

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91275; File No. SR-CBOE-2021-013)

March 8, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend Rule 5.52(d) in Connection with a Market-Maker's Electronic Volume Transacted on the Exchange

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 February 22, 2021, 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 Rule 5.52(d) in connection with a Market-Maker's electronic volume transacted on the Exchange. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Rule 5.52(d) in connection with a Market-Maker’s electronic volume transacted on the Exchange. Rule 5.52(d)(1) provides that if a Market-Maker never trades more than 20% of the Market-Maker’s contract volume electronically in an appointed class during any calendar quarter (“Electronic Volume Threshold”)³, a Market-Maker will not be obligated to quote electronically in any designated percentage of series within that class pursuant to subparagraph (d)(2) (which governs the continuous electronic quoting requirements for Market-Makers in their appointed classes). That is, once a Market-Maker surpasses the Electronic Volume Threshold in an appointed class, the Market-Maker is required to provide continuous electronic quotes in that appointed classes going forward. Neither Rule 5.52(d)(1) nor (d)(2) permit a Market-Maker to reduce its electronic volume after surpassing the Electronic Volume Threshold in order to reset the electronic volume trigger or otherwise

³ The proposed rule change provides additional clarity within Rule 5.52(d)(1) by defining this threshold and adding the defined term throughout Rule 5.52(d)(1).

undo the resulting obligation to stream electronic quotes once the Electronic Volume Threshold is triggered in an appointed class.

Market-Makers accustomed to executing volume on the trading floor have sophisticated and complicated risk modeling associated with their floor trading activity, including quoting, monitoring, and responding to the trading crowd. However, the Exchange understands that while such Market-Makers do have separate systems or third-party platforms for quoting, monitoring and responding to electronic markets, because these Market-Makers are almost exclusively floor-based, their technology or other platforms enabling them to quote electronically do not achieve the level of sophistication or complexity as the systems used by Market-Makers accustomed to quoting electronically. Indeed, to satisfy the continuous electronic quoting requirements, a Market-Maker must provide continuous bids and offers for 90% of the time the Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day and must provide continuous quotes in 60% of the series of the Market-Maker's appointed classes. The Exchange determines compliance by a Market-Maker with this quoting obligation on a monthly basis. In addition to this, a Market-Maker must, among other things, compete with other Market-Makers in its appointed classes, update quotations in response to changed market conditions in its appointed classes, maintain active markets in its appointed classes, and, overall, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. Market-Makers that are predominantly floor-based generally do not have the technology or electronic trading sophistication to fully satisfy the continuous electronic quoting

obligations, as well as other heightened standards required of a Market-Maker in its appointed classes electronically, once the Electronic Volume Threshold is triggered.

The Exchange has observed that, around the end of calendar year 2019, particularly given the significant increase in market volatility and unpredictability of market conditions in the months leading up to and during the COVID-19 pandemic,⁴ Market-Makers that almost exclusively executed their volume in open outcry and had not prior triggered an electronic quoting obligation pursuant to Rule 5.52(d)(2), incidentally breached the Electronic Volume Threshold in certain appointed classes and were thereby obliged to provide continuous electronic quotes in those classes going forward. As stated above, once a Market-Maker surpasses the Electronic Volume Threshold in an appointed class, and the electronic quoting obligation is triggered, Rules 5.52(d)(1) and (d)(2) do not permit a Market-Maker to reset the trigger — a Market-Maker is required to stream electronic quotes in that appointed class beginning the next calendar quarter and from there on out. As such, once the Electronic Volume Threshold was surpassed by Market-Makers accustomed to quoting on the trading floor, these Market-Makers had to be equipped to uphold continuous electronic quoting obligations by just the next calendar quarter, production of which was exacerbated by the volatile and unusual market

