

competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading in Tapes A, B and C securities is less than 2%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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)¹⁵ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁶ 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 under Section 19(b)(2)(B)¹⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ 15 U.S.C. 78s(b)(2)(B).

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-NYSENAT-2020-27 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-NYSENAT-2020-27. 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-NYSENAT-2020-27 and should be submitted on or before September 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89638; File No. SR-CBOE-2020-052]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules 5.37, 5.38, and 5.73 Related to Auction Notification Messages and Index Combo Orders in SPX in the Automated Improvement Mechanism, Complex Automated Improvement Mechanism, and FLEX Automated Improvement Mechanism

August 21, 2020.

I. Introduction

On June 3, 2020, Cboe Exchange, Inc. ("Exchange" or "Cboe") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rules 5.37, 5.38, and 5.73 to (1) allow the Exchange to determine to disseminate the stop price in auction notification messages for Automated Improvement Mechanism ("AIM"), Complex Automated Improvement Mechanism ("C-AIM"), and FLEX AIM auctions in S&P 500® Index options ("SPX"); and (2) modify the minimum increment for C-AIM and FLEX AIM auction responses for Index Combo Orders in SPX. The proposed rule change was published for comment in the **Federal Register** on June 18, 2020.³ On July 22, 2020, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.⁴ On July 27, 2020,

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 89063 (June 12, 2020), 85 FR 36923. Comments received on the proposed rule change are available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2020-052/srcboe2020052.htm>.

⁴ In Amendment No. 1, the Exchange amended the proposal to: (1) To add that, when the proposed stop price dissemination in auction notification

pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶ The Commission is publishing this notice and order to solicit comment on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to amend Rule 5.38 and Rule 5.73 regarding the minimum increment for Complex Automated Improvement Mechanism ("C-AIM") and FLEX AIM Auction responses, respectively, in connection with Index Combo Orders in SPX,⁸ as well as Rule 5.37, Rule 5.38, and Rule 5.73 in connection with dissemination of the stop price in auction notification messages for auctions in SPX.

By way of background, the Exchange recently activated the Automated Improvement Mechanism ("AIM") and C-AIM Auctions in S&P 500 Index ("SPX") options.⁹ When submitting an Agency Order into a C-AIM Auction, the Initiating Member must also submit a contra-side second order for the same size as the Agency Order. This second order guarantees that the Agency Order will receive an execution (*i.e.*, it acts as a stop). Upon commencement of a C-AIM Auction, market participants submit responses to trade against the

Agency Order. At the end of an auction, depending on the contra-side interest available, the contra order may be allocated a certain percentage of the Agency Order.¹⁰

When the Exchange is operating in its normal trading environment, the Exchange has not activated C-AIM (or AIM) in SPX,¹¹ thus all non-FLEX crossing transactions in SPX were previously only able to occur on the trading floor. Therefore, Trading Permit Holders may cross orders only in open outcry on the trading floor. Pursuant to Rule 5.87(f), a floor broker holding an order for the eligible order size is entitled to cross a certain percentage¹² of the order with facilitated (and solicited orders, if designated by the Exchange for a class) after satisfying public customer orders¹³ if the order trades at or between the best bid or offer given by the crowd in response to the floor broker's initial request for a market. Specifically, a floor broker representing an order of the eligible order size or greater that he wishes to cross (and the percentage of which he is entitled to cross) must request bids and offers for such option series and make all persons in the trading crowd, including the PAR Official, aware of his request. In this way, the crossing mechanism on the trading floor allows for the trading crowd to control the price of a crossing order and indicates to responding TPHs and the crossing floor broker a reasonable range at which the market is willing to buy (sell) at that point in time. This provision is subject to the crossing rules in Rule 5.86 (subject to certain exceptions), which require disclosure of all terms and conditions to the crowd (including the price) prior to executing a cross.¹⁴

