

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98502; File No. SR-CBOE-2023-051)

September 25, 2023

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Rules Regarding Early Termination of Complex Order Auctions

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 September 15, 2023, 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 Act³ 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 Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its rules regarding early termination of complex order auctions. 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.

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 amend certain of its rules regarding the early termination of complex order auctions. The Exchange offers several auction mechanisms for complex orders, including the Complex Order Auction (“COA”),⁵ the Complex Automated Improvement Mechanism (“C-AIM”),⁶ and the Complex Solicitation Auction Mechanism (“C-SAM”).⁷ The Rules regarding each of these complex order auction mechanisms contain provisions that describe what events may cause the applicable auction to terminate prior to the end of the auction timer.⁸ These provisions generally correspond to the pricing requirements to begin an auction. This ensures that the auction will not continue if the market changes in a manner that would create a situation in which the auction would not have been permitted to begin.

COA

⁵ See Rule 5.33(d).

⁶ See Rule 5.38.

⁷ See Rule 5.40.

⁸ See Rules 5.33(d)(3), 5.38(d)(1), and 5.40(d)(1).

COA is a single-sided auction in which an eligible order will be exposed for price improvement. Specifically, upon receipt of a COA-eligible order,⁹ the System sends a COA auction message to subscribers of data feeds that deliver COA auction messages, which message identifies certain terms of the COA-eligible order. To be COA-eligible, a buy (sell) order must, among other things, have a price equal to or higher (lower) than the synthetic best offer (bid) (“SBO (SBB)”), provided that if any of the bids or offers on the simple book that comprise the SBB (SBO) is represented by a Priority Customer order,¹⁰ the price must be at least one minimum increment higher (lower) than the SBB (SBO).¹¹ Corresponding to this requirement, current Rule 5.33(d)(3)(B) and (C) provide that a COA will terminate prior to the end of the COA auction timer:

- when the System receives a non-Priority Customer Order in a leg of the complex order that would improve the SBBO on the same side as the COA-eligible order that initiated the COA to a price better than the COA price, in which case the System terminates the COA and processes the COA-eligible order pursuant to subparagraph (5) below, enters the new order in the simple book, and updates the SBBO; or
- if the System receives a Priority Customer Order in a leg of the complex order that would join or improve the SBBO on the same side as the COA-eligible order that initiated the COA to a price equal to or better than the COA price, in which case the System terminates the COA and processes the COA-eligible order pursuant to subparagraph (5) below, enters the new order in the simple book, and updates the SBBO.

⁹ See Rule 5.33(b)(5) (definition of COA-eligible order).

¹⁰ A “Priority Customer” means a person or entity that is Public Customer and not a Professional. A “Public Customer” means a person that is not a broker-dealer, and a “Professional” means any person or entity that (a) is not a broker or dealer in securities, and (b) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1.1 (definitions of Priority Customer, Public Customer, and Professional).

¹¹ See Rule 5.33(b)(5) (definition of COA-eligible order).

The Exchange proposes to amend Rule 5.33(d)(3)(B) and (C) to provide that any incoming order may cause the SBBO to change in a manner that causes a COA auction to terminate early.

Specifically, the proposed rule change amends these Rule provisions to state the following:

(B) when the System receives an order in a leg of the complex order that would improve the SBBO on the same side as the COA-eligible order that initiated the COA to a price better than the COA price, in which case the System terminates the COA and processes the COA-eligible order pursuant to [Rule 5.33(d)(5)], enters the new order in the Simple Book, and updates the SBBO; or

(C) if the System receives an order in a leg of the complex order that would join or improve the SBBO on the same side as the COA-eligible order that initiated the COA to a price equal to the COA price and cause any component of the SBBO to be represented by a Priority Customer, in which case the System terminates the COA and processes the COA-eligible order pursuant to [Rule 5.33(d)(5)], enters the new order in the Simple Book, and updates the SBBO.

Pursuant to the proposed change to subparagraph (B), a COA will continue to terminate early if the Exchange receives any simple order (Priority or non-Priority Customer) that would cause the SBBO to be better than the stop price (as covered by current subparagraphs (B) and (C)). Pursuant to the proposed change to subparagraph (C), a COA will terminate early if the Exchange receives any simple order (not just a Priority Customer order as set forth in current subparagraph (C)) that would cause the SBBO to be equal to the stop price and have the best bid or offer (“BBO”) of a leg represented by a Priority Customer order.

