

19(b)(3)(A) of the Act<sup>28</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>29</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>30</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>31</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that waiver of the operative delay would allow the Exchange to effect the changes to its Rulebook and By-Laws, which would eliminate obsolete provisions in the Exchange's Rulebook and better align provisions in the Exchange's By-Laws with those in the By-Laws of its affiliates, in time for the Exchange Board meeting on September 25, 2019. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>32</sup>

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 shall 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2019-14 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-GEMX-2019-14. 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 (<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-GEMX-2019-14 and should be submitted on or before October 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>33</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87237; File No. SR-CBOE-2019-093]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Rules Regarding the Automated Improvement Mechanism and Solicitation Auction Mechanism for Flexible Exchange Options, and Move Those Rules From the Currently Effective Rulebook to the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges

October 4, 2019.

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 October 4, 2019, 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 and II 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<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.

#### 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 the Exchange's Rules regarding the automated improvement mechanism ("AIM") and solicitation auction mechanism ("SAM") for flexible exchange options ("FLEX Options") ("FLEX AIM" and "FLEX SAM," respectively) and moves those Rules from the currently effective Rulebook ("current Rulebook") to the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) ("shell Rulebook"). The text of the proposed rule change is provided in Exhibit 5.

<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).

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization 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 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.

<sup>30</sup> 17 CFR 240.19b-4(f)(6).

<sup>31</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>32</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) ("Cboe Global"), which is also the parent company of Cboe C2 Exchange, Inc. ("C2"), acquired Cboe EDGA Exchange, Inc. ("EDGA"), Cboe EDGX Exchange, Inc. ("EDGX" or "EDGX Options"), Cboe BZX Exchange, Inc. ("BZX" or "BZX Options"), and Cboe BYX Exchange, Inc. ("BYX" and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the "Cboe Affiliated Exchanges"). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this

technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The proposed rule change amends current Rules 24A.5A and 24A.5B regarding the FLEX AIM Auction and the FLEX SAM Auction, respectively. The proposed changes reflect recent amendments to general FLEX trading rules as well as recent amendments to the non-FLEX AIM and SAM Auctions.<sup>5</sup> The proposed rule change amends and moves the following provisions regarding the terms of FLEX AIM and SAM Auctions from the current Rulebook to the shell Rulebook. In addition to the substantive changes described below, the proposed rule change makes additional nonsubstantive changes to these Rules, including to make the rule text plain English, simplify the rule provisions, update cross-references and paragraph numbering and lettering, reorganize certain provisions, and eliminate redundant provisions.

| Rule provision   | Current rule (current rulebook)   | Proposed rule (shell rulebook)     | Proposed substantive changes   |
|--|---|------------------------------------|--|
| <b>FLEX AIM Auction</b>  |   |                                    |  |
| A 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 or solicited order(s) (except for the account of any FLEX Market-Maker <sup>6</sup> with an appointment in the applicable FLEX Option class on the Exchange (an "Initiating Order") provided it submits the Agency Order for electronic execution into a FLEX AIM Auction. | Rule 24A.5A, introductory paragraph and Interpretations and Policies .04 and .05. | Rule 5.73, introductory paragraph. | The proposed rule change clarifies that an Initiating Order may consist of one or more solicited orders, as further discussed below. The proposed rule change also specifies in the introductory paragraph that both simple and complex orders may be submitted into a FLEX AIM Auction, as the auction will apply to both simple and complex orders in a substantially similar manner, as further discussed below. The proposed rule change deletes a price requirement related to the best bid or offer ("BBO"), <sup>7</sup> because there will no longer be an electronic book (and thus no BBO) for FLEX Options. <sup>8</sup> Because the Exchange does not currently have an electronic book for FLEX Option classes, and thus there are no resting orders to potentially execute at the conclusion of a FLEX AIM Auction, deletion of this provision will have no impact on how FLEX AIM Auctions operate. |
| An Agency Order must be in a FLEX Option class the Exchange designates as eligible for FLEX AIM Auctions.  | Rule 24A.5A(a)(1).  | Rule 5.73(a)(1) ..                 | None.  |
| The Agency Order and Initiating Order must each be a FLEX Order that complies with Rule 5.72(b) in a permissible FLEX Option series that complies with Rule 4.21.  | N/A .....   | Rule 5.73(a)(2) ..                 | This requirement is not explicitly stated in the current Rules; however, it is consistent with current functionality, and the proposed rule change merely states this in the Rules. For a FLEX AIM Auction to occur, the orders submitted would need to be in a series eligible for FLEX trading, and thus include all the terms necessary to comprise a FLEX Option series. <sup>9</sup>  |
| The Initiating FLEX Trader must mark an Agency Order for FLEX AIM Auction processing.  | Rule ..... 24A.5A(b)(1)(i) ...  | Rule ..... 5.73(a)(3) .....        | None.  |
| There is no minimum size for Agency Orders. The Initiating Order must be for the same size as the Agency Order.  | Rule 24A.5A(a)(1) and (2) and Interpretation and Policy .03.                      | Rule 5.73(a)(4) ..                 | The proposed rule change deletes the provision from current subparagraph (a)(1) that permits the Exchange to designate eligibility size parameters for FLEX AIM Auctions. The Exchange has not designated any such eligibility size parameters, and intends to continue to have no minimum size requirements for Agency Orders, so the Exchange no longer needs this flexibility. The proposed rule change clarifies in the Rules that the Initiating Order must be for the same size as the Agency Order, which is implied by the current Rules. <sup>10</sup>  |

<sup>5</sup> See SR-CBOE-2019-045 (proposed changes to the Exchange's non-FLEX AIM Auction); SR-CBOE-2019-051 (proposed changes to the Exchange's non-FLEX complex AIM Auctions); SR-

CBOE-2019-063 (proposed changes to the Exchange's non-FLEX SAM Auction); SR-CBOE-2019-064 (proposed changes to the Exchange's non-FLEX C-SAM Auction); and SR-CBOE-2019-084

(proposed changes to the Exchange's FLEX trading rules).

