This document is scheduled to be published in the
Federal Register on 01/24/2024 and available online at
https://federalregister.gov/d/2024-01304, and on https://govinfo.gov

8011-01P

**SECURITIES AND EXCHANGE COMMISSION**
**[Release No. 34-99385; File No. SR-CBOE-2024-004]**

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 5.34**

January 18, 2024.

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 January 3, 2024, 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b-4(f)(6) thereunder.[4] 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 Rule 5.34. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 5.34. Order and Quote Price Protection Mechanisms and Risk Controls

The System's acceptance and execution of orders, quotes, and bulk messages, as applicable, pursuant to the Rules, including Rules 5.31 through 5.33, and orders routed to PAR pursuant to Rule 5.82 are subject to the following price protection mechanisms and risk controls, as applicable.

---

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

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(iii).

4 17 CFR 240.19b-4(f)(6).

(a) Simple Orders.

(1) – (3) No change.

(4) Drill-Through Price Protection.

(A) – (B) No change.

(C) The System enters a market order with a Time-in-Force of Day or limit order with a Time-in-Force of Day, GTC, or GTD (or unexecuted portion) not executed pursuant to subparagraph (A) in the Book with a displayed price equal to the drill-through price.

(i) – (vii) No change.

(D) This protection does not apply to bulk messages or ISOs.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

#### 1. Purpose

The Exchange proposes to amend Rule 5.34. Specifically, the Exchange proposes to exclude Intermarket Sweep Orders ("ISOs") from its drill-through protection. Pursuant to Rule 5.34(a)(4)(A), if a buy (sell) order enters the book at the conclusion of the opening auction process or would execute or post to the book when it enters the book, the Exchange's system executes the order up to an Exchange-determined buffer amount (determined on a class and premium basis)

above (below) the offer (bid) limit of the Opening Collar[5] or the National Best Offer ("NBO") (National Best Bid ("NBB")) that existed at the time of order entry, respectively (the "drill-through price"). The System cancels or rejects any market order with a time-in-force of immediate-or-cancel ("IOC") (or unexecuted portion or limit order with time-in-force of IOC or fill-or-kill ("FOK") (or unexecuted portion not executed pursuant to the previous sentence.[6] Rule 5.34(a)(4)(C) establishes an iterative drill-through process, whereby the Exchange permits orders to rest in the book for multiple time periods and at more aggressive displayed prices during each time period. Specifically, the Exchange system enters a market order with a time-in-force of day or limit order with a time-in-force of day, good-til-cancelled ("GTC"), or good-til-gate ("GTD") (or unexecuted portion) in the book with a displayed price equal to the drill-through price. The order (or unexecuted portion) will rest in the book at the drill-through price for the duration of consecutive time periods (the Exchange determines on a class-by-class basis the length of the time period in milliseconds, which may not exceed three seconds), which are referred to as "iterations." Following the end of each period, the Exchange system adds (if a buy order) or subtracts (if a sell order) one buffer amount (the Exchange determines the buffer amount on a class-by-class basis) to the drill-through price displayed during the immediately preceding period (each new price becomes the "drill-through price"). The order (or unexecuted portion) rests in the book at that new drill-through price for the duration of the subsequent period. The Exchange system applies a timestamp to the order (or unexecuted portion) based on the time it enters or is re-priced in the book for priority reasons. The order continues through this iterative process until the earliest of the following to occur: (a) the order fully executes; (b) the user cancels the order; and (c) the buy (sell) order's limit price equals or is less (greater) than the drill-through price at any time during application of the drill-through mechanism, in which case the order rests in the book at its limit price.

---

5 See Rule 5.31(a) for the definition of Opening Collars.

6 See Rule 5.34(a)(4)(B).

Currently, the drill-through protection applies to ISOs. An ISO is a limit order for an options series that meets the following requirements: (1) when routed to an Eligible Exchange,[7] the order is identified as an ISO; and (2) simultaneously with the routing of the order, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO, with such additional orders also marked as ISOs.[8]

The Exchange proposes to exclude ISOs from the drill-through protection.[9] The primary purpose of the drill-through price protection is to prevent orders from executing at prices "too far away" from the market when they enter the book for potential execution. This is inconsistent with the primary purpose of ISOs, which is to permit orders to trade at prices outside of the market. The Exchange believes excluding ISOs from the drill-through is consistent with the purpose of each type of functionality.

