

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88348; File No. SR-CBOE-2020-016)

March 10, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Rules Related to the Complex Order Auction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 6, 2020, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its rules related to the Complex Order Auction. The text of the proposed rule change is provided in Exhibit 5.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 rule related to the Complex Order Auction (“COA”) to (1) to add rule text that was unintentionally omitted from the post-migration Rulebook and (2) increase the maximum Response Time Interval period.

By way of background, On October 7, 2019, Cboe Options migrated its trading platform to the same system used by its affiliated exchanges³ (the “migration”). In connection with this technology migration, Cboe Options updated and reorganized its entire Rulebook (the “post-migration Rulebook”), including rules related to COA⁴, which became effective upon the technology migration. Current Subparagraph (3) of Rule 5.33(d) governs the Response Time Interval, which is the period of time during which Users may submit responses to a COA auction message (“COA Responses”). Rule 5.33(d)(3) currently provides that “the Exchange determines the duration of the Response Time Interval, which may not exceed 500 milliseconds.” The Exchange notes that the corresponding rule that was in place just prior to migration, Rule 6.53C(d)(iii)(2),

³ For purposes of this rule filing, the Exchange’s affiliated exchanges are Cboe C2 Exchange, Inc. (“C2”), acquired Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX” or “EDGX Options”), Cboe BZX Exchange, Inc. (“BZX” or “BZX Options”), and Cboe BYX Exchange, Inc. (“BYX” and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the “Cboe Affiliated Exchanges”).

⁴ Current Rule 5.33(d) describes the COA process for COA-eligible orders. Orders in all classes are eligible to participate in COA. Upon receipt of a COA-eligible order, the System initiates the COA process by sending a COA auction message to all subscribers to the Exchange’s data feeds that deliver COA auction messages.

provided that the Exchange “will determine the length of the Response Time Interval on a class-by-class basis; provided, however, that the duration shall not exceed three (3) seconds”.⁵

The Exchange first proposes to clarify and explicitly provide in current Rule 5.33(d)(3) that the Exchange determines the duration of the Response Time Interval on a “class-by-class basis”. As indicated above, the proposed clarification is consistent with the Exchange’s rule governing Response Time Intervals that was in place prior to the technology migration on October 7, 2019. When the Exchange proposed Rule 5.33(d) and incorporated it into the post-migration Rulebook, it inadvertently did not include the “class-by-class basis” language, which the Exchange now proposes to include.⁶ The Exchange believes it is appropriate to add clarity back in the rules to avoid potential confusion.

The Exchange next proposes to amend the maximum duration of the Response Time Interval. As indicated above, the Response Time Interval cannot currently exceed 500 milliseconds. Also as mentioned above, pre-migration, the Exchange’s rule provided for a maximum Response Time Interval of 3 seconds. The Exchange believes that it is in TPHs’ best interest to minimize the response timer to a time frame that continues to allow adequate time for the TPHs to respond to a COA auction message, as both the order being exposed and the TPHs responding are subject to market risk during the response timer period. Indeed, the Exchange had reduced the maximum time period from 3 seconds to 500 milliseconds as the Exchange’s timer was (and currently still is) set at 100 milliseconds, and the Exchange therefore didn’t believe it was necessary to maintain a maximum of 3 seconds.⁷ After further evaluation however, the

⁵ See Securities Exchange Act Release No. 87015 (September 19, 2019), 84 FR 50504 (September 25, 2019)(SR-CBOE-2019-060).

⁶ Id.

⁷ Id.

Exchange believes it is appropriate to reinstate the 3 second maximum. For example, during times of extreme market volatility, there may be increased message traffic, which could potentially result in a delay of processing of COA responses. In such instances, the Exchange believes a response timer of 500 milliseconds may be inadequate. As such, to ensure participants can respond to, and the system can process, COA responses in a sufficient amount of time, the Exchange proposes to reinstate the maximum Response Time Interval period to 3 seconds (i.e., 3000 milliseconds).

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.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ Id.

The proposed rule change to add rule text that was inadvertently omitted from the post-migration Rulebook is designed to protect investors by ensuring that its rule relating to COA accurately references and reflects the current, post-migration Rules in place, thereby mitigating any potential investor confusion. The Exchange believes this change will have no impact on trading on the Exchange, as it is merely clarifying that the Exchange can determine the duration of a Response Time Interval on a class-by-class basis, notwithstanding its inadvertent omission to carry over such language in the relocated COA rules post-migration. Indeed, the proposed rule change provides clarity and transparency in the rules, which may alleviate potential confusion, thereby protecting investors by removing impediments to and perfecting the mechanisms of a free and open market and a national market system.

The Exchange believes the proposal to reinstate the Response Time Interval maximum period to 3 seconds promotes just and equitable principles of trade and removes impediments to a free and open market because it allows the Exchange to provide increased time for Trading Permit Holders participating in a COA to submit COA responses and have such responses processed by the Exchange in a timely manner, and could encourage competition among participants, thereby enhancing the potential for price improvement for complex orders in the COA to the benefit of investors and public interest. The Exchange believes the proposed rule change is not unfairly discriminatory because it establishes a maximum Response Time Interval period applicable to all Exchange participants participating in a COA. The Exchange also notes the proposed maximum timer is the same as the timer previously allowed by the Exchange premigration, just six months ago.¹¹

¹¹ See Securities Exchange Act Release No. 87015 (September 19, 2019), 84 FR 50504 (September 25, 2019)(SR-CBOE-2019-060).

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 is not intended as a competitive filing. Rather, the proposed rule change to clarify that the Response Time Interval may be set on a class-by-class basis is corrective in nature and merely updates a rule to add language it inadvertently omitted in connection with its migration-related rulebook change. The proposed change to reinstate the pre-migration maximum Response Time Interval period is also not designed to address any aspect of competition, but instead would continue to provide market participants with sufficient time to respond, compete, and provide price improvement for orders entered into COA. The proposed rule change merely reinstates the pre-migration maximum to provide the Exchange further flexibility to ensure Trading Permit Holders have sufficient time to submit, and the Exchange has sufficient time to process, COA responses. The proposed rule change also offers the same response timer period to all TPHs and would not impose a competitive burden on any particular participant.

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)(iii) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁴ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange represents that waiver of the operative delay would add rule text that was omitted from the post-migration Rulebook and reinstate a maximum Response Time Interval that was in place pre-migration. The Exchange states that in times of extreme market volatility, there may be increased message traffic which could potentially result in a delay of processing of COA responses, and the proposed change would help ensure that participants can respond to (and the exchange's systems can process) COA responses in a sufficient amount of time. The Commission notes that the proposed rule change does not present any unique or novel regulatory issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁶

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Commission has waived the five-day pre-filing requirement in this case.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2020-016 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-2020-016. 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

See 15 U.S.C. 78c(f).

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. 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-2020-016 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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).