

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91689; File No. SR-CBOE-2021-025)

April 27, 2021

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend Rule 5.37 and Rule 5.38 in Connection with Allocations at the Conclusion of the Exchange’s Automated Improvement Mechanism (“AIM”) and Complex AIM (“C-AIM”) 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 April 14, 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 5.37 and Rule 5.38 in connection with allocations at the conclusion of the Exchange’s Automated Improvement Mechanism (“AIM”) and Complex AIM (“C-AIM”) auctions. 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 adopt a Priority Order Plus status in connection with the allocation of exclusively listed³ index option classes, as designated by the Exchange, at the conclusion of an AIM and C-AIM auction.

The AIM and C-AIM auctions are electronic auctions intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (“NBBO”) in AIM, or the synthetic best bid or offer (“SBBO”) on the Exchange in C-AIM). Upon submitting an Agency Order into an AIM or C-AIM 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,

³ An “exclusively listed option” is an option that trades exclusively on an exchange because the exchange has an exclusive license to list and trade the option or has the proprietary rights in the interest underlying the option. An exclusively listed option is different than a “singly listed option,” which is an option that is not an “exclusively listed option” but that is listed by one exchange and not by any other national securities exchange.

market participants may submit responses to trade against the Agency Order. At the conclusion of an auction, depending on the contra-side interest available, the Initiating Order may be allocated a certain percentage of the Agency Order. Rule 5.37(e) and Rule 5.38(e) currently govern the order in which an Agency Order submitted into an AIM and C-AIM auction, respectively, is allocated among available contra-side interest. At the time each AIM or C-AIM Auction concludes, the System allocates the Agency Order pursuant to Rule 5.37(e) or Rule 5.38(e), as applicable, and takes into account all auction responses and unrelated orders and quotes in place at the exact time of conclusion. Any execution prices at the conclusion of an AIM Auction must be at or better than both sides of the BBO existing at the conclusion of the AIM Auction and at or better than both sides of the Initial NBBO,⁴ and any execution prices at the conclusion of a C-AIM Auction must be at or between the SBBO and the best prices of any complex orders resting on⁵ each side of the Complex Order Book (“COB”) at the conclusion of the C-AIM Auction.

Currently, the Exchange may offer Priority Order status for allocations at the conclusion of an AIM Auction. If the Exchange designates a class as eligible for Priority Order status, then Priority Orders receive Agency Order executions after Priority Customers and the Initiating TPH (as applicable) have received their Agency Order allocations.⁶ Rule 5.37(e)(4) provides that if the Exchange designates a class as eligible for Priority Order status, Users with displayed resting

⁴ The term “Initial NBBO” means the national best bid or national best offer at the time an Auction is initiated. See Rule 5.37.

⁵ The proposed rule change removes an extraneous “the” from Rule 5.38(e).

⁶ Priority Orders receive priority pursuant to the order of allocation as set forth in Rule 5.37(e)(1) (if the Auction results in no price improvement), Rule 5.37(e)(2) (if the Auction results in price improvement for the Agency Order and the Initiating TPH selected a single-price submission) or Rule 5.37(e)(3) (if the Auction results in price improvement for the Agency Order and the Initiating TPH selected auto-match).

quotes and orders that were at a price equal to the Initial NBBO on the opposite side of the market from the Agency Order have priority up to their size for their contra-side interest (“Priority Orders”)⁷ in the Initial NBBO at each price level at or better than the Initial NBBO (after Priority Customers and the Initiating TPH have received allocations, as set forth in subparagraphs (e)(1) through (3)). Priority Order status is only valid for the duration of the particular AIM Auction.⁸

