

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, September 18, 2019, at 2:00 p.m., to hear oral argument in an appeal by Alexandre S. Clug, and a cross-appeal by the Division of Enforcement, from an initial decision of an administrative law judge.

**PLACE:** Auditorium (L-002) at Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:** On February 8, 2016, the law judge found that (i) Clug and Aurum Mining, LLC violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder by making material misrepresentations and omissions to investors; (ii) PanAm Terra, Inc. violated Securities Act Section 17(a)(2) by making material misrepresentations and omissions to investors; (iii) Clug and The Corsair Group violated Exchange Act Section 15(a)(1) by acting as unregistered brokers; and (iv) Clug aided, abetted, and caused a violation by Michael W. Crow of Exchange Act Section 15(b)(6)(B). The law judge also found that Crow was not a de facto executive officer of PanAm, and therefore that PanAm was not primarily liable or Clug secondarily liable for violating Securities Act Section 17(a), Exchange Act Sections 10(b) and 13(a), and Exchange Act Rules 10b-5, 12b-20, 13a-1, and 13a-13, and that Clug did not violate Exchange Act Rule 13a-14(a) by failing to disclose Crow's role at PanAm in its periodic reports.

The law judge ordered that Clug cease-and-desist from further violations, pay disgorgement plus prejudgment interest, and be barred from the securities industry and from participating in penny stock offerings. The law judge did not sanction Aurum, PanAm, or Corsair.

Clug appealed the law judge's findings of fact and conclusions of law as to his violations and sanctions. The Division cross-appealed the findings related to Crow's role at PanAm and the sanctions for Clug, Aurum, PanAm, and Corsair. The issues likely to be considered at oral argument include whether Clug, Aurum, PanAm, and

Corsair committed the above violations and what, if any, sanctions are appropriate.

**CONTACT PERSON FOR MORE INFORMATION:** For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: September 11, 2019.

**Vanessa A. Countryman,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86916; File No. SR-CBOE-2019-051]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules Regarding How Complex Orders Are Processed Through the Automated Improvement Mechanism and To Move Those Rules From the Currently Effective Rulebook to the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges

September 10, 2019.

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 August 28, 2019, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 the Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its Rules regarding how complex orders are processed through the Automated Improvement Mechanism ("C-AIM" or

"C-AIM Auction"), and move those Rules from the currently effective Rulebook ("current Rulebook") to the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) ("shell Rulebook"). 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.

#### 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

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) ("Cboe Global"), which is also the parent company of Cboe C2 Exchange, Inc. ("C2"), acquired Cboe EDGA Exchange, Inc. ("EDGA"), Cboe EDGX Exchange, Inc. ("EDGX" or "EDGX Options"), Cboe BZX Exchange, Inc. ("BZX" or "BZX Options"), and Cboe BYX Exchange, Inc. ("BYX" and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the "Cboe Affiliated Exchanges"). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. Cboe Options believes offering similar functionality to the

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

extent practicable will reduce potential confusion for market participants.

In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration. The Exchange proposes to add the provisions of its Rules regarding C-*AIM* Auctions, as proposed to be modified in this rule filing, to Rule 5.38 in the shell Rulebook.<sup>5</sup>

The proposed rule change moves the provisions regarding *AIM* Auctions for complex orders from current Interpretations and Policies .07 and .08(b)<sup>6</sup> to proposed Rule 5.38, and provides additional detail to the Rules, as well as makes certain additional changes. Current Interpretation and Policy .07 states complex orders may be executed through an *AIM* Auction at a net debit or net credit price provided the eligibility requirements in current Rule 6.74A(a) are satisfied and the Agency Order is eligible for an *AIM* Auction considering its complex order type, order origin code (*i.e.*, non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange), class, and marketability as determined by the Exchange. Order allocation is the same as in current Rule 6.74A(b)(3), provided that complex order priority rules applicable to bids and offers in the individual series legs of a complex order contained in current Rule 6.53C(d) or Interpretation and Policy .06, as applicable, will continue to apply. Current Rule 6.74A, Interpretation and Policy .08(b) states that complex orders may be eligible for *AIM* customer-to-customer immediate crosses in the same manner as simple orders, except the condition that requires the execution price of those crosses to not be through the NBBO will not apply, and instead the execution price may not be through the BBO.

The Exchange believes it will provide more clarity to the Rules to have a separate rule regarding how *AIM* Auctions apply to complex orders (“C-*AIM* Auctions”), and thus proposes to add Rule 5.38 to the shell Rulebook. As they are today, complex orders will continue to be processed and executed in a C-*AIM* Auction in a substantially similar manner as simple orders are

<sup>5</sup> Proposed Rule 5.38 is substantially the same as EDGX Options Rule 21.22, except as otherwise described below.

<sup>6</sup> The Exchange proposed to delete Rule 6.74A, Interpretation and Policy .07 from current Rulebook in SR-CBOE-2019-045 (filed August 27, 2019).

processed and executed in an *AIM* Auction pursuant to Rule 5.37 in the shell Rulebook,<sup>7</sup> and therefore proposed Rule 5.38 is substantially similar to Rule 5.37 in the shell Rulebook.<sup>8</sup>

The proposed rule change codifies in the proposed introductory paragraph<sup>9</sup> that the Initiating Order may consist of one or more solicited orders. This accommodates multiple contra-parties and increases the opportunities for customer orders to be submitted into a C-*AIM* Auction with the potential for price improvement, since the Initiating Order must stop the full size of the Agency Order. This has no impact on the execution of the Agency Order, which may already trade against multiple contra-parties depending on the final auction price, as set forth in proposed paragraph (e) (and current Rule 6.74A(b)(3) and Interpretation and Policy .07). This proposed change is consistent with the Exchange’s current interpretation of current Rule 6.74A, and the proposed rule change clarifies this in the Rule.<sup>10</sup>

The proposed rule change deletes the restriction that a solicited order cannot be for the account of any Market-Maker appointed in the class. Current Rule 6.74A, Interpretation and Policy .04, which applies to *AIM* Auctions of complex orders), imposes this restriction.<sup>11</sup> With respect to the simple markets, appointed Market Makers have a variety of obligations related to providing liquidity and making

<sup>7</sup> See current Rule 6.74A, Interpretation and Policy .07 (“complex orders may be executed through the [AIM] Auction at a net debit or net credit price” with certain exceptions”); see also Securities Exchange Act Release No. 57610 (April 3, 2008), 73 FR 19535 (April 10, 2008) (SR-CBOE-2008-14) (which approved current Rule 6.74A, Interpretation and Policy .07 and acknowledged that, except as set forth in that Interpretation and Policy, all other aspects of the *AIM* Auction would continue to apply unchanged).

<sup>8</sup> The Exchange recently proposed certain amendments to the simple *AIM* Auction, many of which the Exchange similar proposes to apply to C-*AIM* Auctions. See SR-CBOE-2019-048 (filed August 27, 2019). The Exchange notes it proposed to delete all of current Rule 6.74A in that rule filing, and thus the proposed rule change merely adds all provisions that are applicable to C-*AIM* Auctions (as proposed to be amended) to the shell Rulebook.

<sup>9</sup> The proposed rule change also adds to the proposed introductory paragraph that for purposes of proposed Rule 5.38, the term “SBBO” means the synthetic best bid or offer on the Exchange at the particular point in time applicable to the reference. This is merely an addition of terminology used throughout the Rule, but has no impact on functionality.

<sup>10</sup> See Cboe Options Regulatory Circular RG17-074 (May 19, 2017); see also EDGX Rule 21.19; and NASDAQ ISE, LLC (“ISE”) Rule 723(b); see also Rule 5.37, introductory paragraph in the shell Rulebook; and EDGX Options Rule 21.22, introductory paragraph.

