

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88816; File No. SR-CBOE-2020-041)

May 6, 2020

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend its Definition of Bulk Messages in Rule 1.1 and Amend Rule 5.5(c)(3)

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 24, 2020, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its definition of bulk messages in Rule 1.1 and amend Rule 5.5(c)(3). 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 its rules in connection with bulk message functionality to offer this functionality exclusively to Market-Makers on the Exchange. Currently, Cboe Options Market-Makers generally submit their quotes electronically using bulk messages. A bulk message is a single electronic message a User may submit to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. Bulk message functionality was adopted by the Exchange in connection with a recent technology migration and made available to all Users in place of the Exchange's prior quoting functionality, which was available only to Market-Makers and permitted them to update their electronic quotes in block quantities.³ Currently, the definition of a bulk message in Rule 1.1 provides that a User may submit a bulk message through a bulk port, which is a dedicated logical port. Current Rule 5.5(c)(3) provides that a bulk message submitted through a logical port is subject to the following: (1) it has a Time-in-Force of Day; (2) a Market-Maker with an appointment in a class may designate a bulk message for that class as Post Only or Book Only, and other Users must designate a bulk message for that class as Post Only; and (3) a User may establish a default MTP Modifier of MCN, MCO, or MCB, and a default value of Attributable or Non-Attributable, for a bulk port, each of which applies to all bulk messages submitted to the Exchange through that bulk port. Additionally, Users may

³ See Securities Exchange Release No. 86374 (July 15, 2019) 84 FR 34963 (July 19, 2019) (SR-CBOE-2019-033).

submit single orders through a bulk port in the same manner as Users may submit orders to the Exchange through any other type of port, including designated with any order instruction and any time-in-force,⁴ and as auction responses (using auction response messages). The primary purpose of bulk ports and bulk messages is to encourage liquidity provision, particularly by Market-Makers, on the Exchange.⁵

The Exchange proposes to amend the definition of bulk messages in Rule 1.1 so that Market-Makers may exclusively submit bulk messages (the same quotation functionality that was prior offered exclusively to Market-Makers up until October 2019⁶) and proposes to update Rule 5.5(c)(3) regarding bulk ports accordingly. Specifically, the proposed rule change amends the definition of bulk messages to provide that the term “bulk message” means a single electronic message a User submits with an M Capacity (i.e., for the account of a Market-Maker) to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. In this way, the bulk messages submitted through bulk ports would be attributed only to Market-Maker quotes. In line with the proposed amendment to the User Capacity permitted to submit bulk messages, the proposed rule change also updates Rule 5.5(c)(3)(A)(ii) to provide that, while a Market-Maker with an appointment in a class may designate a bulk message for that class as a Post Only or Book Only, a non-appointed Market-Maker, as opposed to any other User, must designate a bulk message for that class as Post Only. This is currently the case for Market-Makers submitting bulk messages in non-appointed classes and the proposed rule change merely

⁴ A Market-Maker with an appointment in a class may designate an order for that class submitted through a bulk port only as Post Only or Book Only, and other Users must designate an order for that class submitted through a bulk port as Post Only. See Rule 5.5(c)(3)(B).

⁵ See supra note 3.

⁶ See id.

reflects the specific type of other User (i.e., Market-Makers not appointed in a class) that will be able to submit bulk messages. The Exchange also notes that the proposed rule change updates the term User to Market-Maker in Rule 5.5(c)(3)(A)(iii) to reflect the proposed amendment to the User Capacity permitted to submit bulk messages and provide uniformity for the terms used throughout Rule 5.5(c)(3)(A).

The Exchange notes that the vast majority of bulk messages submitted through bulk ports are for the account of a Market-Maker. Indeed, over the second half of March 2020 the Exchange observed that no non-Market-Makers submitted bulk messages through bulk ports. Because so few non-Market-Maker Users opt to use this functionality, the Exchange believes that the current demand does not warrant the Exchange resources necessary for ongoing System support for non-Market-Maker bulk messaging. The Exchange notes that the use of bulk messages is voluntary and non-Market-Maker Users will continue to be able to submit their single orders and auction responses through bulk ports and other logical ports in the same manner as they currently do.