| Rule provision   | Current rule (current rulebook)                                    | Proposed rule (shell rulebook) | Proposed substantive changes  |
|--|--|--------------------------------|---|
| The price of the Agency Order and Initiating Order must be in an increment the Exchange determines on a class basis (which may not be smaller than the amounts set forth in Rule 5.4(c)(4) <sup>11</sup> of the shell Rulebook). The price must be in the same format ( <i>i.e.</i> , price or percentage) as the exercise price of the FLEX Option series. If the Agency Order and Initiating Order are complex orders, the price must be a net price <sup>12</sup> for the complex strategy.   | Rule .....<br>24A.5A(b)(1)(vii) and Interpretation and Policy .05. | Rule 5.73(a)(5) ..             | The current rule state the minimum increment for responses and the Initiating TPH's submission is determined by the Exchange but may not be smaller than \$0.01 or .01%, and premiums are rounded to the nearest minimum increment. This is consistent with the minimum increment available for all FLEX Trading, so the proposed rule change merely references Rule 5.4(c)(4) in the shell Rulebook, which describes the permissible minimum increments for FLEX Option series, rather than repeats those increments. Additionally, while current rules permit bids and offers (including the price submitting into a FLEX AIM Auction) to be in a different format than the exercise price of a FLEX Option series, the current functionality does not permit this. Rule 5.3(e)(3) in the shell Rulebook makes it clear that bids and offers must be in the same format as the exercise price, as it would be difficult to apply a dollar price for a FLEX Option series with a percentage-based exercise price. <sup>13</sup> There is no substantive change to the permissible minimum increments for orders submitted to a FLEX AIM Auction. The proposed rule change maintains the rule provision that complex Agency and Initiating Orders must include a net price. See the discussion below regarding the application of FLEX AIM to complex orders, including proposed changes to current Rule 24A.5A, Interpretation and Policy .05. |
| An Initiating FLEX Trader may only submit an Agency Order to a FLEX AIM Auction after trading in FLEX Options is open pursuant to Rule 5.71 <sup>14</sup> .  | N/A .....  | Rule .....<br>5.73(a)(6) ..... | This is consistent with current functionality, as executions cannot occur prior to the opening of trading. The proposed rule change clarifies this in the Rule.   |
| The System rejects or cancels both an Agency Order and Initiating Order submitted to a FLEX AIM Auction that do not meet the conditions in proposed paragraph (a).   | N/A .....  | Rule 5.73(a) .....             | This is consistent with current functionality and the concept of eligibility requirements, and the proposed rule change explicitly states this in the Rule.   |
| The Initiating Order must stop the entire Agency Order at a price in the same format ( <i>i.e.</i> , price or percentage) as the exercise price of the FLEX Option series. If the Agency Order and Initiating Order are complex orders, the price must be a net price for the complex strategy.  | Rule .....<br>24A.5A(b)(1)(vii) and Interpretation and Policy .05. | Rule 5.73(b) .....             | The proposed rule change references Rule 5.4 in the shell Rulebook, which describes the permissible minimum increments for FLEX Option series, rather than repeats those increments. There is no substantive change to the permissible minimum increments for orders submitted to a FLEX AIM Auction.   |
| The Initiating FLEX Trader must specify (1) a single price at which it seeks to execute the Agency Order against the Initiating Order (a "single-price submission"), including whether it elects to have last priority in allocation (as described in proposed subparagraph (e)(4)); or (2) an initial stop price and instruction to automatically match the price and size of all FLEX AIM responses ("auto-match") at each price, up to a designated limit price, better than the price at which the balance of the Agency Order can be fully executed ( the "final auction price"). | Rule .....<br>24A.5A(a)(2) and (b)(1)(i).                          | Rule 5.73(b)(1) and (2).       | The proposed rule change deletes the provision that the Agency Order will be stopped at the better of the BBO or the Agency Order's limit price if designated as auto-match, and instead will have an initial stop price, because there will no longer be an electronic book (and thus no BBO) for FLEX Options. <sup>15</sup>  |
| The System rejects or cancels both an Agency Order and Initiating Order submitted to a FLEX AIM Auction that do not meet the conditions in proposed paragraph (b).   | N/A .....  | Rule 5.73(b) .....             | This is consistent with current functionality and the concept of eligibility requirements, and the proposed rule change explicitly states this in the Rule.   |
| One or more FLEX AIM Auctions in the same FLEX Option series or complex strategy, as applicable, may occur at the same time.   | Rule .....<br>24A.5A(b) and Interpretation and Policy .05.         | Rule 5.73(c)(1) ...            | The proposed rule change permits concurrent FLEX AIM Auctions, which the current rule prohibits, as further discussed below. The proposed rule change also deletes the provision that says unrelated FLEX Orders may not be submitted to the electronic book for the duration of a FLEX AIM Auction, because there will no longer be an electronic book (and thus no BBO) for FLEX Options.   |
| The System initiates the FLEX AIM Auction process by sending a FLEX AIM Auction notification message detailing the side, size, Auction ID, the length of the FLEX AIM Auction period, and FLEX option series or complex strategy, as applicable, of the Agency Order to all FLEX Traders that elect to receive FLEX AIM Auction notification messages. FLEX AIM Auction notification messages are not disseminated to OPRA.  | Rule .....<br>24A.5A(b)(1)(ii) and (vi).                           | Rule 5.73(c)(2) ...            | The current rule states the auction message (currently called a request for responses ("RFR")) details the size and side of the order, which message is set to all FLEX Traders that have elected to receive RFRs upon receipt of a properly designated Agency Order for FLEX AIM processing. Other than changes to terminology and other nonsubstantive changes, the proposed rule change adds that this message will also include the Auction ID and options series or complex strategy, as applicable, of the Agency Order. This is consistent with the current RFR that is disseminated, and the proposed rule change merely adds details to the rule. The proposed rule change to add that the FLEX AIM Auction notification message includes the length of the FLEX AIM Auction period relates to the proposed change below that the Initiating FLEX Trader, rather than the Exchange, will designate the length of the FLEX AIM Auction period (and therefore FLEX Traders will know how long they have to respond to a FLEX AIM Auction). The proposed rule change also adds that AIM Auction notification messages are not included in the disseminated OPRA, which is also consistent with current functionality. <sup>16</sup>   |
| The "FLEX AIM Auction period" is a period of time designated by the Initiating FLEX Trader, which may be no less than three seconds and no more than five minutes. The designated length of the FLEX AIM Auction period may not be longer than the amount of time remaining until the market close.  | Rule .....<br>24A.5A(b)(1)(iii)                                    | Rule 5.73(c)(3) ...            | The proposed rule change adds a maximum time to the range for the FLEX AIM Auction period (the minimum potential auction period remains three seconds), which proposed maximum time is consistent with current Exchange authority under the current Rules. Additionally, this corresponds to the same permissible time range as that for electronic FLEX Auctions pursuant to Rule 5.72(c) in the shell Rulebook, and permits the Initiating FLEX Trader to designate the length of the FLEX AIM Auction when submitting the Agency Order rather than have the Exchange establish a length for all FLEX AIM Auctions. It also ensures that a FLEX AIM Auction will conclude prior to the close of trading to prevent executions after the market close. This is consistent with the standard FLEX electronic auction, which permits FLEX Traders to designate the length of that auction (and permits it to be from three seconds to five minutes). This provides consistency among electronic FLEX auctions. Additionally, it provides FLEX Traders with flexibility regarding the duration of the exposure time, which it may want to be longer than three seconds due to the terms of the FLEX Option series being auctioned. <sup>17</sup>  |
| An Initiating FLEX Trader may not modify or cancel an Agency Order or Initiating Order after submission to a FLEX AIM Auction.   | Rule .....<br>24A.5A(b) .....                                      | Rule 5.73(c)(4) ...            | The proposed rule change makes only nonsubstantive changes to this provision, as well as clarifies that the prohibition on the Initiating FLEX Trader from modifying or cancelling an order after submission to a FLEX AIM Auction applies to both the Agency Order and the Initiating Order (the current rules only references the Agency Order; however, they are submitted as a pair, and thus not being able to modify or cancel the Agency Order means that the Initiating FLEX Trader is not able to modify or cancel the Initiating Order either).   |
| Any FLEX Trader may submit responses to a FLEX AIM Auction that are properly marked specifying price, size, side, and the Auction ID for the FLEX AIM Auction to which the FLEX Trader is submitting the response. A FLEX AIM response may only participate in the FLEX AIM Auction with the Auction ID specified in the response.   | Rule .....<br>24A.5A(b)(1)(iv) and (v).                            | Rule 5.73(c)(5) ...            | The current rule specifies that responses must include prices and sizes; the proposed rule change adds responses must also specify side and an Auction ID, which is consistent with current functionality and merely adds details to the rule. The proposed rule change adds that a FLEX AIM response may only participate in the AIM Auction with the Auction ID specified in the response. This is consistent with current functionality. The Exchange proposes to include this language given the above proposal that permits concurrent FLEX AIM Auctions. The proposed rule change deletes the provision that caps the price of a FLEX AIM response at the opposite side of the BBO, because there will no longer be an electronic book (and thus no BBO) for FLEX Options.  |

| Rule provision   | Current rule (current rulebook)  | Proposed rule (shell rulebook)                             | Proposed substantive changes   |
|--|--|--|--|
| <p>The minimum price increment for FLEX AIM responses is the same as the one the Exchange determines for a class pursuant to subparagraph (a)(4) above, and must be in the same format (<i>i.e.</i>, price or percentage) as the exercise price of the FLEX Option series. A response to a FLEX AIM Auction of a complex Agency Order must have a net price. The System rejects a FLEX AIM response that is not in the applicable minimum increment or format.</p>   | <p>Rule .....<br/>24A.5A(b)(1)(vii) and Interpretation and Policy .05.</p> | <p>Rule .....<br/>5.73(c)(5)(A).</p>                       | <p>The proposed rule change adds that the System rejects a FLEX AIM response that is not in the applicable minimum increment or format, which is consistent with current functionality and merely adds detail to the rule. See the discussion below regarding the application of FLEX AIM to complex orders, including proposed changes to current Rule 24A.5A, Interpretation and Policy .05.</p>   |
| <p>A FLEX Trader may submit multiple FLEX AIM responses at the same or multiple prices to a FLEX AIM Auction. For purposes of a FLEX AIM Auction, the System aggregates all of a FLEX Trader's FLEX AIM responses for the same EFID at the same price. The System caps the size of a FLEX AIM response, or the aggregate size of a FLEX Trader's FLEX AIM responses for the same EFID at the same price, at the size of the Agency Order (<i>i.e.</i>, the System ignores size in excess of the size of the Agency Order when processing the FLEX AIM Auction).</p>  | <p>N/A .....</p>   | <p>Rule .....<br/>5.73(c)(5)(B) and (C).</p>               | <p>This is consistent with current functionality. Current Rule 24A.5A contains no restriction on how many responses a FLEX Trader may submit; the proposed rule change merely makes this explicit in the Rules. The proposed rule change also states for purposes of a FLEX AIM Auction, the System aggregates all of a FLEX Trader's FLEX AIM responses for the same EFID at the same price. This (combined with the proposed size cap) will prevent a FLEX Trader from submitting multiple orders, quotes, or responses at the same price to obtain a larger pro-rata share of the Agency Order.</p>   |
| <p>FLEX AIM responses must be on the opposite side of the market as the Agency Order. The System rejects a FLEX AIM response on the same side of the market as the Agency Order.</p>   | <p>N/A .....</p>   | <p>Rule .....<br/>5.73(c)(5)(D) .....</p>                  | <p>This is consistent with current functionality, and the proposed rule change merely adds this detail to the rules. Additionally, the Exchange believes this is reasonable given that the purpose of an AIM response is to trade against the Agency Order in the AIM Auction into which the AIM response was submitted.</p>   |
| <p>FLEX AIM responses are not visible to AIM Auction participants or disseminated to OPRA.</p>   | <p>Rule .....<br/>24A.5A(b)(1)(vi)</p>                                     | <p>Rule .....<br/>5.73(c)(5)(E) .....</p>                  | <p>None.</p>   |
| <p>A FLEX Trader may modify or cancel its FLEX AIM responses during the FLEX AIM Auction.</p>  | <p>Rule .....<br/>24A.5A(b)(1)(viii)</p>                                   | <p>Rule .....<br/>5.73(c)(5)(F) .....</p>                  | <p>The current Rule permits FLEX Traders to cancel a FLEX AIM response, but does not explicitly state that those responses may be modified. A modification of a response is equivalent to a cancellation of an existing response and submission of a new response, but may instead be done through a different message type. Therefore, the proposed rule change permits the same activity that can be done pursuant to the current rule, but merely in a different manner (<i>i.e.</i>, modification rather than cancellation and separate entry).</p>  |
| <p>A FLEX AIM Auction concludes at the earliest to occur of the following times: (1) The end of the FLEX AIM Auction period; and (2) any time the Exchange halts trading in the affected series, provided, however, that in such instance the FLEX AIM Auction concludes without execution.</p>  | <p>Rule .....<br/>24A.5A(b)(2) .....</p>                                   | <p>Rule .....<br/>5.73(d) .....</p>                        | <p>The proposed rule change deletes the provision that says a FLEX AIM Auction will conclude any time an RFR response matches the BBO on the opposite side of the market from the RFR responses, because there will no longer be an electronic book (and thus no BBO) for FLEX Options.</p>  |
| <p>At the conclusion of the FLEX AIM Auction, the System allocates the Initiating Order or FLEX AIM responses against the Agency Order at the best price(s) to the price at which the balance of the Agency Order can be fully executed (the "final auction price"). If the FLEX AIM Auction results in no price improvement, the System executes the Agency Order at the stop price in the following order: Priority Customer responses receive first priority at each price level, the Initiating Order participation entitlement (50% or 40% depending on how many FLEX Traders submitted FLEX AIM responses at the same price receives second priority at the final auction price, all other responses have third priority and are allocated on a pro-rata basis pursuant to Rule 5.32(a)(1)(B), and the Initiating Order would have fourth priority to the extent there are any remaining contracts. If the FLEX AIM Auction results in price improvement for the Agency Order and the Initiating FLEX Trader selected a single-price submission, at each price better than the final auction price, the System executes the Agency Order first to Priority Customer responses (in time priority) and then to all other FLEX AIM responses, allocated on a pro-rata basis. At the final auction price, the System executes any remaining contracts from the Agency Order at that price in the order set forth in proposed subparagraph (e)(1). If the FLEX AIM Auction results in price improvement for the Agency Order and the Initiating FLEX Trader selected auto-match, at each price level better than the final auction price up to the designated limit price, the System executes the Agency Order against the Initiating Order for the number of contracts equal to the aggregate size of all FLEX AIM responses and then executes the Agency Order against those responses in the order set forth in proposed subparagraph (e)(2). At the final auction price, the System executes contracts at that price in the order set forth in proposed subparagraph (e)(1). If the Initiating FLEX Trader selects a single-price submission, it may elect for the Initiating Order to have last priority to trade against the Agency Order. If the Initiating FLEX Trader elects last priority, then notwithstanding proposed subparagraphs (e)(1) and (2), the System only executes the Initiating Order against any remaining Agency Order contracts at the stop price after the Agency Order is allocated to all FLEX AIM responses at all prices equal to or better than the stop price. Last priority information is not available to other market participants and may not be modified after it is submitted.</p> | <p>Rule .....<br/>24A.5A(b)(3).</p>  | <p>Rule 5.73(e) .....</p>                                  | <p>The proposed rule change deletes references to executions against FLEX Orders, and whether the final auction price locks an order on the electronic book, because there will no longer be an electronic book (and thus no BBO) for FLEX Options, and thus Agency Orders will only execute responses or the Initiating Order, as applicable. The proposed rule change deletes the reference to a FLEX Appointed Market-Maker participation entitlement, as there are currently no FLEX Appointed Market-Makers, and the Exchange has not applied a participation entitlement, and as a result, the Exchange is deleting FLEX Appointed Market-Makers from the Rules.<sup>18</sup> The proposed rule change provides that non-Priority Customer FLEX AIM responses will be allocated in a pro-rata manner rather than price-time. The majority of classes on the Exchange currently have a base allocation algorithm of pro-rata, and therefore the Exchange believes it is a reasonable manner in which to allocate FLEX AIM responses. FLEX AIM Priority Customer<sup>19</sup> responses will continue to have priority at each price level (in time priority); however, non-TPH broker-dealers will not and will be treated in the same manner as all other non-Priority Customer responses, as further discussed below. The Exchange notes the current rule states public customer orders have priority, rather than Priority Customers. Currently, the Exchange does not permit the submission of FLEX Orders with a Professional Capacity code, and so the terms public customer and Priority Customer practically mean the same thing. However, the Exchange plans to make the Professional Capacity code available for FLEX orders following migration, and because the System handles Professional orders like broker-dealer orders, those orders will not receive priority in a FLEX AIM Auction. Therefore, only Priority Customer responses will receive priority.<sup>20</sup> The proposed rule change also permits the Initiating FLEX Trader to select last priority, as further discussed below. Finally, the proposed rule change adds that any unexecuted responses (or portions) at the conclusion of the FLEX AIM Auction will be cancelled.</p> |
| <p>A FLEX Trader may only use a FLEX AIM Auction where there is a genuine intention to execute a bona fide transaction.</p>  | <p>Rule .....<br/>24A.5A, Interpretation and Policy .01.</p>               | <p>Rule .....<br/>5.73, Interpretation and Policy .01.</p> | <p>None.</p>   |
| <p>It will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 10.1 (to which the Exchange intends to move Rule 4.1 from the current Rulebook) 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.</p>   | <p>Rule .....<br/>24A.5A, Interpretation and Policy .02.</p>               | <p>Rule .....<br/>5.73, Interpretation and Policy .02.</p> | <p>The proposed rule change deletes the language that states the Agency Order cannot be broken up into separate orders for "two (2) or fewer contracts," as that language is not in the corresponding provision for non-FLEX AIM (see Rules 5.37, Interpretation and Policy .02 and 5.38, Interpretation and Policy .02 of the shell Rulebook). Deletion of this language does not have any impact on the prohibited conduct in this provision, and provides consistency among the rules in the shell Rulebook regarding AIM Auctions.</p>   |

