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Page 1 of * 28		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2025 - * 090 Amendment No. (req. for Amendments *)	
Filing by Cboe Exchange, Inc. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>		Amendment * <input type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input checked="" type="checkbox"/>		Section 19(b)(3)(A) * <input type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Rule			
		<input type="checkbox"/> 19b-4(f)(1)		<input type="checkbox"/> 19b-4(f)(4)	
		<input type="checkbox"/> 19b-4(f)(2)		<input type="checkbox"/> 19b-4(f)(5)	
		<input type="checkbox"/> 19b-4(f)(3)		<input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b> Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div>The Exchange proposes to amend Rules 5.37, 5.39, 5.73, and 5.74.</div>					
<b>Contact Information</b> 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 * Sarah Last Name * Williams Title * Senior Counsel E-mail * swilliams@cboe.com Telephone * (224) 461-6793 Fax					
<b>Signature</b> Pursuant to the requirements of the Securities Exchange of 1934, Cboe Exchange, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. Date 12/09/2025 (Title *) By Laura G. Dickman VP, Associate General Counsel (Name *) <div>NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.</div> <div>Laura Dickman Date: 2025.12.09 14:46:01 -06'00'</div>					

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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25-090 19b4 (AIM Auction - M Capaci

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 \***

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25-090 Exhibit 1 (AIM Auction - M Cap

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 Advanced Notice by Clearing Agencies \***

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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 2- Notices, Written Comments, Transcripts, Other Communications**

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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.

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Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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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.

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Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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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**

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25-090 Exhibit 5 (AIM Auction - M Cap

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**

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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 Rules 5.37, 5.39, 5.73, and 5.74 to permit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange, in all classes, to be solicited for the Initiating Order submitted for execution against an Agency Order into a simple AIM, simple SAM, FLEX AIM or FLEX SAM Auction. 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 November 5, 2025. The Exchange will announce via Exchange Notice the implementation date of the proposed rule change no later than 60 days after the operative date of this rule filing.

(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 Sarah Williams, (224) 461-6793, Cboe Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

**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 Rules 5.37 (Automated Price Improvement Mechanism (“AIM” or “AIM Auction”)), 5.39 (“Solicitation Auction Mechanisms (“SAM” or “SAM Auction”)), 5.73 (FLEX Automated Improvement Mechanism (“FLEX AIM” or

“FLEX AIM Auction”)), and 5.74 (FLEX Solicitation Auction Mechanism (“FLEX SAM” or “FLEX SAM Auction”)), to permit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange, in all classes, to be solicited for the Initiating Order<sup>1</sup> submitted for execution against an Agency Order into a simple AIM Auction pursuant to Rule 5.37, a simple SAM Auction pursuant to Rule 5.39, a FLEX AIM Auction pursuant to Rule 5.73, or a FLEX SAM Auction pursuant to Rule 5.74.

By way of background, Rule 5.37 contains the requirements applicable to the execution of certain customer orders (“Agency Orders”) using AIM. An AIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (“NBBO”)). Rule 5.39 contains the requirements applicable to the execution of Agency Orders using SAM. Similarly, a SAM Auction is an electronic auction intended to provide a larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Upon submitting an Agency Order into an AIM or SAM Auction, the initiating Trading Permit Holder (“Initiating TPH”) must also submit a contra-side second order (“Initiating Order”) for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.<sup>2</sup> At the conclusion of an AIM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated a certain percentage (or more) of the Agency Order.<sup>3</sup> At the

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<sup>1</sup> The “Initiating Order” is the order comprised of principal interest or a solicited order(s) submitted to trade against the order the submitting Trading Permit Holder (the “Initiating TPH” or “Initiating FLEX Trader,” as applicable) represents as agent (the “Agency Order”).

<sup>2</sup> See Rules 5.37(c)(5) and 5.39(c)(5).

<sup>3</sup> See Rule 5.37(e).

conclusion of a SAM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated the entire Agency Order or none of the Agency Order.<sup>4</sup> Rules 5.73 and 5.74 contain the requirements for AIM and SAM Auctions for flexible exchange options (“FLEX Options”) (“FLEX AIM” and “FLEX SAM,” respectively).

Currently, the introductory paragraphs of Rules 5.37 and 5.73 prohibit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange in all classes except S&P 500 Index options (“SPX”) to be solicited to execute against the Agency Order in a simple AIM or FLEX AIM Auction, respectively. The introductory paragraphs of Rules 5.39 and 5.73 prohibit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange to be solicited to execute against the Agency Order in a simple SAM or FLEX SAM Auction, respectively.