C-AIM and C-SAM

C-AIM permits a Trading Permit Holder (“TPH”) to submit for execution a complex order it represents as agent (“Agency Order”) against principal or solicited interest (an “Initiating Order”) that stops the entire Agency Order at a price that satisfies specified criteria.¹² Similarly, C-SAM permits a TPH to submit for execution an Agency Order against an Initiating Order (that, unlike for C-AIM,

¹² See generally Rule 5.38; see also Rule 5.38(a) (C-AIM auction eligibility requirements) and (b) (C-AIM stop price requirements).

may only be solicited) that stops the entire Agency Order at a price that satisfies specified criteria.¹³

With respect to both C-AIM and C-SAM, the stop price for the buy (sell) Agency Order must, among other things:

- with respect to same-side simple orders, be (a) at least one minimum increment better than the SBB (SBO) if the applicable side of the BBO on any component of the complex strategy is represented by a Priority Customer order on the simple book; or (b) at or better than the SBB (SBO) if the applicable side of the BBO of each component of the complex strategy is represented by a non-Priority Customer order or quote on the simple book; and
- with respect to opposite-side simple orders, be (a) at least one minimum increment better than the SBO (SBB) if the BBO of any component of the complex strategy is represented by a Priority Customer order on the simple book; or (b) at or better than the SBO (SBB) if the BBO of each component of the complex strategy represents a non-Priority Customer quote or order on the simple book.¹⁴

Corresponding to these requirements, current Rules 5.38(d)(1)(d), (e), and (f) and 5.40(d)(1)(d), (e), and (f)¹⁵ provide that a C-AIM or C-SAM auction, respectively, will terminate prior to the end of the C-AIM or C-SAM, as applicable, auction timer:

¹³ See generally Rule 5.40; see also Rule 5.40(a) (C-SAM auction eligibility requirements) and (b) (C-SAM stop price requirements). The primary differences between C-AIM and C-SAM are that (a) the minimum size (as determined by the Exchange) of an order submitted into C-SAM cannot be smaller than 500 option contracts on the smallest leg, while the minimum size of a C-AIM order may not be smaller than one contract (compare Rules 5.38(a)(3) and 5.40(a)(3)) and (b) and that execution of orders submitted into C-SAM are handled as all-or-none orders.

¹⁴ See Rules 5.38(b)(1) and (3) and 5.40(b)(1) and (3).

¹⁵ The proposed rule change capitalizes the lettering of the subparagraphs in Rules 5.38(d)(1) and 5.40(d)(1) to conform to the lettering used throughout the Rulebook.

- upon receipt by the System of an unrelated non-Priority Customer order or quote that would post to the simple book and cause the SBBO on the same side as the Agency Order to be better than the stop price;
- upon receipt by the System of an unrelated Priority Customer order in any component of the complex strategy that would post to the simple book and cause the SBBO on the same side as the Agency Order to be equal to or better than the stop price; or
- upon receipt by the System of a simple non-Priority Customer order that would cause the SBBO on the opposite side of the Agency Order to be better than the stop price, or a Priority Customer order that would cause the SBBO on the opposite side of the Agency Order to be equal to or better than the stop price.

The Exchange proposes to amend Rules 5.38(d)(1)(d), (e), and (f) ((D) and (E) as proposed) and 5.40(d)(1)(d), (e), and (f) ((D) and (E) as proposed) to provide that any incoming order may cause the SBBO to change in a manner that causes a C-AIM or C-SAM auction, respectively, to terminate early. Specifically, the proposed rule change amends these Rule provisions to state the following:

(D) upon receipt by the System of an unrelated order or quote that would post to the Simple Book and cause the SBBO on the same side as the Agency Order to be (i) better than the stop price, or (ii) equal to the stop price if any component of the SBBO is then represented by a Priority Customer;

(E) upon receipt by the System of an unrelated order that would post to the Simple Book and cause the SBBO on the opposite side of the Agency Order to be (i) better than the stop price, or (ii) equal to the stop price if any component of the SBBO is then represented by a Priority Customer;