The Exchange now proposes to adopt a new allocation incentive for Priority Orders in exclusively listed index options classes at the conclusion of AIM, as well as C-AIM, auctions. First, the proposed rule change amends Rule 5.34(e)(4) to permit the Exchange to designate any exclusively listed index option class as eligible for Priority Order Plus status at the conclusion of an AIM Auction. As stated, Rule 5.34(e)(4) currently governs Priority Order status and, as proposed, the manner in which Priority Order Plus status functions is substantively the same as Priority Order status, except that Priority Order Plus status will be available only for exclusively listed index option classes and Priority Orders eligible for Priority Order Plus status will receive higher priority than Priority Orders eligible for Priority Order status. Specifically, proposed Rule 5.37(e)(4) provides that the Exchange may designate any exclusively listed index option class as eligible for Priority Order Plus status and any class as eligible for Priority Order status. A class

⁷ The proposed rule also updates the language in Rule 5.37(e)(4) to clarify that a User that establishes Priority Order status (by having displayed resting quotes and orders priced equal to the Initial NBBO contra to the Agency Order) receives that Priority Order status for their contra-side interest (up to their size in the Initial NBBO) at each price level at which the Agency Order executes. This is how the Priority Order status functions today and the proposed clarification does not alter any current functionality. Instead, the proposed clarification merely makes the Rule more explicit and relocates the defined term “Priority Orders” to more appropriately describe the Priority Order status allocation process.

⁸ Priority Order status is currently activated for numerous classes in AIM.

designated as eligible for one status is not eligible for the other status. If the Exchange designates a class as eligible for Priority Order Plus or Priority Order status, Users with displayed resting quotes and orders that were at a price equal to the Initial NBBO on the opposite side of the market from the Agency Order have priority for their contra-interest (“Priority Orders”) up to their size in the Initial NBBO at each price level at or better than the Initial NBBO. Priority Order Plus and Priority Order allocations are received after Priority Customers have received allocations, and Priority Order allocations are also received after the Initiating TPH has received its entitlement allocation, as set forth in Rule 5.37(e)(1) through (3). Each status is only valid for the duration of the particular AIM Auction. As a result of the proposed status, the proposed rule change also adopts new Rule 5.37(e)(1)(B),⁹ which provides for the allocation of Priority Orders, if the Exchange has designated the class as eligible for Priority Order Plus status, immediately following Priority Customer allocations but prior to Initiating TPH allocations when an AIM Auction results in no price improvement. The proposed rule change also amends Rule 5.37(e)(2)(B) to include that Priority Orders may be allocated immediately following Priority Customer allocations, in the same order of allocation priority as they currently are, if the Exchange has designated a class as eligible for Priority Order Plus or Priority Order status.

Additionally, proposed Rule 5.37(e)(1)(B) provides that Priority Orders eligible for Priority Order Plus status are allocated in a pro-rata manner. Likewise, the proposed rule change updates Rules 5.37(e)(1)(C) and (D)¹⁰ and (e)(2)(B), (C) and (D) to reflect that Priority Orders, all other contra-side interest (including AIM responses and orders and quotes on the Book) and non-Priority Customer non-displayed Reserve Quantity pursuant to these Rules are allocated in a

⁹ The proposed rule change also updates the numbering of current Rule 5.37(e)(1)(B) through (e)(1)(E) to reflect the addition of new Rule 5.37(e)(1)(B).

¹⁰ Rule 5.37(e)(1)(D) and (E), as a result of the addition of new Rule 5.37(e)(1)(B). See id.

pro-rata manner. The proposed rule change also updates Rule 5.39(e)(2)(C), which provides for generally similar order of allocations at the conclusion of a Solicitation Auction Mechanism (“SAM” or “SAM Auction”), to likewise reflect that non- Priority Customer non-displayed Reserve Quantity is allocated in a pro-rata manner.¹¹ Currently, these Rules provide that Priority Orders and all other contra-side interest are allocated pursuant to the base allocation algorithm applicable to the class pursuant to Rule 5.32(b) (i.e., either in time priority or in a pro-rata manner)¹² and that non-Priority Customer non-displayed Reserve Quantity is allocated in time priority. The Exchange notes that pro-rata allocation for Priority Orders and all other contra-side interest at the conclusion of an AIM Auction is consistent with the manner in which the same orders currently receive allocations at the conclusion of an AIM auction on the Exchange’s affiliated options exchange, Cboe EDGX Exchange, Inc. (“EDGX Options”), pursuant to EDGX Options Rules 21.19(e)(1)(C) and (D) and (e)(2)(B) and (C).¹³ Pro-rata allocation is also consistent with the manner in which other options exchanges allocate agency orders at the

