(1) Other than Commentary .01(e) to Rule 8.600–E, the Shares will meet all other requirements of Rule 8.600–E.

(2) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

(3) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.[24]

(4) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-listed equity securities, certain futures, and certain exchange-traded options with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV and the Disclosed Portfolio is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(7) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act.[25]

(8) The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

The Exchange represents that all statements and representations made in the filing regarding: (1) The description of the portfolio holdings or reference assets; (2) limitations on portfolio holdings or reference assets; or (3) the applicability of Exchange listing rules specified in the rule filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the Exchange represents that the issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor [26] for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [27] and Section 11A(a)(1)(C)(iii) of the Act [28] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NYSEArca–2019–57), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–21727 Filed 10–4–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87192; File No. SR–CBOE–2019–063]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Solicitation Auction Mechanism (''SAM'' or ''SAM Auction'')

October 1, 2019.

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 September 24, 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 as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 the Solicitation Auction Mechanism (''SAM'' or ''SAM Auction''). The text of the proposed rule change is provided in Exhibit 5.

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[24] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[25] *See* 17 CFR 240.10A–3.

[26] The Commission notes that certain proposals for the listing and trading of exchange traded products include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[29] 15 U.S.C. 78s(b)(1).

[30] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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 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 delete Rule 6.74B in the current Rulebook and add the provisions regarding SAM Auctions for simple orders, as proposed to be modified in this rule filing, to Rule 5.39 in the shell Rulebook.[5]

The proposed rule change moves the introductory paragraph of current Rule 6.74B to the introductory paragraph of proposed Rule 5.39 in the shell Rulebook and adds to the introductory paragraph[6] of Rule 5.39 that the Solicited Order may consist of one or more solicited orders.[7] This accommodates multiple contra-parties and increases the opportunities for customer orders to be submitted into a SAM Auction with the potential for price improvement, since the Solicited 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). The Exchange notes that with regard to order entry, the first order submitted into the system is marked as the initiating/agency side and the second order is marked as the contra-side. Additionally, the Solicited Order will always be entered as a single order, even if that order consists of multiple contra-parties who are allocated their portion of the trade in a post-trade allocation.[8]

Proposed Rule 5.39(a) lists the SAM Auction eligibility requirements:[9]

- The proposed rule change moves the requirement that the Agency Order must be in any class of options the Exchange designates as eligible for SAM Auctions from current Rule 6.74B(a)(1) to proposed Rule 5.39(a)(1).
- The proposed rule change moves the requirement that the Initiating TPH mark an Agency Order for SAM Auction processing from current Rule 6.74B(b)(1)(A) to proposed Rule 5.39(a)(2).
- The proposed rule change moves the requirement that the Agency Order must be for at least the minimum size designated by the Exchange (which may not be less than 500 standard option contracts or 5,000 mini-option contracts) from current Rule 6.74B(a)(1) to proposed Rule 5.39(a)(3). Proposed Rule 5.39(a)(3) also states the Solicited Order must be for (or must total, if the Solicited Order is comprised of multiple solicited orders) the same size as the Agency Order. While not explicitly stated in current Rule 6.74B, this proposed provision clarifies current functionality and is consistent with the current Rules.[10]

The proposed rule change deletes the requirement that the Initiating TPH must designate each of the Agency Order and Solicited Order as AON from current Rule 6.74B(a)(2). The Exchange's new system has been designed to automatically handle any orders submitted into a SAM Auction (using the appropriate messaging) as all-or-none, so the Initiating TPH will no longer be required to add any specific AON designations to the Agency Order or Solicited Order.

[5] Current Rule 6.74B, Interpretation and Policy .01 permits complex orders to be executed through a SAM Auction. The Exchange intends to adopt a separate rule regarding the execution of complex orders in SAM Auctions in a separate rule filing.

[6] The proposed rule change also adds to the proposed introductory paragraph that for purposes of proposed Rule 5.39, the term ''NBBO'' means the national best bid or offer at the particular point in time applicable to the reference, and the term ''Initial NBBO'' means the national best bid or national best offer at the time a SAM Auction is initiated. This is merely an addition of terminology used throughout the Rule, but has no impact on functionality.

[7] The Solicited Order cannot have a Capacity F for the same executing firm ID (''EFID'') as the Agency Order or for the account of any Market-Maker with an appointment in the applicable class on the Exchange. *See* current Rule 6.74B, Interpretation and Policy .03. Cboe Options Rule 6.74B does not contain a similar provision, but enforces the requirement that the contra-side order be a solicitation rather than a facilitation through surveillance. The proposed rule change adds this functionality, which will help with the enforcement of this requirement, in addition to surveillance. The Agency Order and Solicited Order cannot both be for the accounts of a customer. Current Rule 6.74B does not contain a similar prohibition. However, the Exchange believes it is appropriate for such customer-to-customer crosses to be submitted to an AIM Auction pursuant to Rule 5.37 in the shell Rulebook, as that rule contains a provision for Customer-to-Customer Immediate AIM Crosses.

[8] The Exchange notes that while other exchange rules do not specify whether the contra-side order in a solicitation auction mechanism may consist of multiple orders, the contra-side order for Qualified Contingent Cross Orders (see Rule 6.53 of the current Rulebook and Rule 5.6(c) of the shell Rulebook), which similarly have a minimum quantity requirement and are fully crossed against an Solicited Order that must be for a minimum number of contracts, may consist of multiple contra-side orders. However, Nasdaq ISE, LLC (''ISE'') Regulatory Information Circular 2014–013 states that the contra-side order submitted into a crossing mechanism (including the ISE solicited order mechanism) may consist of one or more parties.