<sup>11</sup> This restriction exists for simple *AIM* Auctions. See Rule 5.37, introductory paragraph in the shell Rulebook.

competitive markets in their appointed classes. Therefore, prohibiting Market-Makers from being solicited in a simple *AIM* Auction may encourage those Market-Makers to provide liquidity in that auction to provide liquidity through responses, as well as quotes on the Book that may have the opportunity to execute against the Agency Order. Because Market-Makers have no obligations to provide liquidity to complex markets (and there is no quoting functionality available in the complex order book (“COB”)), appointed Market-Makers are on equal footing with all other market participants with respect to C-*AIM* Auctions. Permitting Market-Makers to be solicited provides all market participants with the opportunity to provide liquidity to execute against Agency Orders in C-*AIM* Auctions in the same manner (both through solicitation, responses, and interest resting on the COB).<sup>12</sup> EDGX Options Rule 21.22 similar does not restrict appointed Market-Makers from being solicited to participate on the contra-side of C-*AIM* Auctions.

The proposed introductory paragraph for Rule 5.38 is the same as the corresponding paragraph for simple *AIM* (Rule 5.37 in the shell Rulebook), except [sic] introductory paragraph for simple *AIM* Auctions does not permit the Initiating Order to be comprised of orders for the account of an appointed Market-Maker, and it refers to NBBO rather than SBBO. There is no NBBO for complex orders, as complex orders may be executed without consideration of any prices for the complex strategy that might be available on other exchanges trading the same complex strategy.<sup>13</sup>

Proposed Rule 5.38(a) sets forth eligibility requirements for a C-*AIM* Auction. Proposed Rule 5.38(a)(5) states the Trading Permit Holder that electronically submits an order into an *AIM* Auction (the “Initiating TPH”) may not designate an Agency Order or Initiating Order as Post Only. A Post Only complex order is a complex order the System ranks and executes pursuant to Rule 5.33 in the shell Rulebook,<sup>14</sup>

<sup>12</sup> As further discussed below, the Exchange will no longer restrict Users that may submit responses to C-*AIM* Auctions.

<sup>13</sup> See current Rule 6.53C (which the Exchange intends to move to Rule 5.33 in the shell Rulebook). Additionally, executions of legs of complex orders are exceptions to the prohibition of trade-throughs. See Rule 6.81(b)(8) in the current Rulebook (Rule 6.57(b)(8) in the shell Rulebook).

<sup>14</sup> The Exchange intends to move the provisions regarding electronic processing of complex orders from Rule 6.53C of the current Rulebook to Rule 5.33 in the shell Rulebook. The Exchange does not currently offer Post Only functionality, but will following the technology migration. See Rule 5.6(c)

subjects to the Price Adjust process pursuant to Rule 5.32 in the shell Rulebook, or cancels or rejects (including if it is not subject to the Price Adjust process and locks or crosses a Protected Quotation of another exchange), as applicable (in accordance with User instructions), except the order or quote may not remove liquidity from the Book or route away to another Exchange. The Exchange does not currently offer Post Only order functionality, but will as of the technology migration.<sup>15</sup> The Exchange believes it is appropriate to not permit the Agency or Initiating Order to be designated as Post Only, as the purpose of a Post Only order is to not execute upon entry and instead rest in the COB, while the purpose of a C-AIM Auction is to receive an execution following the Auction but prior to entering the COB. Proposed Rule 5.38(a)(6) states the Initiating TPH may only submit an Agency Order to a C-AIM Auction after the COB opens. This is consistent with current functionality, as executions cannot occur prior to the opening of trading. The proposed rule change clarifies this in the Rule.

The proposed rule change moves the various other C-AIM Auction eligibility requirements to proposed paragraph (a) and makes nonsubstantive changes:

- The requirement that an Agency Order be in a class of options the Exchange designates as eligible for C-AIM Auctions moves from current Interpretation and Policy .07 to proposed subparagraph (a)(1).<sup>16</sup>

in the shell Rulebook (which describes Post Only functionality for simple orders). The Exchange intends to adopt a similar definition of Post Only for complex orders, which will be virtually identical to the definition of Post Only complex orders in the rules of Cboe Affiliated Exchanges. See C2 Rule 6.13(b)(5) and EDGX Options Rule 21.20(b) (which define a Post Only complex order as a complex order the System ranks and executes pursuant to C2 Rule 6.1e [sic] or EDGX Options Rule 21.20, respectively, or cancels or rejects, as applicable (in accordance with the User's instructions), except the order may not remove liquidity from the COB or the Simple Book. The System cancels or rejects a Post Only market complex order unless it is subject to each exchange's drill-through protection.

<sup>15</sup> See Cboe Options Rule 5.6(c) in the shell Rulebook; see also Securities Exchange Act Release No. 86173 (June 20, 2019), 84 FR 30267 (June 26, 2019) (SR-CBOE-2019-027) (which filing added the Post Only order instruction to the shell Rulebook).

<sup>16</sup> The proposed rule change deletes the provisions that the Agency Order be an order type, have a Capacity (currently referred to as origin code), or meet marketability criteria determined by the Exchange, as the current and proposed rule explicitly state any applicable eligibility parameters. Additionally, the Exchange will announce all determinations it may make with respect to a C-AIM Auction pursuant to Rule 1.5 in the shell Rulebook, and therefore current Interpretation and Policy .05 (and other provisions

- The requirement that the Initiating TPH mark an Agency Order for AIM processing moves from current subparagraph (b)(1)(A) to proposed subparagraph (a)(2).

- The provision that there is no minimum size for Agency Orders moves from current Interpretation and Policy .03 to proposed subparagraph (a)(3). Additionally, the requirement that the Initiating Order be for the same size as the Agency Order moves from current subparagraphs (a)(2) and (a)(3) to proposed subparagraph (a)(3).

- The provision regarding the minimum increment for the Agency Order and Initiating Order price moves from current subparagraph (a)(3) to proposed subparagraph (a)(4). The proposed rule change makes no changes to the permissible minimum increments for C-AIM Auctions and merely moves it to a new provision in the shell Rulebook.

The proposed rule change also explicitly states that all of the eligibility requirements in proposed paragraph (a) must be met for a C-AIM Auction to be initiated, and that the System rejects or cancels both an Agency Order and Initiating Order submitted to an AIM Auction that do not meet the conditions in proposed paragraph (a).

Proposed Rule 5.38(a) is the same as the corresponding paragraph for simple AIM (Rule 5.37(a)), except the proposed rule change does not provide that an Initiating TPH may not submit an Agency Order if the NBBO is crossed (unless the Agency Order is an AIM ISO or Sweep and AIM). As noted above, there is no NBBO for complex orders, and the legs of complex orders are not subject to the restriction on NBBO trade-throughs. Additionally, the proposed rule change references the opening of the complex order book ("COB") rather than the market open, as the opening of the COB is when complex orders may begin trading.

Proposed Rule 5.38(b) sets forth the requirements for the stop price of the Agency Order. It states the Initiating Order must stop the entire Agency Order at a price that satisfies the following:

- If the Agency Order is to buy (sell) and (a) the applicable side of the BBO on any component of the complex strategy represents a Priority Customer order on the Simple Book, the stop price must be at least one minimum increment better than the SBB (SBO); or (b) the applicable side of the BBO on each component of the complex strategy represents a non-Priority Customer

regarding how the Exchange will announce these determinations) is no longer necessary.

order or quote on the Simple Book, the stop price must be at or better than the SBB (SBO). This ensures the execution price of the Agency Order will improve the SBBO if there is a Priority Customer order in any of the legs on the Simple Book. The proposed rule change protects Priority Customers in any of the component legs of the Agency Order in the Simple Book. By permitting a Priority Customer Agency Order to trade at the SBBO if there is a resting non-Priority Customer order in the Book, the proposed rule change also protects Priority Customer orders submitted into a C-AIM Auction. The Exchange believes the proposed rule change is consistent with general customer priority principles.<sup>17</sup>

- If the Agency Order is to buy (sell) and a buy (sell) complex order rests on the COB, the stop price must be at least one minimum increment better than the bid (offer) of the resting complex order, unless the Agency Order is a Priority Customer order and the resting order is a non-Priority Customer order, in which case the stop price must be at or better than the bid (offer) of the resting complex order. This ensures the execution price of the Agency Order will improve the price of any resting Priority Customer complex orders on the COB, and that the execution price of a Priority Customer Agency Order will not be inferior to the price of any resting non-Priority Customer complex orders on the COB.<sup>18</sup> Current Rule 6.74A(b)(3)(I) states if the final auction price locks a Priority Customer order in the Book (which would be the COB for purposes of complex orders) on the same side of the market as the Agency Order, then, unless there is sufficient size in the Auction responses to execute both the Agency Order and the booked Priority Customer order (in which case they will both execute at the final auction price), the Agency Order will execute against the auction responses at one minimum increment worse than the final auction price against the auction participants that submitted the final auction price and any balance will trade against the priority customer order in

<sup>17</sup> General principles of customer priority ensure the execution price of complex orders will not be executed at prices inferior to the SBBO or at a price equal to the SBBO when there is a Priority Customer at the BBO for any component.

