

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83872; File No. SR-CBOE-2018-55)

August 17, 2018

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Amend Rule 6.21., Give Up of a Clearing Trading Permit Holder

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 August 7, 2018, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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

The Exchange proposes to amend its rules governing the give up of a Clearing Trading Permit Holder by a Trading Permit Holder on exchange transactions.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.21, which governs the give up of a Clearing Trading Permit Holder (“Clearing TPH”) by a Trading Permit Holder (“TPH”) on Exchange transactions.

Background

By way of background, Cboe Options Rule 6.21 provides that when a TPH executes a transaction on the Exchange, it must give up the name of the CTPH (the “Give Up”) through which the transaction will be cleared. Rule 6.21 also provides that a TPH may only give up a “Designated Give Up” or its “Guarantor.” This limitation is enforced by the Exchange’s trading systems.

A “Designated Give Up” is currently defined as any CTPH that a TPH (other than a Market-Maker<sup>3</sup>) identifies to the Exchange, in writing, as a CTPH that the TPH would like to have the ability to give up. To designate a “Designated Give Up” a TPH must submit written notification, in a form and manner determined by the Exchange, to the Membership Services Department (“MSD”). Specifically, the Exchange uses a standardized form (“Notification Form”) that a TPH needs to complete and submit to MSD. The Exchange notes that a TPH may currently designate any CTPH as a Designated Give Up. Additionally, there is no minimum or maximum number of Designated Give Ups that a TPH must identify. Rule 6.21 also requires that

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<sup>3</sup> For purposes of this rule, references to “Market-Maker” shall refer to Trading Permit Holders acting in the capacity of a Market-Maker and shall include all Exchange Market-Maker capacities (e.g., Designated Primary Market-Makers and Lead Market-Makers).

the Exchange notify a CTPH, in writing and as soon as practicable, of each TPH that has identified it as a Designated Give Up. The Exchange however, will not accept any instructions from a CTPH to prohibit a TPH from designating the CTPH as a Designated Give Up. Additionally, there is no subjective evaluation of a TPH's list of proposed Designated Give Ups by the Exchange.

Rule 6.21 also defines "Guarantor". For purposes of Rule 6.21, a "Guarantor" refers to a CTPH that has issued a Letter of Guarantee or Letter of Authorization for the executing TPH under the Exchange Rules that is in effect at the time of the execution of the applicable trade.<sup>4</sup> An executing TPH may give up its Guarantor without having to first designate it to the Exchange as a "Designated Give Up."<sup>5</sup> Additionally, the Exchange notes that a Market-Maker is only enabled to give up the Guarantor of the Market-Maker pursuant to Cboe Options Rule 8.5 and also does not need to identify any Designated Give Ups.

Recently, several bank-affiliated clearing firm members of the Securities Industry and Financial Markets Association ("SIFMA") expressed concerns related to the process by which executing brokers on U.S. options exchanges (the "Exchanges") are allowed to designate or 'give up' a clearing firm for purposes of clearing particular transactions. The SIFMA member clearing firms indicated that the Federal Reserve has recently identified the current give-up process as a significant source of risk for clearing firms. SIFMA member clearing firms subsequently requested that the Exchanges alleviate this risk by amending Exchange rules governing the give up process.

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<sup>4</sup> See Cboe Options Rule 3.28, Cboe Options Rule 6.72, and Cboe Options Rule 8.5.

<sup>5</sup> The Exchange already knows each TPH's Guarantor and as such, no further designation or identification is required of TPHs to enable their respective Guarantors.

## Proposed Rule Change

The Exchange proposes to amend Rule 6.21 to provide that TPHs will no longer be able to designate any CTPH for which they desire to give up. Rather, the Exchange proposes to provide that TPHs must first have received written authorization from a CTPH before it may give up that CTPH.

In connection with this proposed change, the Exchange first proposes to eliminate the term “Designated Give Up” throughout Rule 6.21 and replace it with the term “Authorized Give Up” and make other corresponding changes. The Exchange also proposes to amend subparagraph (b)(i) to explicitly define “Authorized Give Up”. For purposes of Rule 6.21, an Authorized Give Up of a TPH will refer to a CTPH which has authorized that TPH to have the ability to give up that CTPH and which has been processed by the Exchange.