[9] With respect to the existing SAM Auction eligibility requirements that the proposed rule change retains but moves from Rule 6.74B in the current Rulebook to Rule 5.39 in the shell Rulebook, the proposed rule change makes nonsubstantive changes, including to make the rule provision more plain English, to simplify the provisions, to delete any redundant language, and to conform language to corresponding rules of applicable Cboe Affiliated Exchanges. Unless otherwise specified in this rule filing, the proposed rule change makes no substantive changes to these provisions.

[10] *See* current Rule 6.74B(a)(2) (which requires the Agency Order to be stopped with a solicited order, and that those orders be all-or-none (''AON'')); and (b)(2)(A) (which provides the Agency Order will be executed against the solicited order (in full per the introductory paragraph of (b)(2)).

• The proposed rule change moves the requirement that the price of the Agency Order and the Solicited Order must be in an increment the Exchange determines on a class basis, which may be no smaller than $0.01 from current Rule 6.74B(a)(3) to proposed Rule 5.39(a)(4). The proposed rule change makes no changes to the permissible minimum increments in SAM Auctions.

• Proposed Rule 5.39(a)(5) states the Initiating TPH may not designate an Agency Order or Solicited Order as Post Only. A Post Only order is an order the System ranks and executes pursuant to proposed Rule 5.32, subjects to the Price Adjust process pursuant to Rule 5.32, 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.[11] The Exchange believes it is appropriate to not permit the Agency or Solicited 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 Book, while the purpose of a SAM Auction is to receive an execution following the Auction but prior to entering the Book.

• Proposed Rule 5.39(a)(6) states an Initiating TPH may only submit an Agency Order to a SAM Auction after the market open. 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.

• Proposed Rule 5.39(a)(7) states an Initiating TPH may not submit an Agency Order if the NBBO is crossed (unless the Agency Order is a SAM Intermarket Sweep Order (''SAM ISO'') (see discussion below)). This is consistent with current functionality and ISO orders, as well as linkage rules, and the proposed rule change clarifies this in the Rule. The Exchange believes it is appropriate to not permit a SAM Auction to be initiated if the NBBO is crossed, as a crossed NBBO may indicate price uncertainty within the market. The Exchange believes this may prevent executions at potentially erroneous prices.

The proposed rule change also explicitly states that all of the eligibility requirements in proposed paragraph (a) must be met for a SAM Auction to be initiated, and that the System rejects or cancels both an Agency Order and Solicited Order submitted to a SAM Auction that do not meet the conditions in proposed paragraph (a). This is consistent with current functionality and the concept of eligibility requirements, and merely adds this detail the Rules.

Proposed Rule 5.39(b) lists the requirements related to the price at which the Solicited Order must stop the Agency Order:[12]

• The proposed rule change moves the requirement that the stop price for a buy (sell) Agency Order must be at or better than the then-current national best offer (''NBO'') (national best bid (''NBB'')) from current Rule 6.74B(a)(2) and (b)(1)(A) to proposed Rule 5.39(b)(1). The current rule also requires the stop price to be at or better than the same side NBBO. While the proposed rule change does not impose that restriction, it requires the execution price to be at or better than the Initial NBBO, and thus it has the same ultimate effect.

• Proposed rule 5.39(b)(2) states if the Agency Order is to buy (sell), the stop price must be at least one minimum increment better than the Exchange best bid (offer) (''BBO''), 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 Exchange best bid (offer). Current Rule 6.74B is silent regarding whether the stop price must be at or better than the same-side Exchange best bid or offer; however, the execution price must be at or better than the Exchange best bid or offer, and the proposed stop price requirement is consistent with the provision, which merely applies this protection at the initiation of the SAM Auction. The Exchange believes this condition protects orders on the same side as the Agency Order resting on the Book, including Priority Customer orders. By permitting a Priority Customer Agency Order to be entered at the same price as a resting non-Priority Customer order, the proposed rule change also protects Priority Customer orders submitted into a SAM Auction. The proposed rule change is consistent with general customer priority principles.

• If the Agency Order is to buy (sell) and the Exchange best offer (bid) represents (a) a Priority Customer order on the Book, the stop price must be at least one minimum increment better than the Exchange best offer (bid); or (b) a quote or order that is not a Priority Customer order on the Book, the stop price must be at or better than the Exchange best offer (bid). Current Rule 6.74B is silent regarding whether the stop price must be at or better than the opposite-side Exchange best bid or offer; however, the execution price may not be at the same price as priority customer orders resting on the book on the opposite side of the Agency Order (unless the priority customer orders execute against the Agency Order), and the proposed stop price requirement is consistent with the provision, which merely applies this protection at the initiation of the SAM Auction. The Exchange believes this condition protects orders on the opposite side of the Agency Order resting on the Book, including Priority Customer orders.

• Proposed Rule 5.39(b)(4) states if the Initiating TPH submits a SAM sweep order to a SAM Auction, the stop price, SAM responses, and executions are permitted at a price inferior to the Initial NBBO. A ''SAM sweep order'' or ''SAM ISO'' is the submission of two orders for crossing in a SAM Auction without regard for better-priced Protected Quotes (as defined in Rule 5.65) because the submitting TPH routed an intermarket sweep order (''ISO'') simultaneously with the routing of the SAM ISO to execute against the full displayed size of any Protected Quote that is better than the stop price and has swept all interest in the Book with a price better than the stop price. Any execution(s) resulting from these sweeps accrue to the SAM Agency Order. Current Rule 6.74B is silent on whether ISOs are permitted with respect to SAM Auctions. However, the proposed definition of a SAM ISO is consistent with linkage rules.

