SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101834; File No. SR-CBOE-2024-052)

December 6, 2024

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Auction Response and Execution Price Cap for AIM And SAM Auctions

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 22, 2024, 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, II, and III 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 Act[3] 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 Rules 5.37 and 5.39. 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.

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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 amend Rules 5.37 (Automated Price Improvement Mechanism ("AIM" or "AIM Auction") and 5.39 ("Solicitation Auction Mechanisms ("SAM" or "SAM Auction")) to modify the agency side execution price cap to allow for further price improvement.

By way of background, Rule 5.37 contains the requirements applicable to the execution of certain customer orders ("Agency Orders") using AIM. An AIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer ("NBBO")). Rule 5.39 contains the requirements applicable to the execution of Agency Orders using SAM. Similarly, a SAM Auction is an electronic auction intended to provide a larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Upon submitting an Agency Order into an AIM or SAM Auction, the initiating Trading Permit Holder ("Initiating TPH") must also submit a contra-side second order ("Initiating Order") for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.[5] At the conclusion of an AIM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated a certain percentage (or more) of the Agency Order.[6] At the conclusion of a SAM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated the entire Agency Order or none of the Agency Order.[7]

Rules 5.37(c)(5)(B) and 5.39(c)(5)(B) provide that the System may not execute AIM responses (against Agency Orders) outside of the BBO at the conclusion of the AIM Auction or the Initial NBBO. Similarly, Rules 5.37(e) and 5.39(e) provide that the execution price of any Agency Order must be not outside the Exchange best bid or offer ("BBO") at the conclusion of the auction or the Initial NBBO.[8] The Exchange proposes to amend Rules 5.37(c)(5)(B) and (e) and 5.39(c)(5)(B) and (e) to eliminate the requirement that the execution price of an AIM response or Agency Order be at or better than the Initial NBBO.[9] The Exchange believes this may provide Agency Orders with further opportunities for price improvement, including in the event the market changes during an AIM or SAM Auction.

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5 See Rules 5.37(c)(5) and 5.39(c)(5).

6 See Rule 5.37(e).

7 See Rule 5.39(e).

8 The term "Initial NBBO" means the national best bid or national best offer at the time an auction is initiated. See Rules 5.37 (introductory paragraph) and 5.39 (introductory paragraph). The Exchange notes that Rules 5.37(b) and 5.39(b) reference the "then-current NBBO" when describing the stop price conditions. The "then-current NBBO" is the NBBO at the time the System receives the Agency Order and contra-order, which (assuming all conditions are satisfied) becomes the time at which the auction commences, and thus the then-current NBBO is ultimately the NBBO at the commencement of the auction, which is also the "Initial NBBO."

9 The proposed rule change makes nonsubstantive changes to Rule 5.37(e) to delete the redundant phrase "as follows," and makes other grammatical changes, which changes have no impact on these provisions and merely improve readability. The proposed rule change also makes nonsubstantive changes to Rule 5.37(e) to replace "better than both sides of" with "between," as those terms mean the same thing with respect to the BBO. This makes the language in Rule 5.37(e) consistent with the analogous language in Rule 5.39(e).

To illustrate the impact of the proposed rule change, suppose the following market exists when an Initiating TPH submits to AIM Auction an Agency Order to buy 5 contracts at 1.05 (which is the stop price):

BBO: 0.85 – 1.20 (no priority customers)

ABBO: 1.00 – 1.10

Initial NBBO: 1.00 – 1.10

After the Auction begins, the ABBO moves to 0.90 – 1.10 and the Exchange receives on its book a non-priority customer order to sell 1 contract at 0.95. During the Auction, one response to sell one contract at 0.75 is submitted. Therefore, when the AIM Auction concludes, the following market exists:

BBO: 0.85 – 0.95 (no priority customers)

ABBO: 0.90 – 1.10

NBBO: 0.90 – 0.95

Under the current rules, the execution price would be capped at the Initial NBB of 1.00, and thus the Agency Order would execute as follows:

