SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89061; File No. SR–NYSEArca–2020–55]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule Regarding Pricing Incentives for Certain Posted Volume

June 12, 2020.

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 June 10, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding pricing incentives for certain posted volume. The Exchange proposes to implement the fee change effective June 10, 2020.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to introduce a new incentive program to provide an additional method for OTP Holders and OTP Firms (collectively, ''OTP Holders'') executing in their capacity as Market Makers or Lead Market Makers (''LMMs'') to qualify for enhanced posting credits for certain Penny Pilot issues.

Specifically, the Exchange proposes to adopt an additional $0.03 per contract credit for OTP Holders executing in their capacity as Market Makers and LMMs (collectively, ''Market Makers'' unless otherwise specified herein) that qualify for certain of the Market Maker Penny Pilot and SPY Posting Credit Tiers. To qualify for the credit, the proposed change would include a ''cross-asset pricing'' component to incentivize Market Makers and their affiliates to execute a certain amount of volume on both the Exchange's equities and options platform.

The Exchange proposes to implement the fee changes on June 10, 2020.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [5]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[6] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[7] Similarly, the equities markets also face stark competition, which is relevant because the Exchange may offer ''cross-asset pricing,'' which is designed to incent participants to execute a certain amount of volume on both the Exchange's equities and options platform. As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [8] Indeed, equity trading is currently dispersed across 13 exchanges,[9] 31 alternative trading systems,[10] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).[11] Therefore, currently no single exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's market share of trading in Tapes A, B and C securities combined is less than 10%.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products. To respond to this competitive marketplace, the Exchange has established incentives—or posting credit tiers—designed to encourage Market Makers to direct additional order flow to the Exchange to achieve more favorable pricing and higher credits. The Exchange incentives also include ''cross-asset pricing,'' which allows Market Makers to aggregate their options and equity volume with affiliated or appointed Order Flow Providers (''OFPs'') (collectively referred to as

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

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

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on June 1, 2020 (SR–NYSEArca–2020–53) and withdrew such filing on June 10, 2020.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[6] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[7] Based on OCC data, *see id.,* in 2019, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January 2020.

[8] *See* Securities Exchange Act Release No. 84875 (December 19, 2018), 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule).

[9] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, *available here http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[10] *See* FINRA ATS Transparency Data, *available here: https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[11] *See* Cboe Global Markets U.S. Equities Market Volume Summary, *available here: http://markets.cboe.com/us/equities/market_share/.*

affiliates herein), making the NYSE Arca a more attractive trading venue.[12]

The Exchange proposes to adopt an additional incentive program that encourages executions of Market Maker posted volume as well as trading on NYSE Arca Equities.

Proposed Rule Change

Pursuant to the Market Maker Penny Pilot and SPY Posting Credit Tiers (the ''MM Penny Credit Tiers''), Market Maker orders and quotes that post liquidity and are executed on the Exchange earn a base credit of $0.28 per contract, and may be eligible for increased credits based on the participant's activity. Currently, in addition to the base, there are three MM Penny Credit Tiers, with increasing minimum volume thresholds (as well as increasing credits) associated with each tier: The Select Tier, the Super Tier and the Super Tier II.

The Exchange proposes to adopt a new incentive program that would provide OTP Holders acting as Market Makers that achieve Super Tier or Super Tier II of the MM Penny Credit Tiers (each an ''eligible'' Market Maker or LMM) [13] an additional $0.03 per contract credit on certain electronic executions of Market Maker posted interest in Penny Pilot issues.

Specifically, eligible Market Makers and LMMs may earn the additional $0.03 credit if the Market Makers or LMMs execute at least 0.18% of TCADV from Market Maker posted interest in all issues, plus Equity Trading Permit Holder and Market Maker posted volume in Tape B Securities (''Tape B Adding ADV'') that is equal to at least 1.50% of US Tape B consolidated average daily volume (''CADV'') executed on NYSE Arca Equity Market for the billing month.[14] However, for eligible LMMs, this additional ($0.03) credit is not available to executions of issues in their LMM appointment as the Exchange already provides an additional credit to LMMs on such posted interest.[15] The Exchange notes that there is no limitation on the availability of this credit to eligible Market Makers (that are not acting as LMMs) and the additional ($0.03) credit will be applied to eligible executions regardless of whether an option issue executed is part of a Market Maker's appointment. As is the case with current posting credit tiers, Market Makers may aggregate their volume with affiliated OFPs to achieve the proposed additional credit.[16]

The Exchange believes the proposed additional incentive is reasonable because Market Makers (and their affiliates) can bring a variety of order flow to the Exchange, which may result in an increase in volume and liquidity on both its options and equities platforms. The Exchange's fees are constrained by intermarket competition, as Market Makers (and their affiliates) may direct their order flow to any of the 16 options exchanges, including those with similar posting incentives. The proposed cross-asset pricing is designed to encourage Market Makers to (continue to) conduct trading in both options and equities on the Exchange. The Exchange notes that all market participants stand to benefit from increased transaction volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange believes the proposed incentive should incent Market Makers to increase trading on the equities market, as well as the options market. Furthermore, the Exchange believes that incenting additional liquidity by Market Makers in all issues and by LMMs, in issues outside of their LMM appointment, benefits all participants as it contributes to the Exchange's depth of book as well as to the top of book liquidity. To the extent that Market Maker activity that adds liquidity is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, 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.

