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

File No.* SR - 2020 - * 051
Amendment No. (req. for Amendments *) 1

Filing by Cboe Exchange, Inc.

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

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☐	☑	☐	☑	☐	☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

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

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

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

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

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

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 * Counsel
E-mail * rtenuta@cboe.com
Telephone * (312) 786-7068
Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 07/23/2020

By Laura G. Dickman

(Name *)

(Title *) VP, Associate General Counsel

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

ldickman@cboe.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information * Add Remove View	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	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 Advance 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, security-based swap submission, or advance notice 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 Exhibit Sent As Paper Document ☐	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 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	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.
Exhibit 4 - Marked Copies Add Remove View	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	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. **<u>Text of the Proposed Rule Change</u>**

(a) Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its automated price improvement auction rules in connection with Agency Order size requirements. The Exchange initially submitted this rule filing SR-CBOE-2020-051 to the Securities and Exchange Commission ("Commission") on June 11, 2020 (the "Initial Rule Filing"). This Amendment No. 1 supersedes the Initial Rule Filing and replaces it in its entirety. Amendment No. 1 amends the Initial Rule Filing to adopt a maximum size of 10 contracts for Agency Orders in SPX submitted into the Automated Price Improvement Mechanism ("AIM" or "AIM Auction") and the Complex Automated Price Improvement Mechanism ("C-AIM" or "C-AIM Auction"). Additionally, this Amendment No. 1 also provides additional detail and clarity to the Form 19b-4 regarding the volume of different order sizes submitted to AIM, C-AIM and the trading floor, price improvement opportunities for retail-sized orders in AIM and C-AIM, and the overall purpose and resulting benefits of adopting a maximum size requirement for SPX orders in AIM and C-AIM. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. **<u>Procedures of the Self-Regulatory Organization</u>**

(a) The Exchange's President (or designee) pursuant to delegated authority approved the proposed rule change on May 29, 2020.

(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., 400 South LaSalle, Chicago, Illinois 60605.

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 5.37(a)(3) and Rule 5.38(a)(8) to adopt a maximum size of 10 contracts for Agency Orders in SPX submitted through the Automated Price Improvement Mechanism ("AIM" or "AIM Auction") and the Complex Automated Price Improvement Mechanism ("C-AIM" or "C-AIM Auction").[1]

Currently, Rules 5.37(a)(3) and 5.38(a)(3), which govern the size requirements for AIM and C-AIM Agency and Initiating Orders, provide that there is no minimum size for orders submitted into AIM and C-AIM Auctions, respectively, and that the Initiating Order must be for the same size as the Agency Order. As such, an Agency Order of any size may currently be submitted in an AIM or C-AIM Auction.

The Exchange now proposes to amend Rule 5.37(a)(3) to provide the maximum size for all Agency Orders in SPX is 10 contracts, and by amending Rule 5.38(a)(3) to provide that the maximum size for the smallest leg of all Agency Orders in SPX is 10 contracts.[2] The proposed maximum size limit for SPX Agency Orders submitted in an AIM or C-AIM Auction is designed to address the specific trading characteristics, market model, and investor basis of SPX. The Exchange notes that the maximum size requirement for Agency Orders in SPX would apply to all Agency Orders in the entire SPX class (including SPX Weeklys ("SPXW")).

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1 Amendment No. 1 adopts a fixed maximum size requirement of 10 contracts for SPX Agency Orders submitted to AIM and C-AIM and amends the Initial Rule Filing to reflect this fixed maximum.

2 Application of the maximum size to the smallest leg of complex orders is consistent with the application of a size requirement for the Exchange's Complex Solicitation Auction Mechanism, which is a similar price improvement auction mechanism on the Exchange. See Rule 5.40(a)(3).

In particular, SPX has a different and more complicated market model, involves taking on greater risk, has a significantly higher notional value (e.g., they are ten times the notional size of SPY options), tends to trade in much larger size, tends to have a larger percentage of volume executed in open outcry than other classes, and tends to execute increasingly more complex strategies (e.g., SPX Combo orders) than in other options classes. The Exchange understands these factors may limit retail customer participation in SPX to simpler strategies and smaller-sized orders. While AIM and C-AIM have historically been activated for all other options classes, the unique and more complex characteristics of SPX have contributed to the Exchange's historical determination to not activate AIM and C-AIM in SPX when the floor is open so to encourage liquidity on the trading floor as well as in the electronic book to accommodate these large and complex trades.[3] Therefore, the Exchange believes the application of an Agency Order size ceiling may provide more price improvement opportunities in SPX geared towards retail customers when AIM and C-AIM are activated in SPX.[4] The Exchange believes this may incentivize increased retail customer auction participation in SPX and provide retail customers with execution and price improvement opportunities in SPX while incentivizing continued liquidity in the electronic book and on the trading floor for larger and more complex orders.

The Exchange has observed that smaller size order flow tends to attract liquidity provider responses, as such orders are generally easier to hedge than larger orders, which may encourage market participants to compete to provide price improvement in an

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3 The Exchange notes that, due to the Covid-19 pandemic, the trading floor was inoperable from March 16, 2020 through June 12, 2020 and, as a result, AIM and C-AIM were activated for SPX for the duration of the floor closure.

4 Amendment No. 1 adds additional clarification regarding the differences between SPX and other classes and the role of such differences in the Exchange's historical determination not to activate AIM and C-AIM for SPX.

electronic competitive auction process. This, in turn, may contribute to a deeper, more liquid auction process with additional price improvement opportunities for market participants that submit smaller size orders, particularly retail customers.

The Exchange notes that smaller orders in SPX are not commonly executed on the floor, and, without an opportunity to execute in AIM and C-AIM, smaller orders are primarily submitted into to the Book and trade at the market, whereas, with AIM and C-AIM, smaller orders may receive price improvement.[5] For example, the Exchange observed that during April and May 2020, while the trading floor was inoperable and AIM and C-AIM were activated for SPX, the average daily statistics for Agency Orders containing various quantities was as follows:

	AIM		**C-AIM**	
Order Size Category	**# Agency Orders**	**# Contracts**	**# Agency Orders**	**# Contracts**
1 to 10	1,668	4,229	2,123	17,231
11 to 50	103	2,759	189	17,226
51 to 100	19	1,654	30	12,696
101 to 250	5	977	21	16,373
251 to 500[6]	3	1,335	12	19,144

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5 Amendment No. 1 provides additional detail regarding the typical order flow of smaller, retail-sized orders when the Exchange is operating in its historically normal environment (i.e., when the trading floor is operable and AIM/C-AIM is not activated in SPX). The Exchange notes, too, that Rule 5.37(b)(1)(A) guarantees price improvement for smaller order submitted to AIM. It provides that if a buy (sell) Agency Order is for less than 50 standard option contracts (or 500 mini-option contracts), the stop price of the Initiating Order must be at least one minimum increment better than the then-current NBO (NBB) or the Agency Order's limit price (if the order is a limit order), whichever is better.

