

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87455; File No. SR-CBOE-2019-102)

November 4, 2019

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend the Fat Finger Check in Rule 5.34 as it Applies to Stop-Limit Orders

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 October 29, 2019, 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, and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the 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 the fat finger check in Rule 5.34 as it applies to Stop-Limit orders. 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 its fat finger check under Rule 5.34(c)(1) as it applies to Stop-Limit orders. Currently, Rule 5.34(c)(1) provides that if a User submits a buy (sell) limit order to the System with a price that is more than a buffer amount above (below) the NBO (NBB), the System cancels or rejects the order (i.e. the “fat finger” check). The Exchange determines a default buffer amount; however, a User may establish a higher or lower amount than the Exchange default. This check generally applies to orders and quotes with a limit price, subject to certain exceptions set forth in current Rules 5.34(c)(1)(B) through (D). For example, current Rule 5.34(c)(1)(D) provides that the check does not apply to bulk messages.⁵

The Exchange proposes to add Stop-Limit orders to Rule 5.34(c)(1)(D) as an additional order type to which the fat finger check does not apply. A “Stop-Limit” order is an order to buy (sell) that becomes a limit order when the consolidated last sale price (excluding prices from complex order trades if outside the NBBO) or NBB (NBO) for a particular option contract is equal

⁵ The Exchange notes that a separate provision governs a fat finger check specific to bulk messages. See Rule 5.34(a)(5).

to or above (below) the stop price specified by the User.⁶ Stop-Limit orders allow Users increased control and flexibility over their transactions and the prices at which they are willing to execute an order. The purpose of a Stop-Limit order is to not execute upon entry, and instead rest in the System until the market reaches a certain price level, at which time the order could be executed. As such, when a buy (sell) Stop-Limit order is activated, its limit price may likely be outside of the buffer amount above (below) the NBO (NBB) in anticipation of capturing rapidly increasing (decreasing) market prices.

The primary purpose of the fat finger check is to prevent limit orders from executing at potentially erroneous prices upon entry, because the limit prices are “too far away” from the then-current NBBO. As noted above, a Stop-Limit order is not intended to execute upon entry. Currently, because a Stop-Limit order does not “become” a limit order until activated, the limit order fat finger check applies to a Stop-Limit order at the time the order is activated. As noted above, at that time, the limit price may cross the NBO, and thus may be cancelled due to the fat finger check if the limit price crosses the NBO by more than the buffer. Therefore, the manner in which the fat finger check cancels/rejects a Stop-Limit order may conflict with the intended purpose of a Stop-Limit order and a User’s control over the time when and the price at which it executes. For example, assume that when the NBBO is 8.00 x 8.05, a User submits a Stop-Limit order to buy at 9.25 and a stop price of 8.15 and the User has set the fat finger buffer to \$1.00. Assume the NBBO then updates to 8.15 x 8.20. The updated NBB equals the stop price of the order will activate the stop price of the Stop Limit Order, converting it into a limit order to buy at 9.25, which would be more than the fat finger buffer of \$1.00 above the current NBO, thus canceled/rejected by the System in accordance with the fat finger check. The Exchange also notes that the System is

⁶ See Rule 5.6(c) (definition of Stop-Limit order).

currently able to apply only one buffer amount (either the Exchange default amount or a User's established amount) across multiple order types. Therefore, a User would not be able to expand the buffer amount to accommodate Stop-Limit orders without potentially over-expanding the buffer amount for other limit orders that execute upon entry.

The Exchange notes that a User's Stop-Limit orders would still be subject to other price protections already in place on the Exchange. In particular, Rule 5.32(c)(2) specifically applies to Stop-Limit orders and provides that the System cancels or rejects a buy (sell) Stop-Limit order if the NBB (NBO) at the time the System receives the order is equal to or above (below) the stop price.⁷ Because the purpose of a Stop-Limit order is to rest in the Book until a specified price is reached, the Exchange believes rejecting a stop or stop-limit order entered above or below, as applicable, that price may be erroneous, as entry at that time would be inconsistent with the purpose of the order. Additionally, drill-through protections are in place pursuant to Rule 5.34(a)(4), such that, if a buy (sell) order would execute (i.e., when the stop price for a Stop-Limit order is activated), the System executes the order up to a buffer amount (the Exchange determines the amount on a class and premium basis) above (below) the NBO (NBB) that existed at the time of order entry ("the drill-through price").

