

# SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-100081; File No. SR-CBOE-2024-015)

May 8, 2024

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Exchange Rule 5.33, Complex Orders

## I. Introduction

On March 19, 2024, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the definition of “complex strategy” in Exchange Rule 5.33(a) to allow the Exchange to create new complex strategies. In addition, the proposal amends Exchange Rule 5.33(b)(2) to provide that, in a class in which the Exchange determines that complex orders with Capacity M or N are not eligible for entry into the Complex Order Book (“COB”), the Exchange may determine that a complex order with Capacity M or N may enter the COB in complex strategies designated by the Exchange.<sup>3</sup> The proposed rule change was published for comment in the Federal Register on March 28, 2024.<sup>4</sup> On April 4, 2024, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission has received no comment letters regarding

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange states that the origin code “M” represents Exchange Market-Makers, and the origin code “N” represents market makers or specialists on another exchange (“away market makers”). The Exchange states that, currently, orders representing any capacity, including M and N, are eligible for entry and may rest on the COB in all classes except S&P 500 Index (“SPX”) and Cboe Volatility Index (“VIX”) options. In SPX and VIX options, M and N complex orders are not eligible for entry into the COB except as set forth in Exchange Rule 5.33(b)(2). See Securities Exchange Act Release No. 99838 (March 22, 2024), 89 FR 21548, 21549, n.3 (March 28, 2024) (“Notice”) and Amendment No. 1.

<sup>4</sup> See Notice, supra note 3.

<sup>5</sup> Amendment No. 1 revises the proposal to correct descriptions of the current complex book process by stating that Market-Makers and away market makers currently are not permitted to enter orders in VIX

the proposal. The Commission is publishing this notice to solicit comment on Amendment No. 1 and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The definition of complex strategy in Exchange Rule 5.33(a) provides that new complex strategies may be created as the result of the receipt of a complex instrument creation request or the receipt of a complex order for a complex strategy that is not currently in the Exchange's system.<sup>6</sup> The Exchange proposes to revise this definition to also allow the Exchange to create new complex strategies. The Exchange states that customers will continue to have the ability to create complex instruments as they do today.<sup>7</sup>

Exchange Rule 5.33(b)(2) states, in part, that the Exchange determines which Capacities are eligible for entry into the COB.<sup>8</sup> The Exchange states that, currently, orders entered with any Capacity, including Market-Maker and away market-maker orders, are eligible for entry and may rest on the COB in all classes except SPX and VIX.<sup>9</sup> In SPX and VIX options, Market-Maker and away market maker complex orders are not eligible for entry into the COB except as set forth in Exchange Rule 5.33(b)(2)(A).<sup>10</sup> The Exchange proposes to amend Exchange Rule

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options, as well as SPX options, in the COB. Amendment No. 1 makes no changes to Exhibit 5 of the proposal. Amendment No. 1 is available on the Commission's website at <https://www.sec.gov/comments/sr-cboe-2024-015/srcboe2024015.htm>.

<sup>6</sup> See Cboe Rule 5.33(a).

<sup>7</sup> See Notice, 89 FR at 21550.

<sup>8</sup> "Capacity" means the capacity in which a User submits an order, which the User specifies by applying the corresponding code to the order. See Cboe Rule 1.1.

<sup>9</sup> See Amendment No. 1.

<sup>10</sup> See *id.* Exchange Rule 5.33(b)(2)(A) provides that "In a class in which the Exchange determines complex orders with Capacity M or N are not eligible for entry into the COB, the Exchange may determine that a complex order with Capacity M or N may enter the COB if: (i) the complex order is on the opposite side of (a) a Priority Customer complex order(s) resting in the COB with a price not outside the SNBBO; or (b) orders on the same side of the market in the same complex strategy that initiated a COA(s) if there are "x" number of COAs within "y" milliseconds, counted on a rolling basis (the Exchange determines the number