¹¹ The proposed rule change also corrects an inadvertent error in Rule 5.39(e)(2)(B), that currently references EDGX Option “Rule 21.8(c)” regarding pro-rata allocation of remaining contra-side interest. The proposed rule change corrects this incorrect reference to EDGX Option’s pro-rata rule to appropriately reference “a pro-rata manner.” The Exchange notes that Rule 5.39 was intended to be substantively identical to EDGX Options Rule 21.21 (EDGX Options SAM). See Securities and Exchange Act Release No. 87192 (October 1, 2019), 84 FR 53525 (October 7, 2019) (SR-CBOE-2019-063).

¹² Rule 5.32(b) provides that the Exchange may determine that a class has a base algorithm of price-time (i.e., price time priority) (where the System prioritizes resting orders at the same price in the order in which the System received them) or pro-rata (where the System allocates orders resting at the same price proportionally according to size).

¹³ Pursuant to EDGX Options Rules 21.19(e)(1)(C) and (D) and (e)(2)(B) and (C), Priority Orders or all other contra-side interest, as applicable, are allocated pursuant to Rule 21.8(c), which provides that all option classes on EDGX Options have a pro-rata base algorithm for orders resting at the same best price. The Exchange notes that EDGX Options intends to submit a rule filing to, among other things, update its corresponding AIM and SAM allocation provisions to harmonize pro-rata allocation of non-Priority Customer non-displayed Reserve Quantity with the proposed changes herein.

conclusion of comparable price improvement auctions¹⁴ and solicitation auctions on those exchanges.¹⁵

Second, the proposed rule change adopts new Rule 5.38(e)(4),¹⁶ which permits the Exchange to designate any exclusively listed index option class as eligible for Priority Complex Order Plus status, pursuant to which proposed Priority Complex Orders may receive Agency Order executions after Priority Customers at the conclusion of a C-AIM Auction. Specifically, proposed Rule 5.38(e)(4) provides that, if the Exchange designates a class as eligible for Priority Complex Order Plus status, Users with contra-side complex interest at the conclusion of the C-AIM Auction and displayed resting quotes and orders that were at a price equal to the BBO on the opposite side of the market from any of the components of the Agency Order at the time the C-AIM Auction commenced, have priority in their contra-side complex interest (“Priority Complex Orders”) up to their largest size in a BBO in a pro-rata manner (after Priority Customers have received allocations, as set forth in subparagraphs (e)(1) through (3) above). Priority Complex Order Plus status is only valid for the duration of the particular C-AIM Auction. As a result of the proposed status, the proposed change also adopts new Rules

¹⁴ See Nasdaq ISE Options 3, Section 13(d)(3), which governs allocations at the conclusion of ISE’s price improvement mechanism and allocates an agency order across non-Priority Customer interest “based upon the percentage of the total number of contracts available at the price that is represented by the size of such interest”; and MIAX Options Rule 515A(a)(2)(iii), which governs allocations at the conclusion of MIAX’s price improvement mechanism and allocates an agency order across Professional interest on a pro-rata basis.

¹⁵ See Nasdaq ISE Options 3, Section 11(d)(3), which governs the allocations at the conclusion of ISE’s solicitation mechanism and allocates an agency order across non-Priority Customer interest “based upon the percentage of the total number of contracts available at the best price that is represented by the size of the non-Priority Customer [interest]”.

¹⁶ The proposed rule change also updates the numbering of current Rule 5.38(e)(4) through (e)(6) to reflect the addition of new Rule 5.38(e)(4).

