

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92988; File No. SR-CBOE-2021-053]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5.5(c) and Rule 5.6(d) in Connection With Time-In-Force Instructions Available for Bulk Messages for the Account of a Market Maker

September 15, 2021.

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 9, 2021, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 Rule 5.5(c) and Rule 5.6(d) in connection with Time-in-Force instructions available for bulk messages. 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 5.5(c) and Rule 5.6(d) to allow Users to instruct bulk messages with a Time-in-Force of Immediate-or-Cancel (“IOC”). Currently, Users may not designate bulk messages as IOC, which, pursuant to Rule 5.6(d), instructs a limit order to execute in whole or in part as soon as the System receives it. The System cancels and does not post to the Book an IOC order (or unexecuted portion) not executed immediately on the Exchange or another options exchange. A bulk message is a single electronic message a User submits with an M Capacity (*i.e.*, for the account of a Market-Maker) to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. More, specifically, bulk message functionality is available to Market-Makers and permits them to update their electronic quotes in block quantities across series in a class. Rule 5.5(c)(3)(A)(i) currently provides that a bulk message submitted through a dedicated logical port (*i.e.*, a “bulk port”) has a Time-in-Force of Day. Pursuant to Rule 5.6(d), the term “Day” means, for an order so designated, an order or quote that, if not executed, expires at the RTH market close. All bulk messages have a Time in Force of Day, as set forth in Rule 5.5(c). The Exchange notes that, pursuant to Rule 5.6(a), a Time-in-Force applied to a bulk message applies to each bid and offer within that bulk message.

The Exchange proposes to allow Market-Makers to designate bulk messages as IOC by amending the following: Rule 5.3(c)(3)(A)(i) to provide that a bulk message submitted through a bulk port has a Time-in-Force of Day or IOC; the definition of IOC in Rule 5.6(d) to provide that Users may designate bulk messages as IOC; and the definition of “Day” in Rule 5.6(d) to remove the language that all bulk messages have a Time-in-Force of Day, as set forth in Rule 5.5(c), and instead provide that Users may designate bulk messages as Day.

A Market-Maker’s primary purpose is to provide liquidity to the market, which it may do in various ways,

including resting quotes on the Book as well as submitting quotes to trade against other resting interest on the Book. In addition to providing liquidity via continuous quotes in a Market-Maker’s appointed classes,⁵ as part of its quoting obligations, a Market-Maker is also required to maintain active markets in its appointed classes, update quotations in response to changed market conditions in its appointed classes and compete with other Market-Makers in its appointed classes.⁶ As part of a Market-Maker’s efforts to satisfy these obligations, a Market-Maker may update quotes with the specific purpose of removing interest resting in the Book. This may provide additional execution opportunities for customers, thereby encouraging an increase in overall participation in an appointed class.

Currently, if a Market-Maker wishes to execute against interest in the Book, a Market-Maker will enter a Book Only bulk message or modify an existing bulk message to attempt to execute against such interest, followed immediately by a bulk message to cancel the preceding bulk message (or unexecuted portion) so that no portion of that bulk message will remain displayed on the Book.

Essentially, in order to execute against interest on the Book, Market-Makers may currently send a sequence of bulk messages that mimic the result of an IOC instruction—ultimately the bulk message is cancelled and does not post to the Book if it is not executed immediately against resting interest. Sending a bulk message to cancel immediately following the submission of a bulk message or a bulk message modification to execute against resting interest creates an extra step for Market-Makers (compared to Trading Permit Holders (“TPHs”) that may use IOC orders to accomplish this) using bulk message functionality and requires the System to process additional messages. As such, the proposed rule change to permit Market-Makers to designate their bulk messages as IOC would allow them to attempt more effectively and efficiently to execute against interest in the Book and would reduce message traffic by eliminating the need for Market-Makers to send multiple messages to attempt this. The Exchange notes that Market-Makers may already use bulk messages to remove liquidity from the Book (if they so elect) using the “Book Only” instruction and, as described above, Market-Makers may already use bulk messages to remove liquidity without letting nonexecuted size rest on the Book. The proposed rule

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).

⁵ See Rule 5.51(a)(1).

⁶ See Rule 5.51(a)(3)–(5).

change merely streamlines the manner in which Market-Makers may already utilize bulk messages to execute against interest on the Book without sending an unexecuted bulk message (or unexecuted portion) to the Book thereafter. Also, Market-Makers may already designate their quotes submitted in an order as IOC.⁷

The Exchange notes that bulk message functionality is designed to facilitate Market-Makers quoting on the Exchange in connection with their responsibility as liquidity providers. For example, the current requirement that bulk messages have a Time-in-Force of Day is consistent with general practice of Market-Makers to enter new quotes at the beginning of each trading day, as well as a Market-Maker's obligation to update its quotes in response to changed market conditions in its appointed classes. The provision that allows Market-Makers to designate their bulk messages as Post Only or Book Only is intended to provide Market-Makers with flexibility to use these instructions to permit them to execute against resting interest upon entry or add liquidity to the Book in connection with their various obligations in a manner they deem appropriate.⁸ The Exchange believes that the proposed rule change likewise permits Market-Makers to use an instruction with respect to their bulk messages as an additional tool to provide liquidity to the market and meet their various obligations (such as maintaining active markets in an appointed class, updating quotations in response to changed market conditions in an appointed class and competing with other Market-Makers in an appointed class) in a manner they deem appropriate, which may include removing interest in the Book to subsequently post updated quotes at potentially tighter spreads and to provide additional execution opportunities at potentially improved prices. The Exchange also believes that

the proposed rule change enhances a current means by which Market-Makers use bulk messages to facilitate the provision of liquidity on the Exchange. That is, Market-Makers using bulk messages with an IOC instruction, as proposed, may more efficiently execute against resting interest, thereby increasing execution opportunities for orders resting on the Book. An increase in transactions on the Exchange may facilitate tighter spreads and price discovery, and, as a result, encourage increased participation and additional order flow from other market participants. The Exchange notes that the submission of bulk messages to the Exchange is voluntary and that Market-Makers may continue to elect to use bulk messages designated as Day in the same manner as they do today, including sending a bulk message immediately followed by a cancel to attempt to execute against resting interest.