5.33(b)(2) to provides that in a class in which the Exchange determines that orders with Capacity M or N are not eligible for entry into the COB, the Exchange may determine that a complex order with Capacity M or N may enter the COB in complex strategies designated by the Exchange. The Exchange will have the ability to designate strategies created by the Exchange and by users for the entry of Market-Maker and away market maker orders in the COB.<sup>11</sup>

When determining which complex strategies to create and in which complex strategies the orders of Market-Makers and away market makers will be eligible for COB entry, the Exchange represents that it intends to make such determinations based on objective, nondiscriminatory factors, including strategy type, orders, and executions within a strategy type using close by strikes, and market participant feedback.<sup>12</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national

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“x” (which must be at least two) and the time period “y” (which may be no more than 2,000); and (ii) the User cancels the complex order, if it remains unexecuted, no later than a specified time (which the Exchange determines and may be no more than five minutes) after the time the COB receives the M or N complex order.”

<sup>11</sup> See Notice, 89 FR at 21550.

<sup>12</sup> See *id.* at 21552.

<sup>13</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal will allow the Exchange to create complex strategies and to determine, in classes for which the Exchange has determined that the orders of Market-Makers and away market makers may not rest in the COB, that the orders of Market-Makers and away market makers may rest in the COB in complex strategies designated by the Exchange. As described more fully in the Notice, the Exchange states that it understands from market participants that electronic trading in complex strategies may be limited for a variety of reasons, including the fragmentation of liquidity across multiple customer-created complex instruments expressing a similar exposure profile.<sup>15</sup> The Exchange states that allowing it to create complex strategies, and to designate complex strategies in which the orders of Market-Makers and away market makers are eligible for entry in the COB, would permit the consolidation of liquidity in a single complex strategy that currently is spread across multiple customer-created complex instruments expressing the same or similar exposure profiles.<sup>16</sup> The Exchange further states that the proposal to allow the Exchange to create complex strategies could aggregate liquidity seeking a particular level of risk exposure in a single set of strikes for a complex strategy (as opposed to across many varying strikes).<sup>17</sup> According to the Exchange, the consolidation of liquidity resulting from the proposed changes could increase execution opportunities at more competitive prices.<sup>18</sup> The Commission believes that consolidating liquidity in particular complex strategies, including commonly traded strategies, could increase price competition in these strategies, potentially

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<sup>15</sup> See Notice, 89 FR at 21549.

<sup>16</sup> See Notice, 89 FR at 21459, 21550.

<sup>17</sup> See Notice, 89 FR at 21550.

<sup>18</sup> See id.

resulting in more favorable executions for investors. The Exchange represents that it will determine the complex strategies to create and the complex strategies in in which the orders of Market-Makers and away market makers will be eligible for COB entry based on objective and nondiscriminatory factors, including the strategy type, orders, and executions within a strategy type using close by strikes, and market participant feedback.<sup>19</sup> In addition, the Exchange states that customers will continue to have the ability to create complex instruments as they do today.<sup>20</sup>

#### IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2024-015 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-2024-015. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies

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<sup>19</sup> See Notice, 89 FR at 21552.

<sup>20</sup> See *id.* at 21550. See also Exchange Rule 5.33(a) (definition of complex strategy).

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office 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-CBOE-2024-015 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. The proposal, as originally filed, stated that SPX is the only option class for which the Exchange has determined that the orders of Market-Makers and away market makers are not eligible for entry in the COB.<sup>21</sup> Amendment No. 1 revises the proposal to indicate that the Exchange has determined that the orders of Market-Makers and away market makers in VIX options, as well as SPX options, are not eligible for entry in the COB. Amendment No. 1 does not modify the rule text or the operation of the proposed rules;

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<sup>21</sup> See Notice, 89 FR at 21549, n.3 and n.4.

rather it corrects an erroneous factual statement regarding the option classes for which the Exchange has determined that the orders of Market-Makers and away market makers are not eligible to rest in the COB. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-CBOE-2024-015), as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).