Moreover, orders in SPX generally take on greater risk than in other option classes. SPX options tend to have a higher notional value than options in other classes (*e.g.*, they are ten times the notional size of SPY options), trade much larger size than in other options classes (indeed, even smaller sized orders in SPX would be considered fairly large size in other classes), and effect increasingly more complex strategies than executed in other classes (*e.g.*, Index Combo orders are more frequently submitted) or executed electronically (*e.g.*, in open outcry complex orders trade with larger ratios that may be negotiated by the trading crowd). Given these factors, SPX Market-Makers on the floor generally have more confidence in the pricing of their responses as the crosses start with a request for market and the trading crowd then provides a "ballpark" of the prices at which they are willing to trade and a Market-Maker may thus more confidently base response on the market of other members of the trading crowd. The Exchange notes, too, that these unique factors and more complex characteristics of SPX have contributed to the Exchange's historical determination to not activate AIM and C-AIM in SPX when the floor is open, whereas the auctions have historically been activated in all other options classes.¹⁵

Pursuant to Rules 5.4(b) and 5.33(f)(1)(A), the minimum increment for bids and offers on complex orders in options on SPX¹⁶ is \$0.05 or greater, or in any increment determined by the Exchange. When seeking to cross SPX complex orders on the trading floor, a floor broker generally identifies the legs of the complex order and their relative sizes to each other with a net package price. The Exchange understands the trading crowd then generally provides a market based on the strategy's theoretical value in an increment of \$0.05 rather than the value of the net package (which equals the strategy times the ratio), which is particularly true when the complex order represented is a delta neutral order that includes a combo. The Exchange has observed that Index Combos in SPX comprise a significant portion of crosses in SPX,¹⁷ and when the Exchange

messages is enabled for AIM, C-AIM, or FLEX AIM auctions in SPX, it would apply to all such AIM, C-AIM, or FLEX AIM auctions; (2) specify that the proposed minimum increment modification would apply to Index Combo Orders in SPX, and to correct an internal cross-reference in the proposed rules; (3) provide additional detail to the description and examples of the proposed modification to the minimum increment for Index Combo Orders in SPX; and (4) provide additional justification and support for the proposed rule change. The full text of Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2020-052/sr-cboe2020052-7464403-221166.pdf>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 89400, 85 FR 46202 (July 31, 2020). The Commission designated September 16, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ Amendment No. 1 clarifies throughout the Form 19b-4 and in the Exhibit 5 that the proposed rule change is applicable to Index Combo Orders in SPX.

⁹ The Exchange notes FLEX AIM in SPX had been activated prior to March 16, 2020.

¹⁰ See generally Rule 5.38(e). The Exchange notes, too, that the same process applies to the FLEX AIM Auction pursuant to the FLEX Rules. See generally Rule 5.73(e).

¹¹ The Exchange had activated C-AIM and AIM in SPX for the first time as a result of the March 16, 2020 trading floor suspension to help prevent the spread of COVID-19 and operated in an all-electronic configuration beginning March 16, 2020 through June 15, 2020, when the trading floor reopened. The Exchange intends to activate AIM and C-AIM in SPX as electronic crossing mechanisms available for Users while the trading floor is open, subject to approval of this proposed rule change and separate proposed rule changes regarding AIM and C-AIM.

¹² Currently, the Exchange has set the percentage as 40% (the same crossing entitlement percentage as on AIM, C-AIM, and FLEX AIM). See CBOE Regulatory Circular RG16-179, Participation Entitlement Applicable to Crossing Orders in Open Outcry (November 18, 2016) available at <https://www.cboe.com/publish/RegCir/Reg16-179.pdf>.

¹³ Similarly, the AIM and C-AIM percentage applies after public customer orders are satisfied. See Rules 5.37(e) and 5.38(e).

¹⁴ See Rule 5.87, Interpretation and Policy .05.

¹⁵ Amendment No. 1 adds additional clarification regarding the differences between SPX and other classes and the role of such differences in the Exchange's historical determination not to activate AIM and C-AIM for SPX, whereas AIM and C-AIM have historically been activated in all other classes.

¹⁶ Except for box/roll spreads.

