



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103167; File No. SR-CBOE-2025-039]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Automated Price Improvement for Complex Orders Comprised of Flexible Exchange Option Series and Non-FLEX Option Series for S&P 500 Index Options

June 2, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 23, 2025, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“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 Act³ 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 its automated price improvement (“AIM”) for complex orders comprised of flexible exchange (“FLEX”) Option series and non-FLEX Option series (“FLEX v. Non-FLEX Order”) for S&P 500 Index options (“SPX options”). The text of the proposed rule change is provided in Exhibit 5.

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).

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

In 2021, the Exchange amended Rules 5.37 and 5.38 regarding its Automated Improvement Mechanism ("AIM") and Complex Automated Improvement Mechanism ("C-AIM") to permit the Exchange to determine, per trading session (e.g., Regular Trading Hours ("RTH") or Global Trading Hours ("GTH")),⁵ that the maximum size for all SPX Agency Orders, or the maximum size for the smallest leg for all SPX Agency Orders, respectively, is 10 contracts.⁶ As set forth in the filing to adopt those maximum size provisions, the Exchange noted that the maximum size was appropriate given that SPX has a different and more complicated market model, involves taking on greater risk, has a significantly higher notional value (e.g., SPX Options are ten times the notional size of SPY options), tends to have larger size, tends to have larger volume executed in open outcry,

⁵ The Exchange notes since the adoption of that proposed rule change it added another trading session, the Curb trading session, to its Rules. See Rule 5.1(d). The Exchange has chosen to leave two trading sessions listed as examples in these current Rules, as well as the proposed rules, to accommodate for the possibility that other trading sessions are adopted. However, the current and proposed rules would permit the Exchange to determine to apply the maximum contract size to SPX Agency Orders in any available trading session set forth in Rule 5.1.

⁶ See Rules 5.37(a)(3) (AIM Auctions) and 5.38(a)(3) (C-AIM Auctions); see also Securities Exchange Act Release No. 91119 (February 12, 2021), 86 FR 10381 (February 19, 2021) (SR-CBOE-2020-051) ("AIM/C-AIM SPX Max Size Approval").

and tends to execute increasingly more complex strategies compared to other options classes.⁷ Additionally, the Exchange had observed that smaller size order flow tends to attract liquidity provider responses, as such orders are generally easier to hedge than larger orders, which may encourage market participants 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 that submit smaller size orders, particularly retail customers. Further, the Exchange had observed that smaller SPX orders are not commonly executed on the floor. When the Exchange activated AIM and C-AIM for SPX for the first time when the trading floor was temporarily closed due to the Covid-19 pandemic, and then deactivated those auctions for SPX when the trading floor re-opened, the Exchange observed a significant decline in the number of smaller SPX orders submitted for execution on the trading floor compared to smaller SPX orders submitted into AIM and C-AIM. However, the trading floor is generally better suited for the larger complex orders typical in SPX. Therefore, the Exchange proposed to permit it to impose a maximum contract size for SPX Agency Orders as way to provide smaller orders with price improvement opportunities that AIM and C-AIM offer while also continuing to incentivize SPX liquidity on the trading floor to continue to accommodate larger, more complicated SPX orders.⁸

The Exchange now proposes to amend Rule 5.73 regarding FLEX AIM Auctions with respect to FLEX v. Non-FLEX Orders for SPX options.⁹ Current Rule 5.38(a)(3) regarding non-FLEX complex AIM Auctions (“C-AIM Auctions”) provides the Exchange may determine, per trading session (e.g., Regular Trading Hours (“RTH”) or Global Trading Hours (“GTH”)),¹⁰ that the maximum size for the smallest leg of all Agency Orders in SPX is 10 contracts. The proposed rule

⁷ Id. at 10382.

⁸ Id. at 10382 – 10383.

⁹ The Exchange notes it inadvertently did not include the proposed rule change in the rule filing to adopt FLEX v. Non-FLEX Order functionality.

