

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93598; File No. SR-CBOE-2021-066)

November 17, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 5.34

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 5, 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 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 Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Rule 5.34.

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 modify the optional duplicate order protection risk limit setting for Users in Rule 5.34(c)(9). Duplicate order protection is voluntary functionality, which was designed to protect Users against execution of multiple identical orders that may have been erroneously entered. Specifically, pursuant to current Rule 5.34(c)(9), if a User enables this functionality for a port, then after the System receives a specified number of duplicate orders with the same EFID⁵, side, price, quantity, and class within a specified time period (the User determines the number and length of the time period), the System will (A) reject additional duplicate orders until it receives instructions from the User to reset this control or (B) reject all incoming orders submitted through that port for that EFID until the User contacts the Trade Desk to request it reset this control. The User may continue to submit cancel requests prior to reset.

⁵ The term “EFID” means an Executing Firm ID. The Exchange assigns an EFID to a Trading Permit Holder, which the System uses to identify the Trading Permit Holder and the clearing number for the execution of orders and quotes submitted to the System with that EFID.

The Exchange proposes to amend this risk setting to eliminate the time parameter. Particularly, as amended, the System will continue to check for a specified number of duplicate orders (which will continue to be determined by the User), but no longer check to see if any such duplicative orders were received over a specified period of time. Instead, the system will compare each submitted order against the immediately preceding order that was submitted with respect to the orders' EFID, side, price, quantity, and class. For example, suppose a User sets the duplicative order count to 10 orders. When the System receives an incoming order, the System checks if the immediately preceding order it received had the same EFID, side, price, quantity and class. If the order does not, then the System keeps the count at "0" (and performs the same process for the next incoming order). If the order does, the System will count that order as "1". If the following 9 incoming orders through that port are also duplicates (i.e., same EFID, side, price, quantity and class), then regardless of how long it takes for such orders to come into the System, the System will (i) reject any additional duplicate orders until it receives a reset instruction from the User or (ii) reject all incoming orders submitted through that port for that EFID until the User contacts the Trade Desk to request it reset this control, as it does today.

The Exchange has observed that the time parameter check under the current duplicate order protection feature can potentially create a (albeit minor) latency impact for Users who opt to use the functionality. More specifically, minor latency can arise in connection with the specified time parameter because the System must store and conduct a check across all orders sent during the specified time period when this risk check is enabled. The Exchange believes removing the time parameter check will eliminate this latency for Users that opt to use the duplicate order protection. The Exchange does not believe that the proposed rule change will impact the effectiveness of the duplicate order protection feature for those Users that opt to enable such functionality. Also, as

noted above, the use of the risk limit is voluntary. The Exchange will continue to offer Users a full suite of additional price protection mechanisms and risk controls which the Exchange believes sufficiently mitigate risks associated with Users entering orders and quotes at unintended prices, and risks associated with orders and quotes trading at prices that are extreme and potentially erroneous, as a likely result of human or operational error.

Lastly, the Exchange proposes to correct an erroneous rule number. Particularly, the Exchange proposes to update Rule 5.34(c)(12) to Rule 5.34(c)(11), which follows the immediately preceding subparagraph (10) of Rule 5.34(c).

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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

consistent with the Section 6(b)(5)⁸ 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 and benefit investors, because the Exchange believes it will remove small latency that may currently be caused by use of the duplicate order protection functionality. Moreover, the Exchange does not believe that the proposed rule change will affect the protection of investors or the public interest or the maintenance of a fair and orderly market because Users still have the ability to enable such control to protect against execution of multiple identical orders that may have been erroneously entered, just in a different manner (i.e., without a specified time parameter check). As stated, the Exchange does not believe that the proposed rule change will impact the effectiveness of the duplicate order protection feature for those Users that opt to enable such functionality. In addition to this, the Exchange notes that the use of this risk control is voluntary, and the Exchange will continue to offer a full suite of alternative price protection mechanisms and risk controls.

The Exchange believes updating an erroneous subparagraph reference in Rule 5.34 removes impediments to and perfects the mechanism of a free and open market and national market system and benefits investors, because it eliminates potential confusion and maintains clarity in the rules.

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. In

⁸ Id.

particular, the Exchange does not believe that the proposed rule change would impose a burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will amend this risk control in the same manner for all Users on the Exchange. In addition to this, and as stated above, the use of the duplicative order protection risk control is voluntary, and the Exchange will continue to offer various other price protections and risk controls that sufficiently mitigate risks associated with market participants entering and/or trading orders and quotes at unintended or extreme prices. The Exchange does not believe 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, as the proposed rule change only updates an existing risk control applicable to orders submitted to the Exchange. The Exchange also notes that market participants on other exchanges are welcome to become participants on the Exchange if they determine that this proposed rule change has made Cboe Options a more attractive or favorable venue.

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 after the date of the filing, or such shorter time as the

Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ 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 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 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-2021-066 on the subject line.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 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 Exchange has satisfied this requirement.

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-2021-066. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-CBOE-2021-066 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.¹¹

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).