<sup>18</sup> This corresponds to the same-side simple order check for AIM, which requires the Agency Order to improve the price of a resting Priority Customer order on the Simple Book, or a non-Priority Customer order or quote on the Simple Book unless the Agency Order is for a Priority Customer and the resting order is not a Priority Customer, in which case the stop price must be at or better than the Exchange best bid (offer). See Rule 5.37(b)(2) in the shell Rulebook.

the book at the order's limit price. The proposed rule change protects Priority Customers on the same side of the COB as the current rule does, except it does so by applying a check at the initiation of a C- AIM Auction rather than at the conclusion of a C- AIM Auction. By permitting a Priority Customer Agency Order to trade at the same price as a resting non-Priority Customer order, the proposed rule change also protects Priority Customer orders submitted into a C- AIM Auction. Additionally, application of this check at the initiation of a C- AIM Auction may result in the Agency Order executing at a better price, since the stop price must improve any same-side complex orders (with the exception of a Priority Customer Agency Order and a resting non-Priority Customer order described above), as under the current Rule, the Agency Order may execute at one minimum increment worse. The proposed rule change is consistent with general customer priority principles.

- If the Agency Order is to buy (sell) and (a) the BBO of any component of the complex strategy represents a Priority Customer order on the Simple Book, the stop price must be at least one minimum increment better than the SBO (SBB), or (b) the BBO of each component of the complex strategy represents a non-Priority Customer order on the Simple Book, the stop price must be at or better than the SBO (SBB). This ensures the execution price of the Agency Order will improve the price of the opposite side of the SBBO if there is a Priority Customer order on any leg, and not be through the opposite side of the SBBO. While the stop price may cross the opposite side best-priced complex order resting on the opposite side of the COB, as noted below, any complex interest at a better price than the stop price will trade ahead of the Initiating Order. Pursuant to proposed paragraph (e), any contra-side interest available at better prices than the stop price at the conclusion of a C- AIM Auction will execute against the Agency Order ahead of the Initiating Order. Therefore, the Agency Order will execute at the best prices available at the conclusion of the C- AIM Auction, even if the stop price was inferior to those prices. Simple AIM Auctions may similarly start at prices inferior to the NBBO for the series in certain instances.<sup>19</sup>

<sup>19</sup> Simple AIM has no price checks for orders on the opposite side of the Agency Order. See Rule 5.37(b) in the shell Rulebook. The proposed rule change adopts price checks for simple orders that constitute the SBBO on the opposite side of the Agency Order to ensure that the Agency Order does not execute at a price through the opposite side

- The Initiating TPH must specify (a) a single price at which it seeks to execute the Agency Order against the Initiating Order (a "single-price submission"), including whether it elects to have last priority in allocation (as described below), or (b) an initial stop price and instruction to automatically match the price and size of all C- AIM responses and other trading interest ("auto-match") up to a designated limit price or at all prices that improve the stop price. The proposed rule change moves this provision from current subparagraph (b)(1)(A) to proposed subparagraph (b)(3). It is also the same as the corresponding simple AIM provision.<sup>20</sup> The proposed rule change also explicitly states that all of the conditions in proposed paragraph (b) must be met for a C- AIM Auction to be initiated, and that the System rejects or cancels both an Agency Order and Initiating Order submitted to a C- AIM Auction that do not meet the conditions in proposed paragraph (b).

Proposed paragraph (c) describes the C- AIM Auction process. Currently, only one C- AIM Auction may be ongoing at any given time in a series, and C- AIM Auctions in the same series may not queue or overlap in any manner.<sup>21</sup> The Exchange proposes to permit concurrent C- AIM Auctions in the same complex strategies. Pursuant to proposed Rule 5.38(c)(1), with respect to Agency Orders for which the smallest leg is less than 50 standard option contracts (or 500 mini-option contracts), only one C- AIM Auction may be ongoing at any given time in a complex strategy, and C- AIM Auctions in the same complex strategy may not queue or overlap in any manner. Therefore, the proposed rule change has no impact on these smaller Agency Orders. One or more C- AIM Auctions in the same complex strategy for Agency Orders for which the smallest leg is 50 standard option contracts (or 500 mini-option contracts) or more may occur at the same time. C- AIM Auctions in different complex strategies may be ongoing at any given time, even if the complex strategies have

SBBO to protect orders (including Priority Customer orders) resting in the Simple Book. While there is no complex AIM sweep or complex sweep and AIM order for C- AIM, because complex orders do not route (and there is no applicable NBBO), permitting the stop price to cross the opposite side of the COB is consistent with those order types in simple AIM, which permit the stop price to be inferior to the Initial NBBO. See Rule 5.37(b)(3) in the shell Rulebook. The execution at the conclusion of a C- AIM Auction will essentially "sweep" better-priced contra-side complex interest that is available on the Exchange.

<sup>20</sup> See Rule 5.37(b)(4) in the shell Rulebook.

<sup>21</sup> See current Rule 6.74A(b).

overlapping components. A C- AIM Auction may be ongoing at the same time as an AIM Auction in any component of the complex strategy.

To the extent there is more than one C- AIM Auction in a complex strategy underway at a time, the C- AIM Auctions conclude sequentially based on the exact time each C- AIM Auction commenced, unless terminated early pursuant to proposed Rule 5.38(d). In the event there are multiple C- AIM Auctions underway that are each terminated early pursuant to proposed paragraph (d), the System processes the C- AIM Auctions sequentially based on the exact time each C- AIM Auction commenced. If the System receives a simple order that causes an AIM and C- AIM (or multiple AIM and/or C- AIM) Auctions to conclude pursuant to proposed Rules 5.37(d) and 5.38(d), the System first processes AIM Auctions (in price-time priority) and then processes C- AIM Auctions (in price-time priority). At the time each C- AIM Auction concludes, the System allocates the Agency Order pursuant to proposed paragraph (e) and takes into account all C- AIM Auction responses and unrelated orders and quotes in place at the exact time of conclusion.<sup>22</sup>

The Exchange believes it is appropriate to permit concurrent C- AIM Auctions in the same complex strategy (for Agency Orders for which the smallest leg is for 50 or more contracts). Different complex strategies are essentially different products, as orders in those strategies cannot interact, just as orders in different series or classes cannot interact. Similarly, while it is possible for a complex order to leg into the Simple Book, a complex order may only execute against simple orders if there is interest in each component in the appropriate ratio for the complex strategy. A simple order in one component of a complex strategy cannot on its own interact with a complex order in that complex strategy. Therefore, the Exchange believes it is appropriate to permit concurrent AIM and C- AIM Auctions that share a component. As proposed, C- AIM Auctions will ensure that Agency Orders execute at prices that protect

<sup>22</sup> See proposed Rule 5.38(c)(1), which is the same as the corresponding proposed paragraph for simple AIM (see Rule 5.37(c)(1) in the shell Rulebook), except the proposed change adds how the System will handle ongoing auctions that include an overlapping component (whether that component is the subject of an ongoing simple AIM Auction or part of a complex strategy for which a different C- AIM Auction is ongoing) and adds that whether concurrent C- AIM Auctions (subject to the same minimum size restriction as simple orders) in the same complex strategy may occur is based on the size of the smallest leg of the Agency Order.

