

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93646; File No. SR-CBOE-2021-067)

November 22, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Add a Held Order Instruction

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 10, 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 add a held order instruction. The text of the proposed rule change is provided below.

(additions are underlined; deletions are [bracketed])

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Rules of Cboe Exchange, Inc.

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Rule 5.6. Order Types, Order Instructions, and Times-in-Force

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).

(a) – (b) No change.

(c) *Order Instructions*. An “Order Instruction” is a processing instruction a User may apply to an order (multiple instructions may apply to a single order), subject to the restrictions set forth in Rule 6.8(c) with respect to orders and bulk messages submitted through bulk ports and any other restrictions set forth in the Rules, when entering it into the System for electronic or open outcry processing and includes:

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Electronic Only

An “Electronic Only” order is an order a User designates for electronic processing, but does not route to PAR for manual handling if not eligible for electronic processing.

Held

A “held” order is an order marked “held” for which a Floor Broker’s client does not give the Floor Broker discretion as to the price or time at which such order is to be executed or the order was received by the Exchange electronically and subsequently routed to a Floor Broker or PAR Official pursuant to the User’s instructions.

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Not Held

A “not held” order is an order marked “not held”, “take time” or which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed. An order entrusted to a Floor Broker will be considered a not held order, unless [otherwise specified by a Floor Broker’s client] marked “held” or the order was received by the Exchange electronically and subsequently routed to a Floor Broker or PAR Official pursuant to the User’s instructions. A User may not designate a not held order as Electronic Only.

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Rule 5.70. Availability of Orders

(a) Pursuant to Rule 5.6(a), the Exchange may make order types, Order Instructions, and Times-in-Force available on a class basis. The Exchange may make the following order types, Order Instructions, and Times-in-Force available for orders submitted in FLEX Options (“FLEX Orders”):

(1) No change.

(2) *Order Instructions*: All Sessions, Attributable, DAC (except for FLEX Options with an exercise price that is a percentage of the closing value of the underlying equity security or index value, as applicable on the trade date or that is Asian or Cliquet-settled), Direct to PAR, Electronic Only, Held, Non-Attributable, Not Held, and RTH Only.

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Rule 5.83. Availability of Orders

(a) *Simple Orders.* Pursuant to Rule 5.6(a), the Exchange may make order types, Order Instructions, and Times-in-Force available on a class basis for PAR routing for manual handling (and open outcry trading). The Exchange may make the following order types, Order Instructions, and Times-in-Force available for PAR routing for manual handling (and open outcry trading):

(1) No change.

(2) Order Instructions: AON, Attributable, Compression/PCC, Held, Minimum Quantity, MTP Modifier, Non-Attributable, Not Held, Penny Cabinet, RTH Only, and Sub-Penny Cabinet.

(3) No change.

(b) *Complex Orders.* The Exchange may make complex orders, including security future-option orders, and stock-option orders available for PAR routing for manual handling. Other than Index Combo orders, which may be submitted for electronic and open outcry handling, a complex order with a ratio less than one-to-three (.333) or greater than three-to-one (3.00) may only be submitted for manual handling and open outcry trading. The Exchange may make the follow complex order types available for PAR routing for manual handling (and open outcry trading):

(1) No change.

(2) *Order Instructions:* AON, Attributable, Complex Only, Compression/PCC, Held, Index Combo, MTP Modifier, Multi-Class Spread, Non-Attributable, Not Held, RFC, RTH Only, SPX Combo, and stock-option order.

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Rule 5.91. Floor Broker Responsibilities

(a) – (b) No change.

(c) *Discretionary Transactions.*

(1) An order entrusted to a Floor Broker is considered a not held order (as set forth in the definition of a “not held” order in Rule 5.6(c)) unless the order is marked as held.

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add a held order instruction. Currently, Rule 5.6(c) permits the Exchange to offer a not held order instruction.⁵ A “not held” order is an order marked “not held”, “take time” or which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed.⁶ An order entrusted to a Floor Broker will be considered a not held order, unless otherwise specified by a Floor Broker’s client or the order was received by the Exchange electronically and subsequently routed to a Floor Broker or PAR Official pursuant to the User’s instructions.⁷ In other words, an order received by a Floor Broker is by default a not held order unless the Floor Broker receives instructions to the contrary.⁸ Currently, there is no

⁵ Pursuant to Rules 5.70(a)(2) and 5.83(b)(2), the Exchange may make the not held order instruction available for FLEX open outcry trading and non-FLEX open outcry trading, respectively.

⁶ A “not held” order generally is one where a customer gives a Floor Broker discretion in executing the order, both with respect to the time of execution and the price (though the customer may specify a limit price), and the Floor Broker works the order over a period of time to avoid market impact while seeking best execution of the order.

⁷ A User may not designate a not held order as Electronic Only.