6 The Exchange also notes that orders for over 500 contracts did not exceed a daily average of 2 orders (for up to an average daily total of 3,425 contracts) in AIM nor over a daily average of 4 orders (for up to an average daily total of 50,971 contracts) in C-AIM.

The Exchange then observed that since the re-opening of the trading floor on June 15, 2020,[7] the average daily statistics for customer orders for various quantities has been as follows:

Order Size Category	Simple Orders on Floor		Complex Orders on Floor	
	# Customer Orders	# Contracts	# Customer Orders	# Contracts
1 to 10	11	50	12	1,481
11 to 50	11	376	41	11,894
51 to 100	8	688	44	16,305
101 to 250	9	1,487	30	20,635
251 to 500[8]	6	2,240	19	22,489

The Exchange has observed that brokers generally cross customer orders on the trading floor, which is currently the only way to cross orders on the Exchange. Overall, as demonstrated in the tables above, the Exchange has observed that, when AIM and C-AIM were activated for SPX, there was a significant number of SPX orders (and resulting number of contracts) containing quantities of one to ten contracts submitted through the electronic auctions over any other order size category. However, once the trading floor was again operable in June 2020, and AIM and C-AIM consequently switched off for SPX, the volume of customer orders in SPX for one to ten contracts submitted to the trading floor decreased significantly (approximately a 99% decrease in number of simple orders, total number of simple order contracts and number of complex orders, and approximately a 91% decrease in total number of complex order contracts) from the volume that had previously been submitted to the electronic auctions, whereas, larger order sizes experienced a notable

[7] Through July 16, 2020, when this data was compiled.

[8] The Exchange also notes that orders for over 500 contracts have had up to a daily average of 4 orders (for up to an average daily total of 9,120 contracts) in AIM and up to 10 orders (for up to an average daily total of 60,091 contracts) in C-AIM.

increase in volume once the trading floor was again operable. Thus, the data demonstrates that when AIM is not available, brokers do not take advantage of the ability to cross smaller-sized orders on the trading floor, but when AIM is available, brokers use the electronic auction to cross these smaller-sized orders.

In addition to this, the Exchange observed that, in a sample of SPX orders submitted into simple AIM during a week of trading in April 2020,[9] orders containing quantities from one to ten contracts submitted through AIM received an average price improvement of approximately $0.34 over their limit prices, whereas orders containing quantities from 11 to 50 contracts received an average price improvement of approximately $0.22, and orders for 51 to 250 contracts received an average price improvement of $0.08and orders containing quantities of between 251 and 500 received an average of $0.15. That is approximately a 55% larger average price improvement that orders for one to ten contracts received than orders for 11 to 50 contracts, a 325% larger average price improvement than orders for 51 to 250 contracts and approximately 127% larger average price improvement than orders for 251 to 500 contracts. While the Exchange did not observe such a significant increase in price improvement for complex orders from one to ten contracts in the sample of SPX orders submitted to C-AIM, it notes that greater price improvement generally did occur for smaller sized complex orders as compared to larger sized orders. The Exchange notes, however, that it is simultaneously submitting a rule filing to amend the manner in which price improvement occurs for certain complex SPX orders submitted to C-AIM so that price improvement received through the C-AIM Auction is better aligned with pricing that

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9 Amendment No. 1 amends the data sample presented by expanding the time frame in which the sample was taken for average price improvement over the limit price of Agency Orders submitted into AIM and C-AIM from through.

typically occurs on the trading floor. The Exchange believes that this, paired with the proposed maximum quantity, will greatly incentivize more retail-sized order flow through C-AIM. Overall, as this data demonstrates, price improvement on smaller orders (particularly for one to ten contracts) in SPX, a class which generally exhibits more complicated trading characteristics and complex market factors, is generally more beneficial than price improvement on larger orders submitted through AIM and C-AIM, and customers are more inclined to submit smaller orders (1-10 contracts) in SPX into the electronic auctions when activated for SPX, rather than to the trading floor, when operable. As a result, if the Exchange is able to implement a maximum size requirement of up to 10 contracts for SPX as proposed,[10] it may determine to activate AIM and C-AIM when the trading floor is open. The Exchange believes this could provide incentive for the submission of smaller size SPX orders to the Exchange and into the electronic auction. As a result, the Exchange believes the proposed rule change will provide retail customers with additional price improvement opportunities overall when the trading floor is open while preserving liquidity available in the market, particularly on the trading floor, for larger and more complicated orders.

The Exchange notes that the trading floor is generally better suited for the larger complex orders typical in SPX. Therefore, while permitting retail-sized orders in SPX to execute in AIM and C-AIM will provide additional price improvement opportunities for smaller orders, it is also designed to maintain SPX liquidity, and incentive Market-Maker

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10 The proposed rule change to designate a maximum size of 10 contracts is based on this data, which demonstrates that orders with size up to 10 contracts generally experience the most volume when AIM and C-AIM are activated for SPX and generally receive the most beneficial price improvement (and are considered to be "retail" sized orders).

activity in SPX, on the trading floor and in the electronic book when AIM and C-AIM is activated for SPX, creating a liquid hybrid environment for orders in this class. Indeed, the Exchange has observed that open outcry trading is the generally preferred execution mechanism for orders in such a complex and nuanced class as SPX, which has been indicated, among other observations, by a significant decrease in SPX executions while the Exchange operated in an all-electronic environment. Data from February 3, 2020 through March 13, 2020 (the last trading day prior to the temporary close of the trading floor) shows that a total of 2,717,383 contracts for simple orders in SPX and 27,242,625 contracts for complex orders in SPX were executed in open outcry auctions, whereas data for approximately the same timeframe, from March 16, 2020 through April 21, 2020, shows that 534,790 contracts were executed in AIM in SPX and 13,059,041 contracts were executed in C-AIM in SPX. The Exchange notes, too, that the Exchange's trading floor may be better suited for crosses in SPX with more complex orders, complicated strategies and larger size. Such orders are more commonly executed on the trading floor as Trading Permit Holders ("TPHs") are able to negotiate and fine-tune the terms of a trade on the trading floor and are permitted to submit complex orders with a ratio less than one-to-three (.333) or greater than three-to-one (3.00) for execution on the trading floor.[11] TPHs are not currently permitted to submit complex orders with such ratios for electronic processing. In addition to this, the trading crowd in open outcry is able to provide markets that are more tailored to the complexity and size of orders typically submitted in SPX. Greater execution and price improvement opportunities for SPX orders may result from the markets given by the trading crowd that better define the nuanced complexity and size of such orders than if the same

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[11] See Rule 5.83(b).

orders were submitted via AIM or C-AIM –which, instead, may provide greater price improvement opportunities for simpler and smaller orders (as demonstrated in the data sample explained above).[12]

Finally, pursuant to current Rule 5.37.02 and Rule 5.38.02, it is deemed conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 8.1 to engage in a pattern of conduct where the Initiating Member breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating TPH would have otherwise received in accordance with the allocation procedures contained in the AIM and C-AIM Rules, respectively. In light of the proposed rule change, the Exchange also proposes to amend Rules 5.37.02 and 5.38.02 to make it clear that Initiating TPHs also may not break up an Agency Order into separate orders for the purpose of circumventing the maximum quantity requirement pursuant to subparagraph(s) (a)(3). The Exchange notes that its surveillance program will monitor for such violations in the same manner in which it currently monitors for allocation-related break up violations.