The Exchange believes that allowing a Stop-Limit order, once activated, with a limit price outside of the NBBO (notwithstanding any fat finger buffer) to execute at that limit price (up to the drill-through buffer amount) is consistent with the intended purpose of a Stop-Limit order. As stated, when a buy (sell) Stop-Limit order is activated, its limit price is intended to be

⁷ However, the System accepts a buy (sell) Stop-Limit order if the consolidated last sale price at the time the System receives the order is equal to or above (below) the stop price. The Exchange notes that the System is unable to compare the stop price of a stop-limit order to the last consolidated sale price upon receipt of the order, which is why the order is accepted when the stop price is above (below) the last consolidated sale price when the System receives it.

at a consequential amount above (below) the NBO (NBB) in order to capture rapidly increasing (decreasing) trade prices, to which the NBBO would as rapidly track and reflect. To cancel or reject such orders based on the NBBO at the time of its activation would inhibit Stop-Limit orders from capturing favorable trade prices as a result of a rapidly shifting market.

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.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ 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)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change benefits market participants by ensuring that they are able to use Stop-Limit orders to achieve their intended purpose. As stated, Stop-Limit orders are intended to increase User price control and flexibility, particularly in the face of price swings and market volatility, by resting in the System until the market reaches a certain price level.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ Id.

Thus, they are not intended to execute upon entry. Conversely, the primary purpose of the fat finger check is to prevent limit orders from executing at potentially erroneous prices upon entry, because the limit prices are “too far away” from the then-current NBBO. By excluding Stop-Limit orders from the fat finger check, which would currently cancel/reject a Stop-Limit order if its buy (sell) limit price was above (below) the NBO (NBB) upon activation of its stop limit price, the proposed rule change removes impediments to and perfects the mechanism of a free and open market and national market system by allowing Users the control and flexibility to set the limit prices on Stop-Limit orders so as to capture significant market fluctuations, which, as stated, result in corresponding significant adjustments in the NBBO. Therefore, the proposed rule change is designed to protect investors by allowing their Stop-Limit orders to execute as intended without being canceled or rejected in connection with the NBBO that existed at the time of their activation, and instead to consider rapid price movements and corresponding NBBO adjustments. The Exchange notes that the proposed rule change will not affect the protection of investors or the maintenance of a fair and orderly market because other price controls would apply to Stop-Limit orders, both at the time of their submission and when their stop prices are activated and they become limit orders.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all Users’ Stop-Limit orders will be excluded from the fat finger check in the same manner. Also, all Users’ Stop-Limit orders will continue to be subject to other specific price controls in place, both at the time of

their submission and once their stop prices are activated and they become limit orders. The proposed rule change will not impose any burden on intermarket competition that that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is merely designed to allow Users' Stop-Limit orders to execute in a manner that achieves their intended purpose by updating a price protection mechanism already in place on the Exchange and applicable only to trading on the Exchange.

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

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

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the

¹¹ 15 U.S.C. 78s(b)(3)(A).

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

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange believes that waiver of the operative delay is appropriate because, as the Exchange discussed above, excluding Stop-Limit orders from the fat finger check, which would currently cancel/reject a Stop-Limit order if its buy (sell) limit price was above (below) the NBO (NBB) upon activation of its stop limit price, will benefit market participants by ensuring that they are able to use Stop-Limit orders to achieve their intended purpose. Thus, the Exchange believes that the proposed rule change is designed to protect investors by allowing their Stop-Limit orders to execute as intended without being canceled or rejected due to the application of the fat finger check provision.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal will permit Stop-Limit orders to execute as intended and not be inadvertently cancelled in certain situation, as discussed above, by the fat finger check provision. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.¹⁵

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

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

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-2019-102 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-2019-102. 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, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the

principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-102 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.¹⁶

Jill M. Peterson
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).