

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92913; File No. SR-CBOE-2021-052)

September 9, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 5.32 in Connection with Participation Entitlements

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 2, 2021, 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 Act⁴ and Rule 19b-4(f)(6) thereunder.⁵ 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 5.32 in connection with participation entitlements. The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(6).

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 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 5.32(a)(2)(B), in connection with participation entitlements, to clarify the manner in which the System treats non-Priority Customers with orders and quotes at the same price and to correct certain inadvertent rule text regarding the manner in which the System applies the PMM participation entitlement percentages. In particular, Rule 5.32(a)(2)(B) governs participation entitlements for Designated Market-Makers ("DPMs"), Lead Market-Makers ("LMMs") and Preferred Market-Makers ("PMMs") and currently provides that the Exchange may apply one or more of the DPM, LMM, and PMM participation entitlements (in any sequence) to a class. If the DPM, LMM, or PMM, as applicable, has a quote at the highest bid or lowest offer, it will receive the greater of (i) the number of contracts it would receive pursuant to the applicable base allocation algorithm and (ii) 50% of the contracts if there is one other non-Priority Customer order or quote, 40% of the contracts if there are two non-Priority Customer orders or

quotes, or 30% of the contracts if there are three or more non-Priority Customer orders or quotes on the Book at that price.

First, the proposed rule change updates Rule 5.32(a)(2)(B) to clarify the manner in which the System treats non-Priority Customer orders and quotes. For the purposes of the participation entitlement, the System currently counts the number of firms at each price level, aggregating orders or quotes per firm, rather than counting the number of each separate order or quote. Therefore, to reflect current System functionality, the proposed rule change removes references to individual non-Priority Customer orders and quotes in Rule 5.32(a)(2)(B) and updates the language to provide that, if the DPM or LMM,⁶ as applicable, has a quote at the highest bid or lowest offer, it will receive the greater of (i) the number of contracts it would receive pursuant to the applicable base allocation algorithm and (ii) 50% of the contracts if there is one other non-Priority Customer, 40% of the contracts if there are two non-Priority Customers, or 30% of the contracts if there are three or more non-Priority Customers with orders or quotes on the Book at that price.

Second, the proposed rule change updates Rule 5.32(a)(2)(B) to be consistent with the manner in which the System currently applies the participation entitlement percentages for PMMs. The System currently applies a 50%/40% participation entitlement percentage structure to PMMs, as opposed to the 50%/40%/30% participation entitlement percentage structure that, pursuant to Rule 5.32(a)(2)(B), applies to all three Market-Maker types. Therefore, to reflect current System functionality, the proposed rule change adopts language in Rule 5.32(a)(2)(B) to provide that, if the PMM, as applicable, has a quote at the highest bid or lower offer, it will receive the greater of (i) the number of the contracts it would receive pursuant to the applicable base allocation algorithm and (ii)

⁶ The proposed rule change removes “PMM” from this provision and adopts language in connection with participation entitlement percentages application to PMMs, as described in further detail in this proposal.

50% of the contracts if there is one other non-Priority Customer, or 40% of the contracts if there are two or more non-Priority Customers with orders or quotes on the Book at that price. The current participation entitlement percentage structure for DPMs and LMMs (i.e., 50%/40%/30%) will remain the same and the Exchange may continue to apply one or more of the participation entitlements for DPMs and LMMs, and for PMMs, as proposed, (in any sequence) to a class. The Exchange notes that it previously restructured its Rules related to order entry and allocation, including the participation entitlement provisions, in connection with a 2019 technology migration. Prior to this restructuring, separate provisions governed the participation entitlement percentages for PMMs, DPMs, and LMMs. The provision that governed the PMM participation entitlements provided for the same 40%/50% participation entitlement structure as proposed herein⁷ and the provisions that governed the DPM and LMM participation entitlements provided for the same participation entitlement percentage structure for DPMs and LMMs as Rule 5.32(a)(2)(B) currently provides for today. Upon the migration-related restructuring of its Rules, the Exchange intended to continue to apply the 50%/40% participation entitlement percentage structure to PMMs and the 50%/40%/30% participation entitlement percentage structure to DPMs and LMMs. Indeed, following the restructuring, the System today continues to apply the 50%/40% participation entitlement percentage structure to PMMs and the 50%/40%/30% participation entitlement percentage structure to DPMs and LMMs. However, in the migration-related filing that restructured

⁷ Specifically, prior Rule 8.13(c) provided that the PMM participation entitlement is the greater of one contract or 40% when there are two or more other Market-Maker quotes or broker-dealer orders at the BBO, and 50% when there is one other Market-Maker quote or broker-dealer order at the BBO. The Exchange notes that the current application of the base algorithm, as opposed to one contract, was the only substantive change intended to be made to this provision. DPMs, LMMs, and PMMs were intended to continue to be subject to the obligations that were set forth in the applicable Rules in place prior to the 2019 technology migration. See Securities Exchange Act Release No. 86374 (July 15, 2019), 84 FR 34963 (July 19, 2019) (SR-CBOE-2019-033) at footnote 68.

the rules governing participation entitlements by combining such rules, the Exchange inadvertently applied the 50%/40%/30% participation entitlement percentage structure to all three Market-Maker types. Therefore, the proposed rule change updates the Rule to correct this inadvertent rule change and make explicit that the 50%/40% participation entitlement percentage structure continues to apply to PMMs, consistent with the pre-migration provision that was previously filed with the Commission.

The Exchange notes the proposed rule changes reflect how the System currently treats non-Priority Customer with orders or quotes at the same price for the purposes of the participation entitlement and reflect the participation entitlement percentages that the System continues to apply to PMMs today. The proposed rule changes are merely a clarification and a correction to inadvertently changed rule text that do not alter any current functionality nor the current participation entitlement percentage structures, but instead add clarity to the Rule by more accurately reflecting the current participation entitlement process.

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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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 Exchange believes that the proposed rule changes regarding the manner in which the System treats non-Priority Customer with orders and quotes at the same price for the purposes of the participation entitlement and applies the PMM participation entitlement percentages removes impediments to and perfects the mechanism of a free and open market and national market system by amending Rule 5.32(a)(2)(B) to be consistent with current functionality. The proposed changes are merely a clarification and a correction to inadvertently changed rule text in the Rule intended to more accurately reflect how the System currently works, thereby increasing transparency in the Rule and ultimately benefitting investors. The proposed clarification and correction do not alter any current functionality nor the current participation entitlement percentage structures, which are consistent with pre-migration provisions as previously filed with the Commission, but instead provide clarity to the Rule by more accurately describing the current participation entitlement process.

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 changes to Rule 5.32(a)(2)(B) are not competitive in nature but are merely a clarification and correction in the Rule, consistent with existing System functionality and

¹⁰ Id.

intended to provide clarity to the Rule by more accurately reflecting the current participation entitlement process. DPMs, LMMs and PMMs will continue to receive participation entitlements in the same manner as they do today.

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 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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.

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-2021-052 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-2021-052. 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-2021-052, 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.¹³

J. Matthew DeLesDernier
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).