(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.[13] Specifically, the Exchange believes the proposed rule change is consistent with the

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12 Amendment No. 1 adds additional detail and bolsters the explanation regarding the reasons why the trading floor is better suited for the execution of the generally larger, more complicated orders in SPX, including providing additional data regarding SPX order flow to the floor when operable and to AIM/C-AIM when the floor was not operable.

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

Section 6(b)(5)[14] 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)[15] 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 maximum size for AIM and C-AIM Agency Orders in SPX will allow the Exchange to activate AIM and C-AIM Auctions for SPX in a manner the Exchange believes will appropriately address the different trading characteristics, market model, investor basis and conditions presented in SPX as compared to different option classes, for which AIM and C-AIM have historically been activated. The Exchange has considered these factors in its determination to not activate AIM and C-AIM in SPX when operating in a normal hybrid trading environment. With the proposed rule change, the Exchange would consider activating AIM and C-AIM in SPX when the trading floor is open to provide additional execution and price improvement opportunities to retail customers. The Exchange believes this may encourage an increase smaller-sized SPX orders and meaningful and competitive responses to the auctions, as applicable, which ultimately benefits investors and retail customers in particular.

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14 15 U.S.C. 78f(b)(5).

15 Id.

The Exchange acknowledges that price improvement auctions have provided the market with benefits, such as providing an efficient manner of access to liquidity for customers. However, the options industry overall has observed that quoted liquidity on the book has decreased, quotes have widened, and options market makers have reduced their participation in the market, which has impacted market quality.[16] The Exchange believes the proposed rule change may encourage a general increase in retail order flow and execution opportunities in SPX, while maintaining market quality and liquidity for larger and more complicated orders outside of AIM and C-AIM auctions, which removes impediments to and perfects the mechanism of a free and open market and a national market system, and benefits the entire market and all investors. Specifically, the Exchange believes that a maximum order size for these auctions would provide retail customers in SPX with access to these auctions while maintaining typical levels of liquidity and market quality in the electronic book and on the trading floor by continuing to direct larger and more complex order flow to the trading floor, thus, incentivizing SPX Market-Makers to continue to provide liquidity and tight markets in the trading crowd and on the electronic book for such orders.

Additionally, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system by increasing price improvement opportunities for smaller, retail-sized orders in SPX. As indicated above, the Exchange observed that while AIM and C-AIM were

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[16] See Letter to Brett Redfearn, Director, Division of Trading & Markets, from Cboe Global Markets, Inc. the Listed Options Trading Committee of the Securities Industry and Financial Markets Association ("SIFMA"), and the Listed Options Committee of the Security Traders Association ("STA"), dated June 4, 2018, available at http://cdn.batstrading.com/resources/comment_letters/Cboe-Joint-Letter-with-SIFMA-and-The-STA-on-Options-Market-Structure.pdf.

activated for SPX during the temporary floor closure, there was notable volume in and beneficial price improvement for smaller retail-sized SPX orders, particularly containing quantities of one to ten contracts, over other order sizes. However, when AIM and C-AIM are not activated for SPX and the trading floor is operable, smaller customer orders in SPX are not generally submitted for open outcry trading, while larger orders, instead, experience more significant volume. As a result, the Exchange believes that the proposed rule change would allow the Exchange to re-activate AIM and C-AIM in SPX while the trading floor is open and, thus, continue to provide observed beneficial price improvement opportunities to retail-sized orders not previously as accessible for such orders.[17]

In addition to this, the Exchange does not believe that the proposed rule change would permit unfair discrimination between TPHs that submit retail-sized orders and TPHs that submit larger and more complicated orders in SPX because the trading floor is generally better suited and more appropriate for larger and more complicated orders, where TPHs tend to execute such orders given the flexibility to negotiate and fine-tune the terms of an order as well as the ability to submit orders with ratios of less than one-to-three or greater than three-to-one. As stated, SPX order flow generally gravitates to the trading floor, which has historically been, and is currently, the sole crossing mechanism for orders in SPX. Accordingly, the Exchange does not believe the proposed rule change is unfairly discriminatory as it is designed to promote a competitive process for retail executions in an electronic environment in a product otherwise more adapted for more sophisticated, complex executions while providing retail orders with the potential to

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[17] See supra note 5.

receive meaningful price improvement, wherein TPHs may continue to receive significant execution opportunities on their larger and generally more complex orders in the same manner as they have always been able to – via execution on the trading floor. In addition to this, given that the Exchange does not generally activate AIM and C-AIM in SPX, the proposed rule change will have no impact on larger orders, which TPHs are currently unable to submit into AIM and C-AIM Auctions when the trading floor is open. Also, and as discussed above, the Exchange believes that permitting retail-sized orders to execute in AIM and C-AIM auctions will continue to direct larger orders to the trading floor thus creating continued incentive for Market-Makers to continue to remain on the trading floor to execute against those orders. Likewise, the Exchange does not believe that implementing a maximum size for SPX Agency Orders would permit unfair discrimination between orders in SPX and orders in other classes submitted to AIM and C-AIM because AIM and C-AIM have historically been activated in all other classes, whereas, the Exchange has only recently considered activating AIM and C-AIM in SPX, with what it believes to be an appropriate limitation to retail orders, due to the unique trading characteristics, market model, investor base, and large notional value of SPX options compared to other options.[18] In addition, the Exchange believes that the proposed rule change to amend Rules 5.37.02 and 5.38.02 would protect investors by prohibiting TPHs to break up Agency Orders to circumvent maximum size requirements.

The Exchange does not believe that the purpose of the proposed rule change to accommodate retail customers is new or unique, as the Exchange and other options

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[18] Amendment No. 1 provides additional detail in connection with why it believes it is appropriate to limit maximum size for SPX orders submitted into the electronic auctions as compared to the trading floor and to other classes in which AIM and C-AIM are activated.

exchanges currently have rules, such as certain reduced fees and market structure benefits (such as execution priority), in place that provide preferential treatment to or are geared toward benefitting retail customers particularly. Moreover, the Exchange believes that the proposed rule change is consistent with longstanding precedent, thus indicating that it is consistent with the Act, to provide reasonable incentives to retail investors that rely on the public markets for their investment needs. Indeed, the Commission has long stressed the need to ensure that the markets are structured in a way that meets the needs of ordinary investors.[19] The Exchange believes that the proposed rule change would assist the Exchange in achieving the Commission's stated goal of improving the retail investor experience in the public markets while protecting overall market quality.

