optiver

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

ADDRESS
Strawinskylaan 3095
1077 ZX Amsterdam
The Netherlands

130 E. Randolph, Suite 1300
Chicago, IL 60601

TEL
+31(0) 20 708 7000
(312) 821-9500

info@optiver.com
www.optiver.com

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Release No. 34-89058; File No. SR-CBOE-2020-051

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SUBJECT
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Dear Ms. Countryman,

Optiver US LLC and AMS Derivatives B.V. (collectively "Optiver" or the "Firms"), appreciate the opportunity to comment on the CBOE Exchange, Inc. (the "Exchange" or "CBOE"), Proposed Rule Change (the "Proposal") related to file number SR-CBOE-2020-051: Amend Its Automated Price Improvement Auction Rules in Connection with Agency Order Size Requirements.

Optiver is a global proprietary trading firm[1]. The firm does not have customers, does not carry customer accounts, does not receive or hold customer funds, and effects securities transactions only with other broker-dealers. As a proprietary trading firm, Optiver trades on over 50 exchanges in equities, futures, and options markets worldwide. Across all markets, Optiver supports regulatory policies that promote transparency, open access to markets, and fair competition amongst all market participants.

The Exchange proposes to amend Rule 5.37(a)(3) and Rule 5.38(a)(3)[2] to provide that the Exchange may determine a maximum size requirement for Agency Orders in SPX without declaring a specific size to be entered into the AIM mechanism for SPX. The Exchange is afforded a unilateral process through the dissemination of regulatory circulars to set a maximum size without necessarily justifying the rationale behind an increase. In fact, CBOE's May 2020 data suggests that the average SPX simple agency order size that was executed in the AIM mechanism was slightly higher than 4 contracts in 95% of the transactions. The Proposal indicates the maximum size may be up to 100 contracts.

Optiver has argued that price discovery is best served when orders are exposed to all market participants simultaneously, such that no one participant has a distinct advantage over another. The new rule amendment proposed by CBOE gives certain participants exactly that advantage in three ways.

[1] Established in 1986, Optiver has offices in Amsterdam (Optiver Europe), Chicago (Optiver US LLC), London (Optiver FX Ltd), Shanghai (Optiver Asia Pacific), and Sydney (Optiver Asia Pacific). With over 1,000 employees, Optiver trades on over 50 exchanges on four continents.
[2] SR-CBOE-2020-51

First, an initiating Trading Permit Holding ("TPH") submitting an SPX (including SPX weeklies("SPXW")) paired order into the AIM mechanism is granted the ability to view the paired retail order and its characteristics before the order is visible to any other participant. The initiating TPH essentially selectively picks the agency orders in which they may or may not want to interact. The AIM mechanism's inherent participation allocation guarantees (up to 40%)[3] allowing an initiating TPH to trade with the favorable orders and pass along what they deem as unfavorable orders to the rest of the market.

Second, the initiating TPH does not have to represent its best prices to orders it brings to the Exchange. Paired order types like auto-match allow the initiating firm to not initially respond at the best level(s) as other responding firms, but to automatically match better responses [4] This guarantees enhanced participation rights on the most favorable orders and permits capture of the largest spread possible.

Third, in the past the Securities and Exchange Commission (the "Commission") has been concerned that "if particular exchange members lock up too great a share of customer orders, the number of competing market makers within the market could diminish, and with them, active or potential intramarket price competition."[5] A small number of wholesale firms already control a vast majority of the retail options flow in the US to the detriment of competition. This rule filing will extend that control to another product. The Commission has generally approved exchange price improvement mechanism rule filings in the past that promote competition among market centers[6]. The Proposal will essentially enable AIM functionality on a single-listed SPX product with potential detrimental impacts on the price discovery process because the only quote competition is within the Exchange itself. The CBOE already has a price improvement auction mechanism for SPX complex orders in the form of Complex Order Auctions ("COA") [7]. We see enabling C-AIM in SPX as a duplicative auction mechanism that provides an unnecessary participation right to the initiating TPH.

If the Proposal is approved in spite of its shortcomings, CBOE should be required to refile each time a maximum order size requirement is amended with robust supporting data, including the number of SPX AIM contracts improved, the percentage of SPX AIM contracts executed at the Best Bid and Offer ("BBO"), the percentage of SPX AIM contracts improved, and the percentage of SPX AIM contracts internalized.

Optiver supports rule modifications that promote increased participation in options markets. Meaningful price improvement should be required to encourage increased participation among retail clients in CBOE's SPX product. While CBOE's rule filing does reference some statistics around aggregate price improvement observed in SPX AIM transactions while the mechanism has been available during CBOE's floor closure, we question whether this data is truly representative. In particular, we note that the narrow data set given by CBOE is drawn on a period of extreme volatility and a lack of floor based liquidity and therefore far overstates the potential price improvement going forward in more typical market conditions.

[3] https://markets.cboe.com/us/options/trading/crossing_orders/
[4] https://cdn.cboe.com/resources/membership/US_Options_Auction_Process_Specification.pdf (page 8) and https://cdn.cboe.com/resources/membership/US_Options_FIX_Specification.pdf (page 42). Also "Entering Contra Order as a Market Order guarantees participation at best price (auto-matches best price of other auction participants)" https://markets.cboe.com/us/options/trading/crossing_orders/
[5] See Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (establishing trading rules for the Boston Options Exchange Facility)
[6] https://www.sec.gov/rules/sro/miax/2014/34-72009.pdf
[7] "COA further automates the order handling and execution process for eligible marketable complex orders having up to four legs and having a ratio of one-to three or higher or three-to-one or lower, while continuing to provide the potential for price improvement through an automated auction process. https://markets.cboe.com/us/options/trading/complex_orders/

Finally and fundamentally, we believe that AIM is not an appropriate tool to promote price improvement. In fact, CBOE has had rules on their books in the past which allow for non-paired electronic price improvement on eligible non-complex public customer marketable orders in SPX. We encourage CBOE to review other auction order type alternatives in their proprietary listed SPX product.

Optiver greatly appreciates the Commission's consideration of our comments on File No. SR CBOE-2020-051 and would be pleased to discuss these comments in greater detail with the staff. If you have any additional questions, please do not hesitate to contact us.

Yours Sincerely,

Michael Golding

Michael Golding
Head of Trading – Optiver US LLC

Rutger Brinkhuis

Rutger Brinkhuis
Head of Trading – AMS Derivatives B.V.