¹⁷ In April 2020, Index Combos in SPX comprised 60.5% of crossed volume executed in SPX via AIM while the trading floor was inoperable.

activated C-AIM for SPX options, a significant amount of SPX volume executed through C-AIM. An Index Combo Order in SPX is a complex order that includes one or more SPX legs, hedged by an SPX combo, or synthetic future, defined by the delta. Specifically, an “Index Combination” is a purchase (sale) of an index option call and a sale (purchase) of an index option put with the same expiration date and strike price, and “delta” is the positive (negative) number of Index Combinations that must be sold (bought) to establish a market neutral hedge with one or more series of the same index option.¹⁸ A combo often used in SPX is an at-the-money series in the quarterly expiration that coincides with the CME E-mini S&P 500 futures contract expiration. In order to hedge fully, the number of combos required is equal to the number of units of the non-combo portion times the delta divided by 100. For example, 800 units of a 12.5-delta option would require 100 combos to be fully hedged ($800 * 12.5 / 100 = 100$ combos).

In open outcry, the trading crowd generally prices the combo hedge portion separately. The price of the combo and the rest of the order are ultimately packaged and sent out as a net package price for the entire order on the customer fill report. If the crowd

improves the price on the non-combo leg by a minimum increment, or greater, that price is given on each contract. For example, if the trading crowd improves \$0.10 on 800 contracts, the \$0.10 improvement is on each of the 800 contracts.¹⁹

Currently, Rule 5.38(c)(5)(A) and Rule 5.38(a)(4) provide that the minimum price increment for C-AIM responses and Agency and Initiating Orders, respectively, must be in an increment the Exchange determines on a class basis—which, as described above, is \$0.05 in SPX options.²⁰ The Exchange notes that the corresponding FLEX AIM Rules 5.73(c)(5)(A) and 5.73(a)(4) provide the same for FLEX AIM Auctions. However, unlike on the trading floor, market participant responses using this increment have generally improved the net package price (based on then-current leg markets) by the minimum increment of \$0.05. More specifically, in an electronic auction the improvement increment is given on each strategy unit. That is, if the order (per the example above) is for 800:100:100 total quantity, the system treats this as 100 units of an 8:1:1 ratio strategy. If \$0.05 of improvement is given, the \$0.05 applies to each of the 100 strategy units.²¹ While members of the trading crowd on the trading floor are permitted to

improve the net package price (based on then-current leg markets) by the minimum increment of \$0.05 under the Rules, that is not the common practice, as noted above. The Exchange believes this is because the parties to an electronic complex order trade may compete only with respect to the net price and are not able to negotiate the leg prices.

Using the example above, consider, specifically, an Index Combo in SPX to buy 800 SPX NOV 3650 calls, “tied” (meaning hedged by combos), with a 12.5 delta. Systematized, the order has an 8:1:1 ratio, 100 times, and is as follows:

- Leg 1 = Buy 800 SPX NOV 3650 Calls.
- Leg 2 = Sell 100 SPX SEP 3210 Calls.
- Leg 3 = Buy 100 SPX SEP 3210 Puts.

Consider, too, that the current quotes are as follows:

- SPX NOV 3650 Call = \$20.40 – \$21.00
- SPX SEP 3210 Call \$120.00 – \$120.70.
- SPX SEP 3210 Put \$127.30 – \$128.00.

If the entire order were to trade at the implied/BBO prices, the premium and total cash outlay would be as follows:

Option	Premium	Ratio	Total cash
NOV 3650 Call	\$21.00	\$168.00	\$1,680,000.00 debit ($\$21 * 800 * 100$).
SEP 3210 Call	120.00	120.00	1,200,000.00 credit ($120 * 100 * 100$).
SEP 3210 Put	128.00	128.00	1,280,000.00 debit ($128 * 100 * 100$).
Net package	N/A	176.00	1,760,000.00 debit ($176 * 100 * 100$).

As described above, the trading crowd would generally price the non-combo portion separately and, per the example

above, if the crowd improves the non-combo portion (Leg 1) by the minimum

increment of \$0.10, prices would be as follows:

Option	Premium	Ratio	Total cash
NOV 3650 Call	\$20.90	\$167.20	\$1,672,000.00 debit ($\$20.90 * 800 * 100$).
SEP 3210 Call	120.00	120.00	1,200,000.00 credit ($120 * 100 * 100$).
SEP 3210 Put	128.00	128.00	1,280,000.00 debit ($128 * 100 * 100$).
Net package	N/A	175.20	1,752,000.00 debit ($175.20 * 100 * 100$).