The Exchange cannot predict with certainty whether any Market Maker would benefit from this proposed credit. At present, whether or when a Market Maker qualifies for the MM Penny Credit Tiers in a given month is dependent on market activity and a Market Maker's mix of order flow. Thus, the Exchange cannot predict with any certainty the number of Market Makers that may qualify for the proposed incentive; however, the Exchange believes that Market Makers would be encouraged to try to achieve the newly adopted credit.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[18] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed

[12] *See* Fee Schedule, Endnote 15 (providing that an ''Appointed MM'' is an NYSE Arca Market Maker designated as such by an Order Flow Provider (''OFP'') (as defined in NYSE Arca Rule 6.1A–O(a)(21)) and ''Appointed OFP'' is an OFP been designated as such by an NYSE Arca Market Maker).

[13] Super Tier and Super Tier II each have alternative minimum volume thresholds. While Super Tier requires certain levels of options volume only, two of the three alternative qualification bases to achieve Super Tier II include cross-asset pricing. *See* Fee Schedule, Market Maker Penny Pilot and SPY Posting Credit Tiers.

[14] *See* proposed Fee Schedule, Market Maker Penny Pilot and SPY Posting Credit Tiers (with asterisks denoting requirements for eligible Market Makers to receive the additional ($0.03) credit). The Exchange notes that the cross-asset (equity) component is identical to one of the alternative bases to achieve Super Tier II, but the options requirement to achieve the proposed credit is higher.

[15] *See id. See* also Fee Schedule, TRANSACTION FEE FOR ELECTRONIC EXECUTIONS—PER CONTRACT (regarding additional $0.04 credit on posted interest in Penny Pilot issues in an LMM's appointment).

[16] *See id. See also* proposed Fee Schedule, Endnotes 8 (providing that the proposed incentives will include the activity of affiliates) and 15 (defining affiliates referenced in Endnote 8).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

[19] *See* Reg NMS Adopting Release, *supra* note 5, at 37499.

equity and ETF options trades.[20] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[21] In addition, by including the cross-asset pricing in the proposed incentive, it is important to note that the equities market is likewise subject to stark competition. As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [22] Indeed, equity trading is currently dispersed across 13 exchanges, 32 alternative trading systems, and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume). Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's market share of trading in Tapes A, B and C securities combined is less than 10%.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The proposed change is designed to incent Market Makers (and their affiliates) to transact more options and equities volume on the Exchange, which may result in an increase of volume and liquidity on both its options and equites platforms, which would benefit all market participants by providing more trading opportunities and tighter spreads, and may lead to a corresponding increase in order flow from other market participants. The Exchange believes it is reasonable to limit the application of the additional ($0.03) credit for LMM activity to executions in issues that are outside of their LMM appointment given that the Exchange already provides an additional ($0.04) credit to LMMs for executions on posted interest in Penny Pilot issues that are within an LMM's appointment.[23]

Furthermore, the Exchange believes that incenting additional liquidity by Market Makers in all issues and by LMMs, in issues outside of their LMM appointment, benefits all participants as it contributes to the Exchange's depth of book as well as to the top of book liquidity. To the extent that Market Maker activity in Penny Pilot issues that adds liquidity is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants in those issues and thus would promote just and equitable principles of trade, 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.

To the extent that the proposed change attracts more posted interest in Penny Pilot issues and cross asset activity, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.

The Exchange cannot predict with certainty whether any Market Maker would benefit from of this proposed credit. At present, whether or when a Market Maker qualifies for the MM Penny Credit Tiers in a given month is dependent on market activity and a Market Maker's mix of order flow. Thus, the Exchange cannot predict with any certainty the number of Market Makers that may qualify for the proposed incentive; however, the Exchange believes that Market Makers would be encouraged to try to achieve the newly adopted credit.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange and Market Makers (and their affiliates) can opt to avail themselves of the incentives or not.

The Exchange believes it is an equitable allocation of credits to limit the application of the additional ($0.03) credit for LMM activity to executions in issues that are outside of their LMM appointment given that the Exchange already provides an additional ($0.04) credit to LMMs for executions on posted interest in Penny Pilot issues that are within an LMM's appointment.[24]

To the extent that the proposed change continues to attract more participation in the MM Penny Posting Tiers, the increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to introduce the various Tiers because the proposed modifications would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The Exchange believes it is not unfairly discriminatory to limit the application of the additional ($0.03) credit for LMM activity to executions in issues that are outside of their LMM appointment given that the Exchange already provides an additional ($0.04) credit to LMMs for executions on posted interest in Penny Pilot issues that are within an LMM's appointment.[25]

The proposal is based on the amount and type of business transacted on the Exchange and Market Makers are not obligated to try to achieve the qualifications for any of the MM Penny Credit Tiers, nor are they obligated to try to achieve the proposed additional credit. The Exchange also believes the proposed incentive is not unfairly discriminatory to non-Market Markers (*i.e.,* Customers, Professionals Customers, Firms and Broker-Dealers) because such market participants are

[20] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[21] Based on OCC data, *see id.,* in 2019, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January 2020.