Priority Customer orders in the Simple Book and that are not inferior to the SBBO at the conclusion of the C–AIM Auction, even when there are concurrent simple and complex auctions occurring. The proposed rule change sets forth how any AIM auctions with overlapping components will conclude if terminated due to the same event.

The Exchange notes it is currently possible for auctions in a component leg and a complex strategy containing that component (such as a simple AIM Auction in the component and a complex order auction (“COA”) in the complex strategy that contains that component) to occur concurrently, and at the end of each auction, it is possible for interest resting in the Simple Book to trade against the complex order subject to the COA. While these auctions may be occurring at the same time, they will be processed in the order in which they are terminated (similar to how the System will process auctions as proposed above). In other words, suppose today there is an AIM Auction in a series and a COA in a complex strategy for which one of the components is the same series both occurring, which began and will terminate in that order, and each of which last 100 milliseconds. While it is possible for both auctions to terminate nearly simultaneously, the System will still process them in the order in which they terminate. When the AIM Auction terminates, the System will process it in accordance with current Rule 6.74A (Rule 5.37 in the shell Rulebook), and the auctioned order may trade against any resting interest (in addition to the contra-side order and responses submitted to that AIM Auction, which may only trade against the order auctioned in that AIM current Rule 6.74A (Rule 5.37 in the shell Rulebook)). The System will then process the COA Auction when it terminates, and the auctioned order may trade against any resting interest, including any simple interest that did not execute against the AIM order (in addition to the contra-side order and responses submitted to that COA Auction, which may only trade against the order auctioned in that COA), pursuant to current Rule 6.53C.<sup>23</sup>

The proposed rule change moves and makes nonsubstantive changes to other provisions regarding the C–AIM Auction process to proposed paragraph (c):

- The proposed rule change moves the provision regarding the C–AIM

<sup>23</sup> The Exchange will similarly permit concurrent simple AIM Auctions upon the technology migration. See Rule 5.37(c)(1) in the shell Rulebook.

Auction notification message (currently called a request for responses (“RFR”)) from current subparagraph (b)(1)(B) to proposed subparagraph (c)(2). The proposed provision specifies that the message will detail the side, size, Auction ID, and complex strategy of the Agency Order to all Users that elect to receive C–AIM Auction notification messages. This is consistent with the current RFR that is disseminated. The current rule states that the RFR states the side and size of the Agency Order; the proposed rule change adds details regarding other information that is included in the notification messages. The Exchange believes not certain information about the Agency Order (such as the stop price and Capacity) encourages market participants to submit responses with their best possible prices, which may result in more price improvement for the Agency Order. The proposed rule change also adds that C–AIM Auction notification messages are not included in OPRA, which is also consistent with current functionality.

- The proposed rule change moves the provision regarding the length of the C–AIM Auction period from current subparagraph (b)(1)(C) to proposed subparagraph (c)(3). The proposed rule change makes no changes to the current range of permitted lengths of C–AIM Auction periods.

- The proposed rule change moves the provision that prohibits an Initiating TPH from modifying or cancelling an Agency Order or Initiating Order after submission to a C–AIM Auction from current subparagraph (b)(1)(A) to proposed subparagraph (c)(4).

The proposed rule change also moves all provisions regarding C–AIM Auction responses into proposed subparagraph (c)(5), as well as makes certain changes described below, as well as nonsubstantive changes:

- The proposed rule change moves the provision regarding which market participants may respond to C–AIM Auctions from current subparagraphs (b)(1)(D) and (E) to proposed subparagraph (c)(5). Currently, only Market-Makers with an appointment in the applicable class and Trading Permit Holder (“TPHs”) representing orders as agent at the top of the Book may respond to C–AIM Auctions.<sup>24</sup> The

<sup>24</sup> See current Rule 6.74A(b)(1)(D) and (E) (pursuant to current Interpretation and Policy .07, these provisions apply to AIM Auctions of complex orders); and Rule 5.37(c)(5) in the shell Rulebook; see also *supra* note 7 and Choe Options Regulatory Circular RG17–145 (October 17, 2017) (which Regulatory Circular states that the restrictions on which market participants may respond to AIM Auctions applies to both auctions of simple orders and complex orders).

Exchange proposes to permit all Users (other than the Initiating TPH (the response cannot have the same EFID as the Initiating Order))<sup>25</sup> to respond to C–AIM Auctions. By permitting additional participants to submit responses to C–AIM Auctions, the Exchange believes this may provide the opportunity for additional liquidity in these auctions, which could lead to additional price improvement opportunities. EDGX Options similarly permits all Users to respond to C–AIM Auctions.<sup>26</sup>

- The proposed rule change moves provisions regarding what must be specified in the responses (including price, size, side, and Auction ID) from current subparagraphs (b)(1)(D) and (E) to proposed subparagraph (c)(5).

- The current rule specifies that responses must specify prices and sizes; the proposed rule change adds responses must also specify side and an Auction ID. The proposed rule change adds that a C–AIM response may only participate in the C–AIM Auction with the Auction ID specified in the response. This is consistent with current functionality.<sup>27</sup> The Exchange proposes to include this language given the above proposal that permits concurrent C–AIM Auctions in the same series for larger Agency Orders.

- The proposed rule change moves the provision regarding the permissible minimum increment for C–AIM responses from current subparagraph (b)(1)(G) to proposed subparagraph (c)(5)(A), but makes no substantive changes.

- Proposed subparagraph (c)(5)(B) states that C–AIM buy (sell) responses are capped at the following prices that exist at the conclusion of the C–AIM Auction: (i) the better of the SBO (SBB)

<sup>25</sup> As further discussed below, the Initiating Order may receive an entitlement of 40% or 50% of the Agency Order. The Exchange believes it is appropriate to not permit the Initiating TPH to also submit responses in order to try to trade against a larger percentage of the Agency Order. This is consistent with proposed allocation rules, pursuant to which the Initiating Order may only receive more than 40% or 50%, as applicable, of the Agency Order if there are remaining contracts after all other interest has executed. See proposed Rule 5.38(e)(1).

<sup>26</sup> See EDGX Options Rule 21.22(c)(5).

<sup>27</sup> Current subparagraph (b)(3)(K) permits an unexecuted balance of a response to an AIM Auction of a complex order after the Agency Order has been executed and the balance to trade against any unrelated order(s) that cause the AIM Auction of a complex order to conclude. The proposed rule change deletes that provision given the proposed rule change to permit concurrent auctions, as described above, and thus the requirement that responses may only trade with an Agency Order in the C–AIM Auction into which the C–AIM response was submitted. If a responder wishes to execute interest against any orders that caused a C–AIM Auction to conclude and that are resting in the Book, that responder may separately submit an order to the Exchange.

or the offer (bid) of a resting complex order at the top of the COB; or (ii) one minimum increment lower (higher) than the better of the SBO (SBB) or the offer (bid) of a resting complex order at the top of the COB if the BBO of any component of the complex strategy or the resting complex order, respectively, is a Priority Customer order. The System executes these C–AIM responses, if possible, at the most aggressive permissible price not outside the SBBO at the conclusion of the C–AIM Auction or price of the resting complex order. This will ensure the execution price is at or better than the SBBO or prices of resting complex orders at the end of the C–AIM Auction, which the stop price must be at or better than (and must be better than if represented by a Priority Customer order) as set forth in proposed Rule 5.38(e).<sup>28</sup> This is similar to current subparagraph (b)(1)(E), which does not permit responses to cross the opposite side of the Exchange’s disseminated quote that exists at the conclusion of the Auction.<sup>29</sup>