¹⁰ See supra note 5.

change amends Rule 5.73(a)(4) to similarly provide that if the Exchange determines to apply a maximum size for a trading session (e.g., RTH or GTH) for all Agency Orders in SPX for non-FLEX C-AIM Auctions pursuant to Rule 5.38(a)(3), that maximum size will apply to the smallest leg of all SPX FLEX v. Non-FLEX Agency Orders submitted into FLEX AIM Auctions. The Exchange states that it will announce any determination it makes in connection with the application of the maximum size requirement of ten contracts for agency orders in SPX to a trading session via Exchange notice pursuant to Rule 1.5.¹¹

The Exchange recently amended its Rules to permit FLEX v. Non-FLEX Orders.¹² Currently, as noted above, the Exchange may determine for a trading session to subject SPX Agency Orders submitted into AIM or C-AIM Auctions to a maximum size of 10 contracts. The Exchange believes if it makes such a determination for non-FLEX SPX complex orders, it is reasonable to apply the same maximum size restriction to SPX non-FLEX v. FLEX Orders since such orders would contain a non-FLEX SPX leg that would be subject to the maximum size if submitted into a non-FLEX AIM Auction. Specifically, the different trading characteristics, market model, investor basis and conditions presented in SPX as compared to different option classes described above would apply to SPX FLEX v. Non-FLEX Orders.¹³ Further, not applying a maximum contract size applicable to SPX FLEX v. Non-FLEX Agency Orders would provide market participants with opportunities to attempt to circumvent the size maximum applicable to

¹¹ The Exchange has announced the planned launch date of June 23, 2025 for implementation of FLEX v. Non-FLEX Orders. See Update - Cboe Options Allows FLEX and Non-FLEX Instruments on Complex FLEX Orders (May 19, 2025). That notice included the Exchange's plan to impose a maximum size cap of 10 contracts to SPX FLEX v. Non-FLEX Agency Orders submitted into FLEX AIM (subject to effectiveness of this proposed rule change), so Trading Permit Holders are aware the Exchange has determined to apply the maximum size of 10 contracts to SPX FLEX v. Non-FLEX Orders.

¹² See Securities Exchange Act Release No. 102297 (January 28, 2025), 90 FR 8822 (February 3, 2025) (SR-CBOE-2024-047). The Exchange intends to make FLEX v. Non-FLEX Orders available in June 2025.

¹³ The Exchange notes that while these differences also apply to FLEX SPX options, there are also different characteristics in the FLEX market that have caused the Exchange to determine for now not to apply a maximum size to SPX FLEX orders submitted into FLEX AIM. Further, the Exchange notes that unlike non-FLEX SPX options, there is minimal retail trading in FLEX options (as many retail brokers do not even make FLEX option trading available to their customers given the more complex nature of FLEX options). Therefore, the reasoning related to making AIM and C-AIM available subject to the maximum contract size to accommodate more retail order flow is not applicable to the current proposed rule change. See AIM/C-AIM SPX Max Size Approval at 10382 – 10383.

non-FLEX SPX orders. For example, without the proposed rule change, a market participant could circumvent the non-FLEX AIM maximum size requirement by combining its order for a non-FLEX SPX leg with a smaller SPX leg and submitting into FLEX AIM. The Exchange intends to not permit nonconforming SPX FLEX v. Non-FLEX Orders to be eligible for electronic processing (as is currently the case for non-FLEX SPX orders), which will prevent market participants from attaching a one contract FLEX SPX leg to a large non-FLEX SPX leg that would otherwise not be eligible for submission into AIM due to the maximum contract size. The proposed maximum contract size for SPX FLEX v. Non-FLEX orders, combined with the Exchange's intent to not permit nonconforming SPX FLEX v. Non-FLEX Orders to be eligible for electronic processing (and thus nonconforming SPX FLEX v. Non-FLEX Orders would not be eligible for FLEX AIM Auctions) pursuant to Rule 5.70(d),¹⁴ will align with the current maximum size permissible for non-FLEX SPX Orders. Specifically, the proposed rule change will impose a maximum size on all SPX Agency Orders that contain a non-FLEX SPX leg in order to address the different trading characteristics that exist for those options and balance the benefits of providing smaller orders with price improvement opportunities that AIM and C-AIM offer with the need to maintain SPX liquidity on the trading floor to continue to accommodate larger, more complicated SPX orders.