As stated, if submitted for execution in an electronic auction, the minimum improvement increment is \$0.05 for complex orders in SPX. If the electronic

auction results in the minimum improvement increment of \$0.05, \$0.05 of improvement would be given to each strategy unit (i.e., each of the 100 units

would receive \$0.05 of improvement). The prices would be as follows:²²

¹⁸ See Rule 5.33(b).

¹⁹ Amendment No. 1 adds clarity around the use of Index Combo Orders in SPX as well as the price improvement process on such orders when submitted for open outcry trading.

²⁰ The System rejects a C-AIM response or Agency or Initiating Order that is not in the applicable minimum increment.

²¹ Amendment No. 1 adds clarity regarding the price improvement process for Index Combo Orders in SPX when submitted for execution in an electronic auction.

²² The Exchange notes that the System uses an algorithm to determine how price improvement is distributed on a multi-leg strategy. This example shows one possibility. The \$0.05 improvement cannot not be applied to Leg 1 because the ratio on

that leg is ‘8’, therefore, there are not enough pennies to distribute given there are only five pennies (\$0.05) worth of improvement. This, then, leaves the other two legs, both of which have a ratio of ‘1’, in which the System may distribute the five pennies of improvement per strategy unit. In sum, the price improvement given is always distributed in a manner that improves the leg market.

Option	Premium	Ratio	Total cash
NOV 3650 Call	\$21.00	\$168.00	\$1,680,000.00 debit (\$21*800*100).
SEP 3210 Call	120.03	120.03	1,200,300.00 credit (120.03*100*100).
SEP 3210 Put	127.98	127.98	1,279,800.00 debit (127.98*100*100).
Net package	N/A	175.95	1,759,500.00 debit (175.95*100*100).

Therefore, as demonstrated in the example, the difference between pricing the combo and non-combo portions of the order separately when trading in open outcry (where the example order would have received a total price improvement of \$0.80) and as a net package when trading in an electronic auction (where the example order would have received a total price improvement of only \$0.05), may result in a significant difference between the price improvement received.²³

In addition to this, current Rules 5.37(c)(2), 5.38(c)(2), and 5.73(c)(2) provide that the System initiates the AIM, C-AIM, and FLEX AIM Auction processes, respectively, by sending an auction notification message detailing the side, size, Auction ID, options series (additionally, in the case of C-AIM Auctions, complex strategy, and in the case of FLEX AIM Auctions, length of the auction period and complex strategy, as applicable) of the Agency Order to all Users that elect to receive AIM, C-AIM, or FLEX AIM Auction notification messages. AIM, C-AIM, and FLEX AIM Auction notification messages are not included in the disseminated BBO (in connection with AIM Auctions) or OPRA. As such, the stop price of an Agency Order is not currently included in auction notification messages. The Exchange believes that lack of an indication of where an auction is set to begin, like the ballpark figure provided by the trading crowd when crossing on the trading floor, may cause apprehension in pricing competitive responses during the electronic auctions in SPX, which may reduce liquidity and price improvement during such auctions.

The Exchange is considering activating AIM and C-AIM in SPX when it reopens the trading floor. To better align the C-AIM process for SPX complex strategies with the open outcry crossing process for those strategies, the Exchange proposes to amend Rule 5.38(c)(5)(A) to provide that the minimum price increment for a C-AIM response in which the Agency Order complex strategy is comprised of an

Index Combo Order in SPX (as defined in Rule 5.33(b))²⁴ will be the ratio of the non-combo portion of the strategy to the number of combos, multiplied by the minimum price increment the Exchange determines for options on SPX Agency Orders pursuant to Rule 5.38(a)(4). Also, to better align the AIM and C-AIM pricing process generally for responses with the open outcry process, the Exchange proposes to amend Rules 5.37(c)(2) and 5.38(c)(2) to provide that the Exchange may also determine to include the stop price in AIM and C-AIM Auction notification messages, respectively, in SPX.²⁵ If the stop price is enabled for SPX in AIM or C-AIM, respectively, it will apply to all AIM auctions in SPX.²⁶ Like all other information disseminated in an AIM and C-AIM Auction notification message, the stop price will be available to all Users that elect to receive auction notification messages. The Exchange notes that the FLEX AIM Rules in connection with the auction process for FLEX complex orders are substantially similar to the AIM and C-AIM Rules. Therefore, to maintain consistency within the Rules between the FLEX and non-FLEX auctions, the Exchange also proposes to amend the FLEX AIM process for SPX complex strategies (*i.e.* for FLEX C-AIM) and for FLEX AIM Auction notification messages in the same manner.²⁷