1 contract against the sell response @ 1.00

1 contract against the sell order @ 1.00

3 contracts against the Initiating Order at 1.05

As proposed, the execution price would be capped at BBO at the conclusion of the Auction of 0.85, and thus the Agency Order would execute as follows:

1 contract against the sell response @ 0.85

1 contract against the sell order @ 0.95

3 contracts against the Initiating Order @ 1.05

Therefore, as proposed, the Agency Order is able to buy one contract at 0.15 less and another contract at 0.05 less than what occurs under the current Rules, which ultimately results in price savings for this customer.

To illustrate what would happen if the away market moved the other direction during an AIM Auction, suppose the following market exists when an Initiating TPH submits to AIM Auction an Agency Order to buy 5 contracts at 1.05 (which is the stop price):

BBO: 0.85 – 1.20 (no priority customers)

ABBO: 1.00 – 1.10

Initial NBBO: 1.00 – 1.10

After the Auction begins, the ABBO moves to 1.10 – 1.20 and the Exchange receives on its book a non-priority customer order to sell 1 contract at 1.15. During the Auction, one response to sell one contract at 0.95 is submitted. Therefore, when the AIM Auction concludes, the following market exists:

BBO: 0.85 – 1.15 (no priority customers)

ABBO: 1.10 – 1.20

NBBO: 1.10 – 1.15

Under the current rules, the execution price would be capped at the Initial NBB of 1.00, and thus the Agency Order would execute as follows:

1 contract against the sell response @ 1.00

4 contracts against the Initiating Order at 1.05

As proposed, the execution price would be capped at BBO at the conclusion of the Auction of 0.85, and thus the Agency Order would execute as follows:

1 contract against the sell response @ 0.95

4 contracts against the Initiating Order @ 1.05

Therefore, as proposed, the Agency Order is able to buy one contract at 0.05 less than what occurs under the current Rules, which ultimately results in price savings for this customer. This example also demonstrates that if the Agency Order side of the market crosses the auction/stop price, the Agency Order will still not trade at a price worse than the auction/stop price.

Another example illustrates what would happen if the Exchange's market moved during an AIM Auction and the Agency Order side of the market crossed the auction/stop price, suppose the following market exists when an Initiating TPH submits to AIM Auction an Agency Order to buy 5 contracts at 1.05 (which is the stop price):

BBO: 0.85 – 1.20 (no priority customers)

ABBO: 1.00 – 1.10

Initial NBBO: 1.00 – 1.10

After the Auction begins, the Exchange receives on its book a non-priority customer order to buy 1 contract at 1.15. No responses were received prior to the receipt of this order. This would cause the Agency Order's stop price of 1.05 to be outside of the BBO of 1.15 – 1.20. As a result, pursuant to Rule 5.37(d)(1)(C), the AIM Auction would conclude. All five contracts of the Agency Order would execute against the Initiating Order at 1.05. The proposed rule change would have no impact on this scenario since the execution price is still within the Initial NBBO.

The proposed change will continue to protect interest resting on the Exchange's book (including priority customers) and interest at away markets in accordance with linkage rules[10] while providing customers with additional opportunities for price improvement. Additionally,

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[10] See Rule 5.66(b)(9) (which permits transactions that trade through the NBBO if an order was stopped at a price that did not constitute a trade-through at the time of the stop).

customers will continue to never receive an execution at a price worse than the auction/stop price.

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.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] 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)[13] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change will help perfect the mechanism of a free and open market, promote just and equitable principles of trade and protect investors. In particular, the Exchange believes the proposed rule change will provide opportunities for further price improvement for Agency Orders in the event an away market fades during an auction. The Exchange believes that the proposed rule change may permit Agency Orders submitted into AIM and SAM Auctions (or parts of them) to execute at better prices, including against Auction

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[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] Id.

responses, than they may execute at today. The Exchange believes the proposed changes may provide Agency Orders with increased opportunities for meaningful price improvement without inadvertently penalizing them if markets happen to move during an auction. The Exchange believes the proposed rule change will permit customers to take advantage of market moves that occur during an auction, which may result in these orders receiving further price improvement compared to what they may receive under current Rules, which ultimately benefits investors.