While market participants other than appointed Market-Makers may contribute liquidity to these crossing auctions as either contra orders or responses, appointed Market-Makers, who are the primary source of liquidity on the Exchange in their appointed classes, are limited in the manner in which they may provide liquidity to these auctions. Given that contra orders that comprise Initiating Orders may be allocated a percentage of the Agency Order at the conclusion of the auctions, the limited ability of appointed Market-Makers to participate in simple AIM, simple SAM, FLEX AIM, and FLEX SAM Auctions may reduce the execution opportunities for these liquidity providers, which execution opportunities are available to other market participants who may be solicited or submit responses.

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<sup>4</sup> See Rule 5.39(e).

The Exchange believes that eliminating the prohibition against appointed Market-Makers acting as contra in single-leg AIM orders would enhance price improvement opportunities, particularly for retail and smaller Customer orders. This is especially relevant in proprietary products like VIX options, for which many AIM orders are large-sized transactions with banks or institutional participants as contras, while retail orders often route directly to the Book without the opportunity for potential price improvement via AIM auctions. Allowing local appointed Market-Makers to be solicited as contras may result in exposure of more small customer orders to potential price improvement via auction processes. The Exchange notes that appointed Market-Makers may be solicited as contras for complex AIM and SAM Auctions, which function in a substantially similar manner as AIM and SAM for simple orders.<sup>5</sup> The Exchange further notes that Rule 8.10 prohibits TPHs from misusing material, nonpublic information (for example, advanced knowledge of auctioned orders), so protections will remain in place under the proposed rule change to address any potential information leakage concerns.

Additionally, the restriction has become operationally outdated in current market structure. As noted above, it is common practice that AIM orders already involve the same Market-Maker firm acting as both contra (via an away Market-Maker) and auction respondent (via an appointed Market-Maker). Eliminating this restriction would reduce an arbitrary and unnecessary burden allow Market-Maker firms to structure more efficient auction processes, which may ultimately promote greater competition among Market-Makers and provide Customers with enhanced opportunities for price improvement.

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<sup>5</sup> See Rules 5.38 and 5.39.

To demonstrate the importance of the liquidity provided by Market-Makers, for the time period from January to June 2025, the percentage of smaller Customer orders (20 or fewer) that executed in open outcry against a Market-Maker in multi-list classes as contra was approximately 57%, and the percentage of smaller customer orders (20 or fewer) that executed electronically against a Market-Maker in multi-list classes as contra was approximately 93%. Further, for the same time period, the percentage of smaller Customer orders (20 or fewer) that executed in open outcry against a VIX Market-Maker as contra was approximately 71%, and the percentage of smaller customer orders (20 or fewer) that executed electronically against a Market-Maker in multi-list classes as contra was approximately 87%. Currently, there are 24 distinct TPHs with appointments across multi-list classes and 18 TPHs with VIX appointments, which represent a significant pool of liquidity that would be available to participate in AIM Auctions through both contra orders and auction responses.

The Exchange is proposing to amend Rules 5.37, 5.39, 5.73, and 5.74 to permit orders for the accounts of Market-Makers with an appointment in the applicable class to be solicited for the Initiating Order submitted for execution against an Agency Order in all classes into a simple AIM Auction pursuant to Rule 5.37, a simple SAM Auction pursuant to Rule 5.39, a FLEX AIM Auction pursuant to Rule 5.73, or a FLEX SAM Auction pursuant to Rule 5.74. The Exchange believes providing appointed Market-Makers with an additional way to participate in electronic auctions will expand available liquidity for these auctions, which may increase execution and price improvement opportunities for customers' orders. No similar restriction applies to crossing transactions in open outcry trading.<sup>6</sup> Brokers seeking liquidity to execute against customer orders on the trading floor regularly solicit appointed Market-

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<sup>6</sup> See Rules 5.86 and 5.87.

Makers in the applicable class for this liquidity, as they are generally the primary source of liquidity in a class (as noted above). Therefore, the Exchange believes the proposed rule change will further align open outcry and electronic crossing auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in AIM, SAM, FLEX AIM, and FLEX SAM Auctions across all classes at all times.

The Exchange notes the electronic crossing price improvement auction of another options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra orders for that auction.<sup>7</sup>

(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.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</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. Additionally, the

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<sup>7</sup> See NYSE American, Inc. (“American”) Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. See also <https://www.nyse.com/markets/american-options/cube-customer-best-execution>

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).



Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</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 will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will provide the primary liquidity providers on the Exchange with an additional way to participate in electronic auctions. Additionally, by permitting brokers to solicit primary liquidity providers in a class for electronic auctions, the Exchange believes brokers will be able to more efficiently locate liquidity to fill their customer orders, particularly during times of volatility. As a result, the Exchange believes the proposed rule change will likely expand available liquidity for these auctions, which may create additional execution and price improvement opportunities for customers at all times, which ultimately benefits investors.

The Exchange believes the proposed rule change is consistent with the Act because it will further align open outcry and electronic crossing auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in both types of auctions across all classes. Currently, appointed Market-Makers may be solicited with respect to crossing transactions on the trading floor but may not be solicited with respect to electronic crossing transactions. The Exchange believes there is no reason to restrict Market-Makers ability to provide liquidity into electronic auctions when they are able to similarly provide that liquidity in open outcry trading. As noted above, the electronic crossing price improvement auction of another

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<sup>10</sup> Id.

options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra orders for that auction.<sup>11</sup>

The Exchange believes the proposed rule change will promote competition in AIM Auctions, including competition to initiate AIM Auctions, which will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors. The Exchange believes the availability of this liquidity to Agency Orders will positively affect the experience for Agency Orders and overall quality of the auctions. Furthermore, the Exchange believes increasing the number of market participants available to be solicited may increase competition to provide Initiating Orders, which may lead to an AIM Auction being initiated at a better price. More market participants competing to provide Initiating Orders may lead to solicited parties providing more aggressive initial prices. The Exchange believes the ability of all market participants, including appointed Market-Makers that did not submit an Initiating Order, to submit responses to an AIM Auction will continue to provide competition for executions against Agency Orders.

The Exchange believes any risk that appointed Market-Makers may misuse the nonpublic information of an upcoming AIM Auction is de minimis. Currently, that risk is present for non-appointed Market-Makers, but the Exchange has not observed any trends of solicited market participants separately submitting unrelated orders as a result of knowledge of impending AIM Auctions in other classes. The Exchange notes Rule 5.37, Interpretation and Policy .02 prohibits a pattern or practice of submitting orders or quotes

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<sup>11</sup> See NYSE American, Inc. (“American”) Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. See also <https://www.nyse.com/markets/american-options/cube-customer-best-execution>

for the purpose of disrupting or manipulating AIM Auctions, and Rule 8.10 requires TPHs to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by TPHs and their associated persons. Finally, the Exchange believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it will be permit orders for accounts of appointed Market-Makers to be solicited in the same manner as orders for the accounts of all other market participants. Currently, all market participants other than appointed Market-Makers may be solicited as the contra and submit responses in AIM Auctions for all classes. Given the additional costs and obligations associated with being an appointed Market-Maker, the Exchange does not believe these Market-Makers should have fewer execution opportunities with respect to volume submitted for execution through AIM auctions and not for electronic execution against interest in the book. The Exchange believes the proposed rule change will provide all Market-Makers on the Exchange with the same ability to participate in AIM in all classes at all times, which may further increase execution and price improvement opportunities for customers.

**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 provides the same execution opportunities in AIM Auctions to appointed Market-Makers that are currently available to all other market participants. Additionally, the proposed rule change will further align open outcry and electronic

crossing auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in auctions across all classes.

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 because it relates to orders submitted into auction mechanisms on the Exchange. Additionally, the Exchange notes that the rules of at least one other options exchange permits orders for the accounts of appointed market-makers to be solicited as contra orders for that exchange's electronic crossing price improvement auction.<sup>12</sup> The Exchange believes the proposed rule change may improve price competition within AIM Auctions, because the primary liquidity providers will be able to increase participation in AIM 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.

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<sup>12</sup> See NYSE American, Inc. ("American") Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. See also <https://www.nyse.com/markets/american-options/cube-customer-best-execution>

(c) Not applicable.

(d) Not applicable.

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

As noted above, the proposed changes to Rules 5.37, 5.39, 5.73, and 5.74 are substantively similar to NYSE American Rule 971.1NY.

**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-2025-090]

[Insert date]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change to proposes to Amend Rules 5.37, 5.39, 5.73, and 5.74 to Permit Orders for the Accounts of Market-Makers with an Appointment in the Applicable Class on the Exchange, in all Classes, to be Solicited for the Initiating Order Submitted for Execution Against an Agency Order into a Simple AIM, Simple SAM, FLEX AIM or FLEX SAM Auction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 Rules 5.37, 5.39, 5.73, and 5.74 to permit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange, in all classes, to be solicited for the Initiating Order submitted for execution against an Agency Order into a simple AIM, simple SAM, FLEX AIM or FLEX SAM Auction. The text of the proposed rule change is provided in Exhibit 5.