The Exchange believes that the proposed rule changes will create similar price competition for these orders in electronic and open outcry trading. Particularly, the Exchange believes that the current manner in which de minimis price improvement may occur via C-AIM, as well as FLEX C-AIM, Auctions in connection with Index Combo Orders in SPX (*i.e.*, potentially only improved in sub-penny increments) may discourage market

participants from providing contra-side interest at the best prices and liquidity providers from joining or improving at meaningful increments. As such, the proposed rule change is intended to provide for substantially the same price improvement opportunities at meaningful increments on SPX complex strategies submitted to C-AIM and FLEX C-AIM that occur for the same strategies on the trading floor. To illustrate by using the same complex strategy example above, if a User buys 800 of the November 3650 SPX Calls tied to 100 September 3210 Combos, using a delta of 12.5, pursuant to the proposed rules, the System would calculate the minimum increment by the ratio of the non-combo leg (800) to the number of combos (100) by the minimum increment of \$0.05.

Therefore, $(800/100) \times 0.05 = \0.40 as the starting point for price improvement during the C-AIM or FLEX C-AIM Auction. In this way, by tying the minimum increment to the legs of the order, as opposed to the package price inclusive of the combos, the Exchange believes the proposed rule would require market participants to respond to the C-AIM or FLEX C-AIM Auctions for SPX complex strategies at prices more aligned with the prices at which responses generally occur in open outcry, *i.e.* prices in response to a broker's corresponding bids (offers) based off of the market per leg at which the trading crowd indicates it is willing to buy (sell). If market participants may participate in C-AIM or FLEX C-AIM executions in connection with SPX complex strategies by providing de minimis price improvement compared to price improvement that may occur on the floor, the Exchange believes there may be less interest by market participants to take on the risk of participating as a contra and may negatively impact liquidity available on the trading floor. As a result, the Exchange believes this potentially reduces price improvement opportunities for customers. Particularly, if the Exchange determines to activate C-AIM in SPX when the trading floor re-opens, the Exchange believes the proposed rule change may provide customers with additional opportunities for more meaningful price improvement and may encourage

²⁴ Amendment No. 1 corrects this cross reference in the Exhibit 5 to reflect the appropriate Rule that contains the definition of Index Combo Orders.

²⁵ Amendment No. 1 add this footnote to clarify that the Exchange will notify its TPHs of a determination to include the stop price in auction notification messages, pursuant to Rule 1.5, via a specification, Notice, or Regulatory Circular with appropriate advanced notice, which are posted on the Exchange's website, electronic message, or other communication method as provided in the Rules.

²⁶ Amendment No. 1 adds this language to Rule 5.37(c)(2) and Rule 5.38(c)(2) in the Exhibit 5.

²⁷ See proposed Rules 5.73(c)(2) and 5.73(c)(5)(A).

²³ Amendment No. 1 replaces the example and explanation of the differences between the price improvement process in open outcry trading and in the electronic auctions, simplifying and clarifying the example explanation as well as providing for additional detail.

market participants to provide more liquidity for C–AIM transactions in SPX while also mitigating any potential disincentive to provide liquidity on the trading floor in SPX by better aligning electronic and open outcry crossing of SPX complex orders that include a combo.