The Exchange further notes that the proposed rule change remains consistent with the Options Order Protection and Locked/Crossed Market Plan ("Linkage Plan") approved by the Securities and Exchange Commission (the "Commission") pursuant to Regulation NMS[14] and the Exchange's Rules adopted in accordance with the Linkage Plan.[15] In particular, the proposed rule change is consistent with the trade-through exception that permits an order to trade at a price outside of the NBBO at the time of execution (i.e., the conclusion of an AIM or SAM Auction) if the order was stopped at a price that did not constitute a trade-through at the time of the stop (i.e., the Initial NBBO).[16] This stop price is required for AIM and SAM auctions.[17] While this trade-through exception requires a stop price to be at or between the Initial NBBO, it does not require an execution price to be at or between the Initial NBBO.[18] When the Commission discussed this

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14 See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets Submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.) ("Linkage Approval Order")

15 See Rules 5.65 through 5.67.

16 See Rule 5.66(b)(9).

17 See Rules 5.37(b) and 5.39(b).

18 The Exchange notes at least one other options exchange with similar auction mechanisms does not limit executions prices to being at or better than the Initial NBBO. See, e.g., Nasdaq ISE, LLC ("ISE") Rulebook Options 3, Section 11(d) (permissible execution prices for orders submitted into the solicited order mechanism (comparable to SAM) do not take into account prices of away markets); and Section 13 (permissible execution prices for orders submitted into the price improvement mechanism (comparable to AIM) do not take into account prices of away markets).

trade through exception when approving the Linkage Plan, it noted the purpose of this exception was to allow for "price improvement for an order, even if the market moves in the interim, and the transaction is effected at a price that would trade through the then currently-displayed market," as occurs in price improvement auctions of several exchanges.[19] As proposed, executions will always occur at prices at or between the BBO at the conclusion of the Auction, thus respecting prices from away markets while providing an Agency Order with the opportunity to benefit from any market changes that occur during an auction. Additionally, customers will continue to never receive an execution at a price worse than the auction/stop price.

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 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 it will apply uniformly to AIM and SAM orders and responses of all TPHs. Additionally, the Exchange notes that participation in the AIM and SAM Auctions is completely voluntary. The Exchange believes all market participants may benefit from any additional price improvement in the AIM and SAM Auctions that may result from the proposed rule change. 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 relates to Exchange-specific auction mechanisms and, as noted above, will

19 See Linkage Approval Order at 39368. The Commission continued by stating that "[d]uring [an] auction period, the NBBO could move from where it was when the order was received. However, the Exchange is only required to guarantee a price no worse than the NBBO at the time the order was received." The Commission found this exception to be "in the public interest, appropriate for the protection of investors and the maintenance of fair and orderly markets." Id.

continue to ensure that execution prices occur in a manner consistent with linkage rules and protect customers on the book. As noted above, at least one other options exchange with similar auction mechanisms does not limit executions prices to being at or better than the Initial NBBO.[20]

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 Act[21] and Rule 19b-4(f)(6)[22] 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.

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20 See, e.g., ISE Rulebook Options 3, Section 11(d)(3) (permissible execution prices for orders submitted into the solicited order mechanism (comparable to SAM) do not take into account prices of away markets); and Section 13(d) (permissible execution prices for orders submitted into the price improvement mechanism (comparable to AIM) do not take into account prices of away markets).

21 15 U.S.C. 78s(b)(3)(A).

22 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 (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2024-052 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-2024-052. 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 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-2024-052 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

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23 17 CFR 200.30-3(a)(12).