Pursuant to the proposed subparagraph (D) of each of Rules 5.38(d)(1) and 5.40(d)(1), a C-AIM or C-SAM will continue to terminate early if the Exchange receives any simple order (Priority or non-Priority Customer) that would cause the SBBO on the same side as the Agency Order to be better than the stop price (as covered by current subparagraphs (d) and (e)). Additionally, pursuant

to the proposed subparagraph (D) of each of Rules 5.38(d)(1) and 5.40(d)(1), a C-AIM or C-SAM will terminate early if the Exchange receives any simple order (not just a Priority Customer order as set forth in current subparagraph (e)) that would cause the SBBO on the same side as the Agency Order to be equal to the stop price if any component of the SBBO is then represented by a Priority Customer order. Similarly, pursuant to proposed subparagraph (E) of each of Rules 5.38(d)(1) and 5.40(d)(1), a C-AIM or C-SAM will continue to terminate early if the Exchange receives any simple order (Priority or non-Priority Customer) that would cause the SBBO on the opposite side of the Agency Order to be better than the stop price (as covered by current subparagraph (f)). Additionally, pursuant to proposed subparagraph (E) of each of Rules 5.38(d)(1) and 5.40(d)(1), a C-AIM or C-SAM will terminate early if the Exchange receives any simple order (not just a Priority Customer order as set forth in current subparagraph (f)) that would cause the SBBO on the opposite side of the Agency Order to be equal to the stop price if any component of the SBBO is then represented by a Priority Customer order.

Purpose of Proposed Rule Changes

One purpose of the COA, C-AIM, and C-SAM auction price requirements is to protect interest on the simple book, including Priority Customer interest, as execution of the auction or Agency order, as applicable, could not occur at a price outside the SBBO or at the same price as the SBBO if it includes simple Priority Customer interest on any leg. The purpose of early termination provisions corresponding to those auction price requirements is to terminate an auction if the market changes in a manner that would create a situation in which the auction would not have been permitted to begin. The proposed changes to each of the COA, C-AIM, and C-SAM early termination provisions add the scenario in which the applicable auction will terminate early if the Exchange receives a Non-Priority Customer order that would cause the

SBBO to be equal to the stop price and have the BBO of a leg represented by a Priority Customer order (as current rules contemplate only that an incoming Priority Customer order could cause the SBBO to improve to a price equal to the auction price). This situation could occur, for example, if there was a Priority Customer order representing the BBO of one leg of the component strategy at the beginning of the auction but the stop price was better than the SBBO, and an incoming order (Priority or Non-Priority Customer) during the auction caused the SBBO to change such that it then equals the stop price with a Priority Customer order representing one of the legs. The Exchange believes these proposed changes will further protect Priority Customer orders on the simple book by ensuring that no execution within COA, C-AIM, or C-SAM will occur at a price that equals the SBBO (and the applicable side) if the BBO of any component of the applicable complex strategy is represented by a Priority Customer, regardless of what type of incoming order caused the change in the SBBO.

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.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ 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

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

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)¹⁸ 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 the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and protect investors, because it will update scenarios that will cause complex auctions to terminate early in a manner that protects interest resting on the simple book, including Priority Customer interest. The proposed changes to each of the COA, C-AIM, and C-SAM early termination provisions add the scenario in which the applicable auction will terminate early if the Exchange receives a Non-Priority Customer order that would cause the SBBO to be equal to the stop price and have the BBO of a leg represented by a Priority Customer order. These proposed changes will eliminate a current gap in current Rules, which contemplate only that an incoming Priority Customer order could cause the SBBO to improve to a price equal to the auction price). These proposed rule changes increase consistency among the auction price requirement and early termination provisions, thus removing impediments to a free and open market. As a result, the Exchange believes the proposed rule change will further protect Priority Customer orders on the simple book by ensuring that no execution within a COA, C-AIM, or C-SAM auction will occur at a price that equals the SBBO (and the applicable side) if the BBO of any component of the applicable complex strategy is represented by a Priority Customer, regardless of what type of incoming order caused the change in the SBBO, which ultimately protects investors and the public interest.

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

¹⁸ Id.

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed changes will apply to all TPHs in the same manner. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as it relates solely to provisions regarding when complex auctions occurring on the Exchange may terminate early. The proposed rule changes are not intended to be competitive.

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 Act¹⁹ and Rule 19b-4(f)(6)²⁰ 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

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6).

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 email to rule-comments@sec.gov. Please include file number SR-CBOE-2023-051 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-2023-051. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2023-051 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

²¹ 17 CFR 200.30-3(a)(12).