5.38(e)(1)(B) and 5.38(e)(2)(B),¹⁷ which provide for the allocation of Priority Complex Orders (in a pro-rata manner), if the Exchange has designated the class as eligible for Priority Complex Order Plus status, immediately following Priority Customer allocations and prior to any Initiating TPH allocations, pursuant to Rule 5.38(e)(1)(A) (if the C-AIM Auction results in no price improvement) and Rule 5.38(e)(2) (if the C-AIM Auction results in price improvement for the Agency Order and the Initiating TPH selected a single-price submission).

The proposed Priority Complex Order Plus status and Priority Complex Orders in C-AIM Auctions will function in substantively the same manner in which Priority Order status (and Priority Order Plus status, as proposed) and Priority Orders currently function in AIM Auctions, and differ only to the extent that certain requirements or functionality differs for complex orders and C-AIM. Like Priority Order (and Priority Order Plus) status, Priority Complex Order Plus status allows for Users' to be given, at the conclusion of an auction, priority in their contra-side interest at each price level up to their size that existed at the best price level available at the start of an auction. Reference to Users' orders and quotes on the BBO (as opposed to the Initial NBBO for Priority Orders in an AIM Auction) for Priority Complex Order status is consistent with the permissible pricing and Customer Priority requirements for all complex orders, which consider the BBO of each component of a complex strategy.¹⁸ Priority Complex Orders are also allocated in a pro-rata manner, which is consistent with the manner that all non-Customer contra-

¹⁷ The proposed rule change also updates the numbering of current Rule 5.38(e)(1)(B) through (e)(1)(D) and current Rule 5.38(e)(2)(B) to reflect the addition of new Rules 5.38(e)(1)(B) and (e)(2)(B).

¹⁸ See Rule 5.33(f)(2)(A). The Exchange notes that the prices at which complex orders may execute is based on prices set in the simple market and the proposed Priority Complex Order Plus status allows those market participants that set the simple market prices which create permissible complex pricing to have priority in the complex market and is, thus, equivalent to AIM Priority Order status, providing a benefit to those market participants who set the market.

side complex interest is currently allocated at the conclusion of a C-AIM Auction. Users contra-side complex interest (which includes complex orders on the COB and C-AIM responses)¹⁹ at the end of an auction will receive an allocation of the Agency Order up to their largest BBO size that existed at the time the C-AIM Auction commenced. For example, a complex Agency Order to sell 12 SPX JUN 2950 calls and buy 4 SPX MAY 2850 calls is submitted into C-AIM. At the time the C-AIM Auction commences a User has two orders at the best bid for the SPX JUN 2950 calls, an order for two contracts and an order for five contracts (for a total of seven contracts on the BBO). The User also has one order for 10 contracts at the best offer for the SPX MAY 2850 calls. If the User has any contra-side complex interest at the time the C-AIM Auction concludes, then the User will receive up to 10 Agency Order contracts executed against the User's contra-side complex interest (after Agency Order executions are given to any Priority Customer complex orders on the COB) because the User's largest size on a BBO was 10-lot order at the best offer opposite the buy leg of the Agency Order.

By permitting the Exchange to designate any exclusively listed index option class as eligible for Priority Order Plus and Priority Complex Order Plus status (collectively, "Priority Plus" statuses), the proposed rule change provides further incentive for market participants that set the market in eligible classes, as such market participants would receive priority over all other non-Customer contra-side interest, including the Initiating Order, at the conclusion of an AIM or C-AIM auction. By allowing Priority Orders to receive allocation prior to the Initiating Order, the proposed Priority Plus statuses are designed to encourage competition and the provision of more aggressive prices in exclusively listed index options (as designated) displayed in the Exchange's Book. While the Exchange acknowledges that price improvement auctions have

¹⁹ See Rule 5.38(e).

provided the market with benefits (such as providing an efficient manner of access to liquidity for customers), the options industry overall has observed that quoted liquidity on the book has decreased, quotes have widened, and options market makers have reduced their participation in the market, which the Exchange believes has impacted market quality.²⁰ By providing market participants, particularly Market-Makers and other liquidity providers, the opportunity to receive priority over the Initiating TPH in exclusively listed index classes if they post more aggressive markets, the Exchange believes the proposed rule change creates an AIM incentive allocation feature that may enhance displayed liquidity, provide for tighter markets, and ultimately provide better execution prices for all market participants in classes available exclusively for trading on the Exchange's marketplace.