The Exchange notes that the proposed rule change does not alter the minimum increment as determined by the Exchange for SPX complex strategies and is consistent with the ability of the Exchange to determine the minimum increment for SPX (the proposed minimum increment will be in multiples of \$0.05). Additionally, it would not alter the manner in which the System caps responses pursuant to Rule 5.38(c)(5)(B), wherein, if the BBO of any component of the complex strategy or the resting complex order, respectively, is a Priority Customer order, a response is capped at one minimum increment lower (higher) than the better of the SBO (SBB) or the offer (bid) of a resting complex order at the top of the Complex Order Book (“COB”). The System would simply use the minimum increment determined pursuant to the proposed calculation for any response submitted in connection with an Index Combo Order in SPX.²⁸ Instead, the proposed rule change provides that price improvement opportunities for such orders submitted into C–AIM, as well FLEX AIM, occur at the same meaningful increments that market participants reasonably would expect to occur on such orders pursuant to the current Rules and practice on the trading floor. The Exchange believes this may encourage a potential increase in participation in the C–AIM and FLEX AIM Auctions in SPX without a corresponding negative impact on participation or liquidity in open outcry auctions once the trading floor reopens. The Exchange believes that without the proposed rule change, market participants may improve the displayed auction price by only a trivial amount, thereby, potentially enabling liquidity providers to “step ahead” of those that are willing to trade with customer orders at the auction price. Such activity, in turn, may discourage market participants from providing liquidity at meaningful prices to commence an auction. As such, the Exchange believes that the proposed rule change to provide price improvement at more significant increments that are better aligned with

those received on the trading floor would encourage market participants to provide meaningful responses to customer orders in electronic auctions.²⁹

In the same way, the Exchange believes that the proposed rule change to allow the System to disseminate the initial price of an SPX AIM and C–AIM Auction, as well as FLEX AIM Auction, would more generally align the trading of SPX options submitted for execution into the electronic auctions with those crossed on the trading floor. The Exchange believes that the proposed rule change would allow the Exchange to address any uncertainties market participants may have when pricing SPX responses, given the more complicated market models, greater risk, higher notional value, larger sizes, and increasingly more complex strategies in SPX, by including the Agency Order stop price in the auction notification messages. This, in turn, may facilitate market participants’ confidence in pricing meaningful, competitive responses during electronic auctions in SPX in a manner substantially similar to which the trading crowd’s market allows for market participants to more confidently price their responses accordingly. As a result, this proposed rule change is intended to incentivize continued, competitive responses to SPX electronic auctions in substantially the same manner in which responses may be priced on the trading floor, thus, providing for potentially improved liquidity and price improvement opportunities for orders being executed through those auctions. The Exchange also notes that its affiliated options exchange, Cboe EDGX Exchange, Inc. (“EDGX Options”) corresponding rules³⁰ governing the AIM and C–AIM auction notification messages on EDGX Options provide that its system initiates the AIM or C–AIM auction processes by sending an auction notification message detailing the price, along with the same fields currently detailed pursuant to Cboe Options Rules 5.37(c)(2) and 5.38(c)(2) as well as 5.73(c)(2). Also, pursuant to Exchange Rule 5.33(d)(1), C2 Rule 6.13(d)(1), and EDGX Options Rule 21.20(d)(1), the Exchange and its affiliated options exchanges may currently determine to include in similar notification messages the limit price of an order that initiates a Complex Order Auction (“COA”), much like that of the stop price of an AIM, C–

AIM, or FLEX AIM Agency order that initiates these auctions. The Exchange further notes that similar electronic auctions on other options exchanges disseminate the price in their initial auction messages.³¹

The Exchange believes that providing similar response and execution opportunities across these trading facilities will serve to maintain meaningful levels of liquidity, price competition, and price improvement opportunities in SPX during both electronic and open outcry auctions upon the reopening of the trading floor if the Exchange determines to activate AIM and C–AIM for SPX at that time. As a result, the proposed rule change is designed to ensure that C–AIM for complex SPX strategies remains a viable additional means of execution for SPX complex orders, and that market participants maintain the same confidence in pricing their responses to AIM and C–AIM Auctions in SPX as they have during open outcry auctions, and thus, will continue to provide more execution and price improvement opportunities for customers. Likewise, the proposed rule change would align the FLEX AIM and C–AIM Auction process with the non-FLEX AIM and C–AIM Auction process, potentially providing the similar opportunities for execution and price improvement in connection with the same complex strategies and similar meaningfully price responses submitted into FLEX AIM and providing investors with continued consistency in the Exchange’s auction rules, thus, mitigating any confusion for those participating in both non-FLEX and FLEX SPX trading.

