

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95657; File No. SR-CBOE-2022-038)

September 1, 2022

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change to Amend CBOE Rule 5.32 With Respect to the Handling of Cancel/Replace Messages

I. Introduction

On July 7, 2022, Cboe Exchange, Inc. (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to establish that a cancel/replace message received for an order already resting on the Exchange’s order book will cause such resting order to lose its original priority position, subject to certain exceptions. The proposed rule change was published for comment in the Federal Register on July 26, 2022.³ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Summary of the Proposal

The Exchange proposes to amend CBOE Rule 5.32(e) to describe the impact on priority of a “no-change” order⁴ (i.e., an order submitted to cancel or replace a resting order that does not change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 95328 (July 20, 2022), 87 FR 44438 (“Notice”).

⁴ In this context, the term “order” includes bids and offers submitted in bulk messages. A bulk message means a single electronic message a user submits with an M (Market-Maker) capacity to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. See CBOE Rule 1.1 (definition of bulk message, which provides that the System handles a bulk message bid or offer in the same manner as it handles an order or quote, unless the Rules specify otherwise).

any terms of an order) and of a cancel/replace message that does not change the price or size of a resting order but changes another term of an order. CBOE Rule 5.32(e) describes whether a resting order's priority position may change if it is modified with a cancel/replace message. Specifically, current CBOE Rule 5.32(e) states if the price of an order is changed, the order loses position and is placed in a priority position as if the Exchange's system ("System") received the order at the time the order was changed. If the quantity of an order is decreased, it retains its priority position. If the quantity of an order is increased, it loses its priority position and is placed in a priority position as if the System received the order at the time the quantity of the order is increased.

The Exchange explains, however, that CBOE Rule 5.32(e) is currently silent regarding how the System handles a cancel/replace message comprised of a no-change order or an order that changes terms other than price and size.⁵ The Exchange further represents that it recently determined that the System does not handle all no-change orders and messages uniformly with respect to how they affect resting orders. Specifically, the Exchange explains that currently, when the System receives a no-change order, the resting order would lose its priority position; however, if the System receives a no-change bid or offer in a bulk message, the resting bid or offer would not lose its priority position.⁶

The Exchange proposes to amend CBOE Rule 5.32(e) so that it states as follows: if a User submits a cancel/replace message for a resting order, regardless of whether the cancel/replace message modifies any terms of the resting order, the order loses its priority position and is placed in a priority position based on the time the System receives the

⁵ See Notice, supra note 3, at 44439.

⁶ See id.

cancel/replace message, unless the User only (1) decreases the quantity of an order (as is currently set forth in the Rules), (2) modifies the Max Floor (if a Reserve Order), or (3) modifies the stop price (if a Stop or Stop-Limit order), in which case the order retains its priority position.

The Exchange states that this change will harmonize the handling of all no-change orders and quotes so that any no-change order or bulk message bid or offer will lose priority.⁷ Further, the Exchange states that this proposal will also codify current System functionality that causes a resting order to lose its priority position if any cancel/replace message is submitted if any term other than the Max Floor (if a Reserve Order)⁸ or the stop price (if a Stop or Stop-Limit order⁹) is modified.¹⁰

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposed rule

⁷ See id.

⁸ A "Reserve Order" is a limit order with both a portion of the quantity displayed and a reserve portion of the quantity not displayed. See CBOE Rule 5.6.

⁹ A "Stop (Stop-Loss)" order is an order to buy (sell) that becomes a market order when the consolidated last sale price (excluding prices from complex order trades if outside of the NBBO) or NBB (NBO) for a particular option contract is equal to or above (below) the stop price specified by the User. A "Stop-Limit" order is an order to buy (sell) that becomes a limit order when the consolidated last sale price (excluding prices from complex order trades if outside the NBBO) or NBB (NBO) for a particular option contract is equal to or above (below) the stop price specified by the User. See CBOE Rule 5.6.

¹⁰ See Notice, supra note 3, at 44439.

¹¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

change is consistent with Sections 6(b)(5)¹² and 6(b)(8)¹³ of the Exchange Act. Section 6(b)(5) of the Exchange Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Exchange Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission believes that requiring the System to handle all cancel/replace orders in a uniform manner with respect to priority of affected resting orders is consistent with the Exchange Act in that such requirement is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system. Furthermore, the Commission believes that narrowly restricting when a resting order retains its priority after the System receives a subsequent cancel/replace message (e.g., its only modifies the Max Floor of the resting order) is designed, to, among other things, promote just and equitable principles of trade, 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 without imposing any unreasonable burdens on competition.

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(8).

Accordingly, the Commission finds that the proposed rule change is consistent with the Exchange Act.

IV. Conclusion

IT IS THEREFORE ORDERED that, pursuant to Section 19(b)(2) of the Exchange Act,¹⁴ the proposed rule change (SR-CBOE-2022-038) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,
Deputy Secretary.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).