| Rule provision  | Current rule (current rulebook)  | Proposed rule (shell rulebook)                      | Proposed substantive changes   |
|---|--|---|--|
| <b>FLEX SAM Auction</b>   |  |   |  |
| <p>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 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.</p>   | <p>Rule .....<br/>24A.5B, introductory paragraph and Interpretations and Policies .01 and .04.</p> | <p>Rule .....<br/>5.74, introductory paragraph.</p> | <p>The proposed rule change adds that the Solicited Order cannot have a Capacity F for the same executing firm ID ("EFID") as the Agency Order. Current Rule 24A.5B does not contain a similar provision, but the Exchange currently enforces the requirement that the contra-side order be a solicitation rather than a facilitation through surveillance. The proposed rule change adds this functionality, which will help with the enforcement of this requirement, in addition to surveillance. The proposed rule change also specifies in the introductory paragraph that both simple and complex orders may be submitted into a FLEX SAM Auction, as the auction will apply to both simple and complex orders in a substantially similar manner, as further discussed below.</p>  |
| <p>An Agency Order must be in a FLEX Option class the Exchange designates as eligible for FLEX SAM Auctions.</p>  | <p>Rule .....<br/>24A.5B(a)(1) .....</p>   | <p>Rule .....<br/>5.74(a)(1) .....</p>              | <p>None.</p>   |
| <p>The Agency Order and Solicited Order must each be a FLEX Order that complies with Rule 5.72(b) in a permissible FLEX Option series that complies with Rule 4.21.</p>   | <p>N/A .....</p>   | <p>Rule .....<br/>5.74(a)(2) .....</p>              | <p>This requirement is not explicitly stated in the current Rules; however, it is consistent with current functionality, and the proposed rule change merely states this in the Rules. For a FLEX SAM Auction to occur, the orders submitted would need to be in a series eligible for FLEX trading, and thus include all the terms necessary to comprise a FLEX Option series.<sup>21</sup></p>   |
| <p>The Initiating FLEX Trader must mark an Agency Order for FLEX SAM Auction processing.</p>  | <p>Rule .....<br/>24A.5B(b)(1)(i) .....</p>  | <p>Rule .....<br/>5.74(a)(3) .....</p>              | <p>None.</p>   |
| <p>The Agency Order must be for at least the minimum size designated by the Exchange (which may not be less than 500 standard option contracts or 5,000 mini-option contracts). The Solicited Order must be for (or must total, if the Solicited Order is comprised of multiple solicited orders) the same size as the Agency Order. The System handles each of the Agency Order and the Solicited Order as all-or-none.</p>  | <p>Rule .....<br/>24A.5B(a)(1) and (2).</p>  | <p>Rule .....<br/>5.74(a)(4) .....</p>              | <p>The proposed rule change deletes the requirement that the Initiating FLEX Trader must designate each order entered into a FLEX SAM Auction as all-or-none ("AON"). The Exchange's new system has been designed to automatically handle any orders submitted into a SAM Auction (using the appropriate messaging) as all-or-none, so the Initiating FLEX Trader will no longer be required to add any specific AON designations to the Agency Order or Solicited Order. Therefore, the proposed rule change adds that the System handles each of the Agency Order and the Solicited Order as all-or-none. The proposed rule change clarifies the size requirements for mini-option contracts, which are 1/10th the size of standard option contracts. This is consistent with current functionality and is merely adding detail to the rule. See Rule 5.5, Interpretation and Policy .22 in the current Rulebook (which permits the listing of mini-options); see also Rule 5.39(a)(3) (which has the same size requirements for non-FLEX SAM Auctions). The proposed rule change clarifies in the Rules that the Solicited Order must be for the same size as the Agency Order, which is implied by the current Rules.<sup>22</sup></p>   |
| <p>The price of the Agency Order and Solicited Order must be in an increment the Exchange determines on a class basis (which may not be smaller than the amounts set forth in Rule 5.4(c)(4)). The price must be in the same format (i.e., price or percentage) as the exercise price of the FLEX Option series. If the Agency Order and Solicited Order are complex orders, the price must be a net price for the complex strategy.</p>  | <p>Rule .....<br/>24A.5B(a)(3) .....</p>   | <p>Rule .....<br/>5.74(a)(5) .....</p>              | <p>The current rule state the minimum increment for the Initiating TPH's submission is determined by the Exchange but may not be smaller than \$0.01 or .01%, and premiums are rounded to the nearest minimum increment. This is consistent with the minimum increment available for all FLEX Trading, so the proposed rule change merely references Rule 5.4(c)(4) in the shell Rulebook, which describes the permissible minimum increments for FLEX Option series, rather than repeats those increments. There is no substantive change to the permissible minimum increments for orders submitted to a FLEX SAM Auction. The proposed rule change maintains the rule provision that complex Agency and Initiating Orders must include a net price. See the discussion below regarding the application of FLEX SAM to complex orders, including proposed changes to current Rule 24A.5B, Interpretation and Policy .01.</p>   |
| <p>An Initiating FLEX Trader may only submit an Agency Order to a FLEX SAM Auction after trading in FLEX Options is open pursuant to Rule 5.71.</p>   | <p>N/A .....</p>   | <p>Rule .....<br/>5.74(a)(6) .....</p>              | <p>This is consistent with current functionality, as executions cannot occur prior to the opening of trading. The proposed rule change clarifies this in the Rule.</p>   |
| <p>The System rejects or cancels both an Agency Order and Solicited Order submitted to a FLEX SAM Auction that do not meet the conditions in proposed paragraph (a).</p>  | <p>N/A .....</p>   | <p>Rule 5.74(a) .....</p>                           | <p>This is consistent with current functionality, and the proposed rule change explicitly states this in the Rule.</p>   |
| <p>The Solicited Order must stop the entire Agency Order at a price in the same format (i.e., price or percentage) as the exercise price of the FLEX Option series. If the Agency Order and Solicited Order are complex orders, the price must be a net price for the complex strategy. The Initiating FLEX Trader must specify a single price at which it seeks to execute the Agency Order against the Solicited Order. The System rejects or cancels both an Agency Order and Solicited Order submitted to a FLEX SAM Auction that does not meet the conditions in proposed paragraph (b).</p> | <p>Rule .....<br/>24A.5B(a)(3) and Interpretation and Policy .01, and 24A.5B(b)(1).</p>            | <p>Rule .....<br/>5.74(b) .....</p>                 | <p>The proposed rule change adds that the System rejects or cancels both an Agency Order and Solicited Order submitted to a FLEX SAM Auction that does not meet the conditions in proposed paragraph (b). This is consistent with current functionality, and the proposed rule change explicitly states this in the Rule. Additionally, while current rules permit bids and offers (including the price submitting into a FLEX SAM Auction) to be in a different format than the exercise price of a FLEX Option series, the current functionality does not permit this. Rule 5.3(e)(3) in the shell Rulebook makes it clear that bids and offers must be in the same format as the exercise price, as it would be difficult to apply a dollar price for a FLEX Option series with a percentage-based exercise price.<sup>23</sup></p>   |
| <p>One or more FLEX SAM Auctions in the same FLEX Option series or complex strategy, as applicable, may occur at the same time.</p>   | <p>Rule .....<br/>24A.5B(b) and Interpretation and Policy .01.</p>                                 | <p>Rule .....<br/>5.74(c)(1) .....</p>              | <p>The proposed rule change permits concurrent FLEX SAM Auctions, which the current rule prohibits, as further discussed below. The proposed rule change also deletes the provision that says unrelated FLEX Orders may not be submitted to the electronic book for the duration of a FLEX SAM Auction, because there will no longer be an electronic book (and thus no BBO) for FLEX Options.</p>   |
| <p>The System initiates the FLEX SAM Auction process by sending a FLEX SAM Auction notification message detailing the side, size, price, Capacity, Auction ID, the length of the FLEX SAM Auction period, and FLEX Option series or complex strategy, as applicable, of the Agency Order to all FLEX Traders that elect to receive FLEX SAM Auction notification messages. FLEX SAM Auction notification messages are not disseminated to OPRA.</p>   | <p>Rule .....<br/>24A.5B(b)(1)(ii) .....</p>   | <p>Rule .....<br/>5.74(c)(2) .....</p>              | <p>The current rule states the auction message (currently called a request for responses ("RFR")) details the price, size, and side of the order, which message is set to all FLEX Traders that have elected to receive RFRs upon receipt of a properly designated Agency Order for FLEX SAM processing. Other than changes to terminology and other nonsubstantive changes, the proposed provision specifies that the message will detail the Capacity of the Agency Order, an Auction ID, and the option series, in addition to the price, side, and size, of the Agency Order, which message is sent to all TPHs that elect to receive SAM Auction notification messages. This is consistent with the current auction message that is disseminated; the proposed rule change adds these details to the rule. The proposed rule change to add that the FLEX SAM Auction notification message includes the length of the FLEX SAM Auction period relates to the proposed change below that the Initiating FLEX Trader, rather than the Exchange, will designate the length of the FLEX SAM Auction period (and therefore FLEX Traders will know how long they have to respond to a FLEX SAM Auction). The proposed rule change also adds that FLEX SAM Auction notification messages are not included in the disseminated OPRA, which is also consistent with current functionality.<sup>24</sup></p> |