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 rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply to all Agency Orders in SPX submitted into the AIM and C-AIM auctions by all market participants. The Exchange believes having a maximum size for SPX orders only is appropriate given the trading characteristics, market model, investor base, and large notional value of SPX options compared to other options. AIM and C-AIM is currently active in all other classes on the Exchange with no

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19 See e.g. U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018-2022, available at https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf, wherein the Commission's strategic plan for fiscal years 2018-2022 touts "focus on the long-term interests of our Main Street investors" as the Commission's number one strategic goal.

maximum size. The Exchange believes making AIM and C-AIM available for retail-sized SPX orders provides an appropriate balance of providing these orders with additional execution and price improvement opportunities and limiting orders that may execute through auctions in order to preserve electronic and open outcry liquidity in the SPX market. The Exchange believes all market participants in SPX may benefit from any additional liquidity and price improvement in the AIM and C-AIM Auctions that may result from the proposed rule change. Moreover, the Exchange believes that a maximum quantity in SPX would not significantly affect TPHs that submit larger and more complicated orders as open outcry auctions are generally better suited to facilitating liquidity for larger order size and/or more complex order strategies. The Exchange notes it generally does not activate AIM and C-AIM in SPX options, so the proposed rule change would have no impact on larger-sized SPX orders that currently are not permitted to be submitted into AIM and C-AIM auctions when the Exchange is operating in a normal hybrid trading environment. The Exchange believes that permitting smaller retail-sized orders to execute in the AIM and C-AIM auctions would continue to direct larger orders into open outcry auctions thus encouraging Market-Makers to continue to provide liquidity in the trading crowd while providing retail customers with price improvement opportunities, which may increase competition for these orders and overall quality of the auctions.

As stated above, the Exchange believes the proposed rule change is consistent with the Commission's goal and industry practice to provide reasonable incentives to retail investors that rely on the public markets for their investment needs. The Exchange also notes the proposed rule change has no impact on the allocation or priority of orders and responses at the conclusion of AIM and C-AIM auctions. Additionally, any Agency Order for less than 50 contracts must continue to have an auction price that improves the then-current NBBO.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule change relates to an Exchange-specific auction mechanism in a class of options only listed for trading on the Exchange. The Exchange also notes that other options exchanges offer similar price improvement auctions[20] that are available to market participants, and other options exchanges may, in their discretion, adopt similar maximum size requirements in connection with their auctions.

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) Not applicable.

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20 See e.g., BOX Options' Price Improvement Period ("PIP") available at https://boxoptions.com/about/price-improvement; and Complex Order Price Improvement Period ("COPIP") available at https://boxoptions.com/about/complex-order-description/; and MIAX Options' Price Improvement Mechanism ("PRIME") and Complex Price Improvement Mechanism ("cPRIME") available at https://www.miaxoptions.com/sites/default/files/knowledge-center/2017-07/MIAX_PRIME_07212017.pdf.

(b) Not applicable.

(c) Not applicable.

(d) The Exchange requests accelerated approval of Amendment No. 1. Amendment No. 1 does not change the substance of the Initial Rule Filing with respect to the purpose or justification of maximum size requirements for SPX Agency Orders in AIM and C-AIM, but merely reduces the scope of the proposed rule change by adopting a fixed maximum size limit of 10 contracts, rather than an Exchange-determined limit of up to 100 contracts, which the Exchange believes would provide greater certainty, simplify the process for retail investors in SPX for order sizes that, as observed, have received significant price improvement benefits when AIM and C-AIM have been activated in SPX. It also makes a clarifying edit in the Exhibit 5 in connection with the proposed language regarding the prohibition of circumventing the maximum size requirement to reflect the fixed maximum size limit. Amendment No. 1 also adds detail and specificity to the Form 19b-4 regarding the volume of smaller and larger order sizes in SPX submitted to AIM, C-AIM and the trading floor, the scope of time in which the average price improvement for different order sizes was observed, and the overall purpose and intended benefits of the proposed rule change, as well as other nonsubstantive edits for clarity and ease of understanding. As such, the Exchange does not believe that Amendment No. 1 makes any material changes to the substance or framework of the proposed rule change as set forth in this Amendment No. 1, and therefore, does not believe that a full notice and comment period is necessary. The Exchange also notes that the Initial Rule Filing was filed for accelerated effectiveness pursuant to Section 19(b)(2) of the Act so that it may be operative as soon as practicable. As noted above, the

Exchange activated AIM and C-AIM for SPX while the trading floor was closed, during which time the Exchange observed significant price improvement for smaller orders. The Exchange reopened its trading floor on June 15, at which time it deactivated AIM and C-AIM in SPX, consistent with the SPX market model prior to the floor closure. Accelerated approval of the proposed rule change will permit the Exchange to again activate AIM and C-AIM in SPX as soon as possible in a manner the Exchange believes is appropriate given the trading characteristics and market model for SPX that differ from other options classes. The Exchange believes this will provide additional execution and price improvement opportunities to retail customers that have historically not been available to these customers through an electronic auction when the trading floor is open. The Exchange believes this will also preserve liquidity and market quality on the trading floor for larger and more complicated orders, which comprises a significant portion of SPX trading, which will benefit all investors that participate in the SPX market. For these reasons, the Exchange believes that accelerated approval is appropriate.

Item 8. <u>Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission</u>

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. <u>Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act</u>

Not applicable.

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

Not applicable.

Item 11. **Exhibits**

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

Exhibit 4. Marked copy of changes to the rule text proposed in an amendment compared against the version of the rule text that was initially filed.

Exhibit 5. Proposed rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CBOE-2020-051]

[Insert date]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Amend its Automated Price Improvement Auction Rules in Connection with Agency Order Size Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on [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 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 automated price improvement auction rules in connection with Agency Order size requirements. 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.

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

2 17 CFR 240.19b-4.

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

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. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change</u>

1. <u>Purpose</u>

The Exchange proposes to amend Rule 5.37(a)(3) and Rule 5.38(a)(8) to adopt a maximum size of 10 contracts for Agency Orders in SPX submitted through the Automated Price Improvement Mechanism ("AIM" or "AIM Auction") and the Complex Automated Price Improvement Mechanism ("C-AIM" or "C-AIM Auction").[3]

Currently, Rules 5.37(a)(3) and 5.38(a)(3), which govern the size requirements for AIM and C-AIM Agency and Initiating Orders, provide that there is no minimum size for orders submitted into AIM and C-AIM Auctions, respectively, and that the Initiating Order must be for the same size as the Agency Order. As such, an Agency Order of any size may currently be submitted in an AIM or C-AIM Auction.