III. Summary of Comment Letter Received

To date the Commission has received one comment letter on the proposal.³² The commenter supported the proposal and agreed with Cboe’s assertion that “providing appointed Market-Makers with an additional way to participate in electronic auctions will expand available liquidity for these auctions, which may increase execution and price improvement opportunities for

³¹ See MIAAX Options Rule 5.18(d)(2), which governs the commencement of a Complex Auction on MIAAX Options, and Rules 515A(a)(2)(i)(B) and 515A.12, which govern the request for response message disseminated during MIAAX Options’ electronic crossing auctions, PRIME and complex PRIME; substantially similar to AIM and C–AIM; see also NYSE American Options Rule 903G(a)(2), which governs the information required in FLEX Request for quotes.

³² See letter to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Equities & Options Market Structure, The Securities Industry and Financial Markets Association, dated July 9, 2020.

²⁸ Amendment No. 1 adds language to clarify how the System would cap responses that were submitted in connection with an Index Combo Order in SPX and received the minimum price improvement pursuant to proposed Rule 5.38(c)(5)(A).

²⁹ Amendment No. 1 adds additional detail regarding the purpose of adopting the proposed minimum increments for responses in connection with Index Combo Orders in SPX.

³⁰ See EDGX Options Rules 21.19(c)(2) and 21.22(c)(2).

customers' orders."³³ The commenter also believed that the proposed rule change "would further align open outcry and electronic crossing auctions and the execution and price improvement opportunities in both auctions by permitting the same participants to be solicited as contras in both types of auctions across all classes at all times."³⁴ The commenter agreed with Cboe that "there is no reason to restrict Market-Makers ability to provide liquidity into electronic auctions when they are able to similarly provide that liquidity in open outcry trading."³⁵

IV. Proceedings To Determine Whether to Approve or Disapprove SR-CBOE-2020-052, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act³⁶ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change, as modified by Amendment No. 1, to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,³⁷ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulate 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 to protect investors and the public interest,

and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;³⁸ and Section 6(b)(8) of the Act, which requires that the rules of the Exchange do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.³⁹

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."⁴⁰ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁴¹ and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.⁴²

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5) and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,⁴³ any request for an opportunity to make an oral presentation.⁴⁴

³⁸ 15 U.S.C. 78f(b)(5).

³⁹ 15 U.S.C. 89f(b)(8).

⁴⁰ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁴¹ See *id.*

⁴² See *id.*

⁴³ 17 CFR 240.19b-4.

⁴⁴ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by September 17, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 1, 2020. Commission 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-2020-052 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-2020-052. 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

94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

³³ See *id.* at 3.

³⁴ See *id.*

³⁵ See *id.*

³⁶ 15 U.S.C. 78s(b)(2)(B).

³⁷ 15 U.S.C. 78s(b)(2)(B).

to make available publicly. All submissions should refer to File Number SR-CBOE-2020-052, and should be submitted on or before September 17, 2020. Rebuttal comments should be submitted by October 1, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89635; File No. SR-CBOE-2020-050]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment Nos. 1 and 2 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Amend Rules 5.37 and 5.73 Related to the Solicitation of Market Makers for SPX Initiating Orders in the Automated Improvement Mechanism and FLEX Automated Improvement Mechanism

August 21, 2020.

I. Introduction

On June 3, 2020, Cboe Exchange, Inc. (“Exchange” or “Cboe”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change to permit orders for the accounts of market makers with an appointment in S&P 500® Index Options (“SPX”) to be solicited for the initiating order submitted for execution against an agency order into an Automated Improvement Mechanism (“AIM”) auction or a FLEX AIM auction. The proposed rule change was published for comment in the **Federal Register** on June 18, 2020.³ On July 2, 2020, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.⁴ On July 22,

2020, the Exchange submitted Amendment No. 2 to the proposed rule change.⁵ On July 27, 2020, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁷ The Commission is publishing this notice and order to solicit comment on the proposed rule change, as modified by Amendment Nos. 1 and 2, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁸ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2.