[22] *See supra* note 8.

[23] *See supra* note 15.

[24] *See id.*

[25] *See id.*

not subject to the obligations that apply to Market Makers. The Exchange believes the proposed incentive is reasonable, equitable and not unfairly discriminatory because encouraging Market Makers to direct more volume to the Exchange would also contribute to the Exchange's depth of book as well as to the top of book liquidity.

To the extent that the proposed change attracts more Market Maker posted interest and cross asset activity, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [26]

Intramarket Competition. The proposed change is designed to attract additional order flow in Penny Pilot issues to the Exchange by offering competitive rates based on increased volumes on the Exchange's options and equities platforms, which would enhance the quality of quoting and may increase the volumes of contracts trade on the Exchange. Furthermore, the Exchange believes that incenting additional liquidity by Market Makers in all issues and by LMMs, in issues outside of their Market Making appointment, benefits all participants as it contributes to the Exchange's depth of book as well as to the top of book liquidity. The Exchange believes it does not pose an undue burden on competition to limit the application of the additional ($0.03) credit for LMM activity to executions in issues that are outside of their LMM appointment given that the Exchange already provides an additional ($0.04) credit to LMMs for executions on posted interest in Penny Pilot issues that are within an LMM's appointment.[27] To the extent that the proposed change attracts more posted interest in Penny Pilot issues and cross-asset activity, this increased order flow would continue to make the Exchange a more competitive venue for order execution and all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

The proposed change would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. The Exchange also believes the proposed incentive is not unfairly discriminatory to non-Market Markers (*i.e.,* Customers, Professionals Customers, Firms and Broker-Dealers) because such market participants are not subject to the obligations that apply to Market Makers.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[28] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[29]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage Market Makers (and their affiliates) to direct trading interest (particularly Market Maker posted interest and cross asset activity) to the Exchange. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar incentive for posting liquidity, by encouraging additional orders to be sent to the Exchange for execution. The proposal to is designed to continue to encourage Market Makers (and affiliates) to commit to directing their order flow, including equity market order flow, to the Exchange, which would increase volume and liquidity, to the benefit of all market participants by providing more trading opportunities and tighter spreads.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [30] of the Act and subparagraph (f)(2) of Rule 19b–4 [31] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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

[26] *See* Reg NMS Adopting Release, *supra* note 5, at 37499.

[27] *See* supra note 15.

[28] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[29] Based on OCC data, *see id.,* in 2019, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January 2020.

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(2).

under Section 19(b)(2)(B) [32] of the Act 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–NYSEArca–2020–55 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–NYSEArca–2020–55. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–55 and should be submitted on or before July 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

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[32] 15 U.S.C. 78s(b)(2)(B).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89058; File No. SR–CBOE–2020–051]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Its Automated Price Improvement Auction Rules in Connection With Agency Order Size Requirements

June 12, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 11, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its automated price improvement auction rules in connection with Agency Order size requirements. 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

The Exchange proposes to amend Rule 5.37(a)(3) and Rule 5.38(a)(8) to allow the Exchange to determine maximum size requirements for Agency Orders in SPX submitted though the Automated Price Improvement Mechanism (''AIM'' or ''AIM Auction'') and the Complex Automated Price Improvement Mechanism (''C–AIM'' or ''C–AIM Auction'').

Currently, Rules 5.37(a)(3) and 5.38(a)(3), which govern the size requirements for AIM and C–AIM Agency and Initiating Orders, provide that there is no minimum size for orders submitted into AIM and C–AIM Auctions, respectively, and that the Initiating Order must be for the same size as the Agency Order. As such, an Agency Order of any size [3] may currently be submitted in an AIM or C–AIM Auction.

The Exchange now proposes to amend Rule 5.37(a)(3) to provide that the Exchange may determine a maximum size requirement for Agency Orders in SPX, and by amending Rule 5.38(a)(3) to provide that the Exchange may determine a maximum size requirement for the smallest leg of an Agency Order in SPX.[4] The Exchange believes that the proposed flexibility to allow the Exchange to determine to limit the size of SPX Agency Orders submitted in an AIM or C–AIM Auction will allow the Exchange to appropriately address the specific trading characteristics, market model, and investor basis of SPX. The Exchange notes that the maximum size requirement for Agency Orders in SPX would apply to all Agency Orders in the entire SPX class (including SPX Weeklys (''SPXW'')).

In particular, SPX has a different and more complicated market model,

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

[2] 17 CFR 240.19b–4.

[3] The proposed rule change indicates the maximum size may be up to 100 contracts.

[4] Application of the maximum size to the smallest leg of complex orders is consistent with the application of a size requirement for the Exchange's Complex Solicitation Auction Mechanism, which is a similar price improvement auction mechanism on the Exchange. *See* Rule 5.40(a)(3).