

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104437; File No. SR-CBOE-2025-090]

## **Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change to proposes to Amend Rules 5.37, 5.39, 5.73, and 5.74 to Permit Orders for the Accounts of Market-Makers with an Appointment in the Applicable Class on the Exchange, in all Classes, to be Solicited for the Initiating Order Submitted for Execution Against an Agency Order into a Simple AIM, Simple SAM, FLEX AIM or FLEX SAM Auction**

December 17, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 9, 2025, 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 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, 5.39, 5.73, and 5.74 to permit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange, in all classes, to be solicited for the Initiating Order submitted for execution against an Agency Order into a simple AIM, simple SAM, FLEX AIM or FLEX SAM Auction. The text of the proposed rule change is provided in Exhibit 5.

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

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

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website ([https://www.cboe.com/us/options/regulation/rule\\_filings/bzx/](https://www.cboe.com/us/options/regulation/rule_filings/bzx/)), and at the principal office of the Exchange.

## **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")), 5.39 ("Solicitation Auction Mechanisms ("SAM" or "SAM Auction")), 5.73 (FLEX Automated Improvement Mechanism ("FLEX AIM" or "FLEX AIM Auction")), and 5.74 (FLEX Solicitation Auction Mechanism ("FLEX SAM" or "FLEX SAM Auction")), to permit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange, in all classes, to be solicited for the Initiating Order<sup>3</sup> submitted for execution against an Agency Order into a simple AIM Auction pursuant to Rule 5.37, a simple

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<sup>3</sup> The "Initiating Order" is the order comprised of principal interest or a solicited order(s) submitted to trade against the order the submitting Trading Permit Holder (the "Initiating TPH" or "Initiating FLEX Trader," as applicable) represents as agent (the "Agency Order").

SAM Auction pursuant to Rule 5.39, a FLEX AIM Auction pursuant to Rule 5.73, or a FLEX SAM Auction pursuant to Rule 5.74.

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> Rules 5.73 and 5.74 contain the requirements for AIM and SAM Auctions for flexible exchange options (“FLEX Options”) (“FLEX AIM” and “FLEX SAM,” respectively).

Currently, the introductory paragraphs of Rules 5.37 and 5.73 prohibit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange in all

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<sup>4</sup> See Rules 5.37(c)(5) and 5.39(c)(5).

<sup>5</sup> See Rule 5.37(e).

<sup>6</sup> See Rule 5.39(e).

classes except S&P 500 Index options (“SPX”) to be solicited to execute against the Agency Order in a simple AIM or FLEX AIM Auction, respectively. The introductory paragraphs of Rules 5.39 and 5.73 prohibit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange to be solicited to execute against the Agency Order in a simple SAM or FLEX SAM Auction, respectively.

While market participants other than appointed Market-Makers may contribute liquidity to these crossing auctions as either contra orders or responses, appointed Market-Makers, who are the primary source of liquidity on the Exchange in their appointed classes, are limited in the manner in which they may provide liquidity to these auctions. Given that contra orders that comprise Initiating Orders may be allocated a percentage of the Agency Order at the conclusion of the auctions, the limited ability of appointed Market-Makers to participate in simple AIM, simple SAM, FLEX AIM, and FLEX SAM Auctions may reduce the execution opportunities for these liquidity providers, which execution opportunities are available to other market participants who may be solicited or submit responses.

The Exchange believes that eliminating the prohibition against appointed Market-Makers acting as contra in single-leg AIM orders would enhance price improvement opportunities, particularly for retail and smaller Customer orders. This is especially relevant in proprietary products like VIX options, for which many AIM orders are large-sized transactions with banks or institutional participants as contras, while retail orders often route directly to the Book without the opportunity for potential price improvement via AIM auctions. Allowing local appointed Market-Makers to be solicited as contras may result in exposure of more small customer orders to potential price improvement via auction processes. The Exchange notes that appointed Market-Makers may be solicited as contras for complex AIM and SAM Auctions, which function in a substantially

similar manner as AIM and SAM for simple orders.<sup>7</sup> The Exchange further notes that Rule 8.10 prohibits TPHs from misusing material, nonpublic information (for example, advanced knowledge of auctioned orders), so protections will remain in place under the proposed rule change to address any potential information leakage concerns.

Additionally, the restriction has become operationally outdated in current market structure. As noted above, it is common practice that AIM orders already involve the same Market-Maker firm acting as both contra (via an away Market-Maker) and auction respondent (via an appointed Market-Maker). Eliminating this restriction would reduce an arbitrary and unnecessary burden allow Market-Maker firms to structure more efficient auction processes, which may ultimately promote greater competition among Market-Makers and provide Customers with enhanced opportunities for price improvement.

To demonstrate the importance of the liquidity provided by Market-Makers, for the time period from January to June 2025, the percentage of smaller Customer orders (20 or fewer) that executed in open outcry against a Market-Maker in multi-list classes as contra was approximately 57%, and the percentage of smaller customer orders (20 or fewer) that executed electronically against a Market-Maker in multi-list classes as contra was approximately 93%. Further, for the same time period, the percentage of smaller Customer orders (20 or fewer) that executed in open outcry against a VIX Market-Maker as contra was approximately 71%, and the percentage of smaller customer orders (20 or fewer) that executed electronically against a Market-Maker in multi-list classes as contra was approximately 87%. Currently, there are 24 distinct TPHs with appointments across multi-list classes and 18 TPHs with VIX appointments, which represent a

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<sup>7</sup> See Rules 5.38 and 5.39.

significant pool of liquidity that would be available to participate in AIM Auctions through both contra orders and auction responses.