II. Exchange’s Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Exchange proposes to permit orders for the accounts of Market-Makers with an appointment in SPX to be solicited for the Initiating Order⁹ submitted for execution against an Agency Order in SPX options into a simple AIM Auction pursuant to Rule 5.37 or a simple FLEX AIM Auction pursuant to Rule 5.73. The Exchange does not generally activate AIM for SPX options, and AIM for SPX options is currently not activated.¹⁰ The introductory paragraphs of Rules 5.37 and 5.73 prohibit orders for the accounts of Market-Makers with an appointment in the applicable class to

makers with an appointment in any class to be solicited for the initiating order in an AIM or FLEX AIM auction in that class, to only allow market makers with an appointment in SPX to be solicited for the initiating order in an AIM or FLEX AIM auction in SPX; and (2) provided additional data, justification, and support for its modified proposal. The full text of Amendment No. 1 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboe-2020-050/srcboe2020050-7382058-218888.pdf>.

⁵ In Amendment No. 2, the Exchange: (1) Provided additional data, justification, and support for its proposal; and (2) made technical corrections and clarifications to the description of the proposal. The full text of Amendment No. 2 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboe-2020-050/srcboe2020050-7464399-221161.pdf>.

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Securities Exchange Act Release No. 89398, 85 FR 46197 (July 31, 2020). The Commission designated September 16, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ The “Initiating Order” is the order comprised of principal interest or a solicited order(s) submitted to trade against the order the submitting Trading Permit Holder (the “Initiating TPH” or “Initiating FLEX Trader,” as applicable) represents as agent (the “Agency Order”).

¹⁰ FLEX AIM is generally activated, and currently is activated, for FLEX SPX options.

be solicited to execute against the Agency Order in a simple AIM or FLEX AIM Auction, respectively. No similar restriction applies to crossing transactions in open outcry trading, where a significant portion of SPX options trade.¹¹ As further discussed below, brokers seeking liquidity to execute against customer orders on the trading floor regularly solicit appointed SPX Market-Makers for this liquidity, as they are generally the primary source of pricing and liquidity for those options.

As of March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of the novel coronavirus and began operating in an all-electronic configuration.¹² As a result, the Exchange activated AIM for SPX options for the first time to provide market participants with a mechanism to cross SPX options while the floor was inoperable, which would otherwise not be possible without open outcry trading. The Exchange adopted a temporary rule change to permit Market-Makers to be solicited for electronic crossing transactions in its exclusively listed index options (including SPX options) when the Exchange’s trading floor was inoperable. The Exchange believed this would make the same sources of liquidity for customer orders that are generally available in open outcry available for those orders in an electronic-only environment.¹³ This was particularly true for SPX options, for which the Exchange enabled AIM for the first time. The Exchange believed not permitting Market-Makers to participate as contras could have made it difficult for brokers to find sufficient liquidity to fill their customer orders, which liquidity they generally solicited from SPX Market-Makers on the trading floor. For example, when the Exchange operates in its a hybrid manner as it currently is (with electronic and open outcry trading), if a customer order is not fully executable against electronic bids and offers, a floor broker can attempt to execute the order, or remainder thereof, on the trading floor, where the liquidity to trade with this remainder is generally provided by Market-Makers in the open outcry trading crowd. Additionally, brokers may solicit liquidity from upstairs Market-Maker firms.

Upon the reopening of the trading floor, the Exchange deactivated AIM for SPX options. While AIM was activated

¹¹ See Rules 5.86 and 5.87.

¹² The Exchange continues to operate in an all-electronic environment, but currently plans to reopen its trading floor on June 8, 2020.

¹³ See Rule 5.24(e)(1)(A); see also Securities Exchange Act Release No. 88886 (May 15, 2020), 85 FR 31008 (May 21, 2020) (SR-CBOE-2020-047).

⁴⁵ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 89062 (June 12, 2020), 85 FR 36907. Comments received on the proposed rule change are available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboe-2020-050/srcboe2020050.htm>.

⁴ In Amendment No. 1, the Exchange: (1) Limited the scope of its original proposal, which would have permitted orders for the accounts of market