In connection with this proposed change, the Exchange proposes to amend Rule 5.73, Interpretation and Policy .02 to provide that it is deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1¹⁵ to engage in a pattern of conduct where the Initiating FLEX Trader breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating FLEX Trader would have otherwise received in accordance with the allocation procedures contained in paragraph (e) above or for the

¹⁴ The Exchange currently does not permit nonconforming non-FLEX SPX orders to be eligible for electronic processing. See Cboe Schedule Update (C2022060301), [available at](#) Schedule Update - Cboe Options Introduces New Net, Leg Price Increments and Enhanced Electronic, Open Outcry Handling for Complex Orders with Non-Conforming Ratios.

¹⁵ The proposed rule change updates this cross-reference to Rule 8.1 from Rule 10.1, as Rule 8.1 describes the prohibition on conduct inconsistent with just and equitable principles of trade.

purpose of circumventing the maximum quantity requirement pursuant to proposed Rule 5.73(a)(4) above.¹⁶ 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, including as it does with respect to the same provision in Rule 5.38, Interpretation and Policy .02.

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.¹⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ 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)¹⁹ 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 that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system because the Exchange would handle SPX FLEX v. Non-FLEX Orders submitted into a FLEX AIM Auction in the same manner as non-FLEX SPX complex orders, which addresses the different trading characteristics, market model, investor basis and conditions presented in SPX as

¹⁶ Rule 5.38, Interpretation and Policy .02 contains the same provision.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ Id.

compared to different option classes.²⁰ This, combined with the Exchange's intent to not permit nonconforming SPX FLEX v. Non-FLEX Orders to be eligible for electronic processing (and thus nonconforming SPX FLEX v. Non-FLEX Orders would not be eligible for FLEX AIM Auctions) pursuant to Rule 5.70(d),²¹ will prevent market participants from attempting to circumvent any size maximum applicable to non-FLEX SPX orders.²² The Rules will continue to provide price improvement opportunities for SPX FLEX v. Non-FLEX Orders in a manner consistent with the opportunities available for SPX non-FLEX orders — electronically for smaller orders and in open outcry for larger and more complicated orders.²³ Therefore, the Exchange does not believe the proposed rule change is unfairly discriminatory as it is designed to promote a competitive process for executions of smaller FLEX v. Non-FLEX SPX Orders in an electronic environment and executions of larger FLEX v. Non-FLEX SPX Orders via execution on the trading floor, which is consistent with how non-FLEX SPX orders are currently handled. In addition, the Exchange believes that the proposed rule change to amend Rule 5.73, Interpretation and Policy .02 would protect investors by prohibiting TPHs to break up Agency Orders to circumvent maximum size requirements.

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,

²⁰ See Securities Exchange Act Release No. 91119 (February 12, 2021), 86 FR 10381 (February 19, 2021) (SR-CBOE-2020-051).

²¹ The Exchange currently does not permit nonconforming non-FLEX SPX orders to be eligible for electronic processing. See Cboe Schedule Update (C2022060301), available at Schedule Update - Cboe Options Introduces New Net, Leg Price Increments and Enhanced Electronic, Open Outcry Handling for Complex Orders with Non-Conforming Ratios.

²² For example, without the proposed rule change, a market participant could circumvent the non-FLEX AIM maximum size requirement if a FLEX v. Non-FLEX Agency Order has a large non-FLEX leg and a FLEX leg that is of a conforming ratio.

²³ The trading floor is generally better suited for larger, more complicated orders, as TPHs on the trading floor tend to execute such orders given the flexibility to negotiate and fine-tune the terms of an order.

because it will apply to all SPX FLEX v. Non-FLEX Agency Orders submitted into FLEX AIM auctions by all market participants, and in the same manner it applies to the current maximum size provision applicable to SPX complex orders submitted into non-FLEX AIM. This will provide consistency between AIM auction mechanisms into which complex orders may be submitted that contain non-FLEX SPX legs. 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.

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 Act²⁴ and Rule 19b-4(f)(6)²⁵ 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.

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five 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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2025-039 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-2025-039. 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 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-2025-039 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.²⁶

Stephanie Fouse,

Assistant Secretary.

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