

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97456; File No. SR-C2-2023-011)

May 8, 2023

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 5.32 Regarding Certain Cancel-Replace Messages

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 25, 2023, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 C2 Exchange, Inc. (the “Exchange” or “C2 Options”) proposes to amend Rule 5.32.

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://markets.cboe.com/us/options/regulation/rule_filings/ctwo/), 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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(e) to describe the impact on priority of a “no-change” order³ (i.e., an order submitted to cancel or replace a resting order that does not change any terms of an order) and of a cancel/replace message that does not change the price or size of a resting order but changes another term of an order. Current Rule 5.32(e) describes whether a resting order’s priority position may change if it is modified with a cancel/replace message. Specifically, current Rule 5.32(e) states if the price of an order is changed, the order loses position and is placed in a priority position as if the System received the order at the time the order was changed. If the quantity of an order is decreased, it retains its priority position. If the quantity of an order is increased, it loses its priority position and is placed in a priority position as if the System received the order at the time the quantity of the order is increased.

Rule 5.32(e), however, is currently silent regarding how the System handles a cancel-replace message comprised of a no-change order or an order that changes terms other than price and size. The Exchange recently determined that if the System receives a no-change order, the resting order would lose its priority position; however, if the System receives a “no-change” bid or offer in a bulk message, the resting bid or offer would not lose its priority position. The

³ In this context, the term “order” includes bids and offers submitted in bulk messages. A bulk message means a bid or offer included in a single electronic message a user submits with an M (Market-Maker) capacity to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. See Rule 1.1 (definition of bulk message, which provides that the System handles a bulk message bid or offer in the same manner as it handles an order or quote, unless the Rules specify otherwise).

Exchange proposes to harmonize the handling of all no-change orders and quotes so that any “no-change” order or bulk message bid or offer will lose priority, as well as add to the Rules how the System handles no-change orders. Additionally, the Exchange proposes to codify current System functionality that causes a resting order to lose its priority position if any cancel/replace message is submitted if any term other than the Max Floor (if a Reserve Order)⁴ or the stop price (if a Stop or Stop-Limit order⁵) is modified. Therefore, the proposed rule change amends Rule 5.32(e) to state if a User submits a cancel/replace message for a resting order, regardless of whether the cancel/replace message modifies any terms of the resting order, the order loses its priority position and is placed in a priority position based on the time the System receives the cancel/replace message, unless the User only (1) decreases the quantity of an order (as is

⁴ A “Reserve Order” is a limit order with both a portion of the quantity displayed (“Display Quantity”) and a reserve portion of the quantity (“Reserve Quantity”) not displayed. Both the Display Quantity and Reserve Quantity of the Reserve Order are available for potential execution against incoming orders. When entering a Reserve Order, a User must instruct the Exchange as to the quantity of the order to be initially displayed by the System (“Max Floor”). If the Display Quantity of a Reserve Order is fully executed, the System will, in accordance with the User’s instruction, replenish the Display Quantity from the Reserve Quantity using one of the below replenishment instructions. If the remainder of an order is less than the replenishment amount, the System will display the entire remainder of the order. The System creates a new timestamp for both the Display Quantity and Reserve Quantity of the order each time it is replenished from reserve. A User may attach an instruction for random replenishment (where the System randomly replenishes the Display Quantity for the order with a number of contracts not outside a replenishment range, which equals the Max Floor plus and minus a replenishment value established by the User when entering a Reserve Order with a Random Replenishment instruction) or fixed replenishment (the System will replenish the Display Quantity of an order with the number of contracts equal to the Max Floor). See Rule 5.6(c).

⁵ A “Stop (Stop-Loss)” order is an order to buy (sell) that becomes a market order when the consolidated last sale price (excluding prices from complex order trades if outside of the NBBO) or NBB (NBO) for a particular option contract is equal to or above (below) the stop price specified by the User. A “Stop-Limit” order is an order to buy (sell) that becomes a limit order when the consolidated last sale price (excluding prices from complex order trades if outside the NBBO) or NBB (NBO) for a particular option contract is equal to or above (below) the stop price specified by the User. See Rule 5.6(c).

currently set forth in the Rules), (2) modifies the Max Floor (if a Reserve Order), or (3) modifies the stop price (if a Stop or Stop-Limit order), in which case the order retains its priority position.

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 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 Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market as well as protect investors by adding transparency to the Rules regarding how the System handles cancel/replace messages that change no order terms or change order terms other than price and size. The Exchange believes consistency in handling of all no-change orders and quotes will simplify order handling and thus further benefit investors. The Exchange believes it is reasonable for a user’s resting order to lose

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ Id.

priority if that user submits a cancel/replace order, including a no-change order, to replace that resting order (other than the three exceptions). Ultimately, the purpose of a cancel and replace message is to replace a resting order with a new order; therefore, it is appropriate for the System to treat that replacement order as a new order for purposes of priority. Despite the fact that a cancel/replace message does not modify the price or size of a resting order (and thus has no investment purpose), a user elected to send that new order to the Exchange despite having an identical order resting on the Exchange's book and use System capacity to do so. Therefore, the Exchange believes it promotes just and equitable principles of trade to treat that replacement order as a new order for priority purposes. The Exchange believes the proposed rule change encourages users to submit to the Exchange only bona fide cancel/replace orders that have legitimate investment purposes and discourages use of System capacity to send unnecessary message traffic.

As set forth in the current Rule 5.32(e), a cancel/replace order that decreases the size of a resting order would continue to not result in a loss of priority position is an order. The Exchange believes it is appropriate to continue to not have this type of cancel/replace order cause a loss of priority because it is consistent with a partial execution of that order, which would similarly not cause a loss of priority.⁹ Unlike a no-change order, an order to reduce the size of a resting order may have a legitimate investment purpose, such as to reduce execution risk. Additionally, the Exchange believes it will remove impediments to and perfect the mechanism of a free and open market as well as protect investors by adding transparency to codify that a change to the Max Floor (if a Reserve Order) or the stop price (if a Stop or Stop-Limit order) will not cause a resting order to lose priority because it is unnecessary given the handling of those orders and the

⁹ See Rule 5.32(d).

fact that at that time there is no priority to lose. Such handling is consistent with the definitions and handling of both of those order types. Specifically, as set forth in the definition of a Reserve Order, the Max Floor amount is relevant for replenishment of the Display Quantity of the order after execution, and once replenished, the System creates a new timestamp for both the Display Quantity and Reserve Quantity of the order each time it is replenished from reserve (*i.e.*, prioritizes it in the book at the time of replenishment). Therefore, there is no need for a loss in priority due to a change in the Max Floor amount because that order will have its priority reset once it is replenished with that new amount. Similarly, as set forth in the definitions of Stop and Stop-Limit orders, those orders become market or limit orders, respectively, once triggered and thus placed on the book as market or limit orders and prioritized based on that time. The stop price is the piece of information that determines when these orders will be triggered. As a result, there is no need for an order to lose priority due to a change in the stop price given that those orders have not yet been prioritized on the Book and will be prioritized once triggered and entered into the Book for potential execution.

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 the System will handle all cancel/replace orders from all users in the same manner. All cancel/replace orders, except for the three exceptions, will cause the resting order to lose priority. The three types of cancel/replace orders that will not cause a resting order to lose priority and are consistent with current order handling rules. 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 only impacts priority of orders resting on the Exchange's book and thus will have no impact on terms of an order that are disseminated to market participants or on trading outside of the 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 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

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-C2-2023-011 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-C2-2023-011. 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 offices of the Exchange. Do not include personal identifiable information in

submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-C2-2023-011, 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

Sherry R. Haywood

Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).