| Rule provision   | Current rule (current rulebook)                                  | Proposed rule (shell rulebook)       | Proposed substantive changes   |
|--|--|--------------------------------------|--|
| The "FLEX SAM Auction period" is a period of time designated by the Initiating FLEX Trader, which may be no less than three seconds and no more than five minutes. The designated length of the FLEX SAM Auction period may not be longer than the amount of time remaining until the market close.  | Rule .....<br>24A.5B(b)(1)(iii)                                  | Rule .....<br>5.74(c)(3) .....       | The proposed rule change adds a maximum time to the range for the FLEX SAM Auction period (the minimum potential auction period remains three seconds), which is consistent with current Exchange authority under the current Rules. Additionally, this corresponds to the same permissible time range as that for electronic FLEX Auctions pursuant to Rule 5.72 in the shell Rulebook, and permits the Initiating FLEX Trader to designate the length of the FLEX SAM Auction when submitting the Agency Order rather than have the Exchange establish a length for all FLEX SAM Auctions. It also ensures that a FLEX SAM Auction will conclude prior to the close of trading to prevent executions after the market close. This is consistent with standard FLEX electronic auction, which permits FLEX Traders to designate the length of that auction (and permits it to be from three seconds to five minutes). This provides consistency among FLEX trading. Additionally, it provides FLEX Traders with flexibility regarding the duration of the exposure time, which it may want to be longer than three seconds due to the terms of the FLEX Option series being auctioned. <sup>25</sup>  |
| The Initiating FLEX Trader may not modify or cancel an Agency Order or Solicited Order after submission to a SAM Auction.  | Rule .....<br>24A.5B(b) .....                                    | Rule .....<br>5.74(c)(4) .....       | The proposed rule change makes only nonsubstantive changes to this provision, as well as clarifies that the prohibition on cancelling a FLEX SAM Auction practically means that the Initiating FLEX Trader may not cancel (or modify, which would change the terms of the auction after it started, essentially creating a new auction) the Agency Order or the Solicited Order, the entry of which (subject to eligibility requirements) initiates the FLEX SAM Auction.  |
| Any FLEX Trader other than the Initiating FLEX Trader (determined by EFID) may submit responses to a FLEX SAM Auction that are properly marked specifying price, size, side, and the Auction ID for the FLEX SAM Auction to which the FLEX Trader is submitting the response. A FLEX SAM response may only participate in the FLEX SAM Auction with the Auction ID specified in the response.  | Rule .....<br>24A.5B(b)(1)(iii) and (vi).                        | Rule .....<br>5.74(c)(5) .....       | The current rule specifies that responses must include prices and sizes; the proposed rule change adds responses must also specify side and an Auction ID, which is consistent with current functionality and merely adds details to the rule. The proposed rule change adds that a FLEX SAM response may only participate in the FLEX SAM Auction with the Auction ID specified in the response. This is consistent with current functionality. The Exchange proposes to include this language given the above proposal that permits concurrent FLEX SAM Auctions. The proposed rule change deletes the provision that caps the price of a FLEX SAM response at the opposite side of the BBO, because there will no longer be an electronic book (and thus no BBO) for FLEX Options. The proposed rule change permits all FLEX Traders (including Market-Makers from another options exchange) to submit responses to a FLEX SAM Auction. By permitting additional participants to submit responses to FLEX SAM Auctions, the Exchange believes this may provide the opportunity for additional liquidity in these auctions, which could lead to additional price improvement opportunities.  |
| The minimum price increment for FLEX SAM responses is the same as the one the Exchange determines for a class pursuant to subparagraph (a)(4) above, and must be in the same format (i.e., price or percentage) as the exercise price of the FLEX Option series. A response to a FLEX SAM Auction of a complex Agency Order must have a net price. The System rejects a FLEX SAM response that is not in the applicable minimum increment or format.   | Rule .....<br>24A.5B(b)(1)(v) and Interpretation and Policy .01. | Rule .....<br>5.74(c)(5)(A) .....    | The proposed rule change adds that the System rejects a FLEX SAM response that is not in the applicable minimum increment or format, which is consistent with current functionality and merely adds detail to the rule. See the discussion below regarding the application of FLEX SAM to complex orders, including proposed changes to current Rule 24A.5B, Interpretation and Policy .01.  |
| A FLEX Trader may submit multiple FLEX SAM responses at the same or multiple prices to a FLEX SAM Auction. For purposes of a FLEX SAM Auction, the System aggregates all of a FLEX Trader's FLEX SAM responses for the same EFID at the same price. The System caps the size of a FLEX SAM response, or the aggregate size of a FLEX Trader's FLEX SAM responses for the same EFID at the same price, at the size of the Agency Order (i.e., the System ignores size in excess of the size of the Agency Order when processing the FLEX SAM Auction).  | N/A .....  | Rule .....<br>5.74(c)(5)(B) and (C). | This is consistent with current functionality. Current Rule 24A.5B contains no restriction on how many responses a FLEX Trader may submit; the proposed rule change merely makes this explicit in the Rules. The proposed rule change also states for purposes of a FLEX SAM Auction, the System aggregates all of a FLEX Trader's FLEX SAM responses for the same EFID at the same price. This (combined with the proposed size cap) will prevent a FLEX Trader from submitting multiple orders, quotes, or responses at the same price to obtain a larger pro-rata share of the Agency Order.  |
| FLEX SAM responses must be on the opposite side of the market as the Agency Order. The System rejects a FLEX SAM response on the same side of the market as the Agency Order.  | N/A .....  | Rule .....<br>5.74(c)(5)(D) .....    | This is consistent with current functionality, and the proposed rule change merely adds this detail to the rules. Additionally, the Exchange believes this is reasonable given that the purpose of a FLEX SAM response is to trade against the Agency Order in the FLEX SAM Auction into which the FLEX SAM response was submitted.  |
| FLEX SAM responses are not visible to FLEX SAM Auction participants or disseminated to OPRA.   | Rule .....<br>24A.5B(b)(1)(iv)                                   | Rule .....<br>5.74(c)(5)(E) .....    | None.  |
| A FLEX Trader may modify or cancel its FLEX SAM responses during the FLEX SAM Auction.   | Rule .....<br>24A.5B(b)(1)(vii)                                  | Rule .....<br>5.74(c)(5)(F) .....    | The current Rule permits FLEX Traders to cancel a FLEX SAM response, but does not explicitly state that those responses may be modified. A modification of a response is equivalent to a cancellation of an existing response and submission of a new response, but may instead be done through a different message type. Therefore, the proposed rule change permits the same activity that can be done pursuant to the current rule, but merely in a different manner (i.e., modification rather than cancellation and separate entry).  |
| A FLEX SAM Auction concludes at the earliest to occur of the following times: (1) The end of the FLEX SAM Auction period; and (2) any time the Exchange halts trading in the affected series, provided, however, that in such instance the FLEX SAM Auction concludes without execution.   | Rule .....<br>24A.5A(b)(2) .....                                 | Rule .....<br>5.74(d) .....          | The proposed rule change deletes the provision that says a FLEX SAM Auction will conclude any time an RFR response matches the BBO on the opposite side of the market from the RFR responses, because there will no longer be an electronic book (and thus no BBO) for FLEX Options.   |
| The Agency Order executes against the Solicited Order at the stop price if there are no Priority Customer FLEX SAM responses and the aggregate size of FLEX SAM responses at an improved price(s) is insufficient to satisfy the Agency Order. The Agency Order executes against FLEX SAM responses if: (a) There is a Priority Customer FLEX SAM response and the aggregate size of that response and all other FLEX SAM responses is sufficient to satisfy the Agency Order or (b) the aggregate size of FLEX SAM responses at an improved price(s) is sufficient to satisfy the Agency Order. At each price level, Priority Customer FLEX SAM responses have first priority, and all other FLEX SAM responses are allocated second on a pro-rata basis. There is no execution at the conclusion of a FLEX SAM Auction if there is a Priority Customer FLEX SAM response and the aggregate size of that response and other FLEX SAM responses is insufficient to satisfy the Agency Order. The System cancels or rejects any unexecuted FLEX SAM responses (or unexecuted portions) at the conclusion of a FLEX SAM Auction. | Rule .....<br>24A.5B(b)(3) .....                                 | Rule .....<br>5.74(e) .....          | The proposed rule change deletes references to executions against FLEX Orders, and whether the execution price is better than the BBO, because there will no longer be an electronic book (and thus no BBO) for FLEX Options, and thus Agency Orders will only execute responses or the Initiating Order, as applicable. The proposed rule change deletes the reference to a FLEX Appointed Market-Maker participation entitlement, as there are currently no FLEX Appointed Market-Makers, and the Exchange has not applied a participation entitlement, and as a result, the Exchange is deleting FLEX Appointed Market-Makers from the Rules (as noted above). The proposed rule change provides that FLEX SAM responses will be allocated in a pro-rata manner rather than time priority. The majority of classes on the Exchange currently have a base allocation algorithm of pro-rata, and therefore the Exchange believes it is a reasonable manner in which to allocate FLEX SAM responses. FLEX SAM Priority Customer responses will continue to have priority at each price level; however, non-TPH broker-dealers will not and will be treated in the same manner as all other non-Priority Customer responses, as further discussed below. Finally, the proposed rule change adds that any unexecuted responses (or portions) at the conclusion of the FLEX SAM Auction will be cancelled. See discussion above with respect to FLEX AIM regarding changing the term "public customer" to "Priority Customer," as the same reasoning applies to the proposed change in the FLEX SAM rule. |

