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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90439; File No. SR-C2-2020-017]

### **Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Interpretations and Policies to Rule 6.13 in Connection with Market-Makers' Complex Orders, Quoting Obligations and Volume**

November 17, 2020

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 November 3, 2020, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) proposes to amend its Interpretations and Policies to Rule 6.13 in connection with Market-Makers’ complex orders, quoting obligations and volume. 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://markets.cboe.com/us/options/regulation/rule\\_filings/ctwo/](http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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

**1. Purpose**

The Exchange proposes to adopt new Interpretation and Policy .02 to Rule 6.13 which provides that complex strategies are included when determining whether a Market Maker exceeds the 25% volume threshold in its non-appointed classes pursuant to Rule 8.6(f).<sup>5</sup> The

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<sup>5</sup> As a result of the proposed Interpretation and Policy, the proposed rule change accordingly updates the subsequent Interpretation and Policy numbering.

Exchange also proposes to make clarifying, nonsubstantive updates to Interpretation and Policy .01 to Rule 6.13.

Rule 6.13 governs trading of complex orders on the Exchange and, currently, Interpretation and Policy .01 to Rule 6.13 specifically provides that Market-Makers are not required to quote on the COB. Complex strategies are not subject to any quoting requirements that apply to Market-Makers in the simple market. Interpretation and Policy [sic] to Rule 6.13 also states that the Exchange does not take into account Market-Makers' volume executed in complex strategies when determining whether Market-Makers meet their quoting obligations in the simple market. The proposed rule change updates Interpretation and Policy .01 to Rule 6.13 in order to provide additional clarity and consistency with the rules that provide for a Market-Maker's quoting requirements and obligations. Specifically, pursuant to Rule 8.6, a Market-Maker must satisfy quoting obligations in each of its appointed classes. As such, the proposed updates to Interpretation and Policy .01 to Rule 6.13 to [sic] make it clear that a Market-Maker's orders in complex strategies are not subject to a Market-Maker's quoting requirements in its appointed classes nor are considered in determining whether a Market-Maker has satisfied its quoting obligations in its appointed classes. Also, the proposed rule change also updates Interpretation and Policy .01 to Rule 6.13 as it inadvertently refers to volume executed rather than orders, as "quoting" obligations relate to the submission of quotes and orders rather than executed volume. More specifically, pursuant to Rule 8.6, a Market-Maker's bids and offers entered in the simple market are considered in determining whether a Market-Maker satisfies its quoting obligations, therefore, the proposed rule change amends Interpretation and Policy .01 to Rule 6.13 to more appropriately reflect this. The

proposed change also updates the language in Interpretation and Policy .01 to Rule 6.13 to read in plain English.

Current Rule 8.6(f) provides that a Market-Maker is considered an order entry firm (“OEF”)<sup>6</sup> under the Rules in all classes in which the Market-Maker has no appointment, and limits the total number of contracts a Market-Maker may execute in classes in which it has no appointment to 25% of the total number of all contracts the Market-Maker executes on the Exchange in any calendar quarter. The Exchange does not currently include executed complex order volume when determining whether a Market-Maker has exceeded this threshold. The Exchange’s affiliated options exchange, Cboe Exchange, Inc. (“Cboe Options”) has a rule in place that is substantially the same as C2 Rule 8.6(f); however, Cboe Options currently considers a Market Maker’s executed complex order volume as well as a Market Maker’s executed simple order volume in determining whether a Market-Maker has exceeded the 25% volume threshold in its non-appointed classes.<sup>7</sup> In order to harmonize this practice across the affiliated options exchanges,<sup>8</sup> the Exchange now proposes to change its current interpretation and adopt proposed Interpretation and Policy .02 to Rule 6.13 to provide that a Market-Maker’s orders for complex strategies executed

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<sup>6</sup> See Rule 1.1., which defines an “Order Entry Firm” or “OEF” as a Trading Permit Holder that represents as agent customer orders on the Exchange or that is a non-Market-Maker conducting proprietary trading.

<sup>7</sup> The Exchange notes too that Cboe Options intends to simultaneously submit a rule filing to codify its current practice in calculating its Market-Makers’ simple and complex volume in non-appointed classes in its corresponding Interpretations and Policies to Rule 6.13.

