

under Section 19(b)(2)(B)<sup>32</sup> 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](mailto: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.<sup>33</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-13121 Filed 6-17-20; 8:45 am]

BILLING CODE 8011-01-P

## 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 through 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<sup>3</sup> 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.<sup>4</sup> 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,

<sup>3</sup> The proposed rule change indicates the maximum size may be up to 100 contracts.

<sup>4</sup> 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).

<sup>32</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>33</sup> 17 CFR 200.30-3(a)(12).

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

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

involves taking on greater risk, has a significantly higher notional value (*e.g.*, they are ten times the notional size of SPY options), tends to trade in much larger size, and tends to execute increasingly more complex strategies (*e.g.*, SPX Combo orders) than in other options classes. The Exchange understands these factors may limit retail customer participation in SPX to simpler strategies and smaller-sized orders. These factors also have contributed to the Exchange's historical determination to not activate AIM in SPX when the floor is open so to encourage liquidity on the trading floor to accommodate these large and complex trades. Therefore, the Exchange believes the application of an Agency Order size ceiling may provide more price improvement opportunities in SPX geared towards retail customers. The Exchange believes this may incentivize increased retail customer auction participation in SPX and provide retail customers with execution and price improvement opportunities in SPX while incentivizing continued liquidity on the trading floor for larger and more complex orders.

The Exchange has observed that increased smaller size order flow tends to attract Market-Maker responses, as such orders are generally easier to hedge than larger orders, which may encourage Market-Makers to compete to provide price improvement in an electronic competitive auction process. This, in turn, may contribute to a deeper, more liquid auction process with additional price improvement opportunities for market participants, and particularly retail customers. The Exchange notes, too, that the Exchange's trading floor may be better suited for crosses in SPX with more complex orders, complicated strategies and larger size. Such orders are more generally executed on the trading floor, where Trading Permit Holders ("TPHs") may negotiate and fine-tune the terms of a trade. In addition to this, the trading crowd in open outcry may provide markets that are more tailored to the complexity and size of orders typically submitted in SPX. Greater execution and price improvement opportunities for SPX orders may result from the markets given by the trading crowd that better define the nuanced complexity and size of such orders than if the same orders were submitted via AIM or C-AIM—which, instead, may provide greater price improvement opportunities for simpler and smaller orders. Permitting the Exchange to determine a maximum size for SPX orders submitted to AIM and C-AIM will enable the

Exchange to activate AIM and C-AIM in SPX to provide additional price improvement opportunities for smaller orders and maintain liquidity on the trading floor for larger complex orders, thus creating a liquid hybrid environment for orders in this class.

In a sample of SPX orders submitted into simple AIM during a week of trading in April 2020,<sup>5</sup> the Exchange observed that orders containing quantities from one to ten contracts submitted through AIM received an average price improvement of approximately \$0.34 over their limit prices, orders containing quantities from 11 to 50 contracts received an average price improvement of approximately \$0.22, and orders for 51 to 100 contracts received an average price improvement of \$0.08; whereas, orders containing quantities of between 100 and 250 contracts received an average of \$0.08 and orders containing quantities of between 251 and 500 received an average of \$0.15. That is approximately 325% larger average price improvement than orders for one to ten contracts received than orders for 100 to 250 contracts and approximately 127% larger average price improvement than orders for 251 to 500 contracts. The Exchange also observed this trend generally in the sample of SPX orders submitted to C-AIM, as well, where greater price improvement generally occurred for smaller sized orders as compared to larger sized orders. For C-AIM, the Exchange observed that orders for one to ten contracts received an average price improvement of \$0.14, for 11 to 50 contracts received an average of \$1.69, and for 51 to 100 contracts received an average of \$2.36; whereas orders for 100 to 250 contracts received an average price improvement of \$1.15 and orders for 251 to 500 contracts received an average of \$0.24. As this data demonstrates, price improvement on smaller orders in SPX, a class which generally exhibits more complicated trading characteristics and complex market factors, is generally more beneficial than price improvement on larger orders submitted through AIM and C-AIM.<sup>6</sup> As a result, if the Exchange is able to implement a maximum size requirement for SPX as proposed, it may determine to activate

<sup>5</sup> The sample was taken for average price improvement over the limit price of Agency Orders submitted into AIM and C-AIM from April 6 through April 9.

<sup>6</sup> The proposed rule change to designate a maximum "maximum size" of 100 is based on this data, which demonstrates that orders with size up to 100 contracts generally receive the most beneficial price improvement (and are generally considered to be "retail" sized orders).

AIM when the trading floor is open. The Exchange believes this could incentive the submission of smaller size SPX orders to the Exchange. As a result, the Exchange believes the proposed rule change will provide retail customers with additional price improvement opportunities for retail customers overall when the trading floor is open while preserving liquidity available in the market, particularly on the trading floor, for larger and more complicated orders.