The Exchange now proposes to amend Rule 5.37(a)(3) to provide the maximum size for all Agency Orders in SPX is 10 contracts, and by amending Rule 5.38(a)(3) to provide

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[3] Amendment No. 1 adopts a fixed maximum size requirement of 10 contracts for SPX Agency Orders submitted to AIM and C-AIM and amends the Initial Rule Filing to reflect this fixed maximum.

that the maximum size for the smallest leg of all Agency Orders in SPX is 10 contracts.[4] The proposed maximum size limit for SPX Agency Orders submitted in an AIM or C-AIM Auction is designed to address the specific trading characteristics, market model, and investor basis of SPX. The Exchange notes that the maximum size requirement for Agency Orders in SPX would apply to all Agency Orders in the entire SPX class (including SPX Weeklys ("SPXW")).

In particular, SPX has a different and more complicated market model, involves taking on greater risk, has a significantly higher notional value (e.g., they are ten times the notional size of SPY options), tends to trade in much larger size, tends to have a larger percentage of volume executed in open outcry than other classes, and tends to execute increasingly more complex strategies (e.g., SPX Combo orders) than in other options classes. The Exchange understands these factors may limit retail customer participation in SPX to simpler strategies and smaller-sized orders. While AIM and C-AIM have historically been activated for all other options classes, the unique and more complex characteristics of SPX have contributed to the Exchange's historical determination to not activate AIM and C-AIM in SPX when the floor is open so to encourage liquidity on the trading floor as well as in the electronic book to accommodate these large and complex trades.[5] Therefore, the Exchange believes the application of an Agency Order size ceiling may provide more price improvement opportunities in SPX geared towards retail customers when AIM and C-AIM

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4 Application of the maximum size to the smallest leg of complex orders is consistent with the application of a size requirement for the Exchange's Complex Solicitation Auction Mechanism, which is a similar price improvement auction mechanism on the Exchange. See Rule 5.40(a)(3).

5 The Exchange notes that, due to the Covid-19 pandemic, the trading floor was inoperable from March 16, 2020 through June 12, 2020 and, as a result, AIM and C-AIM were activated for SPX for the duration of the floor closure.

are activated in SPX.[6] The Exchange believes this may incentivize increased retail customer auction participation in SPX and provide retail customers with execution and price improvement opportunities in SPX while incentivizing continued liquidity in the electronic book and on the trading floor for larger and more complex orders.

The Exchange has observed that smaller size order flow tends to attract liquidity provider responses, as such orders are generally easier to hedge than larger orders, which may encourage market participants to compete to provide price improvement in an electronic competitive auction process. This, in turn, may contribute to a deeper, more liquid auction process with additional price improvement opportunities for market participants that submit smaller size orders, particularly retail customers.

The Exchange notes that smaller orders in SPX are not commonly executed on the floor, and, without an opportunity to execute in AIM and C-AIM, smaller orders are primarily submitted into to the Book and trade at the market, whereas, with AIM and C-AIM, smaller orders may receive price improvement.[7] For example, the Exchange observed that during April and May 2020, while the trading floor was inoperable and AIM and C-AIM were activated for SPX, the average daily statistics for Agency Orders containing various quantities was as follows:

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6 Amendment No. 1 adds additional clarification regarding the differences between SPX and other classes and the role of such differences in the Exchange's historical determination not to activate AIM and C-AIM for SPX.

7 Amendment No. 1 provides additional detail regarding the typical order flow of smaller, retail-sized orders when the Exchange is operating in its historically normal environment (i.e., when the trading floor is operable and AIM/C-AIM is not activated in SPX). The Exchange notes, too, that Rule 5.37(b)(1)(A) guarantees price improvement for smaller order submitted to AIM. It provides that if a buy (sell) Agency Order is for less than 50 standard option contracts (or 500 mini-option contracts), the stop price of the Initiating Order must be at least one minimum increment better than the then-current NBO (NBB) or the Agency Order's limit price (if the order is a limit order), whichever is better.

	AIM		C-AIM	
Order Size Category	**# Agency Orders**	**# Contracts**	**# Agency Orders**	**# Contracts**
1 to 10	1,668	4,229	2,123	17,231
11 to 50	103	2,759	189	17,226
51 to 100	19	1,654	30	12,696
101 to 250	5	977	21	16,373
251 to 500[8]	3	1,335	12	19,144

The Exchange then observed that since the re-opening of the trading floor on June 15, 2020,[9] the average daily statistics for customer orders for various quantities has been as follows:

	Simple Orders on Floor		Complex Orders on Floor	
Order Size Category	**# Customer Orders**	**# Contracts**	**# Customer Orders**	**# Contracts**
1 to 10	11	50	12	1,481
11 to 50	11	376	41	11,894
51 to 100	8	688	44	16,305
101 to 250	9	1,487	30	20,635
251 to 500[10]	6	2,240	19	22,489

The Exchange has observed that brokers generally cross customer orders on the trading floor, which is currently the only way to cross orders on the Exchange. Overall, as demonstrated in the tables above, the Exchange has observed that, when AIM and C-AIM were activated for SPX, there was a significant number of SPX orders (and resulting number of contracts) containing quantities of one to ten contracts submitted through the electronic

8 The Exchange also notes that orders for over 500 contracts did not exceed a daily average of 2 orders (for up to an average daily total of 3,425 contracts) in AIM nor over a daily average of 4 orders (for up to an average daily total of 50,971 contracts) in C-AIM.

9 Through July 16, 2020, when this data was compiled.

10 The Exchange also notes that orders for over 500 contracts have had up to a daily average of 4 orders (for up to an average daily total of 9,120 contracts) in AIM and up to 10 orders (for up to an average daily total of 60,091 contracts) in C-AIM.

auctions over any other order size category. However, once the trading floor was again operable in June 2020, and AIM and C-AIM consequently switched off for SPX, the volume of customer orders in SPX for one to ten contracts submitted to the trading floor decreased significantly (approximately a 99% decrease in number of simple orders, total number of simple order contracts and number of complex orders, and approximately a 91% decrease in total number of complex order contracts) from the volume that had previously been submitted to the electronic auctions, whereas, larger order sizes experienced a notable increase in volume once the trading floor was again operable. Thus, the data demonstrates that when AIM is not available, brokers do not take advantage of the ability to cross smaller-sized orders on the trading floor, but when AIM is available, brokers use the electronic auction to cross these smaller-sized orders.

In addition to this, the Exchange observed that, in a sample of SPX orders submitted into simple AIM during a week of trading in April 2020,[11] orders containing quantities from one to ten contracts submitted through AIM received an average price improvement of approximately $0.34 over their limit prices, whereas orders containing quantities from 11 to 50 contracts received an average price improvement of approximately $0.22, and orders for 51 to 250 contracts received an average price improvement of $0.08and orders containing quantities of between 251 and 500 received an average of $0.15. That is approximately a 55% larger average price improvement that orders for one to ten contracts received than orders for 11 to 50 contracts, a 325% larger average price improvement than orders for 51 to 250 contracts and approximately 127% larger average price improvement than orders for

11 Amendment No. 1 amends the data sample presented by expanding the time frame in which the sample was taken for average price improvement over the limit price of Agency Orders submitted into AIM and C-AIM from through.