- Proposed subparagraph (c)(5)(C) states a User may submit multiple C–AIM responses at the same or multiple prices to a C–AIM Auction. This is consistent with current functionality. Current Rule 6.74A contains no restriction on how many responses a User may submit; the proposed rule change merely makes this explicit in the Rules. The proposed rule change also states for purposes of a C–AIM Auction, the System aggregates all of a User’s complex orders on the COB and C–AIM responses for the same EFID at the same price. This (combined with the proposed size cap) will prevent a User from submitting multiple orders or responses at the same price to obtain a larger pro-rata share of the Agency Order.<sup>30</sup>

- Proposed subparagraph (c)(5)(D) states the System caps the size of a C–AIM response, or the aggregate size of a User’s complex orders on the COB and C–AIM responses for the same EFID at

the same price, at the size of the Agency Order (*i.e.*, the System ignores size in excess of the size of the Agency Order when processing the C–AIM Auction). This is consistent with current subparagraph (b)(1)(H), except the proposed rule change caps the aggregate size of a User’s interest at the same price, rather than the size of an individual response. The Exchange believes this is reasonable to prevent a User from submitting an order, quote, or response with an extremely large size in order to obtain a larger pro-rata share of the Agency Order.<sup>31</sup>

- Proposed subparagraph (c)(5)(E) states C–AIM responses must be on the opposite side of the market as the Agency Order, and the System rejects an AIM response on the same side of the market as the Agency Order. This is consistent with current functionality, and the proposed rule change merely adds this detail to the rules. Additionally, the Exchange believes this is reasonable given that the purpose of a C–AIM response is to trade against the Agency Order in the C–AIM Auction into which the C–AIM response was submitted.<sup>32</sup>

- Proposed subparagraph (c)(5)(F) states C–AIM responses may be designated with the match trade prevention (“MTP”) modifier of MTP Cancel Newest, but no other MTP modifiers, and the System rejects a C–AIM response with any other MTP modifier.<sup>33</sup> An incoming order marked with MTP Cancel Newest will not execute against opposite side interest marked with any MTP modifier originating from the same Unique Identifier, and the incoming order (the C–AIM response in this case) will be cancelled back to the originating User. If an Agency Order and response have the same Unique Identifier and an MTP modifier, the System will cancel the response and permit the Agency Order to execute against other interest. This is consistent with the prohibition on the Agency Order being cancelled after it is submitted.<sup>34</sup>

- Proposed subparagraph (c)(5)(G) states C–AIM responses may not be designated as immediate-or-cancel (“IOC”) and the System rejects a C–AIM response designated as IOC.<sup>35</sup> This is consistent with the purpose of a C–AIM response, which is to potentially execute against an Agency Order at the conclusion of a C–AIM Auction (and thus not immediately upon entry, as required by the time-in-force of IOC).<sup>36</sup>

- The provision that states C–AIM responses are not visible to C–AIM Auction participants or disseminated to OPRA moves from current subparagraph (b)(1)(F) to proposed subparagraph (c)(5)(H).<sup>37</sup>

- The provision that states C–AIM responses may be cancelled moves from current subparagraph (b)(1)(I) to proposed subparagraph (c)(5)(I). The proposed rule change also clarifies that C–AIM responses may be modified (which is consistent with current functionality and merely clarified in the rules).<sup>38</sup>

Pursuant to proposed Rule 5.38(d), a C–AIM Auction concludes at the earliest to occur of the following times:

- The end of the C–AIM Auction period;
  - upon receipt by the System of an unrelated non-Priority Customer complex order on the same side as the Agency Order that would post to the COB at a price better than the stop price;
  - upon receipt by the System of an unrelated Priority Customer complex order on the same side as the Agency Order that would post to the COB at a price equal to or better than the stop price;
  - upon receipt by the System of an unrelated non-Priority Customer order or quote that would post to the Simple Book and cause the SBBO on the same side as the Agency Order to be better than the stop price;
  - upon receipt by the System of a Priority Customer order in any

<sup>28</sup> See Rule 5.6(d) in the shell Rulebook. Current C–AIM response functionality does not permit a User to apply this order instruction to C–AIM responses.

<sup>29</sup> This is similar to the corresponding provision for simple AIM Auctions, except that provision also prohibits Users from designated an AIM response as fill-or-kill (“FOK”), which time-in-force will not be available for complex orders, and thus the proposed rule change does not include it in the C–AIM Rule. See Rule 5.37(c)(5)(G) in the shell Rulebook.

<sup>30</sup> This is similar to the corresponding provision for simple AIM Auctions. See Rule 5.37(c)(5)(H) in the shell Rulebook.

<sup>31</sup> This is similar to the corresponding provision for simple AIM Auctions. See Rule 5.37(c)(5)(I) in the shell Rulebook. Proposed subparagraph (e)(6) states the System will cancel or reject any unexecuted C–AIM responses (or unexecuted portions) at the conclusion of the C–AIM Auction.

<sup>28</sup> The proposed rule change also does not specify that C–AIM responses may not be designated as FOK (as Rule 5.37 in the shell Rulebook does). The Exchange does intend to permit complex orders to be designated as FOK, and thus does not need to specify for complex responses that Time-in-Force will not be available.

<sup>29</sup> This is also consistent with a similar requirement for responses to a simple AIM Auction, except the proposed rule change references the SBBO and orders on the COB rather than the BBO and prices of orders on the Simple Book. See Rule 5.37(c)(5)(B) in the shell Rulebook.

<sup>30</sup> This is similar to the corresponding provision for simple AIM Auctions, except that provision also aggregates quotes (there is not quoting functionality available for complex orders), so it is not included in the C–AIM provision. See Rule 5.37(c)(5)(C) in the shell Rulebook.

<sup>31</sup> This is similar to the corresponding provision for simple AIM Auctions, except that provision also aggregates quotes (there is not quoting functionality available for complex orders), so it is not included in the C–AIM provision. See Rule 5.37(c)(5)(D) in the shell Rulebook.

<sup>32</sup> This is similar to the corresponding provision for simple AIM Auctions. See Rule 5.37(c)(5)(E) in the shell Rulebook.

<sup>33</sup> See Rule 5.6(c) in the shell Rulebook for definitions of the various types of MTP Modifiers that will be available on the Exchange as of the System migration. The Exchange does not currently have any equivalent to an MTP modifier that may be applied to orders or auction responses.

<sup>34</sup> This is similar to the corresponding provision for simple AIM Auctions. See Rule 5.37(c)(5)(F) in the shell Rulebook.

component of the complex strategy that would post to the Simple Book and cause the SBBO on the same side as the Agency Order to be equal to or better than the stop price;

- upon receipt by the System of a simple non-Priority Customer order that would cause the SBBO on the opposite side of the Agency Order to be better than the stop price, or a Priority Customer order that would cause the SBBO on the opposite side of the Agency Order to be equal to or better than the stop price;

- upon receipt by the System of an order that would cause the SBBO to be a price not permissible under the Limit Up-Limit Down Plan or Regulation SHO, provided, however, that in such instance, the C-*AIM* Auction concludes without execution;

- the market close; and
- any time the Exchange halts trading in the complex strategy or any component of the complex strategy, provided, however, that in such instance, the C-*AIM* Auction concludes without execution.

The proposed events that would cause a C-*AIM* Auction to conclude early are similar to those that would cause a simple *AIM* Auction to conclude early (as is currently the case),<sup>39</sup> except they are based on the entry of simple or complex orders that impact the SBBO or the best available prices on the same side of the COB rather than the BBO.

The Exchange proposes to conclude the C-*AIM* Auction in response to the incoming orders described above, as they would cause the SBBO or the best-priced complex order on the same side of the market as the Agency Order to be better priced than the stop price, or cause the stop price to be the same price as the SBBO with a Priority Customer order on the BBO for a component or a Priority Customer complex order on the COB. Similarly, the incoming orders described above would cause the opposite side SBBO to be at or better than the stop price. These events would create circumstances under which a C-*AIM* Auction would not have been initiated, and therefore, the Exchange believes it is appropriate to conclude a C-*AIM* Auction when they exist.

