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Page 1 of * 29

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2020 - * 051
Amendment No. (req. for Amendments *)

Filing by Cboe Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Rule

19b-4(f)(1) 19b-4(f)(2) 19b-4(f)(3) 19b-4(f)(4) 19b-4(f)(5) 19b-4(f)(6)

Pilot ☐ Extension of Time Period for Commission Action * ☐ Date Expires *

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

The Exchange proposes to amend its automated price improvement auction rules in connection with Agency Order size requirements.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Rebecca Last Name * Tenuta

Title * Counsel

E-mail * rtenuta@cboe.com

Telephone * (312) 786-7068 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 06/11/2020

By Laura G. Dickman

(Name *)

(Title *)

VP, Associate General Counsel

ldickman@cboe.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) 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.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange's President (or designee) pursuant to delegated authority approved the proposed rule change on May 29, 2020.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Rebecca Tenuta, (312) 786-7068, Cboe Exchange, Inc., 400 South LaSalle, Chicago, Illinois 60605.

Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

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

Currently, Rules 5.37(a)(3) and 5.38(a)(3), which govern the size requirements for AIM and C-AIM Agency and Initiating Orders, provide that there is no minimum size for orders submitted into AIM and C-AIM Auctions, respectively, and that the Initiating Order must be for the same size as the Agency Order. As such, an Agency Order of any size[1] 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.[2] 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, 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

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1 The proposed rule change indicates the maximum size may be up to 100 contracts.

2 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).

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,[3] 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 that 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

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3 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.

factors, is generally more beneficial than price improvement on larger orders submitted through AIM and C-AIM.[4] As a result, if the Exchange is able to implement a maximum size requirement for SPX as proposed, it may determine to activate 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.

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4 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).

(b) 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.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] 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)[7] 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

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

[6] 15 U.S.C. 78f(b)(5).

[7] Id.

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.[8] 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

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8 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.

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.[9] 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

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9 This is demonstrated by the significant decrease in complex order execution while the Exchange has operated in an all-electronic environment.

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.[10] 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.

Item 4. 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

10 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, 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.

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 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[11] that

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11 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 MIAX Options' Price Improvement Mechanism ("PRIME") and Complex Price Improvement Mechanism ("cPRIME") available at

are available to market participants, and other options exchanges may, in their discretion, adopt similar flexibility in connection with their auctions.

Item 5. **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.

Item 6. **Extension of Time Period for Commission Action**

Not applicable.

Item 7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) The proposed rule change is filed for accelerated effectiveness pursuant to Section 19(b)(2) of the Act. The Exchange requests that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act so that it may be operative as soon as practicable. As noted above, the Exchange activated AIM and C-AIM for SPX while the trading floor was closed, during which time the Exchange observed significant price improvement for smaller orders. The Exchange plans to reopen its trading floor on June 8, at which time it plans to deactivate AIM, consistent with the SPX market model prior to the floor closure. Accelerated approval of the proposed rule change will permit the Exchange to activate AIM in SPX as soon as

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https://www.miaxoptions.com/sites/default/files/knowledge-center/2017-07/MIAX_PRIME_07212017.pdf.

possible after the reopening of the trading floor in a manner the Exchange believes is appropriate given the trading characteristics and market model for SPX that differ from other options classes. The Exchange believes this will provide additional execution and price improvement opportunities to retail customers that have historically not been available to these customers through an electronic auction when the trading floor is open. The Exchange believes this will also preserve liquidity and market quality on the trading floor for larger and more complicated orders, which comprises a significant portion of SPX trading, which will benefit all investors that participate in the SPX market. For these reasons, the Exchange believes that accelerated approval is appropriate.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. Proposed rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

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

[Insert date]

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

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 [insert date], 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 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.

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

2 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

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

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

The Exchange now proposes to amend Rule 5.37(a)(3) to provide that the Exchange may determine a maximum size requirement for Agency Orders in SPX, and by amending Rule 5.38(a)(3) to provide that the Exchange may determine a maximum size requirement for the smallest leg of an Agency Order in SPX.[4] The Exchange believes that the proposed

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

4 Application of the maximum size to the smallest leg of complex orders is consistent with the application of a size requirement for the Exchange's Complex Solicitation Auction Mechanism, which is a similar price improvement auction

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, 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

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mechanism on the Exchange. See Rule 5.40(a)(3).

