

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-89507; File No. SR-CBOE-2020-077)

August 7, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 5.34 (Order and Quote Price Protection Mechanisms and Risk Controls) in Connection with Sell Market Orders in No-Bid Series

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 5, 2020, 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Rule 5.34 (Order and Quote Price Protection Mechanisms and Risk Controls) in connection with sell market orders in no-bid series. 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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 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 Rule 5.34(a)(1) in connection with the System's handling of a sell market orders in no-bid series. Specifically, if the System receives a sell market order in a series after it is open for trading with a national best bid ("NBB") of zero, current Rule 5.34(a)(1)(A)(ii) provides that if the NBO in the series is greater than \$0.50, then the System cancels or rejects the market order. The proposed rule change adds to Rule 5.34(a)(1)(A)(ii) that if the NBO in the series is greater than \$0.50, then the System cancels or rejects the market order or routes the market order to PAR for manual handling, subject to a User's instructions. This proposed handling is consistent with order instructions a User may choose to apply to an order wherein, if the order is not eligible for electronic handling, the order routes to PAR for manual handling.<sup>5</sup> Current Rule 5.34(a)(1)(A)(ii), as written, does not specifically consider the case in which a User's order instructions would route an order to PAR

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<sup>5</sup> See e.g. Rule 5.6(c), a "Default" order is an order a User designates for electronic processing, and which order (or unexecuted portion) routes to PAR for manual handling if not eligible for electronic processing.

when such order is not eligible for electronic processing because the NBO in the series is greater than \$0.50.

The System, however, currently handles orders under these circumstances in accordance with the User instruction to route such an order for manual handling.<sup>6</sup> The proposed rule change codifies this behavior. The Exchange notes that Rule 5.34 was recently revised in connection with a technology migration. The rule filing that revised Rule 5.34 consolidated all order and quote price protection mechanisms and risk controls provisions from the pre-migration Exchange Rulebook into one single rule (current Rule 5.34) as well as harmonized Rule 5.34 with the corresponding rules of the Exchange's affiliated exchanges, Cboe EDGX Exchange, Inc. ("EDGX Options") and Cboe C2 Exchange, Inc. ("C2").<sup>7</sup> The Exchange's former rule provision regarding market orders in no-bid (offer) series provided that if the Exchange's best offer (i.e. NBO) was greater than \$0.50, the order would route to PAR if so instructed by the submitting firm.<sup>8</sup> The Exchange inadvertently omitted this specific handling process when it amended current Rule 5.34 in connection with the technology migration.

## 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

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<sup>6</sup> See Cboe U.S. Options FIX Specification (July 13, 2020) at 12, available at [https://cdn.cboe.com/resources/membership/US\\_Options\\_FIX\\_Specification.pdf](https://cdn.cboe.com/resources/membership/US_Options_FIX_Specification.pdf).

<sup>7</sup> See Securities Exchange Release No. 86923 (September 10, 2019), 84 FR 48664 (September 16, 2019) (SR-CBOE-2019-057).

<sup>8</sup> Former Rule 6.13(b)(vi)(B) provided that if the Exchange best offer in a no-bid series is greater than \$0.50, then the order entry firm has the discretion to have the market order to sell via the order handling system pursuant to Rule 6.12 (which permitted a submitting firm to opt to route orders not eligible for electronic processing to a designated order management terminal or PAR Workstation).

Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> 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)<sup>11</sup> 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 will remove impediments to and perfect the mechanism of a free and open market and national market system, as well as protect investors, because it will allow the System to handle orders in a manner that is consistent with the intent of a User's order instruction to route orders to PAR for manual handling that are not eligible for electronic processing, including when the NBO is greater than \$0.50 in a no-bid (offer) series. Manual handling rather than cancellation of orders in these circumstances may provide these orders with additional execution opportunities. Additionally, the Exchange does not believe that the proposed rule change raises any new or novel issues for, nor will affect the protection of investors, because, less than a year ago, the Exchange's effective rules at the time included the same order handling provision.<sup>12</sup> The proposed rule change codifies current functionality in the

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> Id.

<sup>12</sup> See supra note 7.

Rules, which was inadvertently omitted in a previous rule filing, which additional transparency benefits investors.

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 that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will allow orders to route in accordance with a User's intended order instruction, and will apply equally to all Users' orders that are designated to route to PAR when ineligible for electronic processing.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is not intended to address competitive issues, but rather conforms the Rules to current System functionality in a manner that is consistent with order instructions already available to Users. The Exchange additionally notes that the proposed rule change readopts rule language that had prior been in the Exchange's Rules up until less than a year ago.<sup>13</sup>

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.

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<sup>13</sup> See id.

### 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 Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>16</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> 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. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issue as the proposed rule is merely restating rule language that had previously been approved by the Commission in the Exchange Rules up until less than a year ago.<sup>18</sup> 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 does not raise any new issues and will allow the Exchange to remedy its recent inadvertent omission

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 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.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>18</sup> See supra note 7.

without delay. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.<sup>19</sup>

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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2020-077 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-2020-077. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>19</sup> 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).

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-2020-077 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.<sup>20</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).