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.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ 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)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change allowing Market-Makers to designate their bulk messages as IOC will remove impediments to and perfect the mechanism of a free and open market and national market system and benefit investors by permitting Market-Makers to more effectively and efficiently

execute bulk messages against specific interest on the Book without posting an unexecuted bulk message (or unexecuted portion) to the Book thereafter. As described above, Market-Makers already submit bulk messages in a manner that mimics an IOC instruction; the proposed rule change merely streamlines this process for Market-Makers by allowing them to use a Time-in-Force instruction currently available for their orders (which may also contain a Market-Maker's quotes) on the Exchange today. In addition to this, Market-Makers may already include Book Only instructions that permit their bulk messages to remove liquidity from the Book. The proposed rule change is designed to benefit market participants by increasing efficiency and reducing additional message traffic by eliminating the need for Market-Makers to send an additional bulk message to cancel along with their bulk messages in instances in which they wish to execute against interest that appears on the Book. The proposed rule change allows Market-Makers to elect to use their bulk messages as additional tools to meet their various obligations in a manner they deem appropriate, consistent with the purpose of bulk message functionality to facilitate Market-Makers' provision of liquidity, which may include removing interest in the Book to subsequently post updated quotes at potentially tighter spreads and to provide additional execution opportunities at potentially improved prices. Also, the use of IOC bulk messages for Market-Makers may ultimately facilitate the provision of additional liquidity on the by increasing execution opportunities on the Exchange, as an increase in transactions on the Exchange may facilitate tighter spreads and price discovery, thereby encouraging increased participation and additional order flow from other market participants, to the benefit of all investors. Market-Makers may continue to elect to use bulk messages designated as Day in the same manner as they do today, including sending a bulk message immediately followed by a cancel to attempt to execute against resting interest.

Additionally, the Exchange does not believe that the proposed rule change would permit unfair discrimination as bulk message functionality is principally designed to facilitate the provision of liquidity by Market-Makers to the Exchange and help Market-Makers' satisfy their obligations. The Exchange believes that Market-Makers play a unique and critical role in the

⁷ A "quote" or "quotation" is a firm bid or offer a Market-Maker may submit electronically in an order or bulk message. See Rule 1.1. The Exchange also notes that, while Market-Makers may currently instruct their orders, including quotes submitted as orders, as IOC, the Exchange understands that Market-Makers predominantly conduct their trading activity through and design their business models around the use [sic] bulk messages.

⁸ See Securities Exchange Release Nos. 86374 (July 15, 2019), 84 FR 34963 (July 19, 2019) (SR-CBOE-2019-033); and 88816 (May 6, 2020), 85 FR 28131 (May 12, 2020) (SR-CBOE-2020-041). The Exchange notes that SR-CBOE-2019-033 implemented bulk message functionality to replace the Exchange's prior block quoting functionality, which likewise allowed a Market-Maker to submit a single message containing bids and offers in multiple series; however, the Exchange Rules did not prohibit an IOC designation for quotes submitted in block quantities.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ *Id.*

options market by providing liquid and active markets and are subject to various quoting obligations (which other market participants are not), including an obligation to maintain active markets, to update quotations in response to changed market conditions and to compete with other Market-Makers in its appointed classes. Bulk message functionality, including an IOC bulk message, provides Market-Makers with a means to help them satisfy these obligations. As noted above, Market-Makers are already able to use Book Only bulk messages to execute against resting liquidity in multiple series across a class and to cancel quotes in multiple series across a class. The proposed rule change simply allows Market-Makers to utilize their bulk messages in the same manner, just with a single message.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the IOC instruction for bulk messages will be available for all Market-Makers that choose to submit bulk messages. Use of the IOC instruction for bulk messages is voluntary, and Market-Makers may choose to continue to only apply the Day Time-in-Force to bulk messages and continue to attempt to execute bulk messages against resting interest using multiple messages as they do today. The proposed rule change permits Market-Makers to use a Time-in-Force that is already available to all TPHs, including Market-Makers, to apply to their orders. While only Market-Makers may submit IOC bulk messages (as only Market-Makers may currently submit any bulk messages), the Exchange believes this is appropriate given the various obligations Market-Makers must satisfy under the Rules and the unique and critical role Market-Makers play in the options market by providing liquid and active markets. The Exchange believes providing Market-Makers with flexibility to use the IOC instruction with respect to bulk messages will provide Market-Makers with an enhanced tool to provide liquidity to the market and satisfy their obligations in a manner they deem appropriate, as they are similarly able to do today by electing

the Book Only and Post Only instructions for their bulk messages.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as it relates to quoting functionality available to Market-Makers on the Exchange. The Exchange notes that market participants on other exchanges are welcome to become Market-Makers on the Exchange if they determine that this proposed rule change has made participation as a Market-Maker on the Exchange more attractive or favorable.

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

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

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

Because the foregoing proposed rule change does not:

- A. Significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

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-2021-053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2021-053. 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-2021-053, and should be submitted on or before October 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier,
Assistant Secretary.

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¹⁴ 17 CFR 200.30-3(a)(12).