The proposed rule change also explicitly states that the System rejects or cancels both an Agency Order and Solicited Order submitted to a SAM Auction that do not meet these conditions. This is consistent with current functionality and the concept of price conditions, and merely adds this detail the Rules.

Proposed Rule 5.39(c) describes the SAM Auction process, which commences upon receipt of an Agency Order that meets the conditions in

[11] *See* Cboe Options Rule 5.6(c) in the shell Rulebook.

[12] With respect to the existing SAM Auction eligibility requirements that the proposed rule change retains but moves from Rule 6.74B in the current Rulebook to Rule 5.39 in the shell Rulebook, the proposed rule change makes nonsubstantive changes, including to make the rule provision more plain English, to simplify the provisions, to delete any redundant language, and to conform language to corresponding rules of applicable Cboe Affiliated Exchanges. Unless otherwise specified in this rule filing, the proposed rule change makes no substantive changes to these provisions.

proposed paragraphs (a) and (b), as described above: [13]

• Proposed Rule 5.39(c)(1) states that one or more SAM Auctions in the same series may occur at the same time. To the extent there is more than one SAM Auction in a series underway at a time, the SAM Auctions conclude sequentially based on the exact time each SAM Auction commenced, unless terminated early pursuant to proposed paragraph (d). At the time each SAM Auction concludes, the System allocates the Agency Order pursuant to proposed paragraph (e) and takes into account all SAM Auction responses and unrelated orders in place at the exact time of conclusion. In the event there are multiple SAM Auctions underway that are each terminated early pursuant to proposed paragraph (d), the System processes the SAM Auctions sequentially based on the exact time each SAM Auction commenced.[14] The Exchange believes the proposed new functionality may lead to an increase in SAM Auctions, which may provide additional opportunities for price improvement for Agency Orders.

The Exchange notes it is also possible for various types of auctions (such as an AIM Auction or a complex order auction (''COA'')) today to occur concurrently in the same series, and at the end of each auction, it is possible for interest resting in the Book to trade against any of the auctioned orders in the series. 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 processes SAM Auctions as discussed above). In other words, suppose there is an AIM Auction, a SAM Auction, and a COA all occurring in the same series, which began and will terminate in that order, and each of which last 100 milliseconds. While it is possible for all three 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 Rule 6.74A in the current Rulebook (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 pursuant to Rule 6.74A (Rule 5.37 in the shell Rulebook). The System will then process the SAM Auction when it terminates, and the auctioned order may trade against any resting interest that did not execute against the AIM order (in addition to the contra-side order and responses submitted to that SAM Auction, which may only trade against the order auctioned in that SAM pursuant to current Rule 6.74B (proposed Rule 5.39)). Finally, the System will then process the COA Auction when it terminates, and the COA order may leg into the Book and trade against any resting interest that did not execute against the AIM order or SAM order (in addition to any interest resting on the complex order book and COA responses pursuant to current Rule 6.53C in the current Rulebook (which the Exchange intends to move to Rule 5.33 in the shell Rulebook)).

• The proposed rule change moves the provision regarding the SAM Auction notification message (currently referred to as a request for responses message) from current Rule 6.74B(b)(1)(B) to proposed Rule 5.39(c)(2). The proposed provision specifies that the message will detail the Capacity of the Agency Order, an Auction ID, and the option series, in addition to the price, side, and size, of the Agency Order, which message is sent to all TPHs that elect to receive SAM Auction notification messages. This is consistent with the current auction message that is disseminated; the proposed rule change adds these details to the rule. The proposed rule change also adds that SAM Auction notification messages are not included in the disseminated BBO or OPRA, which is also consistent with current functionality.

• The proposed rule change moves the provision regarding the length of the SAM Auction period from current Rule 6.74B(b)(1)(C) to proposed Rule 5.39(c)(3). The proposed rule change makes no changes to the current range of permitted lengths of SAM Auction periods.

• The proposed rule change clarifies in proposed Rule 5.39(c)(4) that the Initiating TPH may not modify or cancel an Agency Order or Solicited Order after submission to a SAM Auction. This is consistent with current functionality, and the proposed rule change merely adds this detail to the Rules.

Proposed Rule 5.39(c)(5) describes the provisions related to SAM responses: [15]

• The proposed rule change moves the provision that states a SAM response must specify size and side from current Rule 6.74B(b)(1)(C) to proposed Rule 5.39(c)(5). The proposed rule change deletes the requirement that a SAM response include a price, and instead permits a SAM response to specify a limit price or be treated as market. This provides Users with more flexibility regarding the price at which it is willing to trade against an Agency Order. The proposed rule change adds that a SAM response must also specify an Auction ID, and that a SAM response may only participate in the AIM Auction with the Auction ID specified in the response. While not specified in current Rule 6.74B, this is consistent with current functionality, and the proposed rule change adds this detail to the Rules. The Exchange proposes to include this language given the above proposal that permits concurrent SAM Auctions in the same series.

Current Rule 6.74B(b)(1)(C) permits all Trading Permit Holders may submit responses to a SAM request for responses (''RFR''), except that responses may not be entered for the account of an options market-maker from another options exchange. The proposed rule change permits all Users (including Market-Makers from another options exchange) [16] to submit responses to a SAM Auction. By permitting additional participants to submit responses to SAM Auctions, the Exchange believes this may provide the opportunity for additional liquidity in these auctions, which could lead to additional price improvement opportunities. Rules of other exchanges do not contain restrictions on who may

[13] With respect to the provisions regarding the SAM Auction process that the proposed rule change retains but moves from Rule 6.74B in the current Rulebook to Rule 5.39 in the shell Rulebook, the proposed rule change makes nonsubstantive changes, including to make the rule provision more plain English, to simplify the provisions, to delete any redundant language, and to conform language to corresponding rules of applicable Cboe Affiliated Exchanges. Unless otherwise specified in this rule filing, the proposed rule change makes no substantive changes to these provisions.