⁴ The Exchange notes that after volatility and unusual market conditions beginning at the end of 2019 and continuously increasing through 2020 as a result of the impact of COVID19 and related factors, some market participants may have experienced significant trading losses, resulting in their limiting their trading behavior and risk exposure. The Exchange understands that firms, not otherwise highly active in the electronic markets, may have executed electronically in order to close positions, reduce exposure, and otherwise mitigate losses and reduce risk in light of market conditions experienced at various points throughout the year. These firms may have also reduced open outcry activity as part of the same risk-reducing strategy, resulting in a coincidental change in the mix of electronic versus open outcry volume for such generally floor-based Market-Makers.

conditions present in the markets over the past year. As a result, the Exchange has observed that at least one Market-Maker⁵ has been unable to successfully fulfill its new continuous electronic quoting obligations in subsequent months. The Exchange understands this is due to the Market-Maker not having the appropriate technology to successfully provide continuous electronic quotes. The Exchange believes requiring a Market-Maker not accustomed to and lacking the appropriate technology to provide continuous electronic quotes may potentially pose risk to the maintenance of fair and order markets as well as risk to the Market-Makers themselves as they are not able to compete in the electronic markets. Also, given the ongoing impact of the COVID-19 pandemic, the Exchange believes that additional floor-based Market-Makers may be susceptible to incidentally breaching the Electronic Volume Threshold in subsequent calendar quarters.

Therefore, the Exchange proposes to amend Rule 5.52(d)(1) in a manner that provides a potential path of recourse for Market-Makers that incidentally exceed the Electronic Volume Threshold, due, for example, to extraordinary or extreme volatility as experienced in the markets in the last year, but that may not be able to satisfy the continuous electronic quoting requirement on a monthly basis going forward given their

⁵ The Exchange is aware of at least two Market-Makers that triggered the Electronic Volume Threshold in the last months of 2019 and were subsequently unable to satisfy the continuous electronic quoting obligations. One such Market-Maker had been registered as a Market-Maker on the Exchange since 1997 (however, such firm has recently been dissolved) and one has been registered as a Market-Maker on the Exchange since 2001. The Exchange also notes that there are other Market-Makers that are not currently subject to the continuous electronic quoting requirements in their appointed classes. For example, the Exchange is aware of at least three Market-Makers that are not currently obligated to provide continuous electronic quotes in SPX.

primarily floor-based operation. Specifically, the proposed rule change adopts Rule 5.52(d)(1)(B)⁶ which provides that the Exchange may, in exceptional cases and where good cause is shown, grant a Market-Maker a reset of the Electronic Volume Threshold in subparagraph (d)(1)(A). If a Market-Maker trades more than 20% of the Market-Maker's contract volume electronically in an appointed class during a calendar quarter, the Market-Maker may submit to the Exchange a request that the Exchange consider a reset of the Electronic Volume Threshold in the appointed class. If the Exchange determines that a Market-Maker qualifies for a reset of the 20% threshold in an appointed class, then the Market-Maker will not become subject to the continuous electronic quoting requirements pursuant to subparagraph (d)(2) in the appointed class in the next calendar quarter, and will again become subject to subparagraph (d)(1)(A) in the appointed class. In order to determine if a Market-Maker qualifies for a reset of the Electronic Volume Threshold in an appointed class, the Exchange may consider: (i) a Market-Maker's trading activity and business model in the appointed class; (ii) any previous requests for a reset of the Electronic Volume Threshold in the appointed class, including previously granted requests; (iii) market conditions and general trading activity in the appointed class; and (iv) any other factors as the Exchange deems appropriate in determining whether to approve a Market-Maker's request for an Electronic Volume Threshold reset. In this way, the proposed rule change allows those Market-Makers that predominantly provide liquidity on the trading floor and incidentally surpass (or have

⁶ The proposed rule change also updates the format of Rule 5.51(d)(1) by adopting the title "Electronic Volume Threshold" and Rule 5.51(d)(1)(A) to govern the provision under current Rule 5.51(d)(1), and adopts the title "Continuous Electronic Quotes" for Rule 5.52(d)(2).