251 to 500 contracts. While the Exchange did not observe such a significant increase in price improvement for complex orders from one to ten contracts in the sample of SPX orders submitted to C-AIM, it notes that greater price improvement generally did occur for smaller sized complex orders as compared to larger sized orders. The Exchange notes, however, that it is simultaneously submitting a rule filing to amend the manner in which price improvement occurs for certain complex SPX orders submitted to C-AIM so that price improvement received through the C-AIM Auction is better aligned with pricing that typically occurs on the trading floor. The Exchange believes that this, paired with the proposed maximum quantity, will greatly incentivize more retail-sized order flow through C-AIM. Overall, as this data demonstrates, price improvement on smaller orders (particularly for one to ten contracts) in SPX, a class which generally exhibits more complicated trading characteristics and complex market factors, is generally more beneficial than price improvement on larger orders submitted through AIM and C-AIM, and customers are more inclined to submit smaller orders (1-10 contracts) in SPX into the electronic auctions when activated for SPX, rather than to the trading floor, when operable. As a result, if the Exchange is able to implement a maximum size requirement of up to 10 contracts for SPX as proposed,[12] it may determine to activate AIM and C-AIM when the trading floor is open. The Exchange believes this could provide incentive for the submission of smaller size SPX orders to the Exchange and into the electronic auction. As a result, the Exchange believes the proposed rule change will provide retail customers with additional price

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[12] The proposed rule change to designate a maximum size of 10 contracts is based on this data, which demonstrates that orders with size up to 10 contracts generally experience the most volume when AIM and C-AIM are activated for SPX and generally receive the most beneficial price improvement (and are considered to be "retail" sized orders).

improvement opportunities overall when the trading floor is open while preserving liquidity available in the market, particularly on the trading floor, for larger and more complicated orders.

The Exchange notes that the trading floor is generally better suited for the larger complex orders typical in SPX. Therefore, while permitting retail-sized orders in SPX to execute in AIM and C-AIM will provide additional price improvement opportunities for smaller orders, it is also designed to maintain SPX liquidity, and incentive Market-Maker activity in SPX, on the trading floor and in the electronic book when AIM and C-AIM is activated for SPX, creating a liquid hybrid environment for orders in this class. Indeed, the Exchange has observed that open outcry trading is the generally preferred execution mechanism for orders in such a complex and nuanced class as SPX, which has been indicated, among other observations, by a significant decrease in SPX executions while the Exchange operated in an all-electronic environment. Data from February 3, 2020 through March 13, 2020 (the last trading day prior to the temporary close of the trading floor) shows that a total of 2,717,383 contracts for simple orders in SPX and 27,242,625 contracts for complex orders in SPX were executed in open outcry auctions, whereas data for approximately the same timeframe, from March 16, 2020 through April 21, 2020, shows that 534,790 contracts were executed in AIM in SPX and 13,059,041 contracts were executed in C-AIM in SPX. The Exchange notes, too, that the Exchange's trading floor may be better suited for crosses in SPX with more complex orders, complicated strategies and larger size. Such orders are more commonly executed on the trading floor as Trading Permit Holders ("TPHs") are able to negotiate and fine-tune the terms of a trade on the trading floor and are permitted to submit complex orders with a ratio less than one-to-three (.333) or greater than three-to-one (3.00) for execution on the trading floor.[13] TPHs are not currently permitted to submit complex orders with such ratios for electronic processing. In addition to this, the trading crowd in open outcry is able to provide markets that are more tailored to the complexity and size of orders typically submitted in SPX. Greater execution and price improvement opportunities for SPX orders may result from the markets given by the trading crowd that better define the nuanced complexity and size of such orders than if the same orders were submitted via AIM or C-AIM –which, instead, may provide greater price improvement opportunities for simpler and smaller orders (as demonstrated in the data sample explained above).[14]

Finally, pursuant to current Rule 5.37.02 and Rule 5.38.02, it is deemed conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 8.1 to engage in a pattern of conduct where the Initiating Member breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating TPH would have otherwise received in accordance with the allocation procedures contained in the AIM and C-AIM Rules, respectively. In light of the proposed rule change, the Exchange also proposes to amend Rules 5.37.02 and 5.38.02 to make it clear that Initiating TPHs also may not break up an Agency Order into separate orders for the purpose of circumventing the maximum quantity requirement pursuant to subparagraph(s) (a)(3). The Exchange notes that its surveillance program will monitor for

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13 See Rule 5.83(b).

14 Amendment No. 1 adds additional detail and bolsters the explanation regarding the reasons why the trading floor is better suited for the execution of the generally larger, more complicated orders in SPX, including providing additional data regarding SPX order flow to the floor when operable and to AIM/C-AIM when the floor was not operable.

such violations in the same manner in which it currently monitors for allocation-related break up violations.

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.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] 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)[17] 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 maximum size for AIM and C-AIM Agency Orders in SPX will allow the Exchange to activate AIM and C-AIM Auctions for SPX in a manner the Exchange believes will appropriately address the different trading characteristics, market model, investor basis and conditions presented in SPX as compared to different option classes, for which AIM and C-AIM have historically

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] Id.

been activated. The Exchange has considered these factors in its determination to not activate AIM and C-AIM in SPX when operating in a normal hybrid trading environment. With the proposed rule change, the Exchange would consider activating AIM and C-AIM in SPX when the trading floor is open to provide additional execution and price improvement opportunities to retail customers. The Exchange believes this may encourage an increase smaller-sized SPX orders and meaningful and competitive responses to the auctions, as applicable, which ultimately benefits investors and retail customers in particular.

The Exchange acknowledges that price improvement auctions have provided the market with benefits, such as providing an efficient manner of access to liquidity for customers. However, the options industry overall has observed that quoted liquidity on the book has decreased, quotes have widened, and options market makers have reduced their participation in the market, which has impacted market quality.[18] The Exchange believes the proposed rule change may encourage a general increase in retail order flow and execution opportunities in SPX, while maintaining market quality and liquidity for larger and more complicated orders outside of AIM and C-AIM auctions, which removes impediments to and perfects the mechanism of a free and open market and a national market system, and benefits the entire market and all investors. Specifically, the Exchange believes that a maximum order size for these auctions would provide retail customers in SPX with access to these auctions while maintaining typical levels of

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18 See Letter to Brett Redfearn, Director, Division of Trading & Markets, from Cboe Global Markets, Inc. the Listed Options Trading Committee of the Securities Industry and Financial Markets Association ("SIFMA"), and the Listed Options Committee of the Security Traders Association ("STA"), dated June 4, 2018, available at http://cdn.batstrading.com/resources/comment_letters/Cboe-Joint-Letter-with-SIFMA-and-The-STA-on-Options-Market-Structure.pdf.

liquidity and market quality in the electronic book and on the trading floor by continuing to direct larger and more complex order flow to the trading floor, thus, incentivizing SPX Market-Makers to continue to provide liquidity and tight markets in the trading crowd and on the electronic book for such orders.