The Exchange is proposing to amend Rules 5.37, 5.39, 5.73, and 5.74 to permit orders for the accounts of Market-Makers with an appointment in the applicable class to be solicited for the Initiating Order submitted for execution against an Agency Order in all classes into a simple AIM Auction pursuant to Rule 5.37, a simple SAM Auction pursuant to Rule 5.39, a FLEX AIM Auction pursuant to Rule 5.73, or a FLEX SAM Auction pursuant to Rule 5.74. The Exchange believes providing appointed Market-Makers with an additional way to participate in electronic auctions will expand available liquidity for these auctions, which may increase execution and price improvement opportunities for customers' orders. No similar restriction applies to crossing transactions in open outcry trading.<sup>8</sup> Brokers seeking liquidity to execute against customer orders on the trading floor regularly solicit appointed Market-Makers in the applicable class for this liquidity, as they are generally the primary source of liquidity in a class (as noted above). Therefore, the Exchange believes the proposed rule change will further align open outcry and electronic crossing auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in AIM, SAM, FLEX AIM, and FLEX SAM Auctions across all classes at all times.

The Exchange notes the electronic crossing price improvement auction of another options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra orders for that auction.<sup>9</sup>

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<sup>8</sup> See Rules 5.86 and 5.87.

<sup>9</sup> See NYSE American, Inc. ("American") Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. See also <https://www.nyse.com/markets/american-options/cube-customer-best-execution>

## 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.<sup>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> 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)<sup>12</sup> 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 promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will provide the primary liquidity providers on the Exchange with an additional way to participate in electronic auctions. Additionally, by permitting brokers to solicit primary liquidity providers in a class for electronic auctions, the Exchange believes brokers will be able to more efficiently locate liquidity to fill their customer orders, particularly during times of volatility. As a result, the Exchange believes the proposed rule change will likely expand available liquidity for these auctions, which may create additional

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> Id.

execution and price improvement opportunities for customers at all times, which ultimately benefits investors.

The Exchange believes the proposed rule change is consistent with the Act because it will further align open outcry and electronic crossing auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in both types of auctions across all classes. Currently, appointed Market-Makers may be solicited with respect to crossing transactions on the trading floor but may not be solicited with respect to electronic crossing transactions. The Exchange believes there is no reason to restrict Market-Makers ability to provide liquidity into electronic auctions when they are able to similarly provide that liquidity in open outcry trading. As noted above, the electronic crossing price improvement auction of another options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra orders for that auction.<sup>13</sup>

The Exchange believes the proposed rule change will promote competition in AIM Auctions, including competition to initiate AIM Auctions, which will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors. The Exchange believes the availability of this liquidity to Agency Orders will positively affect the experience for Agency Orders and overall quality of the auctions. Furthermore, the Exchange believes increasing the number of market participants available to be solicited may increase competition to provide Initiating Orders, which may lead to an AIM Auction being initiated at a better price. More market participants competing to provide Initiating Orders may lead to solicited parties providing more aggressive initial prices.

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<sup>13</sup> See NYSE American, Inc. (“American”) Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. See also <https://www.nyse.com/markets/american-options/cube-customer-best-execution>

The Exchange believes the ability of all market participants, including appointed Market-Makers that did not submit an Initiating Order, to submit responses to an AIM Auction will continue to provide competition for executions against Agency Orders.

The Exchange believes any risk that appointed Market-Makers may misuse the nonpublic information of an upcoming AIM Auction is de minimis. Currently, that risk is present for non-appointed Market-Makers, but the Exchange has not observed any trends of solicited market participants separately submitting unrelated orders as a result of knowledge of impending AIM Auctions in other classes. The Exchange notes Rule 5.37, Interpretation and Policy .02 prohibits a pattern or practice of submitting orders or quotes for the purpose of disrupting or manipulating AIM Auctions, and Rule 8.10 requires TPHs to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by TPHs and their associated persons. Finally, the Exchange believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it will be permit orders for accounts of appointed Market-Makers to be solicited in the same manner as orders for the accounts of all other market participants. Currently, all market participants other than appointed Market-Makers may be solicited as the contra and submit responses in AIM Auctions for all classes. Given the additional costs and obligations associated with being an appointed Market-Maker, the Exchange does not believe these Market-Makers should have fewer execution opportunities with respect to volume submitted for execution through AIM auctions and not for electronic execution against interest in the book. The Exchange believes the proposed rule change will provide all Market-Makers on the Exchange with the same ability to participate in AIM in all classes at all times, which may further increase execution and price improvement opportunities for customers.

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 provides the same execution opportunities in AIM Auctions to appointed Market-Makers that are currently available to all other market participants. Additionally, the proposed rule change will further align open outcry and electronic crossing auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in auctions across all classes.

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 because it relates to orders submitted into auction mechanisms on the Exchange. Additionally, the Exchange notes that the rules of at least one other options exchange permits orders for the accounts of appointed market-makers to be solicited as contra orders for that exchange's electronic crossing price improvement auction.<sup>14</sup> The Exchange believes the proposed rule change may improve price competition within AIM Auctions, because the primary liquidity providers will be able to increase participation in AIM Auctions.

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.

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<sup>14</sup> See NYSE American, Inc. ("American") Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. See also <https://www.nyse.com/markets/american-options/cube-customer-best-execution>

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CBOE-2025-090 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-2025-090. 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 filing 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-2025-090 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.<sup>15</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>15</sup> 17 CFR 200.30-3(a)(12).