| Rule provision   | Current rule (current rulebook)             | Proposed rule (shell rulebook)            | Proposed substantive changes |
|--|---|---|------------------------------|
| Prior to entering Agency Orders into a FLEX SAM Auction on behalf of customers, Initiating FLEX Traders must deliver to the customer a written notification informing the customer that his order may be executed using the FLEX SAM Auction. The written notification must disclose the terms and conditions contained in proposed Rule 5.74 and be in a form approved by the Exchange.   | Rule 24A.5B, Interpretation and Policy .03. | Rule 5.74, Interpretation and Policy .01. | None.                        |
| Under proposed Rule 5.74, Initiating FLEX Traders may enter contra-side orders that are solicited. FLEX SAM provides a facility for FLEX Traders that locate liquidity for their customer orders. FLEX Traders may not use the FLEX SAM Auction to circumvent Rule 5.9 or 5.73 in the shell Rulebook limiting principal transactions. This may include, but is not limited to, FLEX Traders entering contra-side orders that are solicited from (a) affiliated broker-dealers or (b) broker-dealers with which the FLEX Trader has an arrangement that allows the FLEX Traders to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. | Rule 24A.5B, Interpretation and Policy .04. | Rule 5.74, Interpretation and Policy .02. | None.                        |

### The proposed rule change clarifies in the proposed introductory paragraph of

<sup>6</sup> A FLEX Market-Maker with an appointment in a FLEX Option class is not what is currently referred to as a “FLEX Appointed Market-Maker” in the current Rulebook. Under current Rules, a “FLEX Qualified Market-Maker” is an Exchange-registered Market-Maker that is eligible to trade FLEX Options and is appointed to one or more FLEX Option classes, and a “FLEX Appointed Market-Maker” is an Exchange-registered Market-Maker that is eligible to trade FLEX Options that is selected by the Exchange to serve in such capacity for one or more FLEX Option classes, which has certain FLEX quoting obligations. See current Rule 24A.9. The Exchange currently has no FLEX Appointed Market-Makers in any FLEX Option class, and does not intend to, so it has deleted its rules related to FLEX Appointed Market-Makers. See Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-CBOE-2019-059).

<sup>7</sup> With respect to FLEX Options, the term “BBO” means the best bid or offer, or both, as applicable, entered in response to a Request for Quotes or resting in the electronic book. With respect to FLEX AIM and SAM Auctions, which are different than a Request for Quotes, the BBO only incorporates any bids and offers resting in the electronic book. While the Exchange currently has an electronic book for FLEX Options, it has only been used in recent months by one customer for limited purpose, and for a minimal amount of FLEX volume. Therefore, it is unlikely there would be resting FLEX Orders to be incorporated into the BBO. The Exchange will no longer have an electronic FLEX Book. See SR-CBOE-2019-084. Additionally, there is no RFQ process that is part of a FLEX AIM Auction.

<sup>8</sup> See SR-CBOE-2019-084 (which filing describes the current minimal, limited use of an electronic FLEX Book and the elimination of a book for FLEX Orders as of the System migration, and deletes rule provisions related to a FLEX electronic book from the rules in current Chapter XXIV).

<sup>9</sup> See Rule 5.72(b) of the shell Rulebook (which states that submission of a FLEX Order into a FLEX AIM Auction establishes a FLEX Option series as eligible for trading); see also Rule 4.21 (which describes the permissible terms of FLEX Option series, and states that a FLEX Option series may not have the same terms as a non-FLEX Option series on the same underlying security or index that is already available for trading) and Rule 4.22 (which describes fungibility provisions when the Exchange lists for trading a non-FLEX Option series with identical terms as a FLEX Option series).

<sup>10</sup> See current Rule 24A.5A(a)(2), which states the Initiating TPH must stop the “entire” Agency Order.

<sup>11</sup> Pursuant to Rule 5.4(c)(4) in the shell Rulebook, the minimum increment for bids and

offers on FLEX Options may be no smaller than (A) \$0.01, if the exercise price for the FLEX Option series is a fixed price, or (B) 0.01%, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index. The System rounds bids and offers to the nearest minimum increment.

<sup>12</sup> In current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01, the price of a complex order is referenced as a net debit or net credit price, while proposed Rules 5.73 and 5.74 just use the simplified term “net price” as that is consistent with the term used in other FLEX Rules in the shell Rulebook. See, e.g., Rule 5.72(b)(2) in the shell Rulebook. A net debit price is merely a complex order with a net price to buy, and a net credit price is merely a complex order with a net price to sell, so the term net price covers both terms.

<sup>13</sup> See also SR-CBOE-2019-084.

<sup>14</sup> Pursuant to Rule 5.71 in the shell Rulebook, trading in FLEX Options in a trading session may begin, with respect to the Regular Trading Hours trading session, after 9:30 a.m. of the first disseminated (a) transaction on the primary listing market in the security underlying an equity option or (b) index value for the index underlying an index option, and with respect to the Global Trading Hours trading session, after 3:00 a.m.

<sup>15</sup> See *supra* note 7.

<sup>16</sup> This is also consistent with the auction notification message for non-FLEX AIM Auctions. See Rules 5.37(c)(3) and 5.38(c)(3) in the shell Rulebook.

<sup>17</sup> The Exchange believes the proposed time range is reasonable, because it is consistent with the lengths designated by FLEX Traders in the current electronic RFQ process. Specifically, the Exchange notes that from January through August of 2019, for electronic FLEX trading in the FLEX RFQ process (but not FLEX AIM and SAM Auctions), the average RFQ Response period is less than nine seconds, and the average RFQ Reaction period is approximately three minutes. Therefore, the average length of the electronic RFQ process is within the proposed exposure interval. Additionally, in 2019, only 25 of 3457 (or 0.7%) of electronic FLEX RFQs lasted for a total of more than five minutes in 2019, so the Exchange does not believe capping the length of the proposed electronic FLEX Auction at five minutes will have a significant impact on FLEX trading. See SR-CBOE-2019-084.

<sup>18</sup> See *supra* note 6.

<sup>19</sup> As defined in Rule 1.1 in the shell Rulebook, a “Priority Customer” is a person or entity that is a Public Customer (which is a person that is not a broker or dealer in securities) or a Professional (which is defined as any person or entity that (a) is not a broker or dealer in securities, and (b) places more than 390 orders in listed options per day on average during a calendar month for its own

each of proposed Rules 5.73 and 5.74 that the Initiating Order or Solicited Order, respectively, may consist of one or more solicited orders. This accommodates multiple contra-parties and increases the opportunities for customer orders to be submitted into a FLEX AIM or SAM Auction with the potential for price improvement, since the Initiating Order or Solicited Order, respectively, must stop the full size of the Agency Order. This has no impact on the execution of the Agency Order, which may already trade against multiple contra-parties depending on the final auction price, as set forth in proposed paragraph (e) of each of proposed Rules 5.73 and 5.74.

Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01 currently describe the applicability of FLEX AIM and SAM Auctions, respectively. Because FLEX AIM and SAM Auctions apply to

beneficial account(s); the System handles Professional orders in the same manner as broker-dealer orders unless otherwise specified).

