

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90440; File No. SR-CBOE-2020-109)

November 17, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Interpretations and Policies to Rule 5.33 in Connection with Market-Makers' Complex Orders, Quoting Obligations and Volume

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 November 3, 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, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal 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

Cboe Exchange, Inc. (the "Exchange" or "Cboe") proposes to amend its Interpretations and Policies to Rule 5.33 in connection with Market-Makers' complex orders, quoting obligations and volume. 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 adopt new Interpretation and Policy .02 to Rule 5.33 to codify how complex strategy volume is counted when determining whether a Market-Maker exceeds the 25% volume threshold in its non-appointed classes pursuant to Rule 5.52(g) and when determining whether a Market-Maker exceeds the electronic volume thresholds in its appointed classes pursuant to 5.52(d)(1) and (d)(2).⁵ The Exchange also proposes to make clarifying, nonsubstantive updates to Interpretation and Policy .01 to Rule 5.33.

Rule 5.33 governs trading of complex orders on the Exchange and, currently, Interpretation and Policy .01 to Rule 5.33 specifically provides that Market-Makers are not required to quote on the Complex Order Book (“COB”). Complex strategies are not subject to any quoting requirements that are applicable to Market-Makers in the simple market for individual options series or classes. Interpretation and Policy .01 to Rule 5.33 also states that volume executed in complex strategies is not taken into consideration when determining whether Market Makers are meeting quoting

⁵ As a result of the proposed Interpretation and Policy, the proposed rule change accordingly updates the subsequent Interpretation and Policy numbering.

obligations applicable to Market Makers in the simple market for individual options. The proposed rule change updates Interpretation and Policy .01 to Rule 5.33 as it inadvertently refers to volume executed rather than orders, as “quoting” obligations relate to the submission of quotes and orders rather than executed volume. More specifically, pursuant to Rule 5.52, a Market-Maker’s bids and offers entered in the simple market are considered in determining whether a Market-Maker satisfies its quoting obligations, therefore, the proposed rule change amends Interpretation and Policy .01 to Rule 5.33 to more appropriately reflect this. The proposed change also harmonizes the spelling of Market-Maker with the definition set forth in Rule 1.1 and updates the language to read in plain English, and, to the extent possible, with the language in corresponding Interpretation and Policy .01 to Rule 6.13 of its affiliated options exchange, Cboe C2 Exchange, Inc. (“C2”).

Current Rule 5.52(g) provides that a Market-Maker is considered an order entry firm (“OEF”)⁶ under the Rules in all classes in which the Market-Maker has no appointment, and limits the total number of contracts a Market-Maker may execute in classes in which it has no appointment to 25% of the total number of all contracts the Market-Maker executes on the Exchange in any calendar quarter. Rule 5.52(d)(1) provides that if a Market-Maker never trades more than 20% of the Market-Maker’s contract volume electronically in an appointed class during any calendar quarter, a Market-Maker will not be obligated to quote electronically in any designated percentage of series within that class pursuant to subparagraph (d)(2), and Rule 5.52(d)(2) provides that If a Market-Maker trades more than 20% of the Market-Maker’s contract volume electronically in an appointed class during any calendar quarter, commencing the next calendar quarter, a Market-Maker must provide continuous electronic quotes. The Exchange

⁶ See Rule 1.1., which defines an “Order Entry Firm” or “OEF” as a Trading Permit Holder that represents as agent customer orders on the Exchange or that is a non-Market-Maker conducting proprietary trading.

currently considers all contracts executed by a Market-Maker, regardless of whether they are executed in the simple or complex book, in determining whether a Market-Maker has exceeded the 25% volume threshold in its non-appointed classes and the 20% electronic volume threshold in its appointed classes. The Exchange now proposes to codify this in proposed Interpretation and Policy .02 to Rule 5.33. Specifically, the proposed rule change makes it clear that a Market-Maker's orders for complex strategies executed in classes in which it has no appointment are included in the total number of all contracts the Market-Maker executes on the Exchange in any calendar quarter in determining whether the Market-Maker exceeds the 25% threshold pursuant to Rule 5.52(g) and makes it clear that a Market-Maker's orders for complex strategies executed in classes in which it has an appointment are included in the total number of all contracts the Market-Maker executes electronically in an appointed class during any calendar quarter in determining whether the Market-Maker exceeds the electronic volume threshold pursuant to Rule 5.52(d)(1) and (d)(2).