[14] *See* proposed Rule 5.39(c)(1). This provision regarding concurrent SAM Auctions is the same as the Automated Improvement Mechanism (''AIM'') provision that permits concurrent AIM Auctions for Agency Orders of 50 contracts or more. *See* Rule 5.37(c)(1) of the shell Rulebook.

[15] With respect to the provisions regarding SAM responses that the proposed rule change retains but moves from Rule 6.74B in the current Rulebook to Rule 5.39 in the shell Rulebook, the proposed rule change makes nonsubstantive changes, including to make the rule provision more plain English, to simplify the provisions, to delete any redundant language, and to conform language to corresponding rules of applicable Cboe Affiliated Exchanges. Unless otherwise specified in this rule filing, the proposed rule change makes no substantive changes to these provisions.

[16] The proposed rule change also prohibits the Initiating TPH from submitting a response to a SAM Auction (and notes the system helps enforce this prohibition by not permitting a response to have the same EFID as the Agency Order). This will prevent the submitter of a Solicited Order from submitting a response to attempt to participate in the execution of an Agency Order in the event the Solicited Order does not execute against the Agency Order, which is consistent with the requirement that the Solicited Order cannot be a facilitation.

respond to similar solicitation auction mechanisms.[17]

- The proposed rule change moves the provision that states the minimum price increment for SAM response is the same as the one the Exchange determines for a class (pursuant to proposed Rule 5.39(a)(4)), and the System rejects a SAM response that is not in the applicable minimum increment from current Rule 6.74B(b)(1)(E) to proposed Rule 5.39(c)(5)(A).
- Proposed Rule 5.39(c)(5)(B) states SAM buy (sell) responses are capped at the Exchange best offer (bid), or one minimum increment better than the Exchange best offer (bid) if it is represented by a Priority Customer on the Book (unless the Agency Order is a SAM ISO) that exists at the conclusion of the SAM Auction. The System will execute SAM responses, if possible, at the most aggressive permissible price not outside the BBO at the conclusion of the SAM Auction or the Initial NBBO. The proposed rule change ensures the execution price of a response will not cross the Initial NBBO in accordance with linkage rules.[18] Additionally, proposed subparagraph (e) requires the execution price to be at or between the BBO at the conclusion of the SAM Auction. Therefore, as proposed, the price at which any response may be entered (and thus be executed) will ultimately not be through the Initial NBBO or the BBO at the conclusion of the SAM Auction.
- Proposed Rule 5.39(c)(5)(C) states a User may submit multiple SAM responses at the same or multiple prices to a SAM Auction. This is consistent with current functionality. Current Rule 6.74B 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 SAM Auction, the System aggregates all of a User's orders and quotes on the Book and SAM responses for the same EFID at the same price. This (combined with the proposed size cap described below) will prevent a User from submitting multiple orders, quotes, or responses at the same price to obtain a larger pro-rata share of the Agency Order.
- Proposed Rule 5.39(c)(5)(D) states the System caps the size of a SAM response, or the aggregate size of a User's orders and quotes on the Book and SAM 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 AIM Auction). This is consistent with current subparagraph (b)(1)(F), 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.
- Proposed Rule 5.39(c)(5)(E) states SAM responses must be on the opposite side of the market as the Agency Order, and the System rejects a SAM 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 SAM response is to trade against the Agency Order in the SAM Auction into which the SAM response was submitted.
- The proposed rule change moves the provision that says SAM responses are not visible to SAM Auction participants or disseminated to OPRA from current Rule 6.74B(b)(1)(D) to proposed Rule 5.39(c)(5)(F).
- The proposed rule change moves the provision that says a User may modify or cancel its SAM responses during a SAM Auction from current Rule 6.74B(b)(1)(G) to proposed Rule 5.39(c)(5)(G).

Current Rule 6.74B(b)(2) states a SAM Auction at the sooner of Rule 6.74A(b)(2)(A) through (F), which are the provisions that describe when an AIM Auction concludes. The Exchange recently amended the events that may cause an AIM Auction to conclude, so the proposed rule change similarly amends the events that may cause a SAM Auction to conclude to be the same as the events that may cause an AIM Auction to conclude (and adds them to proposed Rule 5.39). Therefore, proposed Rule 5.39(d) states a SAM Auction concludes at the earliest to occur of the following times:

- The end of the SAM Auction period;
- upon receipt by the System of a Priority Customer order on the same side of the market with a price the same as or better than the stop price that would post to the Book;
- upon receipt by the System of an unrelated order or quote that is not a Priority Customer order on the same side of the market as the Agency Order that would cause the stop price to be outside of the BBO;
- the market close (consistent with current functionality and merely added to the Rules); and
- any time the Exchange halts trading in the affected series, provided, however, that in such instance the SAM Auction concludes without execution (consistent with current Rule 6.74A(b)(2)(F), and the proposed rule change adds detail that a SAM Auction in such a case will conclude without execution, which is consistent with current functionality, as no executions may occur while a series is halted for trading).