The Exchange likewise believes that updating the allocation of Priority Orders and other contra-side interest (including non-Priority Customer non-displayed Reserve Quantity) to be pro-rata for all AIM- or SAM-eligible classes (as applicable), as opposed to price-time, creates more appropriate incentives in connection with the Exchange's auctions, which are intended to encourage market participants to produce competitive bids and offers within the entirety of an auction, and thus ultimately increases price improvement opportunities in the auctions.

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

²⁰ See Letter to Brett Redfearn, Director, Division of Trading & Markets, from Cboe Global Markets, Inc. the Listed Options Trading Committee of the Securities Industry and Financial Markets Association ("SIFMA"), and the Listed Options Committee of the Security Traders Association ("STA"), dated June 4, 2018, available at http://cdn.batstrading.com/resources/comment_letters/Cboe-Joint-Letter-with-SIFMA-and-The-STA-on-Options-Market-Structure.pdf.

Exchange and, in particular, the requirements of Section 6(b) of the Act.²¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²² 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)²³ 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 that by allowing the Exchange to permit Priority Orders and Priority Complex Orders, as proposed, to receive allocation of an Agency Order prior to any other non-Customer contra-side interest (including the Initiating Order), the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, protect investors. For classes in which Priority Plus status is enabled, interest of Users with orders and quotes displayed at the best bid or offer in the book will be prioritized higher at the conclusion of AIM and C-AIM auctions, namely, ahead of the Initiating Order, and thus possibly be allocated more contracts from an Agency Order than they otherwise would be. As such, the proposal is designed to create an AIM allocation incentive that encourages Market-Makers and other liquidity providers to quote more aggressively so that

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ Id.

they have the opportunity for higher priority in the event an auction commences. As described above, price improvement auctions may have diminished the incentive for displayed liquidity provider participation in the options markets. The Exchange believes the proposed allocation status may incentivize participation on the Exchange at more aggressive and competitive prices by providing an opportunity for liquidity providers to receive priority ahead of an Initiating TPH if they have such quotes in the Book when an auction commences. The Exchange believes that this may increase competitive and meaningful quotes on the Exchange's displayed markets, which may enhance liquidity provide for tighter markets and ultimately result in better execution prices for customer orders (both submitted into auctions or to the Book), to the benefit of all investors.

The proposed Priority Plus statuses will function in substantively the same manner as the currently Priority Order status available for AIM Auction allocations, allowing for Users to receive priority in their contra-side interest at each price level up to their size that existed at the best price level available at the start of an auction,²⁴ but will just allow Users' Priority Orders to have a higher priority at the conclusion of an auction and will be available in any exclusively listed index option classes so designated by the Exchange.²⁵ Complex Order Plus status differs only to the extent that certain requirements or functionality differs for complex orders and C-AIM, in particular, reference to the BBO pricing and pro-rata allocation. The proposed Priority Plus statuses are consistent with the allocation rules and will continue to yield to Priority Customer allocations. The proposed rule change provides an additional benefit at the conclusion

²⁴ See also supra note 7.

²⁵ The Exchange notes that, pursuant to proposed Rule 5.37(e)(4), a class designated as eligible for one status (Priority Order or Priority Order Plus) is not eligible for the other status.

of AIM and C-AIM auctions to those market participants that set the market prices upon which auction prices must ultimately be based.²⁶ The Exchange believes that further prioritizing the orders and quotes of Users that set the market will further incentivize liquidity providing market participants to increase their displayed liquidity at the best prices in eligible exclusively listed index option classes. An increase in displayed liquidity would encourage more participation overall on the Exchange, in turn contributing to increased levels of overall market quality to the benefit of all investors.