⁸ See Securities Exchange Act Release Nos. 75299 (June 25, 2015), 80 FR 37700 (July 1, 2015) (SR-CBOE-2015-047); and 78110 (June 21, 2016), 81 FR 41626 (June 27, 2016)

standardized manner in which a User may specify on an order that the User wants the order to be handled as held when routed to a Floor Broker.⁹

The proposed rule change adopts a held order instruction. Specifically, the proposed rule change defines a “held” order as an order marked “held” for which a Floor Broker’s client does not give the Floor Broker discretion as to the price or time at which such order is to be executed or the order was received by the Exchange electronically and subsequently routed to a Floor Broker or PAR Official pursuant to the User’s instructions.¹⁰ The proposed rule change makes a corresponding change to the definition of a not held order in Rule 5.6(c) and Rule 5.91(1)(c) to provide that an order entrusted to a Floor Broker is considered a not held order (as set forth in the definition of a “not held” order in Rule 5.6(c)) unless the order is marked as held. The proposed rule change also provides that the Exchange may make the held order instruction available for FLEX open outcry trading and non-FLEX open outcry trading, for which the Exchange may currently make the not held order instruction available.¹¹ The proposed rule change is consistent with current rules, which permit Users to specify that an order not be handled by a Floor Broker as “not held.” It merely adopts a specified manner in which an order must be marked to indicate the client for such order does not wish for a Floor Broker to have price and time discretion with respect to execution of that order.

(SR-CBOE-2016-050).

⁹ See Cboe Options Regulatory Circular RG15-136 (September 30, 2015). Pursuant to that circular, an order will be considered held if a client instructs a Floor Broker that the order is held. However, Cboe’s system does not currently capture in electronic form whether a Floor Broker received such instruction from a client.

¹⁰ See proposed definition of “held” in Rule 5.6(c). Unlike a not held order, a User may designate a held order as Electronic Only, as any order sent for electronic execution is consistent with the definition of held. Therefore, the System will accept a held Electronic Only order.

¹¹ See proposed Rules 5.70(a)(2) and 5.83(a)(2) and (b)(2), respectively.

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.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ 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)¹⁴ 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 and protect investors by eliminating any potential ambiguity regarding how Users may indicate that they do not want their orders to be treated as not held by Floor Brokers. The proposed rule change is consistent with the current not held order instruction and makes a corresponding held order instruction available. The proposed rule change is consistent with current Rules, which permit a User to specify that an order not be handled by a Floor Broker as “not held” but do not describe

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ Id.

how Users may make such a specification. The proposed rule change merely adopts a specified manner in which a client must mark an order to indicate the client does not wish for a Floor Broker to have price and time discretion with respect to execution of that order. The proposed rule change to make the held order instruction available for FLEX open outcry trading and non-FLEX open outcry trading will benefit investors, as it will permit the Exchange to make this order instruction available for the same trading for which the Exchange may currently make the not held order instruction available. This, as well as other conforming changes described above, will provide consistency throughout the Rules.¹⁵ The proposed rule change is consistent with current rules, which permit Users to specify that an order not be handled by a Floor Broker as “not held.”

Additionally, the proposed rule change will promote just and equitable principles of trading by enhancing the Exchange’s audit trail, which will now capture held instructions in a standardized manner and assist the Exchange’s regulatory review of orders executed in open outcry. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,¹⁶ which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange’s TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange. With an enhanced audit trail of orders executed in open outcry, the Exchange believes it will be able to monitor more comprehensively the trading of these orders.

¹⁵ See proposed Rules 5.70(a)(2) and 5.83(a)(2) and (b)(2), respectively.

¹⁶ 15 U.S.C. 78f(b)(1).

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 change is not intended to address competitive issues, as it relates solely to how certain orders routed to a Floor Broker on the Exchange's floor for open outcry trading should be marked. Additionally, as discussed above, the Exchange believes the proposed rule change will enhance the Exchange's audit trail with respect to orders executed in open outcry.

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 the proposed held order instruction (like the current not held order instruction) will be available to all Users that route held client orders to a Floor Broker for open outcry trading on the Exchange's trading floor. Currently, a held order instruction must be communicated in some way to a Floor Broker, when applicable, and the proposed rule change provides a clear, specific, and more streamlined way to do so. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition, as it relates solely to how orders routed for execution on the Exchange's trading floor should be marked. Additionally, as noted above, the proposed held order instruction is merely the converse of the already available not held order instruction that Users may apply to orders.

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 Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁰ 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 proposed rule change may become operative immediately. The Exchange states that waiver of the operative delay would protect investors and the public interest by eliminating, as soon as possible, any potential confusion regarding how a User may indicate that an order is held. The Exchange further states that the proposed change does not raise any new or novel issues. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.²¹

At any time within 60 days of the filing of the proposed rule change, the Commission

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 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.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ 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).

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. Please include File Number SR-CBOE-2021-067 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-2021-067. 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-2021-067 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.²²

J. Matthew DeLesDernier
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).