Additionally, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system by increasing price improvement opportunities for smaller, retail-sized orders in SPX. As indicated above, the Exchange observed that while AIM and C-AIM were activated for SPX during the temporary floor closure, there was notable volume in and beneficial price improvement for smaller retail-sized SPX orders, particularly containing quantities of one to ten contracts, over other order sizes. However, when AIM and C-AIM are not activated for SPX and the trading floor is operable, smaller customer orders in SPX are not generally submitted for open outcry trading, while larger orders, instead, experience more significant volume. As a result, the Exchange believes that the proposed rule change would allow the Exchange to re-activate AIM and C-AIM in SPX while the trading floor is open and, thus, continue to provide observed beneficial price improvement opportunities to retail-sized orders not previously as accessible for such orders.[19]

In addition to this, the Exchange does not believe that the proposed rule change would permit unfair discrimination between TPHs that submit retail-sized orders and TPHs that submit larger and more complicated orders in SPX because the trading floor is generally better suited and more appropriate for larger and more complicated orders,

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[19] See supra note 7.

where TPHs tend to execute such orders given the flexibility to negotiate and fine-tune the terms of an order as well as the ability to submit orders with ratios of less than one-to-three or greater than three-to-one. As stated, SPX order flow generally gravitates to the trading floor, which has historically been, and is currently, the sole crossing mechanism for orders in SPX. Accordingly, the Exchange does not believe the proposed rule change is unfairly discriminatory as it is designed to promote a competitive process for retail executions in an electronic environment in a product otherwise more adapted for more sophisticated, complex executions while providing retail orders with the potential to receive meaningful price improvement, wherein TPHs may continue to receive significant execution opportunities on their larger and generally more complex orders in the same manner as they have always been able to – via execution on the trading floor. In addition to this, given that the Exchange does not generally activate AIM and C-AIM in SPX, the proposed rule change will have no impact on larger orders, which TPHs are currently unable to submit into AIM and C-AIM Auctions when the trading floor is open. Also, and as discussed above, the Exchange believes that permitting retail-sized orders to execute in AIM and C-AIM auctions will continue to direct larger orders to the trading floor thus creating continued incentive for Market-Makers to continue to remain on the trading floor to execute against those orders. Likewise, the Exchange does not believe that implementing a maximum size for SPX Agency Orders would permit unfair discrimination between orders in SPX and orders in other classes submitted to AIM and C-AIM because AIM and C-AIM have historically been activated in all other classes, whereas, the Exchange has only recently considered activating AIM and C-AIM in SPX, with what it believes to be an appropriate limitation to retail orders, due to the unique trading characteristics, market model, investor base, and large notional value of SPX options compared to other options.[20] In addition, the Exchange believes that the proposed rule change to amend Rules 5.37.02 and 5.38.02 would protect investors by prohibiting TPHs to break up Agency Orders to circumvent maximum size requirements.

The Exchange does not believe that the purpose of the proposed rule change to accommodate retail customers is new or unique, as the Exchange and other options exchanges currently have rules, such as certain reduced fees and market structure benefits (such as execution priority), in place that provide preferential treatment to or are geared toward benefitting retail customers particularly. Moreover, the Exchange believes that the proposed rule change is consistent with longstanding precedent, thus indicating that it is consistent with the Act, to provide reasonable incentives to retail investors that rely on the public markets for their investment needs. Indeed, the Commission has long stressed the need to ensure that the markets are structured in a way that meets the needs of ordinary investors.[21] The Exchange believes that the proposed rule change would assist the Exchange in achieving the Commission's stated goal of improving the retail investor experience in the public markets while protecting overall market quality.

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20 Amendment No. 1 provides additional detail in connection with why it believes it is appropriate to limit maximum size for SPX orders submitted into the electronic auctions as compared to the trading floor and to other classes in which AIM and C-AIM are activated.

21 See e.g. U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018-2022, available at https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf, wherein the Commission's strategic plan for fiscal years 2018-2022 touts "focus on the long-term interests of our Main Street investors" as the Commission's number one strategic goal.

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 rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply to all Agency Orders in SPX submitted into the AIM and C-AIM auctions by all market participants. The Exchange believes having a maximum size for SPX orders only is appropriate given the trading characteristics, market model, investor base, and large notional value of SPX options compared to other options. AIM and C-AIM is currently active in all other classes on the Exchange with no maximum size. The Exchange believes making AIM and C-AIM available for retail-sized SPX orders provides an appropriate balance of providing these orders with additional execution and price improvement opportunities and limiting orders that may execute through auctions in order to preserve electronic and open outcry liquidity in the SPX market. The Exchange believes all market participants in SPX may benefit from any additional liquidity and price improvement in the AIM and C-AIM Auctions that may result from the proposed rule change. Moreover, the Exchange believes that a maximum quantity in SPX would not significantly affect TPHs that submit larger and more complicated orders as open outcry auctions are generally better suited to facilitating liquidity for larger order size and/or more complex order strategies. The Exchange notes it generally does not activate AIM and C-AIM in SPX options, so the proposed rule change would have no impact on larger-sized SPX orders that currently are not permitted to be submitted into AIM and C-AIM auctions when the Exchange is operating in a normal hybrid trading environment. The Exchange believes that permitting smaller retail-sized orders to execute in the AIM and C-AIM auctions would continue to direct larger orders into open outcry auctions thus encouraging Market-Makers to continue to provide liquidity in the trading crowd while providing retail customers with price improvement opportunities, which may increase competition for these orders and overall quality of the auctions.

As stated above, the Exchange believes the proposed rule change is consistent with the Commission's goal and industry practice to provide reasonable incentives to retail investors that rely on the public markets for their investment needs. The Exchange also notes the proposed rule change has no impact on the allocation or priority of orders and responses at the conclusion of AIM and C-AIM auctions. Additionally, any Agency Order for less than 50 contracts must continue to have an auction price that improves the then-current NBBO.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule change relates to an Exchange-specific auction mechanism in a class of options only listed for trading on the Exchange. The Exchange also notes that other options exchanges offer similar price improvement auctions[22] that are available to market participants, and other options exchanges may, in their discretion, adopt similar maximum size requirements in connection with their auctions.

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22 See e.g., BOX Options' Price Improvement Period ("PIP") available at https://boxoptions.com/about/price-improvement; and Complex Order Price Improvement Period ("COPIP") available at https://boxoptions.com/about/complex-order-description/; and MIAX Options' Price Improvement Mechanism ("PRIME") and Complex Price Improvement Mechanism ("cPRIME") available at https://www.miaxoptions.com/sites/default/files/knowledge-center/2017-07/MIAX_PRIME_07212017.pdf.