incidentally surpassed) the electronic volume threshold, and, subsequently, are not able to satisfy the continuous electronic quoting requirement on a monthly basis going forward, an opportunity to submit a request to the Exchange that they again be subject only to open outcry quoting requirements and continue to focus on providing liquidity in open outcry in accordance with their business models.⁷ The Exchange notes that many of its rules currently allow it to make similar determinations regarding Market-Maker requirements and obligations. Rule 5.52(d)(2) similarly permits the Exchange to consider exceptions to a Market-Maker's continuous electronic quoting obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances. Rule 3.53(b) permits the Exchange to determine the appropriate number of Designated Primary Market-Makers ("DPMs") by considering factors such as trading experience, history of an applicant's adherence to Exchange Rules, and Rules 3.53(g)(3), 3.55(a)(2), and 5.50(h) permit the Exchange to authorize a Market-Maker to operate as an On-Floor DPM or an On-Floor Lead Market-Maker ("LMM"), or to appoint a class to a DPM, respectively, by considering factors such as performance, volume, capacity, operational factors, and experience. Like the factors listed in proposed Rule 5.52(d)(1), where the Exchange may consider any other factors as the Exchange deems appropriate, the factors

⁷ The Exchange notes that the proposed rule change does not preclude the application of Rule 13.15(g)(14)(A), which, as part of the Minor Rule Violation Plan ("MRVP"), allows the Exchange to impose a fine on Market-Makers for failure to meet their continuous quoting obligations, including on any Market-Maker that is able to "reset" upon Commission approval of this proposal. The Exchange additionally notes that the proposed rule change also does not preclude the Exchange from referring matters covered under the MRVP for formal disciplinary action, pursuant to Rule 13.15(f), whenever it determines that any violation is intentional, egregious or otherwise not minor in nature.

for Exchange consideration listed in Rules 5.52(d)(2), 3.53(b) and (g)(3), 3.55(a)(2) and 5.50(h) are also not limited and non-exhaustive.

Overall, the Exchange believes the propose rule change provides an opportunity for Market-Makers that are accustomed to providing liquidity on the trading floor, that incidentally may breach the Electronic Volume Threshold, to appeal to the Exchange to allow them, if good cause is shown, not to be subject to the continuous electronic quoting requirements and, instead, to continue to focus on providing liquid markets in open outcry in accordance with their business models. As such, the proposed rule change is designed to maintain fair and orderly markets, in that, if so determined appropriate by the Exchange, an Electronic Volume Threshold reset reduces the likelihood that Market-Makers not equipped to compete and stream quotes in the electronic markets at competitive prices, because their business models apply primarily to open outcry trading, are not compelled to attempt do so. The Exchange believes that automatically imposing continuous electronic quoting obligations on such Market-Makers without potential recourse may result in their inability to consistently stream electronic quotes on a monthly basis going forward and to comply with their other Market-Maker responsibilities, including engaging in a course of dealings that must be reasonably calculated to contribute to the maintenance of a fair and orderly market, refraining from making bids or offers that are inconsistent with such course of dealings, and updating quotations in response to changed market conditions. The proposed rule change instead allows the Exchange to consider whether those Market-Makers may continue to provide liquid markets on the Exchange's trading floor without having to quote electronically.

Finally, the proposed rule change also removes the rollout period for new classes in Rule 5.52(d)(1), which currently provides that for a period of 90 days commencing immediately after a class begins trading on the System, this subparagraph (d)(1) governs trading in that class. The rollout period was implemented in connection with the transition of certain classes to the Exchange's former Hybrid System.⁸ As of 2018, all classes listed for trading on the Exchange now trade on the same platform, the Exchange's System. Therefore, a rollout period is no longer necessary. All Market-Makers in new classes and likewise all new Market-Makers will be equally subject to the electronic volume threshold pursuant to Rule 5.52(d)(1) and (d)(2) upon starting out.

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

⁸ See Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (SR-CBOE-2002-05).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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.