<sup>20</sup> This is consistent with other Exchange auction functionality that prioritizes Priority Customer orders, as well as the customer overlay, which prioritizes Priority Customer orders, rather than Public Customer orders. See, e.g., Rules 5.32(a)(2)(A) (describing the Priority Customer overlay), 5.33(d)(5) (describing how Priority Customers receive first priority following a complex order auction), and 5.37(e) (describing how Priority Customers receive first priority at each price level following an AIM Auction).

<sup>21</sup> See *supra* note 9.

<sup>22</sup> See current Rule 24A.5B(a)(2) (b)(3), which states each order entered into the FLEX SAM Auction must be AON, and that the Agency Order executes in full or is cancelled, and may be allocated entirely to the Solicited Order, subject to certain conditions. Given that both orders must be AON, if the Solicited Order was not the same size as the Agency Order, they would not be able to execute against each other at the conclusion of a FLEX SAM Auction.

<sup>23</sup> See also SR-CBOE-2019-084.

<sup>24</sup> This is also consistent with the auction notification message for non-FLEX SAM Auctions. See Rules 5.39(c)(3) and 5.40(c)(3) in the shell Rulebook.

<sup>25</sup> See *supra* note 17.

complex orders in the same manner as they apply to simple orders, other than the need for complex orders (and responses to auctions of complex orders) to include a net price (as required in current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01),<sup>26</sup> the Exchange no longer believes a separate interpretation and policy is necessary for complex orders. The Exchange makes FLEX AIM and SAM Auctions, respectively, available for complex orders in any FLEX Option class in which it makes the applicable auction available for simple orders, so the Exchange no longer needs separate flexibility to apply each auction to complex orders as provided by current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01 (which state the Exchange may determine on a class-by-class basis to make the FLEX AIM Auction or FLEX SAM Auction, respectively, available for complex orders). As discussed below, the proposed rule change will permit multiple FLEX AIM and SAM Auctions for a complex strategy, and in any of the same individual series legs of the strategy, to be ongoing at the same time, so the proposed rule change deletes the provisions from current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01 that state only one FLEX AIM Auction may be ongoing at any given time. Additionally, the proposed rule change deletes the provision in current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01 that state unrelated FLEX Orders in any individual series legs may not be submitted to the electronic book for the duration of a FLEX AIM or SAM Auction, as there will no longer be a book available for FLEX Orders.<sup>27</sup> The Exchange believes this will simplify the FLEX AIM and SAM Auctions.

All eligibility requirements for FLEX AIM and SAM Auctions are set forth in the proposed rules,<sup>28</sup> so the proposed rule change also deletes the current flexibility to determine order types, origin codes, and marketability that are eligible for those auctions from current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01. As discussed above, complex orders, like simple orders, will only be able to trade against FLEX AIM or SAM responses, as applicable, so the proposed rule change deletes the provisions that state complex orders

will only be eligible to trade with other complex orders through a FLEX AIM or SAM Auction, respectively. Order allocation for simple and complex orders following a FLEX AIM or SAM Auction will continue to be the same, as proposed Rule 5.73(e) and 5.74(e) apply to both simple and complex orders, and therefore the proposed rule change deletes that provision from current Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01. Finally, because there will no longer be an electronic book (and thus no BBO) for FLEX Options, the proposed rule change deletes the provisions in Rules 24A.5A, Interpretation and Policy .05 and 24A.5B, Interpretation and Policy .01 regarding the impact of bids and offers in the electronic book on FLEX AIM and SAM Auctions, respectively, and regarding the ability of orders in the individual legs to be submitted to the electronic book during an auction.

With respect to FLEX AIM Auctions, the proposed rule change provides that if the Initiating FLEX Trader selects a single-price submission, it may elect for the Initiating Order to have last priority to trade against the Agency Order.<sup>29</sup> If the Initiating FLEX Trader selects a single-price submission, it may elect for the Initiating Order to have last priority to trade against the Agency Order. In this case, the Initiating Order would only execute against any remaining Agency Order contracts at the stop price after the Agency Order is allocated to all FLEX AIM responses at all prices equal to or better than the stop price. Last priority information is not available to other market participants and may not be modified after it is submitted. This proposed rule change provides Initiating FLEX Traders with additional control over its execution of an Initiating Order against an Agency Order, which may further encourage FLEX Traders to submit Agency Orders to a FLEX AIM Auction for potential price improvement opportunities for those orders. This may also provide more opportunities for other FLEX Traders to participate in the FLEX AIM Auctions. The proposed last priority option is the same as the last priority provision option available in non-FLEX AIM Auctions, and thus the proposed rule change provides further consistency across the Exchange's auction mechanisms.<sup>30</sup>

The proposed rule change permits the Initiating FLEX Trader to designate the length of FLEX AIM and SAM Auctions, rather than the Exchange. The

permissible length of the auctions continues to have a minimum of three seconds, which is consistent with the current Rules. The proposed rule change also imposes a maximum for the length of the auctions of five minutes, which is consistent with the permissible times for the FLEX electronic auction.<sup>31</sup> This will permit the Initiating FLEX Trader to determine a reasonable timeframe for the duration of an auction based on the FLEX Option series or complex strategy submitted into the auction, as well as provide for a timely execution of Agency Orders.

Unlike today, one or more FLEX AIM or SAM Auctions in the same FLEX Option series or complex strategy (as applicable) may occur at the same time. To the extent there is more than one FLEX AIM or SAM Auction in a FLEX Option series or complex strategy (as applicable) underway at the same time, the auctions will conclude sequentially based on the times at which each auction period concludes. At the time each auction concludes, the System allocates the Agency Order pursuant to proposed Rule 5.73(e) or 5.74(e), as applicable, and takes into account all FLEX responses submitted during the auction period. Concurrent auctions will be permitted in various other electronic auctions on the Exchange following migration.<sup>32</sup> If a FLEX Trader attempts to initiate a FLEX AIM or SAM Auction in a FLEX Option series while another auction in that series is ongoing, the Exchange believes it will provide that second FLEX Order with an opportunity for execution in a timely manner by initiating another FLEX Auction, rather than requiring the FLEX Trader to wait for the first auction to conclude. The second FLEX Trader may not be able to submit a response to trade in the ongoing FLEX AIM or SAM Auction, because the terms may not be consistent with that FLEX Trader's order (for example, there may not be sufficient size, and the FLEX Trader may only receive a share of the auctioned order depending on other responses). Therefore, the Exchange believes providing this functionality for FLEX AIM and SAM Auctions may similarly lead to an increase in these auctions, which may provide additional opportunities for execution of FLEX Orders.

The proposed rule change eliminates priority for non-TPH broker-dealer responses at the conclusion of FLEX AIM and SAM Auctions, and thus those responses will be prioritized in the same

<sup>26</sup> See *supra* note 12.

<sup>27</sup> See SR-CBOE-2019-084.

<sup>28</sup> See proposed Rules 5.73(a) and 5.74(a), respectively.

<sup>29</sup> See proposed Rule 5.73(e)(4).

<sup>30</sup> See Rule 5.37(e) in the shell Rulebook.

<sup>31</sup> See Rule 5.72(b)(1)(F) in the shell Rulebook.

<sup>32</sup> See, e.g., Rule 5.37(c)(1), 5.38(c)(1), 5.39(c)(1), and 5.40(c)(1).

manner as all other non-Priority Customer responses. Non-TPH broker-dealers do not, and have not, received priority in the non-FLEX AIM and SAM Auctions, so the proposed rule change aligns the provision regarding who receives first priority in a FLEX AIM or SAM Auction with the corresponding provisions for non-FLEX AIM and SAM Auctions.<sup>33</sup> The Exchange currently prioritizes contra-interest from these market participants to ensure that FLEX AIM and SAM Auctions satisfy the “G” exemption for yielding priority to non-members under Section 11(a)(1) of the Act. However, as discussed below, the Exchange believes the FLEX AIM and SAM Auctions, as proposed, satisfy the “Effect vs. Execute” exemption from Section 11(a) under the Act, and therefore does not need to provide additional functionality for TPHs to satisfy another exemption from Section 11(a) under the Act. Priority Customer responses will continue to receive first priority in both FLEX AIM and SAM Auctions, as they do in non-FLEX AIM and SAM Auctions. Therefore, the proposed rule change provides further consistency across the Exchange’s auction mechanisms.<sup>34</sup>

As proposed, the general framework of the FLEX AIM and SAM Auctions will continue to be the same as the Exchange’s non-FLEX AIM and SAM Auctions, with the differences being only those relating to the differences between FLEX and non-FLEX Options. The Exchange believes it will benefit investors to provide continued consistency across the Exchange’s price improvement mechanisms.

The proposed rule change deletes Rule 24A.5A, Interpretation and Policy .06 and Rule 24A.5B, Interpretation and Policy .02 regarding post-trade verification procedures for FLEX AIM and SAM Auctions for complex orders. Due to the System updates in connection with the System migration, parties to executions follow FLEX AIM and SAM Auctions will no longer need to take additional steps with respect to executions of complex orders following an electronic FLEX AIM or SAM Auction.<sup>35</sup> These procedures require

<sup>33</sup> See Rules 5.37(e), 5.38(e), 5.39(e), and 5.40(e) in the shell Rulebook.

<sup>34</sup> See Rules 5.37(e) and 5.39(e) in the shell Rulebook.

<sup>35</sup> Note current Rule 24A.5A, Interpretation and Policy .06 and Rule 24A.5B, Interpretation and Policy .02 also apply to electronic transactions in FLEX Options with exercise prices and premiums based on a methodology for fixing that number or based on a percentage. As described in another rule filing, the Exchange will no longer offer exercise prices and premiums based on such a methodology. See SR-CBOE-2019-084 (in which filing the Exchange proposes to delete the provisions from

FLEX Traders to input the leg price, exercise price, and/or premium information into the System following execution of a complex FLEX Order. Pursuant to Rule 5.72(b)(2) in the shell Rulebook, FLEX Traders must submit all of this information upon entry of a FLEX Order. Therefore, pursuant to the proposed rule change, a FLEX Trader will be required to input the same information for each leg of a complex FLEX Order prior to submission rather than following execution. A FLEX Official may nullify a transaction following a FLEX AIM or SAM Auction pursuant to Rule 5.75(b) (such as if it did not conform to the terms in Rule 4.21 in the shell Rulebook),<sup>36</sup> or update any inaccurate information in a complex FLEX Order in the same manner as any TPH may update any inaccurate information in any order pursuant to current Rule 6.67.<sup>37</sup> Because all FLEX Orders will now be systematized, as discussed above, there is no longer a need for separate procedures regarding the correction of inaccurate information entered for FLEX transactions.