The proposed rule change deletes the following events that currently cause a SAM Auction to conclude early:

- Upon receipt by the System of an unrelated order (in the same series as the Agency Order) that is marketable against either the BBO (when such quote is the NBBO) or the RFR responses;
- upon receipt by the System of an unrelated limit order (in the same series as the Agency Order and on the opposite side of the market as the Agency Order) that improves any RFR responses; and
- any time there is a quote lock on the Exchange pursuant to Rule 6.45(c) in the current Rulebook.

As discussed below, unrelated orders on the opposite side of the Agency Order received during the SAM Auction may execute against interest outside of the SAM Auction, and therefore, the Exchange will no longer terminate a SAM Auction due to the receipt of an order on the opposite side of the Agency Order. The proposed rule change to conclude a SAM Auction early upon receipt of certain orders on the same side as the Agency Order ensure that the execution price does not occur at the same price as a Priority Customer order on the Book or at a price worse on than a non-Priority Customer order on the Book. This is consistent with the requirements for the stop price described above. Additionally, the Exchange will not have quote lock functionality following the technology migration, and therefore proposes to delete that as an event that may cause a SAM Auction to terminate early.[19]

An unrelated market or marketable limit order (against the BBO), including a Post Only Order, on the opposite side of the Agency Order received during the AIM Auction does not cause the SAM

[17] *See, e.g.,* Miami International Securities Exchange, LLC (''MIAX'') Rule 515A(b).

[18] *See* Rule 6.81(b)(8) in the current Rulebook (Rule 5.66(b)(8) in the shell Rulebook) (requires an order to be stopped at a price no worse than the price at the time of receipt of the order).

[19] *See* Securities Exchange Act Release No. 86374 (July 15, 2019), 84 FR 34963 (July 19, 2019) (SR–CBOE–2019–033) (proposed rule change in which the Exchange deletes quote lock functionality).

Auction to end early and executes against interest outside of the SAM Auction. If contracts remain from such unrelated order at the time the SAM Auction ends, they may be allocated for execution against the Agency Order pursuant to proposed paragraph (e). Because these orders may have the opportunity to trade against the Agency Order following the conclusion of the SAM Auction, which execution must still be at or better than the Initial NBBO and BBO at the conclusion of the SAM Auction, the Exchange does not believe it is necessary to cause a SAM Auction to conclude early in the event the Exchange receives such orders. This will provide more time for potential 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 interest.

The proposed rule change moves the provisions regarding the allocation of the Agency Order at the conclusion of the SAM Auction against the Solicited Order or contra-side interest (which includes orders and quotes resting in the Book and SAM responses) from current Rule 6.74B(b)(2) to proposed Rule 5.39(e). Executions at the conclusion of the SAM Auction will occur in the same manner as they do today, except the proposed rule change prioritizes Priority Customer AON orders over all non-Priority Customer contra-side interest (displayed Priority Customer orders will have priority over Priority Customer AON orders) in executions following SAM Auctions.[20] The Exchange believes this encourages market participants, including Priority Customers, to display their best bids and offers, which may lead to enhanced liquidity and tighter markets.

The proposed rule change adds detail regarding the priority of contra-side interest that executes against the Agency Order, which is consistent with the general priority rules in current Rule 6.45 in the current Rulebook (Rule 5.32 in the shell Rulebook), except for the AON provision noted above. The proposed rule change also explicitly states that the System cancels or rejects any unexecuted SAM responses (or unexecuted portions) at the conclusion of a SAM Auction. While the current rule does not state this, it is consistent with current functionality. Additionally, it is consistent with the provision (as described above) that Users submit responses to a specific auction to potentially execute against the Agency Order and the proposed provision that responses may only execute in the SAM Auction into which they are submitted. The proposed rule change also makes nonsubstantive changes to the allocation provisions, including to make the rule provision more plain English, to simplify the provisions, to delete any redundant language, and to conform language to corresponding rules of applicable Cboe Affiliated Exchanges. Unless otherwise specified in this rule filing, the proposed rule change makes no substantive changes to these provisions.

The proposed rule change moves current Rule 6.74B, Interpretations and Policies .02 and .03 to proposed Rule 5.39, Interpretations and Policies .01 and .02, respectively, making only nonsubstantive changes.

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.[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.

The Exchange's SAM Auction as proposed will function in a substantially similar manner following the technology migration as it does today. The proposed rule change will benefit investors by providing continued consistency across the Exchange's (and the Cboe Affiliated Exchanges', as applicable) price improvement mechanisms. The general framework of the SAM Auction process as proposed to be amended (such as the eligibility requirements, the auction response period, the same-side stop price requirements, response requirements, and auction notification process) will continue to be substantively the same as the framework for the AIM price improvement auction the Exchange's current price improvement auction, as the Exchange recently amended.[24] The Exchange continued similarity of its SAM Auction to its AIM Auction will allow the Exchange's proposed price improvement functionality to fit seamlessly into the options market and benefit market participants with consistency across similar functionality. The Exchange also believes this will encourage Users to compete vigorously to provide the opportunity for price improvement for customer orders in a competitive auction process.

The Exchange believes the proposed rule change to permit the Solicited Order to be comprised of multiple orders that total the size of the Agency Order may increase liquidity and opportunity for Agency Orders to participate in SAM Auctions, and therefore provide Agency Orders with additional opportunities for price improvement, which is consistent with the principles behind the SAM Auction. The Exchange believes that this will be beneficial to participants because allowing multiple contra-parties should foster competition for filling the contra-side 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. Another exchange permits the contra-side in a solicited auction mechanism to be comprised of multiple contra-parties.[25] The Exchange notes the contra-side of a Qualified Contingent Cross order may be comprised of multiple orders.[26]

The proposed rule that an Initiating TPH may not designate an Agency Order or Solicited Order as Post Only protects investors, because it provides transparency regarding functionality that will not be available for SAM. The Exchange believes this 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 submitting orders to a SAM Auction is to receive an execution following the

[20] Providing displayed interest with priority over nondisplayed interest is consistent with the Exchange's general allocation rules. *See* Rule 5.32(a)(3)(A) in the shell Rulebook (which provides that displayed orders have priority over nondisplayed orders).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *Id.*

[24] *See* SR–CBOE–2019–045 (filed August 28, 2019).