<sup>8</sup> The Exchange’s affiliated options exchange, Cboe EDGX Exchange, Inc. (“EDGX Options”) intends to simultaneously submit a substantively identical rule filing to clarify that it will calculate its Market Makers’ simple and complex volume in non-appointed classes pursuant to Cboe Options’ current practice.

in classes in which it has no appointment are included in the total number of all contracts the Market-Maker executes on the Exchange in any calendar quarter in determining whether the Market-Maker exceeds the 25% threshold pursuant to Rule 8.6(f). The Exchange notes that Rule 8.6(f) is designed to prevent a Market-Maker from executing volume in non-appointed option classes in an amount disproportionate to volume executed in its appointed option classes, potentially in derogation of the performance of its obligations and provision of liquidity in its appointed option classes. As such, the proposed rule change is consistent with and supports the purposed [sic] of Rule 8.6(f) by including complex orders in this calculation. Therefore, the proposed rule change considers a Market-Maker's orders executed in complex strategies representative of a Market-Maker's total volume on the Exchange.

## 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>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</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

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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>11</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 remove impediments to and perfect the mechanism of a free and open market and a national market system by providing that the Exchange considers a Market-Maker's complex order volume when calculating the 25% threshold of volume in non-appointed classes pursuant to Rule 8.6(f) and thereby harmonizing the Exchange's rules with that of the corresponding rules of its affiliated options exchanges.<sup>12</sup> Specifically, Rule 8.6(f) is designed to prevent a Market-Maker from executing volume in non-appointed option classes in an amount disproportionate to volume executed in its appointed option classes, potentially in derogation of the performance of its obligations and provision of liquidity in its appointed option classes. As stated above, the Exchange believes that a Market-Maker's orders executed in complex strategies are representative of a Market-Maker's total volume on the Exchange. Thus, including such in its calculation of volume in non-appointed classes will help to ensure that Market-Makers perform their obligations and provide liquidity in appointed classes in an appropriate manner as compared to non-appointed classes, and is thereby consistent with and supports the purpose of Rule 8.6(f). The Exchange also believes that codifying that a Market-Maker's complex order volume counts towards its Market-Maker's total volume on the Exchange may mitigate any potential confusion

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<sup>11</sup> Id.

<sup>12</sup> See supra notes 7 and 8.

regarding this calculation so that Market-Makers have more clarity regarding their obligations in appointed classes in an appropriate manner as compared to non-appointed classes. As such, the Exchange believes the proposed rule change will contribute to the protection of investors and the public interest by adding transparency and clarity to the Exchange's Rules by codifying its affiliated options exchange's current interpretation of how to a Market-Maker's executed volume on the Exchange is calculated. In addition, the Exchange believes the proposed changes to Interpretation and Policy .01 of Exchange Rule 6.13 will add clarity by revising the Rule to provide that orders entered in appointed classes, rather than volume executed, is considered in connection with determining whether a Market-Maker meets its quoting obligations pursuant to Rule 8.6 in its appointed classes as well as updating the language to read in plain English.

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 reiterates that the proposed rule change is intended to codify in new Interpretation and Policy .02 to Rule 6.13 that the Exchange will consider a Market-Maker's complex strategy execution volume in calculating its volume per quarter pursuant to Rule 8.6(f) and harmonize this calculation with the manner in which the exchange's affiliated options exchange, Cboe Options, currently calculates Market-Maker executed volume in non-appointed classes. The proposed rule change also corrects an inadvertent error in Interpretation and Policy .01 to 6.13 indicating that executed volume rather than entered orders are considered when determining compliance with a Market-Maker's quoting obligations. Thus, the Exchange believes this proposed rule change will benefit

Exchange participants by providing specific guidance and additional clarity within the Exchange Rules, as well as between the rules of the affiliated options exchanges.

Additionally, the Exchange believes that the proposed rule change regarding the applicability of Rule 8.6(f) to a Market-Maker's executions in the COB does not impose any burden on intramarket competition because it applies to all Market-Makers in the same manner. The proposed rule change codifies its affiliated options exchange's existing interpretation of such calculation in its corresponding rules. It does not modify any existing Market-Maker obligations. The Exchange believes that the proposed rule change does not impose any burden on intermarket competition because it relates to an obligation regarding Market-Maker executed volume only on the Exchange.

The Exchange believes that the proposed rule change will relieve any burden on market participants because it serves to provide Market-Makers with rules that ensure that Market-Makers are performing their obligations in appointed options classes in an appropriate manner as compared to non-appointed classes. Ensuring that Market-Makers execute a certain amount of their volume in appointed classes will contribute to sufficient liquidity in those classes, which benefits the market and investors as a whole.

Additionally, the proposed nonsubstantive updates to Interpretation and Policy .01 to Rule 6.13 are not competitive in nature and, instead, are intended to correct an inadvertently used term and provide clarity and consistency within the Rules.

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

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

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

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

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

##### 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](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2020-017 on the subject line.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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-C2-2020-017. 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, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2020-017, 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>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>15</sup> 17 CFR 200.30-3(a)(12).