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

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

The text of the proposed rule change is also available on the Commission’s website (<https://www.sec.gov/rules/sro.shtml>), the Exchange’s website ([https://www.cboe.com/us/options/regulation/rule\\_filings/bzx/](https://www.cboe.com/us/options/regulation/rule_filings/bzx/)), and at the principal office of the Exchange.

## **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 Rules 5.37 (Automated Price Improvement Mechanism (“AIM” or “AIM Auction”)), 5.39 (“Solicitation Auction Mechanisms (“SAM” or “SAM Auction”)), 5.73 (FLEX Automated Improvement Mechanism (“FLEX AIM” or “FLEX AIM Auction”)), and 5.74 (FLEX Solicitation Auction Mechanism (“FLEX SAM” or “FLEX SAM Auction”)), to permit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange, in all classes, to be solicited for the Initiating Order<sup>3</sup> submitted for execution against an Agency Order into a simple AIM Auction

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<sup>3</sup> The “Initiating Order” is the order comprised of principal interest or a solicited order(s) submitted to trade against the order the submitting Trading Permit Holder (the “Initiating TPH” or “Initiating FLEX Trader,” as applicable) represents as agent (the “Agency Order”).

pursuant to Rule 5.37, a simple SAM Auction pursuant to Rule 5.39, a FLEX AIM Auction pursuant to Rule 5.73, or a FLEX SAM Auction pursuant to Rule 5.74.

By way of background, Rule 5.37 contains the requirements applicable to the execution of certain customer orders (“Agency Orders”) using AIM. An AIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (“NBBO”)). Rule 5.39 contains the requirements applicable to the execution of Agency Orders using SAM. Similarly, a SAM Auction is an electronic auction intended to provide a larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Upon submitting an Agency Order into an AIM or SAM Auction, the initiating Trading Permit Holder (“Initiating TPH”) must also submit a contra-side second order (“Initiating Order”) for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.<sup>4</sup> At the conclusion of an AIM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated a certain percentage (or more) of the Agency Order.<sup>5</sup> At the conclusion of a SAM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated the entire Agency Order or none of the Agency Order.<sup>6</sup> Rules 5.73 and 5.74 contain the requirements for AIM and SAM Auctions for flexible exchange options (“FLEX Options”) (“FLEX AIM” and “FLEX SAM,” respectively).

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<sup>4</sup> See Rules 5.37(c)(5) and 5.39(c)(5).

<sup>5</sup> See Rule 5.37(e).

<sup>6</sup> See Rule 5.39(e).



Currently, the introductory paragraphs of Rules 5.37 and 5.73 prohibit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange in all classes except S&P 500 Index options (“SPX”) to be solicited to execute against the Agency Order in a simple AIM or FLEX AIM Auction, respectively. The introductory paragraphs of Rules 5.39 and 5.73 prohibit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange to be solicited to execute against the Agency Order in a simple SAM or FLEX SAM Auction, respectively.

While market participants other than appointed Market-Makers may contribute liquidity to these crossing auctions as either contra orders or responses, appointed Market-Makers, who are the primary source of liquidity on the Exchange in their appointed classes, are limited in the manner in which they may provide liquidity to these auctions. Given that contra orders that comprise Initiating Orders may be allocated a percentage of the Agency Order at the conclusion of the auctions, the limited ability of appointed Market-Makers to participate in simple AIM, simple SAM, FLEX AIM, and FLEX SAM Auctions may reduce the execution opportunities for these liquidity providers, which execution opportunities are available to other market participants who may be solicited or submit responses.

The Exchange believes that eliminating the prohibition against appointed Market-Makers acting as contra in single-leg AIM orders would enhance price improvement opportunities, particularly for retail and smaller Customer orders. This is especially relevant in proprietary products like VIX options, for which many AIM orders are large-sized transactions with banks or institutional participants as contras, while retail orders often route directly to the Book without the opportunity for potential price improvement via AIM auctions. Allowing local appointed Market-Makers to be solicited as contras may result in

exposure of more small customer orders to potential price improvement via auction processes. The Exchange notes that appointed Market-Makers may be solicited as contras for complex AIM and SAM Auctions, which function in a substantially similar manner as AIM and SAM for simple orders.<sup>7</sup> The Exchange further notes that Rule 8.10 prohibits TPHs from misusing material, nonpublic information (for example, advanced knowledge of auctioned orders), so protections will remain in place under the proposed rule change to address any potential information leakage concerns.