The proposed rule change deletes Rule 24A.5A, Interpretation and Policy .07 and Rule 24A.5B, Interpretation and Policy .05 regarding determinations made pursuant to those Rules, because the Exchange will announce all determinations it may make with respect to FLEX AIM and SAM Auctions pursuant to Rule 1.5 in the shell Rulebook, making these current interpretations no longer necessary.

## 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>38</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section

current Rules regarding the ability of FLEX Traders to designate exercise prices and premiums in these formats).

<sup>36</sup> Rule 5.75(b) of the shell Rulebook states, among other things, that a FLEX Official may nullify a FLEX Option transaction if it determines the transaction did not conform to the terms of Rules 4.21, 4.22, 5.3, or 5.4 (or the priority principles set forth in Rule 5.72(c) and (d), which do not apply to transactions following a FLEX AIM or SAM Auction).

<sup>37</sup> Rule 6.67 in the current Rulebook describes the Exchange’s Cboe Trade Match System, which permits TPHs to correct bona fide errors, subject to certain restrictions. The Exchange moved Rule 6.67 from the current Rulebook to Rule 6.6 in the shell Rulebook in separate rule filings. See Securities Exchange Act Release No. 86920 (September 10, 2019), 84 FR 48687 (September 16, 2019) (SR-CBOE-2019-056); and 87079 (September 24, 2019) (SR-CBOE-2019-062).

<sup>38</sup> 15 U.S.C. 78f(b).

6(b)(5)<sup>39</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>40</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange’s FLEX AIM and SAM Auctions as proposed—both for simple and complex orders—will function in a substantially similar manner following the technology migration as they do today. 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, and, in general, protect investors and the public interest by providing continued consistency across the Exchange’s price improvement mechanisms for both FLEX and non-FLEX Option. The general framework of the FLEX AIM and SAM Auction process as proposed to be amended will continue to be substantively the same as the framework for the non-FLEX AIM and SAM Auctions, as the Exchange recently amended, retaining differences that relate to the differences between FLEX and non-FLEX Options (e.g., exercise prices in prices or percentages, no electronic book and thus no BBO).<sup>41</sup> The continued similarity of the Exchange’s price improvement auctions will allow the Exchange’s price improvement functionality to continue to fit seamlessly into the options market and benefit market participants with consistency across similar functionality. When auctions have similar functionality, Trading Permit Holders can use the same technology and coding for multiple auctions, rather than have to expend resources to participate in different auctions. Therefore, maintaining consistency across auction functionality will benefit investors. The Exchange also believes this will encourage Trading Permit Holders to compete vigorously to provide the opportunity for price improvement for

<sup>39</sup> 15 U.S.C. 78f(b)(5).

<sup>40</sup> *Id.*

<sup>41</sup> See SR-CBOE-2019-084.

customer orders in FLEX Options in competitive auction processes, which will further benefit and protect investors.

The Exchange believes the proposed rule change to permit an Initiating Order submitted into a FLEX AIM Auction, and a Solicited Order submitted into a FLEX SAM Auction, to be comprised of multiple contra-party orders will, in general, protect investors and the public interest, because it may increase the opportunity for customers to have orders participate in a FLEX AIM or SAM Auction. As a result, this may increase opportunities for price improvement, because this will increase the liquidity available for the Initiating Order or Solicited Order, as applicable, which is consistent with the purpose of FLEX AIM and SAM Auctions. The Exchange believes that this is beneficial to participants because allowing multiple contra-parties should foster competition for filling the Initiating Order or Solicited Order, as applicable, and thereby result in potentially better prices, as opposed to only allowing one contra-party and, thereby requiring that contra-party to do a larger size order which could result in a worse price for the trade.

As noted above, the proposed rule change will allow FLEX AIM and SAM Auctions to occur concurrently with other FLEX AIM and SAM Auctions. Although FLEX AIM and SAM Auctions will be allowed to overlap, the Exchange does not believe that this raises any issues that are not addressed by the proposed rule change. For example, although overlapping, each FLEX AIM or SAM Auction will be started in a sequence and with a duration that determines its processing. Thus, even if there are two FLEX AIM or SAM Auctions that commence and conclude, at nearly the same time, each Auction will have a distinct conclusion at which time the Auction will be allocated, and only against responses submitted into that Auction. As discussed above, each FLEX AIM or SAM response is required to specifically identify the FLEX AIM or SAM Auction, respectively, for which it is targeted and if not fully executed will be cancelled back at the conclusion of the Auction. Thus, responses will be specifically considered only in the specified Auction.

The proposed rule change to allow multiple auctions to overlap for Agency Orders is consistent with functionality already in place on other exchanges, and will therefore remove impediments to and perfect the mechanism of a free and open market and a national market

system.<sup>42</sup> Additionally, the proposed rule change is consistent with the Exchange's rules for non-FLEX AIM and SAM Auctions.<sup>43</sup> Those issues generally relate to the interaction of auctioned orders with contra-side interest at the end of the various auctions. Different series or complex strategies, as applicable, are essentially different products—orders different strategies or in different series cannot interact, just as orders in different classes cannot interact. Therefore, the Exchange believes concurrent FLEX AIM and SAM Auctions in different series or complex strategies, respectively, is appropriate. The Exchange believes this new functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that permit overlapping price improvement auctions, while providing an opportunity for price improvement for Agency Orders and assuring that Priority Customers are protected. Therefore, the Exchange believes this proposed rule change will protect investors and the public interest.

While the terms of FLEX Options are different than those of non-FLEX Options, any potential issues raised by concurrent auctions are the same for non-FLEX and FLEX Options. Additionally, unlike in non-FLEX trading, there is no electronic book for FLEX trading. As noted above, responses submitted to a FLEX AIM or SAM Auction may only execute against the Agency Order in the Auction into which the responses were submitted, so there can be no conflict among contra-side interest with respect to executions. Further, unlike in non-FLEX trading, because there is no electronic book for FLEX Options, there are no events that cause a FLEX AIM or SAM Auction to conclude prior to the end of the respective auction period that would result in an execution, and therefore, the same event could not cause multiple auctions to conclude early. As discussed above, the proposed rule change addresses any of these potential issues.

The proposed range for the length of each of the FLEX AIM and SAM Auction periods is consistent with the range for the exposure interval of the electronic FLEX Auction. Because of the unique terms of FLEX Options, the Exchange believe it is appropriate to provide a reasonable and sufficient

<sup>42</sup> See, e.g., EDGX Rules 21.19(c)(1) and 21.22(c)(1); see also, e.g. Nasdaq ISE LLC ("ISE") Rules 716(d) and 723, Interpretation and Policy .04; and Boston Options Exchange LLC ("BOX") Rule 7270 and BOX IM-7150-3.

<sup>43</sup> See Rules 5.37(c)(1), 5.38(c)(1), and 5.39(c)(1) in the shell Rulebook.

amount of time in which market participants may submit responses. Therefore, the minimum length of a FLEX AIM and SAM Auction (and is proposed to continue to be) three seconds. The Exchange also proposes a maximum length of an auction period of five minutes, as the Exchange also believes it is appropriate to provide for efficient and timely executions so that customers do not potentially miss a market. The proposed rule change also permits the Initiating FLEX Trader to establish the length of the auction period (which will be included in the auction notification message), as the FLEX Trader can determine a reasonable period of time to provide other FLEX Traders to respond based on the complexity of the FLEX Option series that is the subject of the auction, as well as based on market conditions (for example, in a volatile market, the FLEX Trader may believe it is in the best interests of a customer to have shorter auction given quickly changing prices).

The Exchange believes the proposed rule change to permit all FLEX Traders (other than the Initiating FLEX Trader) to respond to FLEX SAM Auctions will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because it permits all FLEX Traders to submit responses to FLEX SAM Auctions. Permitting all FLEX Traders to submit responses to FLEX SAM Auctions may result in more FLEX Traders having the opportunity to participate in executions at the conclusion of FLEX SAM Auctions. Additionally, it may increase liquidity in FLEX SAM Auctions, which may lead to more opportunities to price improvement, which the Exchange believes ultimately protects investors and the public interest. The Exchange's SAM Auction for non-FLEX Options similarly permits market-makers from other options exchange to submit responses.<sup>44</sup>

Additionally, much of the proposed rule change is merely relocating provisions from the FLEX AIM and SAM Auction Rules (such as certain auction eligibility requirements, provisions related to auction responses, and provisions related to executions following the conclusion of an auction) from the current Rulebook to the shell Rulebook and making only nonsubstantive changes, which will

<sup>44</sup> See Rules 5.39(c)(5) and 5.40(c)(5) in the shell Rulebook.

therefore have no impact on FLEX AIM and SAM Auctions. The Exchange believes providing a reorganized, holistic rulebook upon migration will also benefit investors.

The proposed rule change is also consistent with Section 11(a)(1) of the Act<sup>45</sup> and the rules promulgated thereunder. Generally, Section 11(a)(1) of the Act restricts any member of a national securities exchange from effecting any transaction on such exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account with respect to which the member or a person associated with the member exercises investment discretion, unless a specific exemption is available. Examples of common exemptions include the exemption for transactions by broker dealers acting in the capacity of a market maker under Section 11(a)(1)(A),<sup>46</sup> the "G" exemption for yielding priority to non-members under Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder,<sup>47</sup> and "Effect vs. Execute" exemption under Rule 11a2-2(T) under the Act.<sup>48</sup>

The "Effect vs. Execute" exemption permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)'s conditions, a member: (a) Must transmit the order from off the exchange floor; (b) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;<sup>49</sup> (c) may not be affiliated with the executing member; and (d) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Exchange believes that TPHs entering orders into a FLEX AIM or SAM Auction would satisfy the requirements of Rule 11a2-2(T).

