange notifies a TPH required to participate in annual testing. Specifically, the proposed rule change removes the provision in current Interpretation and Policy .01(a)<sup>5</sup> which provides that a meaningful percentage

<sup>3</sup> The Exchange notes that C2 is simultaneously filing a rule change to harmonize certain provisions of its business continuity and disaster recovery testing rules with that of BZX Options and EDGX Options.

<sup>4</sup> See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (“SCI Adopting Release”).

<sup>5</sup> The Exchange also removes (a) and (b) as separate paragraphs under Interpretation and Policy .01 and consolidates the rule text into a single Interpretation and Policy .01 provision. This is consistent with Interpretation and Policy .01 to Rule 2.4 of BZX Options and EDGX Options.

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

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