Additionally, the proposed rule change would conclude a C-*AIM* Auction in response to an incoming order that would cause the SBBO to be at a price not permissible under the Limit Up-Limit Down Plan or Regulation SHO,<sup>40</sup> and would conclude the C-*AIM* Auction without execution.

This will ensure that the stock leg of a stock-option order submitted into a C-*AIM* Auction does not execute at a price not permissible under that plan or regulation. This is consistent with current C-*AIM* functionality to ensure that stock legs do not trade at prices not permissible under the Limit Up-Limit Down Plan or Regulation SHO, and the proposed rule change codifies this in the Rules.

Proposed Rule 5.38(d)(2) states if the System receives an unrelated market or marketable limit complex order (against the SBBO or the best price of a complex order resting in the COB), including a Post Only complex order, on the opposite side of the market during a C-*AIM* Auction, the C-*AIM* Auction does not end early, and the System executes the order against interest outside the C-*AIM* Auction or posts the complex order to the COB. If contracts remain from the unrelated complex order at the time the C-*AIM* Auction ends, they may be allocated for execution against the Agency Order pursuant to proposed Rule 5.38(e). Because these orders may have the opportunity to trade against the Agency Order following the conclusion of the C-*AIM* Auction, which execution must still be at or better than the SBBO and the best-priced complex orders on the COB, the Exchange does not believe it is necessary to cause a C-*AIM* Auction to conclude early in the event the Exchange receives such orders. This will provide more time for potential price improvement, and the unrelated complex order will have the opportunity to trade against the Agency Order in the same manner as all other contra-side interest.<sup>41</sup>

At the conclusion of a C-*AIM* Auction, the System executes the Agency Order against the Initiating Order or contra-side complex interest in the same manner as it does today (and similar to the manner in which it executes a simple Agency Order).<sup>42</sup> The Agency Order will execute at the best price(s), to the price at which the balance of the Agency Order can be fully executed (the “final auction price”). Any execution prices must be at or between the SBBO and the best prices of any complex orders resting on each side of the COB at the conclusion of the C-*AIM* Auction. This is consistent with executions following a C-*AIM* Auction today, which must be consistent with

complex order priority rules.<sup>43</sup> The proposed allocation of complex interest to an Agency Order at the conclusion of a C-*AIM* Auction is similar to the allocation of simple interest to an Agency Order at the conclusion of a simple *AIM* Auction, except the Exchange does not propose to make Priority Orders available in C-*AIM*, and does not offer complex reserve orders so there would be no displayed Reserve Quantity available on the COB for execution.<sup>44</sup>

Unlike today, the Agency Order will only execute against the Initiating Order, C-*AIM* responses, and complex orders resting in the COB, and will not leg into the Simple Book, at the conclusion of a C-*AIM* Auction. As proposed, the execution prices for an Agency Order will always be better than the SBBO existing at the conclusion of the C-*AIM* Auction if it includes a Priority Customer order on any leg, and thus is consistent with general customer priority principles with respect to complex orders, pursuant to which complex orders may only trade against complex interest at prices that improve the BBO of any component that is represented by a Priority Customer order.<sup>45</sup>

The Simple Book and the COB are separate, and orders on each do not interact unless a complex order legs into the Simple Book. As a result, the System is not able to calculate the aggregate size of complex auction responses and complex orders on the COB and the size of simple orders in the legs that comprise the complex strategy at each potential execution price (as executions may occur at multiple prices) prior to execution of an order following an auction for complex orders. The current priority following a C-*AIM* Auction provides that the System will first execute the complex order against all interest in the Simple Book, and then against interest in the COB.<sup>46</sup> If the Exchange were to permit legging into the Simple Book following a C-*AIM* Auction in accordance with the complex order allocation that will be in place following the technology migration,<sup>47</sup> the System would first look

<sup>39</sup> See current Rule 6.74A, Interpretation and Policy .08; see also current Rule 6.53C(d) and Interpretation and Policy .06.

<sup>40</sup> See Rule 5.37(e) in the shell Rulebook.

<sup>41</sup> See proposed Rule 5.38(e)(5).

<sup>42</sup> See current Rule 6.74A, Interpretation and Policy .08; see also current Rule 6.53C(d).

<sup>43</sup> As part of the Cboe Affiliated Exchanges' efforts to align certain system functionality, the Exchange intends to amend and move complex order rules from current Rule 6.53C in the current Rulebook to Rule 5.33 in the shell Rulebook, which rule would be substantively the same as EDGX Rule 21.20.

<sup>39</sup> See Rule 5.37(d) in the shell Rulebook.

<sup>40</sup> See current Rule 6.53C, Interpretation and Policy .06(f).

<sup>41</sup> This is similar to the corresponding provision for simple *AIM* Auctions. See Rule 5.37(d)(2) in the shell Rulebook.

<sup>42</sup> See proposed Rule 5.38(e).

to determine whether there are Priority Customer orders resting in the Simple Book at the final auction price (and in the applicable ratio). If there are, the System would execute the complex order against those simple orders. Following that execution, the System would then look back at C–AIM responses and complex orders resting in the COB to determine whether there is interest against which the order can execute. If there is, the System would execute the remaining portion of the complex order against that complex contra-side interest. Finally, if there is any size left, the System would look back at the Simple Book to determine whether any orders in the legs are able to trade against any remaining contracts in the complex order. If there is, the System would execute the remaining portion of the complex order again against orders in the Simple Book. Because of this process, prior to execution against any Priority Customer simple orders at a single price level, the System would not know the aggregate interest available on both the Simple Book and COB to execute against the auctioned order at that price level.

The amount of aggregate interest available to execute against the Agency Order is relevant in a C–AIM Auction with respect to the allocation of contracts against the Agency Order and other interest at each price level, and with respect to determining the final price level at which the Agency Order will execute. For example, when auto-match is selected, because the System will not be able to determine the aggregate size of contra-side interest (including simple and complex) at that price level, it would not be able to determine how many contracts of the Agency Order should execute against the Initiating Order (which should equal the aggregate size of that contra-side

interest). Additionally, because the System will not be able to determine the aggregate size of contra-side interest (including simple and complex) at the stop price, it would not be able to determine the applicable percentage of the Agency Order that should execute against the Initiating Order.

The Exchange notes there would be significant technical complexities associated with reprogramming priority within the System to permit Agency Orders to leg into the Simple Book following a C–AIM Auction and allocate the Agency Order in a manner consistent with standard priority principles and crossing auctions, while making the most crossing functionality available to TPHs. The proposed rule change will ensure the Agency Order executes in accordance with the C–AIM allocation principles (which are consistent with AIM allocation principles), which provide Priority Customers with priority over the Initiating Order (and other contra-side interest) but also provide for the Initiating Order to execute against a certain portion of the Agency Order, as well as provide Initiating TPHs with flexibility to submit single-price submissions or auto-match at multiple price levels. The Exchange believes providing this functionality will encourage TPHs to submit complex orders into C–AIM Auctions and provide customer orders with opportunities for price improvement. It will also ensure orders (including Priority Customer orders) on the Simple Book are protected in accordance with standard complex order priority principles, as an Agency Order will only be permitted to execute at prices that do not trade at the SBBO existing at the conclusion of the C–AIM Auction if it includes a Priority Customer order on any leg, and that do not trade through the SBBO existing at the conclusion of the C–AIM Auction.

As noted above, the stop price of the Agency Order must be better than the same and opposite side of the SBBO if there is a Priority Customer order at the BBO in any component of the complex strategy. Additionally, the stop price must be better than the price of any Priority Customer order resting at the top of the COB on the same side as the Agency Order. Further, a C–AIM Auction will conclude upon receipt of an unrelated Priority Customer order in any component of the complex strategy that would post to the Simple Book and cause the SBBO on either side of the Agency Order to be equal to or better than the stop price, or upon the receipt of an unrelated Priority Customer complex order on the same side as the

Agency Order that post to the COB with a price equal to or better than the stop price. Additionally, any execution prices at the conclusion of the C–AIM Auction will be subject to the standard complex order priority rules in Rule 5.33 in the shell Rulebook,<sup>48</sup> which ensures an Agency Order must execute at a price that improves the SBBO if there is a Priority Customer order at the BBO in any leg.<sup>49</sup> Therefore, the proposed rule change protects Priority Customer orders in the Simple Book even though Agency Orders may not leg into the Simple Book.