Additionally, the restriction has become operationally outdated in current market structure. As noted above, it is common practice that AIM orders already involve the same Market-Maker firm acting as both contra (via an away Market-Maker) and auction respondent (via an appointed Market-Maker). Eliminating this restriction would reduce an arbitrary and unnecessary burden allow Market-Maker firms to structure more efficient auction processes, which may ultimately promote greater competition among Market-Makers and provide Customers with enhanced opportunities for price improvement.

To demonstrate the importance of the liquidity provided by Market-Makers, for the time period from January to June 2025, the percentage of smaller Customer orders (20 or fewer) that executed in open outcry against a Market-Maker in multi-list classes as contra was approximately 57%, and the percentage of smaller customer orders (20 or fewer) that executed electronically against a Market-Maker in multi-list classes as contra was approximately 93%. Further, for the same time period, the percentage of smaller Customer orders (20 or fewer) that executed in open outcry against a VIX Market-Maker as contra was approximately 71%, and the percentage of smaller customer orders (20 or fewer) that executed electronically

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<sup>7</sup> See Rules 5.38 and 5.39.

against a Market-Maker in multi-list classes as contra was approximately 87%. Currently, there are 24 distinct TPHs with appointments across multi-list classes and 18 TPHs with VIX appointments, which represent a significant pool of liquidity that would be available to participate in AIM Auctions through both contra orders and auction responses.

The Exchange is proposing to amend Rules 5.37, 5.39, 5.73, and 5.74 to permit orders for the accounts of Market-Makers with an appointment in the applicable class to be solicited for the Initiating Order submitted for execution against an Agency Order in all classes into a simple AIM Auction pursuant to Rule 5.37, a simple SAM Auction pursuant to Rule 5.39, a FLEX AIM Auction pursuant to Rule 5.73, or a FLEX SAM Auction pursuant to Rule 5.74. The Exchange believes providing appointed Market-Makers with an additional way to participate in electronic auctions will expand available liquidity for these auctions, which may increase execution and price improvement opportunities for customers' orders. No similar restriction applies to crossing transactions in open outcry trading.<sup>8</sup> Brokers seeking liquidity to execute against customer orders on the trading floor regularly solicit appointed Market-Makers in the applicable class for this liquidity, as they are generally the primary source of liquidity in a class (as noted above). Therefore, the Exchange believes the proposed rule change will further align open outcry and electronic crossing auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in AIM, SAM, FLEX AIM, and FLEX SAM Auctions across all classes at all times.

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<sup>8</sup> See Rules 5.86 and 5.87.

The Exchange notes the electronic crossing price improvement auction of another options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra orders for that auction.<sup>9</sup>

## 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>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</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 will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a

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<sup>9</sup> See NYSE American, Inc. (“American”) Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. See also <https://www.nyse.com/markets/american-options/cube-customer-best-execution>

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> Id.

free and open market and a national market system because it will provide the primary liquidity providers on the Exchange with an additional way to participate in electronic auctions. Additionally, by permitting brokers to solicit primary liquidity providers in a class for electronic auctions, the Exchange believes brokers will be able to more efficiently locate liquidity to fill their customer orders, particularly during times of volatility. As a result, the Exchange believes the proposed rule change will likely expand available liquidity for these auctions, which may create additional execution and price improvement opportunities for customers at all times, which ultimately benefits investors.

The Exchange believes the proposed rule change is consistent with the Act because it will further align open outcry and electronic crossing auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in both types of auctions across all classes. Currently, appointed Market-Makers may be solicited with respect to crossing transactions on the trading floor but may not be solicited with respect to electronic crossing transactions. The Exchange believes there is no reason to restrict Market-Makers ability to provide liquidity into electronic auctions when they are able to similarly provide that liquidity in open outcry trading. As noted above, the electronic crossing price improvement auction of another options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra orders for that auction.<sup>13</sup>

The Exchange believes the proposed rule change will promote competition in AIM Auctions, including competition to initiate AIM Auctions, which will remove impediments

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<sup>13</sup> See NYSE American, Inc. (“American”) Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. See also <https://www.nyse.com/markets/american-options/cube-customer-best-execution>

to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors. The Exchange believes the availability of this liquidity to Agency Orders will positively affect the experience for Agency Orders and overall quality of the auctions. Furthermore, the Exchange believes increasing the number of market participants available to be solicited may increase competition to provide Initiating Orders, which may lead to an AIM Auction being initiated at a better price. More market participants competing to provide Initiating Orders may lead to solicited parties providing more aggressive initial prices. The Exchange believes the ability of all market participants, including appointed Market-Makers that did not submit an Initiating Order, to submit responses to an AIM Auction will continue to provide competition for executions against Agency Orders.