The Exchange notes that limiting the offering of quoting functionality to Market-Makers is not new or unique as other options exchanges currently offer quoting functionality only to their market makers.⁷ Indeed, bulk message functionality (including submission through bulk ports) is geared toward encouraging Market-Maker quoting on the Exchange. For example, the requirement that bulk messages have a time-in-force of Day is intended to be consistent with a Market-Maker's obligation to update its quotes in response to changed market conditions in its appointed classes, and the provision that allows Market-Makers to designate their bulk messages

⁷ See Nasdaq Phlx Options 1, Section 7(a)(B), which provides for its “Specialized Quote Feed”, a quoting interface offered specifically to market makers on Phlx; and see generally MIAX Options Rule 517, which provide for the different types of quotes and quoting mechanisms offered specifically to market makers on MIAX Options.

as Post Only or Book Only (as opposed to the limitation to Post Only for other Users' bulk messages) is intended to provide Market-Makers with flexibility to use these instructions with respect to their bulk messages as additional tools to meet their quoting obligations in a manner they deem appropriate.⁸ Additionally, as noted above, the Exchange offered quote message functionality (which was substantially similar to current bulk message functionality) only to Market-Makers until October 7, 2019.

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.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ 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)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

⁸ See supra note 3.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ Id.

In particular, the Exchange believes that 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 it will delete from the Rules a functionality that is currently unused and as a result, the Exchange will no longer offer, thereby promoting transparency in its Rules. The Exchange notes that other options exchanges currently offer their quoting functionality and/or interfaces exclusively to market makers on their exchanges.¹² Additionally, as noted above, the Exchange only offered quote message functionality (which corresponds to bulk message functionality) until approximately six months ago. Moreover, the Exchange does not believe that the proposed rule change raises any new or novel issues for Users and will not affect the protection of investors and the public interest because this functionality is not currently used by non-Market-Makers. In addition to this, the Exchange notes that the submission of bulk messages to the Exchange is voluntary, and, as stated, non-Market-Makers will continue to be able to submit single order and auction responses through bulk ports and other logical ports to connect to the Exchange and enter orders, receive data, and access information. Also, the Exchange believes that the low non-Market-Maker usage rate of bulk message functionality does not warrant the continued resources necessary for System support of bulk messaging for non-Market-Maker Users. As a result, the Exchange believes the proposed rule change will also remove impediments to and perfect the mechanism of a free and open market and national market system by allowing the Exchange to reallocate System capacity and resources to other System functionality, which benefits all market participants.

Additionally, the Exchange does not believe that the proposed rule change would permit unfair discrimination as, according to March 2020 data, non-Market-Makers are not submitting

¹² See supra note 7.

bulk messages to the Exchange, and, as stated above, bulk message functionality is principally designed to assist Market-Makers in providing liquidity to the Exchange. The options market is driven by Market-Maker quotes, and thus Market-Maker quotes are critical to provide liquidity to the market and contribute to price discovery for investors. Additionally, Market-Makers are subject to continuous quoting obligations (which other Users are not), and bulk message functionality provides Market-Makers with a means to help them satisfy these obligations. Indeed, when bulk messages were adopted, the Exchange expected Market-Makers regularly to use bulk messages to input and update prices on multiple series of options at the same time, and noted that the functionality was intended primarily for the use of Market-Makers.¹³

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 bulk messages functionality will be available for all Exchange Market-Makers in the same manner as it is today. Non-Market-Makers will continue to be able to submit their single orders and auction responses through bulk ports, as well as all orders and other data through logical ports, in the same manner as they currently do. As noted above, this is consistent with the primary purpose of bulk messages, which is to encourage Market-Maker quoting and liquidity on the Exchange. The Exchange further notes that if any non-Market-Makers wish to submit liquidity to the Exchange using bulk messages they are free to register as an Exchange Market-Maker and choose the appointed classes in which they wish to quote. Non-Market-Makers

¹³ See id.

currently do not use bulk message functionality, so the proposed rule change is not expected to have any impact on their business need.

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 other options exchanges currently limit their quoting functionality and/or interface to market makers on their exchanges.¹⁴ As noted above, the Exchange similarly limited quoting functionality (which corresponds to bulk message functionality) to Market-Makers until approximately six months ago.

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)(iii) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁷ normally does

¹⁴ See supra note 7.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 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 Commission has waived the five-day pre-filing requirement in this case.

¹⁷ 17 CFR 240.19b-4(f)(6).

not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁸ 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 proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange represents that it disseminated advance notice of the proposed change to market participants on March 27, 2020 and plans to announce a specific implementation date in the near future. In addition, the Exchange states that the proposal is consistent with quoting functionality on other options exchanges which currently offer such functionality only to their market makers. The Commission notes that the proposed rule change does not present any unique or novel regulatory issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁹

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2020-041 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-2020-041. 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-2020-041 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).