Proposed Rule 5.38(f) regarding Customer-to-Customer C–AIM Immediate crosses is consistent with current functionality, and merely adds detail regarding the current price restrictions applicable to these executions.<sup>50</sup>

Proposed Rule 5.38, Interpretations and Policies .01 through .03 are the same as current Rule 6.74A, Interpretations and Policies .01, .02, and .08, which currently apply to AIM Auctions for complex orders.<sup>51</sup>

## 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>52</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>53</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,

<sup>48</sup> See *id.*

<sup>49</sup> If there was a Priority Customer order resting at the BBO in any leg of a complex strategy in the Simple Book, and a complex order was submitted to the Exchange (outside of a C–AIM Auction) with a price one minimum increment better than the SBBO, that complex order would not be able to execute against interest in the leg markets (including the Priority Customer order).

<sup>50</sup> See current Rule 6.74A, Interpretation and Policy .08(b). The Exchange notes, pursuant to current Rule 6.74A, Interpretation and Policy .08(b), it has not designated any class in which complex orders are eligible for AIM customer-to-customer immediate crosses. Following the technology migration, the Exchange intends to make customer-to-customer immediate crosses for complex orders available in any class in which the Exchange designates as eligible for C–AIM Auctions pursuant to proposed Rule 5.38(a).

<sup>51</sup> These provisions are also virtually identical to the ones applicable to simple AIM Auctions. See Rule 5.37, Interpretations and Policies .01 through .03 in the shell Rulebook.

<sup>52</sup> 15 U.S.C. 78f(b).

<sup>53</sup> 15 U.S.C. 78f(b)(5).

Proposed Rule 5.38(e)(5) explicitly states that execution following a C–AIM Auction for a complex Agency Order will be subject to the complex order price restrictions and priority in Rule 5.33(f)(2). Pursuant to EDGX Rule 21.20(f)(2) (the Exchange intends to adopt an identical provision), the System will not execute a complex order at a net price (i) that would cause any component of the complex strategy to be executed at a price of zero; (ii) worse than the SBBO or equal to the SBBO when there is a Priority Customer Order at the SBBO, except AON complex orders may only execute at prices better than the SBBO; (iii) that would cause any component of the complex strategy to be executed at a price worse than the individual component prices on the Simple Book; (iv) worse than the price that would be available if the complex order Legged into the Simple Book; or (v) that would cause any component of the complex strategy to be executed at a price ahead of a Priority Customer Order on the Simple Book without improving the BBO of at least one component of the complex strategy. The proposed execution provisions for C–AIM Auctions are consistent with this priority.



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>54</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is generally intended to align certain system functionality currently offered by Cboe Options to the Exchange's System in order to provide a consistent technology offering for the Cboe Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on Cboe Affiliated Exchanges. This will provide Users with greater harmonization of price improvement auction mechanisms available among the Cboe Affiliated Exchanges.

The Exchange's C-AIM will function in a substantially similar manner following the technology migration as it does today. The proposed rule change clarifies in the Rules that the Initiating Order may be comprised of multiple contra-party orders will benefit investors. As noted above, this is consistent with current functionality, and the proposed rule change merely adds this detail to the rule, which additional transparency will benefit investors. Permitting the Initiating Order to be comprised of multiple contra-party orders may increase the opportunity for customers to have orders participate in a C-AIM auction. As a result, this may increase opportunities for price improvement, because this will increase the liquidity available for the Initiating Order, which is consistent with the purpose of C-AIM Auctions. The Exchange believes that this is beneficial to participants because allowing multiple contra-parties should foster competition for filling the Initiating Order and thereby result in potentially better prices, as opposed to only allowing one contra-party and, thereby requiring that contra-party to do a larger size order which could result in a worse price for the trade.

The proposed rule change to prohibit Initiating TPHs from designating an Agency Order or Initiating Order as Post Only is appropriate, as the purpose of a Post Only order is to not execute upon entry and instead rest in the Book, while

the purpose of a C-AIM Auction is to receive an execution following the Auction but prior to entering the Book.

The proposed rule change to require the stop price to be at least one minimum increment better than the best-priced complex order in the COB, unless the Agency Order is a Priority Customer order and the resting order is not a Priority Customer, in which case the stop price must be at or better than the price of the complex order will protect investors. It will protect Priority Customer orders on the same side of the COB, as the current rule does, except it does so by applying a check at the initiation of a C-AIM Auction rather than at the conclusion of the Auction. By permitting a Priority Customer Agency Order to trade at the same price as a resting non-Priority Customer order, the proposed rule change also protects Priority Customer orders submitted into a C-AIM Auction. Additionally, application of this check at the initiation of a C-AIM Auction may result in the Agency Order executing at a better price, since the stop price must improve any same-side orders (with the exception of a Priority Customer Agency Order and a resting non-Priority Customer order described above), as under the current Rule, the Agency Order may execute at one minimum increment worse. The proposed rule change is consistent with general customer priority principles.

As noted above, the proposed rule change will allow C-AIM Auctions for which the smallest leg is for 50 standard option contracts (or 500 mini-option contracts) or more to occur concurrently with other C-AIM Auctions. Although C-AIM Auctions for larger Agency Orders will be allowed to overlap, the Exchange does not believe that this raises any issues that are not addressed by the proposed rule change. For example, although overlapping, each C-AIM Auction will be started in a sequence and with a time that will determine its processing. Thus, even if there are two C-AIM Auctions that commence and conclude, at nearly the same time, each C-AIM Auction will have a distinct conclusion at which time the Auction will be allocated. In turn, when the first C-AIM Auction concludes, unrelated orders that then exist will be considered for participation in the Auction. If unrelated orders are fully executed in such C-AIM Auction, then there will be no unrelated orders for consideration when the subsequent Auction is processed (unless new unrelated order interest has arrived). If instead there is remaining unrelated order interest after the first C-AIM Auction has been

allocated, then such unrelated order interest will be considered for allocation when the subsequent Auction is processed. As another example, each C-AIM response is required to specifically identify the Auction for which it is targeted and if not fully executed will be cancelled back at the conclusion of the Auction. Thus, C-AIM responses will be specifically considered only in the specified Auction.

The proposed rule change to allow multiple auctions to overlap for Agency Orders of 50 standard option contracts (or 500 mini-option contracts) or more is consistent with functionality already in place on other exchanges.<sup>55</sup> Different complex strategies are essentially different products—orders in different strategies cannot interact, just as orders in different classes or series cannot interact. Therefore, the Exchange believes concurrent C-AIM Auctions in different complex strategies is appropriate. Additionally, while it is possible for a complex order to leg into the Simple Book, a complex order may only execute against simple orders if there is interest in each component in the ratio of the complex strategy. A simple order in one component of a complex strategy cannot on its own interact with a complex order in that complex strategy. Therefore, the Exchange believes it is appropriate to permit concurrent C-AIM Auctions in the same component. As proposed, C-AIM Auctions will ensure that Agency Orders execute at prices that protect Priority Customer orders in the Simple Book and that are not inferior to the SBBO, even when there are concurrent Auctions occurring. The proposed rule change sets forth how any Auctions with overlapping complex strategies or overlapping components will conclude if terminated due to the same event. The Rules do not currently prevent a COA in a complex strategy from occurring at the same time as an AIM in one of the components of the complex strategy. Therefore, the Exchange believes it is similarly reasonable to permit multiple C-AIM in a complex strategy to occur at the same time as an AIM in one of the components of the complex strategy. The Exchange believes this new functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that permit overlapping

<sup>55</sup> See, e.g., EDGX Rule 21.22(c)(1); see also, e.g., Nasdaq ISE LLC ("ISE") Rules 716(d) and 723, Interpretation and Policy .04; and Boston Options Exchange LLC ("BOX") Rule 7270 and BOX IM-7150-3.