[25] *See* ISE Options 3, Section 11(d); and ISE Regulatory Information Circular 2014–013.

[26] Unlike orders submitted to a SAM Auction, Qualified Contingent Cross orders may immediately execute and are not exposed to the market for possible price improvement.

auction and not enter the Book. Pursuant to current Rule 6.74B and proposed Rule 5.39, an Agency Order will fully execute against contra-side interest (possibly against the Solicited Order, which must be for the same size as the Agency Order), or will be cancelled in the event there is no execution following a SAM Auction, and thus there cannot be remaining contracts in an Agency Order or Solicited Order to enter the Book.

The proposed stop price requirements will benefit investors, as they will protect Priority Customer orders in the Book (as well as Agency Orders for Priority Customers). The current rule essentially enforces these price requirements at the conclusion of a SAM Auction; the proposed rule change merely applies this check at the initiation of a SAM Auction. The Exchange believes application of this price check at the initiation of a SAM 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). The proposed rule change is consistent with general customer priority principles.

As discussed above, the Exchange has proposed to allow SAM Auctions to occur concurrently with other SAM Auctions. Although SAM Auctions for Agency Orders will be allowed to overlap, the Exchange does not believe this raises any issues that are not addressed through the proposed rule change described above. For example, although overlapping, each SAM Auction will be started in a sequence and with a time that will determine its processing. Thus, even if there are two SAM Auctions that commence and conclude, at nearly the same time, each SAM Auction will have a distinct conclusion at which time the SAM Auction will be allocated. In turn, when the first Auction concludes, unrelated orders that then exist will be considered for participation in the SAM Auction. If unrelated orders are fully executed in such SAM Auction, then there will be no unrelated orders for consideration when the subsequent SAM Auction is processed (unless new unrelated order interest has arrived). If instead there is remaining unrelated order interest after the first SAM Auction has been allocated, then such unrelated order interest will be considered for allocation when the subsequent SAM Auction is processed. As another example, each SAM 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, SAM responses will be specifically considered only in the specified SAM Auction. The Exchange does not believe that allowing multiple auctions to overlap for Agency Orders presents any unique issues that differ from functionality already in place on the Exchange or other exchanges. Pursuant to Rule 5.37(c)(1) in the shell Rulebook, multiple AIM Auctions for Agency Orders for 50 or more contracts may overlap. Additionally, other options exchanges permit other auctions to overlap.[27]

The proposed rule change will also perfect the mechanism of a free and open market and a national market system, as it is consistent with linkage rules. Proposed Rule 5.39 does not permit Agency Orders to be submitted when the NBBO is crossed and requires Agency Order execution prices at the end of SAM Auctions to be at or between the Initial NBBO and the BBO at the conclusion of the SAM Auction. The proposed stop price requirements and the events to terminate a SAM Auction early further ensure execution prices at or better than the Initial NBBO and BBO. Additionally, the proposed SAM ISO order type (which is similar to current AIM ISO functionality) will provide TPHs with an efficient method to initiate a SAM Auction while preventing trade-throughs.

The proposed rule change to permit all Users (other than the Initiating TPH) to respond to SAM Auctions will benefit investors. Permitting all Users to submit responses to SAM Auctions may result in more Users having the opportunity to participate in executions at the conclusion of SAM Auctions. Additionally, it may increase liquidity in SAM Auctions, which may lead to more opportunities to 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.[28]

The proposed SAM Auction response requirements are reasonable and promote a fair and orderly market and national market system, as they provide clarity regarding how they may respond to a SAM Auction. The proposed provisions regarding the aggregation of responses with other contra-side interest of the same User, and capping the size and price of that interest at the price and size of the Agency Order, will protect investors by preventing a User from submitting multiple orders, quotes, or responses at the same price to obtain a larger pro-rata share of the Agency Order. The proposed response provisions also ensure responses will be available for execution at prices at or better than the BBO at the conclusion of the SAM Auction, and the Initial NBBO, in accordance with linkage rules, as discussed above.

Unlike current Rule 6.74B, the Exchange will not conclude a SAM Auction early due to the receipt of an opposite side order. 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 SAM Auction, which execution must still be at or better than the Initial NBBO and BBO existing at the conclusion of the SAM Auction. 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 interest.

With respect to trading halts, as described herein, in the case of a trading halt on the Exchange in the affected series, the Auction will be cancelled without execution. Cancelling Auctions without execution in this circumstance is consistent with Exchange handling of trading halts in the context of continuous trading on the Exchange and promotes just and equitable principles of trade and, in general, protects investors and the public interest.[29]

Agency Orders will execute against contra-side interest at the conclusion of a SAM Auction in the same manner as it does today, except that the proposed rule change will also provide priority to Priority Customer AON orders over all non-Priority Customer contra-side interest. Displayed Priority Customer orders will have priority over Priority Customer AON orders, SAM Auctions, which the Exchange believes encourages market participants, including Priority Customers, to display their best bids and offers, which may lead to enhanced liquidity and tighter markets. Prioritizing displayed interest over nondisplayed interest is consistent with the Exchange's current allocation and priority rules, which have been

[27] *See, e.g.,* ISE Options 3, Section 11(d); and Boston Options Exchange (''BOX'') Rule 7270.