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

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

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2020-051 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-2020-051. 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-2020-051 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.[23]

Secretary

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[23] 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Additions set forth in the proposed rule text of original SR-CBOE-2020-051 are underlined and deletions set forth in the proposed rule text of original SR-CBOE-2020-051 are bracketed. Additions being made pursuant to Amendment No. 1 to SR-CBOE-2020-051 are double underlined and deletions being made pursuant to Amendment No. 1 to SR-CBOE-2020-051 are struck-through.

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Rules of Cboe Exchange, Inc.

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Rule 5.37. Automated Improvement Mechanism ("AIM" or "AIM Auction")

A Trading Permit Holder (the "Initiating TPH") may electronically submit for execution an order it represents as agent ("Agency Order") against principal interest or a solicited order(s) (except for an order for the account of any Market-Maker with an appointment in the applicable class on the Exchange) (an "Initiating Order") provided it submits the Agency Order for electronic execution into an AIM Auction pursuant to this Rule. For purposes of this Rule, the term "NBBO" means the national best bid or national best offer at the particular point in time applicable to the reference, and the term "Initial NBBO" means the national best bid or national best offer at the time an Auction is initiated. Bulk messages are not eligible for AIM.

(a) *AIM Auction Eligibility Requirements*. The Initiating TPH may initiate an AIM Auction if all of the following conditions are met:

(1)-(2) No change.

(3) *Size*. There is no minimum size for Agency Orders. The ~~Exchange may determine a~~ maximum size ~~requirement~~ for all Agency Orders in SPX~~, which maximum may be no more than~~ is 10~~0~~ contracts. The Initiating Order must be for the same size as the Agency Order.

* * * * *

Interpretation and Policies

.01 No change.

.02 A pattern or practice of submitting orders or quotes for the purpose of disrupting or manipulating AIM Auctions, including to cause an Auction to conclude before the end of the Auction period, will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1. It will also be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1 to engage in a pattern of conduct where the Initiating TPH breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating TPH would have otherwise received in accordance with the allocation procedures contained in paragraph (e) above or for the purpose of circumventing ~~a~~the maximum quantity requirement ~~as determined by the Exchange~~ pursuant to subparagraph (a)(3) above.

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Rule 5.38. Complex Automated Improvement Mechanism ("C-AIM" or "C-AIM Auction")

A Trading Permit Holder (the "Initiating TPH") may electronically submit for execution a complex order it represents as agent ("Agency Order") against principal interest or a solicited complex order(s) (an "Initiating Order") provided it submits the Agency Order for electronic execution into a C-AIM Auction pursuant to this Rule. For purposes of this Rule, the term "SBBO" means the synthetic best bid or offer on the Exchange at the particular point in time applicable to the reference.

(a) *C-AIM Auction Eligibility Requirements*. The Initiating TPH may initiate a C-AIM Auction if all of the following conditions are met:

(1)-(2) No change.

(3) *Size*. There is no minimum size for Agency Orders. The ~~Exchange may determine a~~ maximum size ~~requirement~~ for the smallest leg of all Agency Orders in SPX~~, which maximum may be no more than~~ is 100~~0~~ contracts. The Initiating Order must be for the same size as the Agency Order.

* * * * *

Interpretations and Policies

.01 No change.

.02 A pattern or practice of submitting orders or quotes for the purpose of disrupting or manipulating C-AIM Auctions, including to cause a C-AIM Auction to conclude before the end of the C-AIM Auction period, will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1. It will also be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1 to engage in a pattern of conduct where the Initiating TPH breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating TPH would have otherwise received in accordance with the allocation procedures contained in paragraph (e) above or for the purpose of circumventing ~~a~~the maximum quantity requirement ~~as determined by the Exchange~~ pursuant to subparagraph (a)(3) above.

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EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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Rules of Cboe Exchange, Inc.

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Rule 5.37. Automated Improvement Mechanism ("AIM" or "AIM Auction")

A Trading Permit Holder (the "Initiating TPH") may electronically submit for execution an order it represents as agent ("Agency Order") against principal interest or a solicited order(s) (except for an order for the account of any Market-Maker with an appointment in the applicable class on the Exchange) (an "Initiating Order") provided it submits the Agency Order for electronic execution into an AIM Auction pursuant to this Rule. For purposes of this Rule, the term "NBBO" means the national best bid or national best offer at the particular point in time applicable to the reference, and the term "Initial NBBO" means the national best bid or national best offer at the time an Auction is initiated. Bulk messages are not eligible for AIM.

(a) *AIM Auction Eligibility Requirements*. The Initiating TPH may initiate an AIM Auction if all of the following conditions are met:

(1)-(2) No change.

(3) *Size*. There is no minimum size for Agency Orders. The maximum size for all Agency Orders in SPX is 10 contracts. The Initiating Order must be for the same size as the Agency Order.

* * * * *

Interpretations and Policies

.01 No change.

.02 A pattern or practice of submitting orders or quotes for the purpose of disrupting or manipulating AIM Auctions, including to cause an Auction to conclude before the end of the Auction period, will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1. It will also be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1 to engage in a pattern of conduct where the Initiating TPH breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating TPH would have otherwise received in accordance with the allocation procedures contained in paragraph (e) above or for the purpose of circumventing the maximum quantity requirement pursuant to subparagraph (a)(3) above.

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Rule 5.38. Complex Automated Improvement Mechanism ("C-AIM" or "C-AIM Auction")

A Trading Permit Holder (the "Initiating TPH") may electronically submit for execution a complex order it represents as agent ("Agency Order") against principal interest or a solicited complex order(s) (an "Initiating Order") provided it submits the Agency Order for electronic execution into a C-AIM Auction pursuant to this Rule. For purposes of this Rule, the term "SBBO" means the synthetic best bid or offer on the Exchange at the particular point in time applicable to the reference.

(a) *C-AIM Auction Eligibility Requirements*. The Initiating TPH may initiate a C-AIM Auction if all of the following conditions are met:

(1)-(2) No change.

(3) *Size*. There is no minimum size for Agency Orders. The maximum size for the smallest leg of all Agency Orders in SPX is 10 contracts. The Initiating Order must be for the same size as the Agency Order.

* * * * *

Interpretations and Policies

.01 No change.

.02 A pattern or practice of submitting orders or quotes for the purpose of disrupting or manipulating C-AIM Auctions, including to cause a C-AIM Auction to conclude before the end of the C-AIM Auction period, will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1. It will also be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1 to engage in a pattern of conduct where the Initiating TPH breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating TPH would have otherwise received in accordance with the allocation procedures contained in paragraph (e) above or for the purpose of circumventing the maximum quantity requirement pursuant to subparagraph (a)(3) above.

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