Finally, pursuant to current Rule 5.37.02 and Rule 5.38.02, it is deemed conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 8.1 to engage in a pattern of conduct where the Initiating Member breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating TPH would have otherwise received in accordance with the allocation procedures contained in the AIM and C-AIM Rules, respectively. In light of the proposed rule change, the Exchange also proposes to amend Rules 5.37.02 and 5.38.02 to make it clear that Initiating TPHs also may not break up an Agency Order into separate orders for the purpose of circumventing a maximum quantity requirement as determined by the Exchange pursuant to subparagraph(s) (a)(3). The Exchange notes that its surveillance program will monitor for such violations in the same manner in which it currently monitors for allocation-related break up violations.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> 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 the proposed rule change to allow the Exchange to determine a maximum size for AIM and C-AIM Agency Orders in SPX will provide the Exchange with the flexibility to activate AIM and C-AIM Auctions for SPX in a manner the Exchange believes will appropriately address the different trading characteristics, market model, investor basis and conditions presented in SPX as compared to different option classes. The Exchange has considered these factors in its determination to not activate AIM and C-AIM in SPX when operating in a normal hybrid trading environment. With the proposed rule change, the Exchange would consider activating AIM and C-AIM in SPX when the trading floor is open to provide additional execution and price improvement opportunities to retail customers. The Exchange believes this may encourage an increase smaller-sized SPX orders and meaningful and competitive responses to the auctions, as applicable, which ultimately benefits investors and retail customers in particular.

The Exchange acknowledges that price improvement auctions have provided the market with benefits, such as providing an efficient manner of access to liquidity for customers. However, the options industry overall has observed that quoted liquidity on the book has decreased, quotes have widened, and options market makers have reduced their participation in the market, which has impacted market quality.<sup>10</sup> Thus, the Exchange believes that the flexibility to impose a maximum order size for these auctions would permit the Exchange to provide retail customers in SPX with access to these auctions while continuing to create incentives for SPX Market-Makers to continue to provide liquidity in the in the trading crowd for larger and more complex orders. As such, the Exchange believes the proposed rule change may encourage a general increase in retail order flow and execution opportunities

in AIM and C-AIM Auctions in SPX, thus enhancing the quality of the auctions, while maintaining market quality and liquidity for larger and more complicated orders, which removes impediments to and perfects the mechanism of a free and open market and a national market system, and benefits the entire market and all investors.

In addition to this, the Exchange does not believe that the proposed rule change would significantly impact TPHs that submit larger and more complicated orders in SPX because the trading floor is generally better suited and more appropriate for such orders, where TPHs tend to execute much larger and more complex orders given the flexibility to negotiate and fine-tune the terms of an order.<sup>11</sup> As discussed above, the Exchange believes not permitting these larger orders to execute in AIM and C-AIM auctions will create incentives for Market-Makers to continue to provide on the trading floor to execute against those orders. Additionally, given that the Exchange does not generally activate AIM and C-AIM in SPX, the proposed rule change will have no impact on larger orders, which TPHs are unable to submit into AIM and C-AIM Auctions when the trading floor is open. In addition, the Exchange believes that the proposed rule change to amend Rules 5.37.02 and 5.38.02 would protect investors by prohibiting TPHs to break up Agency Orders to circumvent maximum size requirements.

The Exchange does not believe that the purpose of the proposed rule change to accommodate retail customers is new or unique, as the Exchange and other options exchanges currently have rules, such as certain reduced fees and market structure benefits, in place that provide preferential treatment to or are geared toward benefitting retail customers particularly. Moreover, the Exchange believes that the proposed rule change is consistent with longstanding precedent, thus indicating that it is consistent with the Act, to provide reasonable incentives to retail investors that rely on the public markets for their investment needs. Indeed, the Commission has long stressed the need to ensure that the markets are structured in a way that meets the needs of ordinary investors.<sup>12</sup> The Exchange

believes that the proposed rule change would assist the Exchange in achieving the Commission's stated goal of improving the retail investor experience in the public markets while protecting overall market quality.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply to all Agency Orders in SPX where the Exchange imposes a maximum size submitted into the AIM and C-AIM auctions by all market participants. The Exchange believes having the ability to designate a maximum size for SPX orders only is appropriate given the trading characteristics, market model, investor base, and large notional value of SPX options compared to other options. The Exchange believes all market participants in SPX may benefit from any additional liquidity and price improvement in the AIM and C-AIM Auctions that may result from the proposed rule change. Moreover, the Exchange believes that determination of a maximum quantity in SPX would not significantly affect TPHs that submit larger and more complicated orders as open outcry auctions are generally better suited to facilitating liquidity for larger order size and/or more complex order strategies. The Exchange notes it generally does not activate AIM and C-AIM in SPX options, so the proposed rule change would have no impact on larger-sized SPX orders that currently are not permitted to be submitted into AIM and C-AIM auctions when the Exchange is operating in a normal hybrid trading environment. The Exchange believes not permitting larger orders into these auctions will encourage Market-Makers to continue to provide liquidity in the trading crowd while providing retail customers with price improvement opportunities, which may increase competition for these orders. As stated above, the Exchange believes the proposed rule change is consistent with the Commission's goal and industry practice to provide reasonable incentives to retail investors that rely on

