SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104440; File No. SR-CBOE-2025-074]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend Functionality Relating to the Processing of Auction Responses

December 17, 2025.

I.   Introduction

On September 30, 2025, Cboe Exchange, Inc. ("Exchange" or "Cboe") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder,[3] a proposed rule change to amend the maximum amount of time permitted for processing auction responses in non-FLEX classes. The proposed rule change was published for comment in the Federal Register on October 3, 2025.[4] On November 3, 2025, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] The Commission has not received any comments on the proposal.

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[1]   15 U.S.C. 78s(b)(1).

[2]   15 U.S.C. 78a.

[3]   17 CFR 240.19b-4.

[4]   See Securities Exchange Act Release No. 104159 (Sep. 30, 2025), 90 FR 48094 ("Notice").

[5]   See 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6]   See Securities Exchange Act Release No. 104173, 90 FR 51424 (Nov. 17, 2025). The Commission designated January 1, 2026, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[7] the Commission is hereby instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II.   Description of the Proposed Rule Change

The Exchange currently offers the following auction and exposure mechanisms ("auctions"): Complex Order Auction ("COA"),[8] Step Up Mechanism ("SUM"),[9] Automated Improvement Mechanism ("AIM"),[10] Complex AIM ("C-AIM"),[11] Solicitation Auction Mechanism ("SAM"),[12] Complex SAM ("C-SAM"),[13] FLEX Auction process,[14] FLEX AIM,[15] and FLEX SAM.[16] In general in these auctions, the System[17] electronically exposes eligible orders for an Exchange-determined period of time in accordance with the applicable Exchange Rule, during which time, in response to an auction notification message, Users[18] may submit auction responses or auction response messages.

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[7]   15 U.S.C. 78s(b)(2)(B).

[8]   See Cboe Rule 5.33(d).

[9]   See Cboe Rule 5.35.

[10]   See Cboe Rule 5.37.

[11]   See Cboe Rule 5.38.

[12]   See Cboe Rule 5.39.

[13]   See Cboe Rule 5.40.

[14]   See Cboe Rule 5.72(c).

[15]   See Cboe Rule 5.73.

[16]   See Cboe Rule 5.74.

[17]   The term "System" means the Exchange's hybrid trading platform that integrates electronic and open outcry trading of option contracts on the Exchange, and includes any connectivity to the foregoing trading platform that is administered by or on behalf of the Exchange, such as a communications hub. See Cboe Rule 1.1.

[18]   The term "User" means any TPH or sponsored user who is authorized to obtain access to the System pursuant to Cboe Rule 5.5. See Cboe Rule 1.1.

Cboe Rule 5.25(c) provides that at the conclusion of an auction response or exposure period, the System will continue to process any messages in its inbound queue that were received by the System before the end of the auction response or exposure period, as identified by each message's timestamp, for up to an Exchange-determined period of time on a class-by-class basis. This Exchange-determined period of time may not exceed 100 milliseconds, except in the case of non-FLEX S&P 500 Index options "SPX options."[19] For non-FLEX SPX options, this Exchange-determined period of time plus the length of the auction response or exposure period, as applicable, may not exceed 1000 milliseconds (until December 31, 2025).[20] The applicable auction will execute once all messages, including auction responses, received before the end time of the auction response period have been processed or the Exchange-determined maximum time limit has elapsed, whichever occurs first.[21]

The Exchange is proposing to make permanent the non-FLEX SPX functionality and broaden it such that it applies to all non-FLEX option classes, and the Exchange is proposing not to apply any auction response processing time to FLEX auctions.[22] Specifically, the Exchange is proposing to amend Cboe Rule 5.25(c) to provide that, for non-FLEX auction or exposure mechanisms, the System processing time for any messages in its inbound queue that were

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[19]   See Cboe Rule 5.25(c); see also Securities Exchange Act Release No. 97738 (June 15, 2023), 88 FR 40878 (June 22, 2023) (order approving SR-CBOE-2022-051, which established the 100-millisecond maximum processing time period) ("100 Millisecond Order").

[20]   See Cboe Rule 5.25(c); see also Securities Exchange Act Release No. 102966 (May 1, 2025), 90 FR 19330 (May 7, 2025) (SR-CBOE-2025-031). The auction response processing time is currently set to 900 milliseconds for SPX options and 100 milliseconds for all other classes. See Notice, supra note 4, at 48095, n. 13.

[21]   See Notice, supra note 4, at 48095.

[22]   See proposed Cboe Rule 5.25(c); see also Notice, supra note 4, at 48095, n. 17. The term "FLEX auction" refers to the FLEX Auction process, FLEX AIM, and FLEX SAM.

received by the System before the end of the auction response or exposure period (as identified

by each message's timestamp), plus the length of the auction response or exposure period, as

applicable, may not exceed 1000 milliseconds.[23] Only auction responses submitted during the

auction response or exposure period would be eligible for processing,[24] in time priority,[25] and the

proposed rule change would make no changes to how the auction rules operate regarding

allocation and execution priority.[26]

The Exchange states, among other things,[27] that the proposed, increased maximum

processing time will result in more timely-submitted auction responses having the opportunity to

participate in the auction and being executed in all classes, particularly in times of volatility and

high message traffic.[28] According to the Exchange, this may provide further opportunities for

auctioned orders to receive price improvement, and may encourage liquidity providers to submit

more auction responses, which may contribute to a deeper, more liquid action process.[29] The

Exchange believes the proposal will continue to appropriately balance providing investors with

timely processing of their options quote and order messages with providing investors who submit

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[23]   See proposed Cboe Rule 5.25(c). The Exchange will announce the length of the Exchange-determined processing period with reasonable advance notice via Exchange Notice. See Cboe Rule 5.25(c).

[24]   See Notice, supra note 4, at 48095.