[28] *See, e.g.,* MIAX Rule 515A(b)(2)(i)(C).

[29] The Exchange notes that trading on the Exchange in any option contract will be halted whenever trading in the underlying security has been paused or halted by the primary listing market and other circumstances. *See* Rule 6.3 in the current Rulebook.

previously filed with the Commission.[30] The Exchange believes this will ensure a fair and orderly market by maintaining priority of orders and quotes and protecting Priority Customer orders, while still affording the opportunity for price improvement during each SAM Auction commenced on the Exchange. The proposed allocation will continue to ensure that the Agency Order will be filled if there is a Priority Customer order on the Book at the stop price and sufficient other contra-side interest to satisfy the Agency Order.

While other exchange rules do not discuss how AON orders are prioritizes at the conclusion of similar solicitation auction mechanisms, the Commission has previously considered this issue. The Commission has stated that not protecting AON public customer order on the book while permitting the agency order and solicited order to execute would disadvantage the public customer order.[31] The proposed rule change to prioritize Priority Customer AON orders over non-Priority Customer contra-side interest ensures that the Agency order and Solicited Order will not cross when a Priority Customer AON order at the stop price is resting on the Exchange's Book, and thus is consistent with the Act, as it promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest. As noted above, the Commission has also previously considered the issue of prioritizing displayed interest over nondisplayed interest, as that concept exists in the Exchange's Rules (and was therefore previously filed with the Commission). While Priority Customer AON orders generally execute after all other interest,[32] the Exchange believes it is appropriate to provide this priority to Priority Customer AON orders in the context of a SAM Auction and give these orders an increased change to execute [33] against the Agency Order (assuming there is sufficient size to satisfy the Agency Order and the AON contingency can be satisfied) given that such orders may prevent an Agency Order from executing against a Solicited Order. As a result, the proposed rule change ensures a Priority Customer AON resting on the Book at the stop price at the conclusion of a SAM Auction will not be disadvantaged.

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 SAM Auctions. Additionally, the proposed rule change is substantially the same as the rule of another exchange.[34]

The proposed rule change is also consistent with Section 11(a)(1) of the Act [35] and the rules promulgated thereunder. Generally, Section 11(a)(1) of the Act restricts any member of a national securities exchange from effecting any transaction on such exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account with respect to which the member or a person associated with the member exercises investment discretion (collectively referred to as ''covered accounts''), unless a specific exemption is available. Examples of common exemptions include the exemption for transactions by broker dealers acting in the capacity of a market maker under Section 11(a)(1)(A),[36] the ''G'' exemption for yielding priority to non-members under Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder,[37] and ''Effect vs. Execute'' exemption under Rule 11a2–2(T) under the Act.[38]

The ''Effect vs. Execute'' exemption permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; [39] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Exchange believes that TPHs entering orders into SAM would satisfy the requirements of Rule 11a2–2(T).

In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from off the floor directly to the Exchange by electronic means.[40] Because the Exchange's SAM Auction receives, and will continue to receive, orders from TPHs electronically through remote terminals or computer-to-computer interfaces, the Exchange believes that orders submitted to a SAM Auction from off the Exchange's trading floor will satisfy the off-floor transmission requirement.[41]

[30] *See* Rule 5.32(a)(3)(A) in the shell Rulebook.

[31] The Commission previously stated that permitting ''the Agency Order and Solicited Order to cross when an all-or-none customer order at the stop price exists on Phlx's order book would result in an outcome that is not consistent with the Act. Specifically, rather than protecting the all-or-none public customer order at the stop price, Phlx's proposal to allow the Solicited Order to execute against the Agency Order and leave the all-or-none public customer order on the order book would disadvantage the public customer order. While such a result may be expedient for the firm that entered the Agency Order and Solicited Order into the Solicitation Auction and for the solicited party, it would raise concerns under Section 6(b)(5) of the Act, which, among other things, requires that the rules of a national securities exchange be designed 'to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest . . .' '' *See* Securities Exchange Act Release No. 75300 (June 25, 2015), 80 FR 37672, 37683 (July 1, 2015) (SR–Phlx–2014–66) (order disapproving a proposed rule change to adopt an electronic solicitation mechanism).

[32] *See* Rule 5.32(a)(3)(C) in the shell Rulebook.

[33] If the Priority Customer AON order received last priority (except for non-Priority Customer AON orders, as is normally the case (*see* Rule 5.32(a)(3)(C) in the shell Rulebook), the Priority Customer AON order would have a reduced change to execute against the Agency Order.

[34] *See* EDGX Options Rule 21.21; *see also* Securities Exchange Act Release No. 87060 (September 23, 2019) (SR–CboeEDGX–2019–047).

[35] 15 U.S.C. 78k(a). Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies.

[36] 15 U.S.C. 78k(a)(1)(A).

[37] 15 U.S.C. 78k(a)(1)(G) and 17 CFR 240.11a1–1(T).

[38] 17 CFR 240.11a2–2(T).

[39] The member may, however, participate in clearing and settling the transaction.

[40] *See, e.g.,* Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release'').

[41] A TPH may not enter an order for a covered account from on the trading floor and rely on the Effect v. Execute, and therefore another exception must apply. A TPH may not send an order for a covered account for an affiliated TPH on the floor and rely on the Effect v. Execute, and therefore another exception must apply.