<sup>54</sup> *Id.*

price improvement auctions, while providing an opportunity for price improvement for Agency Orders and assuring that Priority Customers on the simple Book and COB are protected.

The proposed rule change to permit all Users to respond to C-AIM Auctions will benefit investors. Permitting all Users to submit responses to C-AIM Auctions, rather than appointed Market-Makers and TPHs representing orders as agent at the top of the Book or COB, may result in more Users having the opportunity to participate in executions at the conclusion of C-AIM Auctions. Additionally, it may increase liquidity in C-AIM Auctions, which may lead to more opportunities to [sic] price improvement. The Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because other exchanges permit all market participants to respond to similar price improvement auctions.<sup>56</sup>

The proposed rule changes regarding permissible designations on responses are reasonable and promote a fair and orderly market, because they are consistent with the general auction functionality. The proposed rule change that prohibits Users from designating a C-AIM Auction response with an MTP Modifier other than MTP Cancel Newest is consistent with the prohibition on the Agency Order being cancelled after it is submitted. Additionally, the proposed rule change that prohibits Users from designating a response as IOC is reasonable, because it consistent with the purpose of an AIM response, which is to potentially execute against an Agency Order at the conclusion of a C-AIM Auction (and thus not immediately upon entry, as required by the time-in-force of IOC).

The proposed events that will conclude a C-AIM Auction are reasonable and promote a fair and orderly market and national market system, because they will ensure that executions at the conclusion of an Auction occur at permissible prices (such as not outside the SBBO (and not at the SBBO if there is a Priority Customer order in any component on the Simple Book) and not at the same price as a Priority Customer order on the COB). The proposed rule change will also benefit investors by providing clarity regarding what will cause a C-AIM Auction to conclude. These events would create circumstances under which a C-AIM Auction would not have been permitted to start, or that would cause the auction price no longer

be consistent with the permissible prices at which executions at the conclusion of an Auction may occur. Thus the Exchange believes it is appropriate to conclude a C-AIM Auction if those circumstances occur. The Exchange will no longer conclude a C-AIM Auction early due to the receipt of an opposite side complex order other than one proposed instance. The Exchange believes this promotes just and equitable principles of trade, because these orders may have the opportunity to trade against the Agency Order following the conclusion of the Auction, which execution must still be at or better than the SBBO, as well as prices of complex orders in the COB. The Exchange believes this will protect investors, because it will provide more time for price improvement, and the unrelated order will have the opportunity to trade against the Agency Order in the same manner as all other contra-side complex interest.

The Exchange believes the proposed execution of Agency Orders are reasonable and promote a fair and orderly market and national market system, because best-priced contra-side interest executes against the Agency Order first, and Priority Customer complex orders will have first priority at each price level, followed by other contra-side complex interest. The proposed rule change does not adopt Priority Order status for C-AIM, which is only available in simple AIM for classes the Exchange designates.

In a separate rule filing, the Exchange intends to adopt complex order allocation rules consistent with those in EDGX Options Rule 21.20 as part of its efforts harmonize rules and functionality across the Cboe Affiliated Exchanges. Pursuant to that rule, if an order is able to leg into the Simple Book, the System would first execute an order against Priority Customer orders in the Simple Book, then against any complex order interest in the COB (or auction responses), and last against any other simple interest in the Simple Book (with executions against the Simple Book occurring in the applicable ratio). This would occur at each price at which the complex order may execute. Requiring the System to make these determinations by going “back and forth” between the Simple Book and the COB at multiple price levels would be more complicated after a C-AIM Auction. The System must determine the aggregate amount of interest available at each execution price level before executing any portion of the Agency Order to determine the final auction price and how to allocate the Agency Order against contra-side

interest at the conclusion of a C-AIM Auction. This is necessary because the System must determine at each price level the aggregate non-Priority Customer interest to calculate any auto-match amounts, and to determine the aggregate number of contracts remaining in the Agency Order at the final auction price to calculate the allocation percentage for the Initiating Order.

There would be significant technical complexities associated with reprogramming priority within the System to permit Agency Orders to leg into the Simple Book following a C-AIM Auction and allocate the Agency Order in a manner consistent with standard priority principles and crossing auctions, while making the most crossing functionality available to TPHs. As discussed above, the Exchange believes the proposed rule change protects Priority Customer orders on the Simple Book, because executions following a C-AIM Auction are subject to the general complex order priority<sup>57</sup> that will apply to executions of all complex orders on the Exchange. It ensures an Agency Order will only execute at prices better than the SBBO existing at the conclusion of the C-AIM Auction if there is a Priority Customer order at the BBO on any leg, and at prices equal to or better than the SBBO existing at the conclusion of the C-AIM Auction if there is no Priority Customer order at the BBO on any leg. The proposed allocation will also ensure the Agency Order does not trade at the same price as a Priority Customer complex order resting on the COB or through the best-priced complex orders on the COB, and will protect investors by providing Priority Customer complex orders with priority at each price level.

Given the infrequency with which complex orders currently leg into the Simple Book, including at the conclusion of C-AIM Auctions for complex orders, the Exchange believes it is in the best interest of investors to not implement additional technical complexities given the expected minimal impact, if any, that not permitting Agency Orders to leg into the Simple Book following a C-AIM Auction would have on execution opportunities for orders in the Simple Book.<sup>58</sup>

<sup>57</sup> See proposed Rule 5.38(e)(5) and *supra* note 47.

<sup>58</sup> The Exchange notes the complex order crossing auctions of other options exchanges do not leg agency orders into the simple book at the conclusion of the auction as long as there is price improvement over the equivalent of the SBBO for that exchange. See, e.g., EDGX Options Rule 21.22(e); and NYSE American, LLC (“Amex”) Rule 971.2NY(c)(4).

<sup>56</sup> See, e.g., EDGX Options Rule 21.22(c)(5).

The Exchange believes the proposed rule changes that add detail to the Rules, which are consistent with current functionality, will remove impediments to and perfect the mechanism of a free and open market and protect investors, as these changes provide transparency in the Rules regarding C- AIM Auctions. Additionally, the proposed rule change aligns rule language with corresponding provisions in EDGX Options Rule 21.22.

#### *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 to amend the C- AIM Auction will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed changes to the C- AIM Auction will apply to all orders submitted to an Auction in the same manner. C- AIM Auctions will continue to be voluntary for TPHs to use, and are available to all TPHs. 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 the proposed changes are substantially the same as another options exchange's rules.<sup>59</sup> The general framework and primary features of the Exchange's current C- AIM Auction is not changing, and will continue to protect orders, including Priority Customer orders, resting in the Book and the COB.

The Exchange does not believe the proposed rule change to permit all Users to respond to C- AIM Auctions will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will permit more types of market participants (*i.e.*, all Users) to submit responses to C- AIM Auctions, rather than just appointed Market-Makers and TPHs acting as agent for orders at the top of the Book or COB. This may result in more Users having the opportunity to participate in executions at the conclusion of C- AIM Auctions. 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 may increase liquidity in C- AIM

Auctions, which may lead to more opportunities to price improvement. Additionally, other exchanges permit all market participants to respond to similar price improvement auctions.<sup>60</sup>

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

- A. Significantly affect the protection of investors or the public interest;
- B. Impose any significant burden on competition; and
- C. Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>61</sup> and Rule 19b-4(f)(6)<sup>62</sup> thereunder.<sup>63</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **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

<sup>60</sup> See, e.g., EDGX Options Rule 21.19.

<sup>61</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>62</sup> 17 CFR 240.19b-4(f)(6).

<sup>63</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2019-051 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-2019-051. 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 (<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 such 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-2019-051, and should be submitted on or before October 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>64</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>59</sup> See EDGX Options Rule 21.22; see also Amex Rule 971.2NY(c)(4).

<sup>64</sup> 17 CFR 200.30-3(a)(12).