SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88372; File No. SR-CBOE-2020-017)

March 12, 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 Automated Improvement Mechanism and Complex Automated Improvement Mechanism

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 10, 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 Automated Improvement Mechanism and Complex Automated Improvement Mechanism. 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

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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 rules related to the Automated Improvement Mechanism ("AIM") and Complex Automated Improvement Mechanism ("C-AIM") to (1) allow auction periods to be set on a class-by-class basis and (2) increase the maximum allowable duration of the respective auction periods.

By way of background, Rule 5.37 contains the requirements applicable to the execution of orders using AIM and Rule 5.38 contains the requirements applicable to the execution of complex orders using C-AIM. AIM and C-AIM allow the Exchange's Trading Permit Holders ("TPHs") to electronically cross orders on the Exchange's System. Specifically, AIM and C-AIM allow TPHs to designate certain orders for price improvement and submit such orders into AIM and C-AIM with a matching facilitated or solicited contra order. Once the order is properly submitted, the Exchange commences an auction by sending a message to all TPHs who have elected to receive AIM and C-AIM auction notification messages. Pursuant to current Rules 5.37(c)(3) and 5.38(c)(3), orders entered into AIM and C-AIM, respectively, are exposed for a period of time (the "AIM Auction Period" and "C-AIM" Auction Period", respectively) that may be determined by the Exchange and which may be no less than 100 milliseconds and no more than one second.

The Exchange first proposes to provide in Rules 5.37(c)(3) and 5.38(c)(3) that the Exchange may determine the duration of the AIM and C-AIM Auction Periods on a "class-by-class basis" to provide the Exchange additional flexibility. The Exchange notes that trading characteristics, market models, and investor base may differ between options classes and that such differences may necessitate different auction periods be set for certain classes. The Exchange believes the proposed rule change ensures the Exchange to can appropriately address these differences. Moreover, the Exchange notes that the Exchange is able to set the duration of an auction period on a class-by-class basis for another auction mechanism under its rules (i.e., the Complex Order Auction ("COA").[3]

The Exchange next proposes to amend the maximum allowable duration of the AIM and C-AIM Auction Periods. As indicated above, the AIM and C-AIM Auction Periods may not be less than 100 milliseconds or more than one second. 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 AIM or C-AIM 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 notes its timer is currently set at the minimum 100 milliseconds. However, the Exchange also notes that there may be instances which require a longer auction period. For example, during times of extreme market volatility, TPHs may require additional time to submit their responses and/or such market volatility may result in a significant increase in message traffic, which could potentially result in a delay of processing of AIM and C-AIM auction responses. In such instances, the Exchange believes an auction period of the current maximum of 1 second may be inadequate. As such, to ensure participants can respond to, and the system can process, AIM and C-AIM auction responses in a sufficient amount of time, the Exchange proposes to increase the maximum AIM and C-AIM Auction Period duration from 1 second to 3

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[3] See Rule 5.33(d)(3)

seconds (i.e., 3000 milliseconds). The Exchange notes the proposed maximum is the same as the maximum allowed for the auction period for COA.[4]

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.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] 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)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change to allow the Exchange to set the AIM and C-AIM Auction Period on a class-by-class basis provides the Exchange the flexibility to set the duration of the auction periods to address the specific characteristics of a class and its market, thereby protecting investors by removing impediments to and perfecting the mechanisms of a free and open market

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4 Id.

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

6 15 U.S.C. 78f(b)(5).

7 Id.

and a national market system. Additionally, the Exchange notes that it has flexibility to set times on a class-by-class basis under its rules for another auction mechanism, COA.[8]

The Exchange believes the proposal to increase the maximum AIM and C-AIM Auction Period from 1 second 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 AIM or C-AIM auction to submit auction responses and have such responses processed by the Exchange in a timely manner, which could encourage competition among participants, thereby enhancing the potential for price improvement for orders in AIM and C-AIM to the benefit of investors and public interest. The Exchange believes the proposed rule change is not unfairly discriminatory because it establishes a maximum auction period applicable to all Exchange participants participating in AIM or C-AIM. The Exchange also notes the proposed maximum timer is the same as the timer allowed by the Exchange for another auction mechanism, COA.[9]

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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 changes are not intended as a competitive filing. Rather, the proposed rule change to allow the auction periods to be set on a class-by-class basis is designed to provide the Exchange flexibility so that it may address specific needs and characteristics of each class with respect to the AIM and C-AIM Auction Periods. The proposed change to increase the maximum AIM and C-AIM Auction Periods is also not designed to address any aspect of competition, but

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8 <u>See</u> Rule 5.33(d)(3).

9 <u>Id</u>.

instead would continue to provide market participants with sufficient time to respond, compete, and provide price improvement for orders entered into AIM or C-AIM. The proposed rule change merely increases the auction period maximum (which matches a maximum already allowed for COA) to provide the Exchange further flexibility to ensure Trading Permit Holders have sufficient time to submit, and the Exchange has sufficient time to process, AIM and C-AIM responses. The proposed rule change also offers the same auction 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 Act[10] and subparagraph (f)(6) of Rule 19b-4 thereunder.[11]

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)[13]

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[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 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 prefiling requirement in this case.

[12] 17 CFR 240.19b-4(f)(6).

[13] 17 CFR 240.19b-4(f)(6)(iii).

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.[14]

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

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[14] 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. See 15 U.S.C. 78c(f).

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-2020-017 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-2020-017. 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. 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-2020-017 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.[15]

J. Matthew DeLesDernier
Assistant Secretary

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15 17 CFR 200.30-3(a)(12).