The second condition of Rule 11a2–2(T) requires that neither a member nor an associated person of such member participate in the execution of its order. The Exchange represents that, upon submission to the SAM Auction, an order or SAM response will be executed automatically pursuant to the rules set forth for SAM Auctions. In particular, execution of an order (including the Agency and the Solicited Order) or a SAM response sent to the mechanism depends not on the TPH entering the order or response, but rather on what other orders and responses are present and the priority of those orders and responses. Thus, at no time following the submission of an order or response is a TPH or associated person of such TPH able to acquire control or influence over the result or timing of order or response execution.[42] Once the Agency Order and Solicited Order, or the response, as applicable, have been transmitted, the Initiating TPH that transmitted the orders, or the User that submitted the response, respectively, will not participate in its execution of the Agency Order or Solicited Order, or the response, respectively. No TPH, including the Initiating TPH, will see a SAM response submitted into SAM, and therefore and will not be able to influence or guide the execution of their Agency Orders, Solicited Orders, or SAM responses, as applicable.

Rule 11a2–2(T)'s third condition requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the SAM Auction, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[43] The Exchange represents that the SAM Auction is designed so that no TPH has any special or unique trading advantage in the handling of its orders or responses after transmitting them to the mechanism.

A TPH (not acting in a market-maker capacity) could submit an order for a covered account from off of the Exchange's trading floor to an unaffiliated Floor Broker for submission for execution in the SAM Auction from the Exchange's trading floor and satisfy the effect-versus-execute exemption (assuming the other conditions are satisfied).[44] However, a TPH could not submit an order for a covered account to its ''house'' Floor Broker on the trading floor for execution and rely on this exemption. Because a TPH may not rely on the ''G'' exemption when submitting an order to a SAM Auction,[45] it would need to ensure another exception applies in this situation.

Rule 11a2–2(T)'s fourth condition requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[46] The Exchange recognizes that TPHs relying on Rule 11a2–2(T) for transactions effected through the SAM Auction must comply with this condition of the Rule, and the Exchange will enforce this requirement pursuant to its obligations under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.

Therefore, the Exchange believes that the instant proposal is consistent with Rule 11a2–2(T), and that therefore the exception should apply in this case. Therefore, the Exchange believes the proposed rule change is consistent with Section 11(a) of the Act and the Rules thereunder.

The proposed rule change is generally intended to amend certain system functionality currently offered by Cboe Options 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, as the proposed changes to the Exchange's SAM Auction will apply to all orders submitted to a SAM Auction in the same manner. SAM Auctions will continue to be voluntary for TPHs to use, and are available to all TPHs. Additionally, the ability to respond to SAM Auctions will not be available to all Users (except the Initiating TPH, which is consistent with the requirement that the contra-side order be a solicitation rather than a facilitation). The proposed rule change to provide Priority Customer AON orders with priority over all non-Priority Customer contra-side interest protects additional Priority Customer orders and will ensure that a Priority Customer AON order resting on the Book at the stop price is not disadvantaged.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition, because the general framework and primary features of the Exchange's current SAM Auction are not changing, and will continue to protect orders,

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[42] n Initiating TPH may not cancel or modify an Agency Order or Solicited Order after it has been submitted into SAM, but Users may modify or cancel their responses after being submitted into a SAM. *See* proposed Rule 5.39(c)(4) and (c)(5)(G). The Exchange notes that the Commission has stated that the non-participation requirement does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542, 11547 (the ''1978 Release'').

[43] In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release.

[44] Orders for covered accounts that rely on the ''effect versus execute'' exemption in this scenario must be transmitted from a remote location directly to the Floor Broker on the trading floor by electronic means.

[45] *See* proposed Rule 5.39(e) (which describes the allocation of the Agency Order at the conclusion of the SAM Auction, which does not prioritize non-TPH broker-dealers, as would be required by the ''G'' exemption).

[46] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. *See also* 1978 Release, at 11548 (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

including Priority Customer orders, resting in the Book, as applicable. The proposed rule change will provide continued consistency across the Exchange's (and the Cboe Affiliated Exchanges', as applicable) price improvement mechanisms. The general framework and primary features of the proposed SAM Auction process (such as the eligibility requirements, auction response period, same-side stop price requirements, response requirements, and auction notification process), are substantively the same as the framework for the AIM price improvement auction the Exchange's current price improvement auction, as recently proposed to be amended in connection with the Exchange's upcoming technology migration.[47] Additionally, other options exchanges also offer similar auction mechanisms.[48]

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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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[49] and Rule 19b–4(f)(6) thereunder.[50]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[51] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[52] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may implement the proposed rule change at the time of its anticipated October 7, 2019 system migration. The Exchange notes that the proposed rule change is substantially identical to EDGX Options Rule 21.21 and similar to functionality on other options exchanges, and believes waiver of the operative delay would permit the Exchange to continue to provide the SAM functionality to market participants on a continuous, uninterrupted basis.[53] For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[54]

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 shall 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
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–063 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–2019–063. 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–2019–063, and should be submitted on or before October 28, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Jill M. Peterson,

Assistant Secretary.

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[47] *See supra* note 24.

[48] *See, e.g.,* Nasdaq ISE, LLC (''ISE'') Options 3, Section 11(d); and MIAX Rule 515A(b).

[49] 15 U.S.C. 78s(b)(3)(A).

[50] 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.

[51] 17 CFR 240.19b–4(f)(6).

[52] 17 CFR 240.19b–4(f)(6)(iii).

[53] *See supra* notes 34 and 48.

[54] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[55] 7 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87182; File No. SR–MRX–2019–20]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Several Sections of Options 3

October 1, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 17, 2019, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission

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

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

[3] 17 CFR 240.19b–4.