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,[5] 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

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5 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.

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 that 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.[6] As a result, if the Exchange is able to implement a maximum size requirement for SPX as proposed, it may determine to activate 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

[6] 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).

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.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] 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,

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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)[9] 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

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9 Id.

the book has decreased, quotes have widened, and options market makers have reduced their participation in the market, which has impacted market quality.[10] 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.[11] 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

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10 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.

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

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.[12] 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.

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[12] 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, 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.

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 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[13] 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

[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 MIAX Options' Price Improvement Mechanism ("PRIME") and Complex Price Improvement Mechanism ("cPRIME") available at https://www.miaxoptions.com/sites/default/files/knowledge-center/2017-07/MIAX_PRIME_07212017.pdf.

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 e-mail 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 e-mail 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, D.C. 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; the Commission does not edit personal identifying information from 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 [insert date 21 days from publication in the Federal Register].

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

Secretary

[14] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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Rules of Cboe Exchange, Inc.

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Rule 5.37. Automated Improvement Mechanism ("AIM" or "AIM Auction")

A Trading Permit Holder (the "Initiating TPH") may electronically submit for execution an order it represents as agent ("Agency Order") against principal interest or a solicited order(s) (except for an order for the account of any Market-Maker with an appointment in the applicable class on the Exchange) (an "Initiating Order") provided it submits the Agency Order for electronic execution into an AIM Auction pursuant to this Rule. For purposes of this Rule, the term "NBBO" means the national best bid or national best offer at the particular point in time applicable to the reference, and the term "Initial NBBO" means the national best bid or national best offer at the time an Auction is initiated. Bulk messages are not eligible for AIM.

(a) *AIM Auction Eligibility Requirements*. The Initiating TPH may initiate an AIM Auction if all of the following conditions are met:

(1)-(2) No change.

(3) *Size*. There is no minimum size for Agency Orders. The Exchange may determine a maximum size requirement for Agency Orders in SPX, which maximum may be no more than 100. The Initiating Order must be for the same size as the Agency Order.

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Interpretation and Policies

.01 No change.

.02 A pattern or practice of submitting orders or quotes for the purpose of disrupting or manipulating AIM Auctions, including to cause an Auction to conclude before the end of the Auction period, will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1. It will also be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1 to engage in a pattern of conduct where the Initiating TPH 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 paragraph (e) above or for the purpose of circumventing a maximum quantity requirement as determined by the Exchange pursuant to subparagraph (a)(3) above.

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Rule 5.38. Complex Automated Improvement Mechanism ("C-AIM" or "C-AIM Auction")

A Trading Permit Holder (the "Initiating TPH") may electronically submit for execution a complex order it represents as agent ("Agency Order") against principal interest or a solicited complex order(s) (an "Initiating Order") provided it submits the Agency Order for electronic execution into a C-AIM Auction pursuant to this Rule. For purposes of this Rule, the term "SBBO" means the synthetic best bid or offer on the Exchange at the particular point in time applicable to the reference.

(a) *C-AIM Auction Eligibility Requirements*. The Initiating TPH may initiate a C-AIM Auction if all of the following conditions are met:

(1)-(2) No change.

(3) *Size*. There is no minimum size for Agency Orders. The Exchange may determine a maximum size requirement for the smallest leg of Agency Orders in SPX, which maximum may be no more than 100. The Initiating Order must be for the same size as the Agency Order.

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Interpretation and Policies

.01 No change.

.02 A pattern or practice of submitting orders or quotes for the purpose of disrupting or manipulating C-AIM Auctions, including to cause a C-AIM Auction to conclude before the end of the C-AIM Auction period, will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1. It will also be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1 to engage in a pattern of conduct where the Initiating TPH 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 paragraph (e) above or for the purpose of circumventing a maximum quantity requirement as determined by the Exchange pursuant to subparagraph (a)(3) above.

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