

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 auctions¹³ 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. 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.¹⁴

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

¹³ 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.

¹⁴ 17 CFR 200.30-3(a)(12).

proposed plan with the Commission. Pursuant to Regulation NMS Rule 608, the New Consolidated Data Plan submitted in response to the Governance Order “will itself be published for public comment prior to any Commission decision to disapprove or to approve the plan with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.” 85 FR at 28705; *see* 17 CFR 242.608. Through that process, interested parties will still be able to comment on the proposed plan, and the Commission will review the plan and may make changes or add conditions before issuing a subsequent order approving or disapproving a new plan. Petitioners thus err by claiming that they will incur significant upfront costs in implementing a plan if the Governance Order is not stayed.

Similarly, petitioners wrongly assert that there would be any actions taken pursuant to a New Consolidated Data Plan that would have to be unwound in the absence of a stay. Stay Mot. 16–17. As the Governance Order makes clear, the current Equity Data Plans will remain in place until a New Consolidated Data Plan has been approved by the Commission and implemented. *See* 17 CFR 242.608(b)(1); 85 FR at 28705, 28728. The proposed plan, moreover, must include provisions for the orderly transition of functions and responsibilities from the three existing Equity Data Plans. *Id.* at 28729. And any approval order will be subject to judicial review at that time.

Petitioners also overstate the harm from compliance with the Governance Order itself, including drafting the New Consolidated Data Plan and seeking Commission approval. For example, the SROs will be able to use their extensive expertise and experience in NMS plan operation to efficiently formulate the specific terms and provisions of the proposed New Consolidated Data Plan. 85 FR at 28711. The Commission anticipates that proposal costs will be further reduced because most of the detailed provisions relating to the operation of the existing Equity Data Plans could be imported into the New Consolidated Data Plan without substantial effort or great cost. *Id.* And to the extent governance provisions in the New Consolidated Data Plan would differ from those in the existing Equity Data Plans, the Governance Order prescribes the content of these provisions, further reducing the costs of preparing the new plan. *Id.* at 28729. We therefore do not believe that any harm resulting from compliance with the Governance Order warrants a stay.

2. Petitioners have not shown a likelihood of success on the merits. Exchange Act Section 11A permits the Commission “to authorize or require” SROs “to act jointly” with respect to “matters as to which they share authority under this chapter in planning, developing, operating, or regulating a national market system.” 15 U.S.C. 78k–1(a)(3)(B). Rule 608 likewise provides that “[a]ny two or more self-regulatory organizations, acting jointly, may file a national market system plan” and that “[s]elf-regulatory organizations are authorized to act jointly in” “[p]lanning, developing, and operating any national market subsystem or facility contemplated by a national market system plan,” “[p]reparing and filing a national market system plan,” and “[i]mplementing or administering an effective national market system plan.” 17 CFR 242.608(a). In petitioners’ view, the statutory and regulatory references to “acting jointly” mean that SROs—and only SROs—may have voting power on an NMS operating committee.

The Commission has already considered and rejected that argument. In the Governance Order, the Commission determined that granting non-SROs voting power is consistent with Section 11A and Rule 608(a). Despite petitioners’ challenge, nothing in the text of either Section 11A or Rule 608(a) demonstrates that “acting jointly” means “acting jointly *and exclusively*.” Rather, paragraph (2) of Section 11A(a) contains a broad grant of authority to the Commission, directing it “to use its authority” under the Exchange Act “to facilitate the establishment of a national market system for securities” in accordance with certain broad congressional findings and objectives. 15 U.S.C. 78k–1(a)(2). Paragraph (3) then references the Commission’s ability to authorize or require SROs to act jointly, and nothing in the text or structure of paragraph (3) undermines the Commission’s grant of authority in paragraph (2) or compels the conclusion that joint SRO action must mean exclusive SRO action. The Commission’s grant of authority to SROs in Rule 608(a)(3) likewise authorizes SROs to act jointly but, in doing so, does not by implication limit the Commission’s authority to set forth a governance structure that includes non-SROs with some measure of voting power on an NMS plan operating committee. Rather, as the Governance Order notes, both Section 11A and Rule 608 are silent as to the participation of non-SROs in the operation of the plan. 85 FR at 28715. The Governance Order’s

allocation of voting power to non-SROs is thus consistent with Section 11A and Rule 608(a).