<sup>9</sup> *Id.*

<sup>10</sup> See Letter to Brett Redfearn, Director, Division of Trading & Markets, from Cboe Global Markets, Inc. the Listed Options Trading Committee of the Securities Industry and Financial Markets Association ("SIFMA"), and the Listed Options Committee of the Security Traders Association ("STA"), dated June 4, 2018, available at [http://cdn.batstrading.com/resources/comment\\_letters/Cboe-Joint-Letter-with-SIFMA-and-The-STA-on-Options-Market-Structure.pdf](http://cdn.batstrading.com/resources/comment_letters/Cboe-Joint-Letter-with-SIFMA-and-The-STA-on-Options-Market-Structure.pdf).

<sup>11</sup> This is demonstrated by the significant decrease in complex order execution while the Exchange has operated in an all-electronic environment.

<sup>12</sup> See e.g. U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018–2022, available at [https://www.sec.gov/files/SEC\\_Strategic\\_Plan\\_FY18-FY22\\_FINAL\\_0.pdf](https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf), wherein the Commission's strategic plan for fiscal years

2018–2022 touts "focus on the long-term interests of our Main Street investors" as the Commission's number one strategic goal.

the public markets for their investment needs. The Exchange also notes the proposed rule change has no impact on the allocation or priority of orders and responses at the conclusion of AIM and C-AIM auctions. Additionally, any Agency Order for less than 50 contracts must continue to have an auction price that improves the then-current NBBO.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule change relates to an Exchange-specific auction mechanism in a class of options only listed for trading on the Exchange. The Exchange also notes that other options exchanges offer similar price improvement auctions<sup>13</sup> that are available to market participants, and other options exchanges may, in their discretion, adopt similar flexibility in connection with their auctions.

*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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. By order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2020-051 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-CBOE-2020-051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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-CBOE-2020-051, and should be submitted on or before July 9, 2020.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-13118 Filed 6-17-20; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 89066/June 12, 2020; File No. 4-757]

**Securities Exchange Act of 1934; Order Denying Stay; In the Matter of Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a New National Market System Plan Regarding Consolidated Equity Market Data**

On June 1, 2020, Nasdaq Stock Market LLC, Nasdaq BX, Inc., and Nasdaq PHLX LLC filed a petition in the U.S. Court of Appeals for the District of Columbia Circuit seeking review of the Commission's Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System ("NMS") Plan Regarding Consolidated Equity Market Data (the "Governance Order"), which was approved by the Commission on May 6, 2020 and later published in the **Federal Register**. See 85 FR 28702 (May 13, 2020). On June 3, 2020, petitioners filed with the Commission a motion to stay the effect of the Governance Order pending final resolution of their petition for review.

Pursuant to Section 25(c)(2) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 705 of the Administrative Procedure Act, the Commission has discretion to stay its order directing the self-regulatory organizations ("SROs") to jointly develop, and file with the Commission by August 11, 2020, a single New Consolidated Data Plan that replaces the three current Equity Data Plans if it finds that "justice so requires." 15 U.S.C. 78y(c)(2); 5 U.S.C. 705. The Commission has determined, however, that petitioners have not met their burden to demonstrate that the extraordinary remedy of a stay of the Commission's Governance Order is warranted. Petitioners have not established sufficient irreparable harm, petitioners' legal challenges to the Order lack merit, and the public interest would be served by the SROs complying with the requirements of the Order.

1. The Commission finds that petitioners' stay request overstates the harm that will result from their compliance with the Governance Order. Petitioners assert that, in the absence of a stay, they "will incur immediate and significant upfront costs in drafting the New Consolidated Data Plan, seeking Commission approval of the plan, and, if approved, implementing the plan." Stay Mot. 16. But the Governance Order does not establish a New Consolidated Data Plan. It requires the SROs to file a

<sup>13</sup> See e.g., BOX Options' Price Improvement Period ("PIP") available at <https://boxoptions.com/about/price-improvement/>; and Complex Order Price Improvement Period ("COPIP") available at <https://boxoptions.com/about/complex-order-description/>; and MIAAX Options' Price Improvement Mechanism ("PRIME") and Complex Price Improvement Mechanism ("cPRIME") available at [https://www.miaaxoptions.com/sites/default/files/knowledge-center/2017-07/MIAAX\\_PRIME\\_07212017.pdf](https://www.miaaxoptions.com/sites/default/files/knowledge-center/2017-07/MIAAX_PRIME_07212017.pdf).

<sup>14</sup> 17 CFR 200.30-3(a)(12).