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.[10] Specifically, the Exchange believes the

---

[7] An "Eligible Exchange" means a national securities exchange registered with the SEC in accordance with section 6(a) of the Securities Exchange Act of 1934 (the "Act") that: (a) is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws); (b) is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan); and (c) if the national securities exchange chooses not to become a party to this Plan, is a participant in another plan approved by the Securities and Exchange Commission (the "Commission") providing for comparable Trade-Through and Locked and Crossed Market protection. The term "Trade-Through" means a transaction in an options series at a price that is lower than a Protected Bid or higher than a Protected Offer. A "Protected Bid" or "Protected Offer" means a bid or offer in an options series, respectively, that (a) is disseminated pursuant to the OPRA Plan; and (b) is the best bid or best offer, respectively, displayed by an Eligible Exchange. A "Locked Market" means a quoted market in which a Protected Bid is equal to a Protected Offer in a series of an options class, and a "Crossed Market" means a quoted market in which a Protected bid is higher than a Protected Offer in a series of an options class. See Rule 5.65(e), (g), (i), (o), and (q).

[8] See Rules 5.6(c) (definition of ISO) and 5.65(h).

[9] See proposed Rule 5.34(a)(4)(D).

[10] 15 U.S.C. 78f(b).

proposed rule change is consistent with the section 6(b)(5)[11] 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)[12] 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, remove impediments to and perfect the mechanism of a national market system, and protect investors and the public interest, because it will increase instances in which ISOs receive executions up to their limit prices, including outside of the market prices when the ISOs were submitted to the Exchange, which the Exchange believes is consistent with the expectations of users that submit those orders. As noted above, the primary purpose of ISOs is to permit orders to trade at prices outside of the market. The primary purpose of the drill-through price protection is to prevent orders from executing at prices "too far away" from the market when they enter the book for potential execution. The Exchange believes excluding ISOs from the drill-through is consistent with the purpose of each type of functionality. Therefore, the Exchange believes the proposed rule change will enhance the Exchange system by aligning its drill-through protection with the intended purpose of ISOs.[13] The Exchange believes the proposed rule change may ultimately result in additional executions consistent with the expectations of users that submit ISOs, which ultimately benefits investors. The Exchange further believes the proposed rule change

---

[11] 15 U.S.C. 78f(b)(5).

[12] Id.

[13] The Exchange notes ISOs will continue to receive price protection, such as from the limit order fat finger check. See Rule 5.34(c)(1).

is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, as it will apply to ISOs of all users.

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 that 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 in the same manner to ISOs of all Trading Permit Holders. The Exchange does not believe that 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 solely to the application of one of the Exchange's price protection mechanisms to ISOs. Additionally, the proposed rule change substantively identical to a recent rule change by Cboe EDGX Exchange, Inc. ("EDGX Options").[14] The Exchange also notes at least one other options exchange excludes ISOs from certain of its price protection measures.[15]

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

---

[14] See SR-CboeEDGX-2023-082 (December 21, 2023).

[15] See Miami International Securities Exchange, LLC ("MIAX") Rule 515(c)(1) (ISOs excluded from MIAX's price protection on non-market maker orders in non-proprietary products, which prevents orders from executing more than a specified number of increments away from the national best bid or offer ("NBBO") at the time the order is received).

the Act[16] and Rule 19b-4(f)(6)[17] thereunder.[18] 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. Please include file number SR-CBOE-2024-004 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-2024-004. 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

---

16 15 U.S.C. 78s(b)(3)(A).

17 17 CFR 240.19b-4(f)(6).

18 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 a.m. and 3 p.m. Copies of the filing also 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-2024-004 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.[19]

**Sherry R. Haywood,**

*Assistant Secretary*.

[FR Doc. 2024-01304 Filed: 1/23/2024 8:45 am; Publication Date: 1/24/2024]

---

[19] 17 CFR 200.30-3(a)(12).