The Governance Order does not discount the important role SROs play in plan governance. But it balances that role against the need for, among other things, more viewpoints on plan operating committees. The Commission has determined that “the distribution of voting power” described in the Governance Order “appropriately strikes th[e] balance” between broader representation and the SROs’ statutory and regulatory responsibilities, “by providing for meaningful input from a broad range of stakeholders while also ensuring that the SROs retain sufficient voting power to act jointly on behalf of the plan pursuant to their regulatory responsibilities.” 85 FR at 28722.

Petitioners’ other challenges presented in their stay motion were already rejected in the Governance Order.

3. The Governance Order serves a strong public interest. The governance model for the Equity Data Plans was established in 1970s. Since then, critical developments in the equities markets—including the heightening of an inherent conflict of interest between the for-profit and regulatory roles of the exchanges and the concentration of voting power in the Equity Data Plans among a few large exchange groups—have demonstrated the need for an updated governance model. The public interest will be served by the enhanced decisionmaking and innovation in the provision of equity market data that will result from the governance changes outlined in the Governance Order. And the governance of the consolidated data feeds can be improved by consolidating the three existing, separate Equity Data Plans into a single New Consolidated Data Plan that will reduce existing redundancies, inefficiencies, and inconsistencies between and among the Equity Data Plans. *See* 85 FR at 28711; Proposed Order, 85 FR 2164, 2166–74 (Jan. 14, 2020). Moreover, as the Order explains, “[a]ddressing the issues with the current governance structure of the Equity Data Plans discussed in this Order is a key step in responding to broader concerns about the consolidated data feeds.” 85 FR at 28702 & n.11. Any further delay in taking this first step toward establishing a new governance structure will impede the achievement of these benefits.

Accordingly, it is *ordered*, pursuant to Section 25(c)(2) of the Exchange Act and Section 705 of the Administrative Procedure Act that petitioners’ motions for a stay be denied.

By the Commission.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2020–13127 Filed 6–17–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89063; File No. SR–CBOE–2020–052]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating To Amend Rules 5.37, 5.38 and Rule 5.73

June 12, 2020.

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 June 3, 2020, 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 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 Rules 5.37, 5.38 and Rule 5.73. 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 5.38 and Rule 5.73 regarding the minimum increment for Complex Automated Improvement Mechanism (“C-AIM”) and FLEX AIM Auction responses, respectively, in connection with SPX Combo Orders, 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.³ 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.⁴

When the Exchange is operating in its normal trading environment, the Exchange has not activated C-AIM (or AIM) in SPX,⁵ 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 percentage⁶ of

the order with facilitated (and solicited orders, if designated by the Exchange for a class) after satisfying public customer orders⁷ 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.⁸

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.*, SPX Combo orders) 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.

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 SPX⁹ is \$0.05 or greater, or in any increment determined by the Exchange. When seeking to cross SPX

Regulatory Circular RG16–179, Participation Entitlement Applicable to Crossing Orders in Open Outcry (November 18, 2016) available at <https://www.cboe.com/publish/RegCir/RegCir-179.pdf>.

⁷ Similarly, the AIM and C-AIM percentage applies after public customer orders are satisfied. See Rules 5.37(e) and 5.38(e).

⁸ See Rule 5.87, Interpretation and Policy .05.

⁹ Except for box/roll spreads.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Exchange notes FLEX AIM in SPX had been activated prior to March 16, 2020.

⁴ 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).

⁵ 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. Currently, the trading floor is scheduled to reopen June 15, 2020. 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.

⁶ Currently, the Exchange has set the percentage as 40% (the same crossing entitlement percentage as on AIM, C-AIM, and FLEX AIM). See CBOE