The Exchange believes any risk that appointed Market-Makers may misuse the nonpublic information of an upcoming AIM Auction is de minimis. Currently, that risk is present for non-appointed Market-Makers, but the Exchange has not observed any trends of solicited market participants separately submitting unrelated orders as a result of knowledge of impending AIM Auctions in other classes. The Exchange notes Rule 5.37, Interpretation and Policy .02 prohibits a pattern or practice of submitting orders or quotes for the purpose of disrupting or manipulating AIM Auctions, and Rule 8.10 requires TPHs to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by TPHs and their associated persons. Finally, the Exchange believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it will be permit orders for accounts of appointed Market-Makers to be solicited in the same manner

as orders for the accounts of all other market participants. Currently, all market participants other than appointed Market-Makers may be solicited as the contra and submit responses in AIM Auctions for all classes. Given the additional costs and obligations associated with being an appointed Market-Maker, the Exchange does not believe these Market-Makers should have fewer execution opportunities with respect to volume submitted for execution through AIM auctions and not for electronic execution against interest in the book. The Exchange believes the proposed rule change will provide all Market-Makers on the Exchange with the same ability to participate in AIM in all classes at all times, which may further increase execution and price improvement opportunities for customers.

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 provides the same execution opportunities in AIM Auctions to appointed Market-Makers that are currently available to all other market participants. Additionally, the proposed rule change will further align open outcry and electronic crossing auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in auctions across all classes.

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 because it relates to orders submitted into auction mechanisms on the Exchange. Additionally, the Exchange notes that the rules of at least one other options

exchange permits orders for the accounts of appointed market-makers to be solicited as contra orders for that exchange's electronic crossing price improvement auction.<sup>14</sup> The Exchange believes the proposed rule change may improve price competition within AIM Auctions, because the primary liquidity providers will be able to increase participation in AIM 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:

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<sup>14</sup> See NYSE American, Inc. ("American") Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. See also <https://www.nyse.com/markets/american-options/cube-customer-best-execution>



Electronic Comments:

- Use the Commission's internet comment form (<https://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-2025-090 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-2025-090. 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2025-090 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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17 CFR 200.30-3(a)(12).

**Sherry R. Haywood,**

*Assistant Secretary.*

## 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 in all classes except SPX) ](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.

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**Rule 5.39. Solicitation Auction Mechanism (“SAM” or “SAM Auction”)**

A Trading Permit Holder (the “Initiating TPH”) may electronically submit for execution an order it represents as agent (“Agency Order”) against a solicited order(s) (which cannot have a Capacity F for the same EFID as the Agency Order[ or be for the account of any Market-Maker with an appointment in the applicable class on the Exchange]) (“Solicited Order”) if it submits the Agency Order for electronic execution into a SAM Auction pursuant to this Rule. The Agency Order and Solicited Order cannot both be for the accounts of Priority Customers. 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 a SAM Auction is initiated.

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**Rule 5.73. FLEX Automated Improvement Mechanism (“FLEX AIM” or “FLEX AIM Auction”)**

A FLEX Trader (the “Initiating FLEX Trader”) may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (“Agency Order”) against principal interest or a solicited order(s) [(except, if the Agency Order is a simple order, for an order for the account of any FLEX Market-Maker with an appointment in the applicable FLEX Option class on the Exchange in all FLEX classes except FLEX SPX) ](an “Initiating Order”) provided it submits the Agency Order for electronic execution into a FLEX AIM Auction pursuant to this Rule.

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**Rule 5.74. FLEX Solicitation Auction Mechanism (“FLEX SAM” or “FLEX SAM Auction”)**

A FLEX Trader (the “Initiating FLEX Trader”) may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (“Agency Order”) against a solicited order(s) (which cannot have a Capacity of F for the same EFID as the Agency Order[ or, if the Agency Order is a simple order, for the account of any FLEX Market Maker with an appointment in the applicable FLEX Option class on the Exchange]) (“Solicited Order”) if it submits the Agency Order for electronic execution into a FLEX SAM Auction pursuant to this Rule.

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