[25]   See id. at 48097.

[26]   See id. at 48097, 48098.

[27]   See generally, Notice, supra note 4, for the entirety of the Exchange's statements in support of its proposal.

[28]   See Notice, supra note 4, at 48095-96. The Exchange states that it generally experiences significant increases in volumes and messages traffic when the market experiences volatility. As a result, the Exchange states that it has observed deeper pending message queues, which results in an increased number of timely received auction responses not being processed as part of the execution at the conclusion of an auction. The Exchange believes, based on its observations, that the proposed maximum time may increase the number of timely received auction responses that may execute against an auction order. See id. at 48096.

[29]   See id. at 48096, 48097.

orders that are auctioned with additional liquidity.[30] The Exchange also states that given the
much longer length of FLEX auctions, which may last three seconds to five minutes,[31] the
Exchange believes an increase in auction response processing is unnecessary for FLEX SPX
options.[32]

The Exchange provides certain data in support of its proposal. Specifically, the
Exchange states that, in 2025 prior to May 12 (the date on which the Exchange implemented the
longer auction processing response time for non-FLEX SPX options), the percentage of auction
responses in SPX that were received by the System before the end of the auction period (i.e., had
received a Network Interface Card timestamp) but were rejected because the Exchange could not
process them before the end of the combined auction response or exposure period (as applicable)
plus the then-existing extra processing time, reached over 20% on several occasions and
averaged approximately 7.64%.[33] Between May 12 and September 5, this percentage was nearly
0, according to the Exchange.[34] Despite the maximum auction response processing time being
900 milliseconds, the average length of that time period used since that time was only about 14
milliseconds.[35] The Exchange believes, given the continued increase in options volumes across
the industry (and thus all classes), that all classes could benefit from the additional processing
times.[36]

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[30]   See id. at 48096.

[31]   See Cboe Rules 5.72(c)(1)(F), 5.73(c)(3), and 5.74(c)(3).

[32]   See Notice, supra note 4, at 48098.

[33]   See id. at 48096.

[34]   See id.

[35]   See id.

[36]   See id.

III.   <u>Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change</u>

The Commission hereby institutes proceedings pursuant to Section 19(b)(2)(B) of the

Act[37] to determine whether the Exchange's proposed rule change should be approved or

disapproved. Institution of proceedings does not indicate that the Commission has reached any

conclusions with respect to any of the issues involved. Rather, the Commission seeks and

encourages interested persons to provide additional comment on the proposed rule change to

inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[38] the Commission is providing notice of the

grounds for disapproval under consideration. The Commission is instituting proceedings to

allow for additional analysis of, and input from commenters with respect to, the consistency of

the proposed rule change with the Act and, in particular, Section 6(b)(5) of the Act,[39] which

requires 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 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.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed

rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on

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[37]   15 U.S.C. 78s(b)(2)(B).

[38]   <u>Id.</u>

[39]   15 U.S.C. 78f(b)(5).

the self-regulatory organization that proposed the rule change."[40] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[41] and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[42]

As discussed above, currently, the Exchange-determined period of additional processing time for timely-received auction responses may not exceed 100 milliseconds, except that this maximum processing time is 1000 milliseconds for auctions in non-FLEX SPX options. The Exchange's proposal would increase to 1000 milliseconds the maximum processing time for all non-FLEX classes (and make the 1000-millisecond maximum processing time period permanent for non-FLEX SPX classes), and no longer apply an auction message processing time to any FLEX auctions.

The Commission is concerned that the proposal does not provide an adequate basis, at this time, for the Commission to conclude that the proposed increase to the maximum processing time for auction messages in non-FLEX classes other than SPX and the proposed non-application of any auction response processing time to FLEX auctions would be consistent with the Act. While the Exchange sets forth benefits that could accrue from the proposal, the data it

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40   Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

41   Id.

42   Id.

proffers in support of the proposal is specific to its experience with non-FLEX SPX options. The

proposal does not set forth data directly supporting the proposed increase in the maximum

processing time for non-FLEX classes other than SPX.[43] The proposal also states that an

increase in auction response processing time is unnecessary for FLEX SPX options in light of the

fact that FLEX auctions may last three seconds to five minutes—a proposition with which the

Commission agrees. But the proposal does not currently set forth support for the proposed non-

application of any auction response processing time to any FLEX auction, which is an aspect of

the proposal that, in the Commission's view, is distinct from not increasing the auction response

processing time for FLEX SPX options. Lastly, the Commission also seeks comment on whether

the proposal presents any market risk due to a longer auction processing time for auction

responses or the cancellation of auction responses that have been submitted during the auction

response period.

Accordingly, the Commission is instituting proceedings to allow for additional

consideration and comment on the issues raised herein, including as to whether the proposal is

consistent with the Act.[44]

IV.   Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns

identified above as well as any other relevant concerns. Such comments should be submitted by

[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL*

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[43]   See, e.g., 100 Millisecond Order, supra note 19, at 40878 n. 21 (stating that an Exchange review indicated
        that approximately 55% of auction responses had no opportunity to execute in their respective auctions
        notwithstanding being submitted within the auction response period).

[44]   See 15 U.S.C. 78f(b)(5) and (8).

REGISTER]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER

DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Although there do not appear to

be any issues relevant to approval or disapproval that would be facilitated by an oral presentation

of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any

request for an opportunity to make an oral presentation.[45]

The Commission asks that commenters address the sufficiency and merit of the

Exchange's statements in support of the proposal, in addition to any other comments they may

wish to submit about the proposed rule change.

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-2025-074 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.

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[45]   15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

All submissions should refer to file number SR-CBOE-2025-074. 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-2025-074 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Sherry R. Haywood,

Assistant Secretary.

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[46]   17 CFR 200.30-3(a)(57).