In addition to this, the Exchange believes that updating the allocation of Priority Orders and other contra-side interest (including non-Priority Customer non-displayed Reserve Quantity) to be pro-rata for all AIM- or SAM-eligible classes (as applicable) serves to remove impediments to and perfect the mechanism of a free and open market and national market system because the proposed change is also designed to encourage increased participation at the best prices, resulting in enhanced liquidity, competition, and ultimately more price improvement opportunities, thereby benefitting investors. As stated above, the Exchange believes that providing allocations based on price and size, as opposed to price-time, creates more appropriate incentives in connection with the Exchange's auctions, which are designed to encourage price improvement. The Exchange believes allocating interest to market participants with the best-priced interest during the entirety of the auction rather than allocating interest to the fastest responding market participants more appropriately encourages competitive pricing in an auction environment. Indeed, the Commission has previously asserted that it believes "that allocations based on price/size priority are consistent with the Act" and that it does not believe that a lack of time

²⁶ See also supra note 18.

priority would discourage price competition in a price improvement auction.²⁷ The proposed change also benefits investors by further harmonizing the auction rules across the Exchange and its affiliated options exchange, EDGX Options, which facilitates increased understanding of auction functionality for market participants and mitigates any potential confusion by removing discrepancies, where possible, between the two sets of rules governing auctions.²⁸ Additionally, pro-rata allocation is also consistent with the manner in which other options exchanges allocate agency orders at the conclusion of their comparable price improvement auctions²⁹ and solicitation auctions.³⁰

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 on the purposes of the Act as the proposed Priority Plus statuses will be equally available and apply in the same manner to all orders and quotes resting in the Book or COB, as applicable, in an exclusively listed index option class the Exchange has designated as eligible for the status. 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

²⁷ See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR-ISE-2003-06) (Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 Thereto by the International Securities Exchange, Inc. To Establish Rules Implementing a Price Improvement Mechanism).

²⁸ See also supra note 13.

²⁹ See supra note 14.

³⁰ See supra note 15.

Exchange-specific auction mechanisms in index option classes listed exclusively on the Exchange. The Exchange also notes that other options exchanges offer similar price improvement auctions³¹ that are available to market participants, and other options exchanges may, in their discretion, adopt similar priority order statuses in connection with allocations at the conclusion of their auctions. Additionally, the Exchange believes it is appropriate to limit Priority Order Plus status to exclusively listed index option classes because they only trade on the Exchange (or an affiliated Cboe options exchange). The proposal is designed to incentivize competitive quoting in the Exchange's displayed marketplace in connection with its auctions. Other options exchanges may propose a similar allocation incentive for any classes that trade on those exchanges.

Additionally, the proposed pro-rata allocations for Priority Orders and other contra-side interest (including non-Priority Customer non-displayed Reserve Quantity) will apply equally to all such orders at the conclusion of an AIM or SAM Auction (as applicable). The Exchange notes pro-rata allocation is currently applied to all Priority Orders and other contra-side interest at the conclusion of an AIM auction on EDGX Options³² and at the conclusion of price improvement and solicitation auctions on other options exchanges.³³

³¹ See e.g., supra note 14; BOX Options' Price Improvement Period ("PIP") available at <https://boxoptions.com/about/price-improvement>; and Complex Order Price Improvement Period ("COPIP") available at <https://boxoptions.com/about/complexorder-description/>; and MIAX Options' Price Improvement Mechanism ("PRIME") and Complex Price Improvement Mechanism ("cPRIME") available at https://www.miaxoptions.com/sites/default/files/knowledge-center/2017-07/MIAX_PRIME_07212017.pdf.

³² See supra note 13. The Exchange notes that EDGX Options also intends to submit a rule filing to, among other things, update the allocation of non-Priority Customer non-displayed Reserve Quantity to pro-rata in order to more closely align its AIM and SAM rules with Cboe Options.

³³ See supra notes 14 and 15.

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-2021-025 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-2021-025. 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, DC 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-2021-025, 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.³⁴

J. Matthew DeLesDernier
Assistant Secretary

³⁴ 17 CFR 200.30-3(a)(12).