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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)⁹ 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 rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system by codifying that the Exchange considers a Market-Maker's complex order volume when calculating the 25% threshold of volume in non-appointed classes pursuant to Rule 5.52(g) and when calculating the 20% threshold of electronic volume in its appointed classes. Specifically, Rule 5.52(g) is designed to prevent a Market-Maker from executing volume in non-appointed option classes in an amount disproportionate to volume executed in its appointed option classes. Similarly, Rule 5.52(d)(1) and (d)(2) are designed to prevent a Market-Maker from executing electronic volume in its appointed classes in an amount disproportionate to volume executed on the trading floor in its appointed classes without being obligated to stream continuous electronic quotes. Both Rule 5.52(g) and Rule 5.52(d)(1) and (d)(2) prevent a Market-Maker from executing volume in a manner that potentially derogates the performance of its obligations and provision of liquidity in its appointed option classes. As such, the Exchange believes that including complex volume in these calculations is consistent with and supports the purpose of Rule 5.52(g) and Rule 5.52(d)(1) and (d)(2), which, thereby, will help to ensure that a Market-Maker executes volume in a manner that is consistent with the performance of its quoting obligations and provision of liquidity in its appointed classes. The proposed rule change makes it clear that a Market-Maker's orders executed in complex

⁹ Id.

strategies are considered representative of a Market-Maker's total volume on the Exchange. The Exchange believes this may mitigate any potential confusion regarding this calculation so that Market-Makers have more clarity regarding their obligations in appointed classes in an appropriate manner as compared to non-appointed classes. As such, the Exchange believes the proposed rule change will contribute to the protection of investors and the public interest by adding transparency and clarity to the Exchange's Rules by codifying an existing practice in calculating a Market-Maker's executed volume on the Exchange. In addition, the Exchange believes the proposed changes to Interpretation and Policy .01 of Exchange Rule 5.33 will add clarity by revising the Rule to provide that orders entered in appointed classes, rather than volume executed, is considered in connection with determining whether a Market-Maker meets its quoting obligations pursuant to Rule 5.52 in its appointed classes, conforming the spelling of Market-Maker with its applicable definition in Rule 1.1 and (to the extent possible) with the language of its affiliated options exchange's corresponding provisions, and updating the language to read in plain English.

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 reiterates that the proposed rule change is intended to codify a current Exchange interpretation that a Market-Maker's complex strategy execution volume is considered when calculating its volume per quarter pursuant to Rule 5.52(g) and correct an inadvertent error indicating that executed volume rather than entered orders are considered when determining compliance with a Market-Maker's quoting obligations. Thus, the Exchange believes this proposed rule change will benefit Exchange participants by providing clarity within the Exchange Rules.

Additionally, the Exchange believes that the proposed rule change regarding the applicability of Rule 5.52(g) to a Market-Maker's executions in the COB does not impose any

burden on intramarket competition because it applies to all Market-Makers in the same manner. The proposed rule change codifies an existing interpretation of the Rules and therefore does not modify any existing Market-Maker obligations or manner in which a Market-Maker's non-appointed volume is calculated. The Exchange believes that the proposed rule change does not impose any burden on intermarket competition because it relates to an obligation regarding Market-Maker executed volume only on the Exchange.

Additionally, the proposed nonsubstantive updates to Interpretation and Policy .01 to Rule 5.33 are not competitive in nature and, instead, are intended to correct an inadvertently used term and provide clarity and consistency within the Rules and, to the extent possible, with the corresponding rule language of its affiliated options 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:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. 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 Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder. 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will 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. Please include File Number SR-CBOE-2020-109 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-2020-109. 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-2020-109, 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).