The Exchange believes FLEX AIM and SAM Auctions will place all users—both TPHs and non-TPHs—on the

"same footing" as intended by Rule 11a2-2(T). Given the automated matching and execution at the conclusion of a FLEX AIM or SAM Auction, no TPH would enjoy any special control over the time of execution or special order handling advances for orders executed electronically following a FLEX AIM or SAM Auction, because such orders would be centrally processed for execution by computer, as compared to being handled by a member through bids and offers on the trading floor. Because the electronic trading platform components are designed to prevent any TPHs from gaining any time and place advantages, the Exchange believes each of the FLEX AIM and SAM Auctions satisfies the four components of the "Effect vs. Execute" rule as well as the general policy objectives of Section 11(a) of the Act.

In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from off the floor directly to the Exchange by electronic means.<sup>50</sup> Because the Exchange's FLEX AIM and SAM Auctions each receive, and will continue to receive, orders from FLEX Traders electronically through remote terminals or computer-to-computer interfaces, the Exchange believes that orders submitted to a FLEX AIM or SAM Auction from off the Exchange's trading floor will satisfy the off-floor transmission requirement.<sup>51</sup>

The second condition of Rule 11a2-2(T) requires that neither a member nor an associated person of such member participate in the execution of its order. The Exchange represents that, upon submission to a FLEX AIM or SAM Auction, an order or response will be executed automatically pursuant to the Rules set forth for the applicable Auction. In particular, execution of an order or response sent to a FLEX AIM or SAM Auction depends not on the

FLEX Trader entering the order or response, but rather on what other orders and responses are present and the priority of those orders and responses. Thus, at no time following the submission of an order or response is a FLEX Trader or associated person of such FLEX Trader able to acquire control or influence over the result or timing of order or response execution. The Initiating FLEX Trader may not cancel or modify the Agency Order or applicable contra-side order once submitted into a FLEX AIM or SAM Auction, but FLEX Traders may modify or cancel their responses after being submitted into a FLEX AIM or SAM Auction.<sup>52</sup> Once the Agency Order and Initiating Order or Solicited Order, or response, as applicable, have been transmitted, the FLEX Trader that submitted the order or response will not participate in its execution. No FLEX Trader, including the Initiating FLEX Trader, will see a response submitted into a FLEX AIM or SAM Auction, and therefore and will not be able to influence or guide the execution of the Agency Orders (or contra-side orders) or responses, as applicable. Finally, with respect to FLEX AIM, the last priority feature will not permit a FLEX Trader to have any control over an order. The election to apply last priority to an Initiating Order is available prior to the submission of the order and therefore could not be utilized to gain influence or guide the execution of the Agency Order and Initiating Order. The information provided with respect to the last priority feature by the Initiating FLEX Trader will not be broadcast and further, the information may not be modified by the Initiating FLEX Trader during the FLEX AIM Auction.<sup>53</sup>

Rule 11a2-2(T)'s third condition requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as FLEX AIM and SAM Auctions, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after

<sup>45</sup> 15 U.S.C. 78k(a). Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies.

<sup>46</sup> 15 U.S.C. 78k(a)(1)(A).

<sup>47</sup> 15 U.S.C. 78k(a)(1)(G) and 17 CFR 240.11a1-1(T).

<sup>48</sup> 17 CFR 240.11a2-2(T).

<sup>49</sup> The member may, however, participate in clearing and settling the transaction.

<sup>50</sup> See, e.g., Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR-NYSE-90-52 and SR-NYSE-90-53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) ("1979 Release").

<sup>51</sup> See Rule 5.72(e) in the shell Rulebook.

<sup>52</sup> The Exchange notes that the Commission has stated that the non-participation requirement does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted so long as such modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542, 11547 (the "1978 Release").

<sup>53</sup> See proposed Rule 5.73(e)(4).

transmitting them to the exchange.<sup>54</sup> The Exchange represents that the FLEX AIM and SAM Auctions are designed so that no FLEX Trader has any special or unique trading advantage in the handling of its orders or responses after transmitting them to the mechanisms.

A TPH (not acting in a market-maker capacity) could submit an order for a covered account from off of the Exchange's trading floor to an unaffiliated floor broker for submission for execution the FLEX AIM or SAM Auction from the trading floor and satisfy the "Effect vs. Execute" exemption (assuming the other conditions are satisfied).<sup>55</sup> However, a TPH, relying on this exemption, could not submit an order for a covered account to its "house" floor broker on the trading floor for execution. Because a TPH may not rely on the "G" exemption when submitting an order to a FLEX AIM or SAM Auction,<sup>56</sup> it must ensure another exception applies in this situation.

Rule 11a2-2(T)'s fourth condition requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.<sup>57</sup> The Exchange

<sup>54</sup> In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release.

<sup>55</sup> Orders for covered accounts that rely on the "Effect vs. Execute" exemption in this scenario must be transmitted from a remote location directly to the Floor Broker on the trading floor by electronic means.

<sup>56</sup> See Rule 5.72(e) in the shell Rulebook; see also proposed Rules 5.73(e) and 5.74(e) (which do not prioritize non-TPH broker-dealers, as would be necessary for submission of orders into the FLEX AIM and SAM Auctions to comply with the "G" exemption).

<sup>57</sup> See 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount

recognizes that FLEX Traders relying on Rule 11a2-2(T) for transactions effected through a FLEX AIM or SAM Auction must comply with this condition of the Rule, and the Exchange will enforce this requirement pursuant to its obligations under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.

Therefore, Exchange believes that the instant proposal is consistent with Rule 11a2-2(T), and that therefore the exception should apply in this case. Therefore, the Exchange believes the proposed rule change is consistent with Section 11(a) of the Act and the Rules thereunder.

#### *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. FLEX AIM and SAM Auctions will continue to be voluntary for FLEX Traders to use and will be available to all FLEX Traders. Additionally, the ability to respond to FLEX SAM Auctions will now be available to all FLEX Traders (except the Initiating TPH, which is consistent with the requirement that the contra-side order be a solicitation rather than a facilitation). These auction mechanisms will apply to all FLEX Traders in the same manner. The Exchange believes the FLEX AIM and SAM Auctions will continue to provide opportunities price improvement for Agency Orders in FLEX Options in a competitive auction process.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition. The Exchange believes keeping FLEX AIM and SAM Auctions aligned with corresponding non-FLEX auction mechanisms, with the only differences relating to the differences between FLEX and non-FLEX options, may further encourage submission of FLEX Orders into these price improvement mechanisms. By enhancing our FLEX trading platform, the Exchange believes it may be a more attractive alternative to

of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. See also 1978 Release (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

the OTC market. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

#### *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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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>58</sup> and Rule 19b-4(f)(6) thereunder.<sup>59</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>60</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>61</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative prior to the proposed Exchange's system migration on October 7, 2019, in order to permit the Exchange to provide FLEX AIM and SAM Auction functionality to market participants on an uninterrupted basis. In support of its waiver request, the Exchange states that the FLEX AIM and SAM Auctions for both simple and complex orders will function in a substantially similar manner following the technology

<sup>58</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>59</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization 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 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.

<sup>60</sup> 17 CFR 240.19b-4(f)(6).

<sup>61</sup> 17 CFR 240.19b-4(f)(6)(iii).

migration as they do today. The Exchange further notes that the general framework of the Exchange's FLEX AIM and SAM Auction process will continue to be substantively the same as the framework for the non-FLEX AIM and SAM Auctions, except for differences that relate to the distinctions between FLEX and non-FLEX Options.<sup>62</sup> Additionally, the Exchange states that the proposal relocates certain provisions from the current Rulebook to the shell Rulebook, such as provisions related to auction eligibility requirements, auction responses, and executions following the conclusion of an auction, and makes only non-substantive changes to such provisions, which the Exchange believes will have no impact on FLEX AIM and SAM Auctions. The Exchange further notes that it has provided market participants with notice of this change in advance of the system migration.<sup>63</sup> For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative upon filing.<sup>64</sup>

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:

<sup>62</sup> See *supra* note 41.

<sup>63</sup> See, e.g., Exchange Notice C2019092500, *Trading of FLEX Options on Cboe Options Exchange* (September 25, 2019); Exchange Notice 2019092501, *Cboe Town Hall on FLEX Trading on the New Cboe Options Exchange Platform* (September 25, 2019); BOE and FIX Specifications, available at <http://markets.cboe.com/us/options/support/technical/>.

<sup>64</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### Electronic Comments

- Use the Commission's internet comment form (<http://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-2019-093 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-2019-093. 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 (<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-CBOE-2019-093 and should be submitted on or before October 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>65</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>65</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87235; File No. SR-CBOE-2019-084]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Rules Regarding the Trading of Flexible Exchange Options, and Move Those Rules From the Currently Effective Rulebook to the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges

October 4, 2019.

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 October 2, 2019, 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 and II 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<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.

#### 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 the Exchange's Rules regarding the trading of flexible exchange options "FLEX Options"<sup>5</sup> and moves those Rules from the currently effective Rulebook ("current Rulebook") to the

<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).

<sup>5</sup> See current Rule 24A.1(d), (f), and (g) (which define a FLEX Option, FLEX Index Option, and FLEX Equity Option) and proposed definition of FLEX Option in Rule 1.1 of the shell Rulebook (with nonsubstantive changes to simplify the definition of FLEX Options). A FLEX Option on an equity security may be referred to as a "FLEX Equity Option," and a FLEX Option on an index may be referred to as a "FLEX Index Option." The proposed rule change also adds a period following the rule number of Rule 1.1 to conform to the formatting of other Rules in the shell Rulebook. The proposed rule change also deletes the corresponding definitions of Non-FLEX Option, Non-FLEX Equity Option, and Non-FLEX Index Option, as the Exchange believes the meanings of those terms are self-evident, making the definitions unnecessary. See current Rule 24A.1(o), (p), and (q).