In particular, the proposed rule change is consistent with the Act in that it removes impediments to and perfects the mechanism of a free and open market and in general protects investors by allowing Market-Makers accustomed to quoting on the trading floor and, therefore, not readily equipped to successfully stream electronic quotes on a continuous basis going forward, to appeal to the Exchange for a reset of the Electronic Volume Threshold if such Market-Makers incidentally breach the threshold. As described above, the Exchange understands that certain Market-Makers who primarily operate on the trading floor do not support systems with the level of sophistication and complexity that would allow them to compete in the electronic markets or satisfy the continuous electronic quoting obligations month-to-month pursuant to the Exchange Rules. The Exchange also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market, as it will permit it to remove a potentially undue burden on floor-based Market-Makers, which the Exchange believes may help preserve the presence of such Market-Makers that provide key liquidity to the Exchange's trading floor, which benefits all investors. Therefore, the Exchange believes the proposed rule change to allow a Market-Maker to request that the Exchange consider a reset of the Electronic Volume Threshold will assist in the maintenance of a fair and orderly market, and the protection of investors generally, by providing a potential path of recourse to Market Makers that predominantly provide liquidity to the Exchange's

¹¹ Id.

trading floor but may incidentally breach the Electronic Volume Threshold due, for example, to high volatility or unusual market conditions. Like other Exchange Rules governing Market-Maker requirements and obligations, the Exchange may consider a non-exhaustive list of factors in determining whether to grant a reset. The Exchange believes that an opportunity for a Market-Maker to appeal to the Exchange to potentially receive a reset of the Electronic Volume Threshold may reduce the likelihood that Market-Makers without sufficient equipment to stream competitive electronic quotes on an ongoing basis that may incidentally trigger the electronic volume threshold, especially in light of market volatility and unusual market conditions that continue to arise as a result of the ongoing COVID-19 pandemic, are not necessarily required to do so. This way, such Market-Makers may, if determined appropriate by the Exchange, continue to focus on providing liquidity on the trading floor in accordance with their operations and satisfy their obligation to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market and their other Market-Maker obligations. Therefore, the Exchange also believes the proposed rule change furthers the objectives of Section 6(c)(3) of the Act,¹² which authorizes the Exchange to, among other things, prescribe standards of financial responsibility or operational capability and standards of training, experience and competence for its Trading Permit Holders and person associated with Trading Permit Holders. The Exchange believes that the proposed rule change will generally protect investors as it is designed to support the overall purpose of the rule in permitting open outcry Market-Makers to continue to conduct their

¹² 15 U.S.C. 78f(c)(3).

business as intended — providing liquid markets on the Exchange’s trading floor without having to quote electronically.

Finally, the Exchange believes that the proposed rule change to remove the rollout provision for new classes will remove impediments to and perfect the mechanism of a free and open market and national market system because it removes a provision that is no longer necessary as a result of the full transition of all classes listed on the Exchange to trading on the Exchange’s System. All Market-Makers in new classes, and likewise all new Market-Makers, will continue to have the opportunity to acclimate to their market making obligations in newly appointed classes as they will be equally subject to the electronic volume threshold pursuant to Rule 5.52(d)(1) and (d)(2) upon starting out.

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 the proposed rule change will apply in the same manner to all Market-Makers, in that, all Market-Makers that incidentally reach (or have incidentally reached) the Electronic Volume Threshold will have the opportunity to request that Exchange consider a reset of the threshold. In addition to this, the proposed deletion of the new class rollout period would not impose any burden on competition as it merely removes a rollout period related to the Exchange’s prior transition of classes to its former Hybrid System that is no longer necessary. All new classes and all new Market-Makers will be equally subject to the electronic volume threshold pursuant to Rule 5.52(d)(1) and (d)(2) upon starting out.

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 the Electronic Volume Threshold applies only for the purposes of determining when a Market-Maker is subject to certain quoting obligations on the Exchange.

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

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

(<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2021-013 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-2021-013. 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-2021-013 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.¹³

J. Matthew DeLesDernier
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).