The Exchange next proposes to amend subparagraph (b)(iii) of Rule 6.21, which governs the identification of Authorized Give Ups. Going forward, CTPHs must identify, in a form and manner prescribed by the Exchange, any TPH which will be authorized to give up that CTPH (other than a Market-Maker or TPH for which it is the Guarantor).<sup>6</sup> To facilitate this identification, the Exchange proposes to eliminate the current Notification Form and replace it with a new standardized authorization form titled “Cboe Options Exchange Clearing Trading Permit Holder Give Up Authorization Form” (“Authorization Form”), which both the TPH and CTPH would need to complete and subsequently submit to the Exchange. A copy of the proposed Authorization Form is attached in Exhibit 3.

The Exchange also proposes to amend subparagraph (b)(iv) of Rule 6.21. Currently Rule

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<sup>6</sup> As a Guarantor of a TPH has already provided a Letter of Guarantee or Letter of Authorization for that TPH’s trading activities on the Exchange, no further authorization is necessary.

6.21(b)(iv) provides that any TPH (other than a Market-Maker) may designate any CTPH as a Designated Give Up. In light of the proposed change to require authorization from CTPHs, the Exchange proposes to revise Rule 6.21(b)(iv) accordingly to make clear that any CTPH may authorize any TPH to use it as an Authorized Give Up. The Exchange also proposes to eliminate the language in subparagraph (b)(iv) that provides that the Exchange will not accept instructions with respect to its designation as a Designated Give Up. Particularly, Rule 6.21(b)(iv) provides that the Exchange will not accept any instructions, or give effect to any previous instructions, from a CTPH not to permit a TPH to designate the CTPH as a Designated Give Up. The proposal to require authorization from a CTPH prior to being able to give them up renders this provision obsolete and unnecessary. The Exchange accordingly proposes to eliminate this language.

The Exchange next proposes to amend subparagraph (b)(vi) of Rule 6.21 to make clear that a Guarantor for a TPH will be enabled to be given up for that TPH without any further action by the CTPH as well as the TPH.

The Exchange proposes to amend subparagraph (b)(vii), which currently governs the removal of Designated Give Ups. Currently, if a TPH (other than a Market-Maker) no longer wants the ability to give up a particular Designated Give Up, the TPH must notify the Exchange, in a form and manner prescribed by the Exchange. The Exchange proposes to update this provision in light of the proposed requirement to receive authorization from a CTPH. Particularly, the Exchange proposes to provide that if a CTPH no longer wants a particular TPH (for which it is not the Guarantor)<sup>7</sup> to have the ability to give them up as an Authorized Give Up, the CTPH must notify the Exchange, in a form and manner prescribed by the Exchange. The

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<sup>7</sup> As discussed above, all TPHs will be enabled to give up their respective Guarantor without further action from the CTPH or TPH. This does not preclude a Guarantor from revoking a Letter of Guarantee or Letter of Authorization for any TPH pursuant to Cboe Options Rules 3.28, 6.72, and 8.5.

Exchange anticipates utilizing the same Authorization Form noted above to facilitate revocations of give up authorization.

The Exchange notes that its trading system is currently configured to only accept orders from a TPH which identify a Designated Give Up or Guarantor for that TPH and will reject any order entered by a TPH which designates a Give Up that is not at the time a Designated Give Up or Guarantor of the TPH. The Exchange notes that its systems will continue to be configured to enforce its Give-Up rule. Particularly, going forward, the Exchange's trading system will reject any order entered by a TPH which designates a Give Up that is not an Authorized Give Up or Guarantor for that TPH.<sup>8</sup>

The Exchange will also continue to provide certain notices to TPHs. Currently, pursuant to subparagraph (d) of Rule 6.21, the Exchange provides notice to a TPH in writing when an identified Designated Give Up becomes "effective" (i.e., when a CTPH that has been identified by the TPH as a Designated Give Up has been enabled by the Exchange's trading systems to be given up).<sup>9</sup> Under the proposed rule, the Exchange will continue to provide notice to a TPH in writing when an Authorized Give Up becomes "effective". The Exchange also proposes to notify a TPH, in writing and as soon as practicable, of each CTPH that has revoked its authorization for that TPH.

The Exchange lastly notes that other than updating references from "Designated Give Up" to "Authorized Give Up", it is not changing its rules relating to acceptance and rejection of a

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<sup>8</sup> See proposed changes to Rule 6.21(c).

<sup>9</sup> Currently, a Guarantor for a TPH is always enabled to be given up for a TPH without any action by the TPH. As previously discussed, under the proposed rule a TPH's Guarantor will continue to be enabled for that TPH without further action from the Guarantor or the TPH.

trade by a Give Up.<sup>10</sup>

The Exchange believes the proposed rule changes will help limit clearing firm risk and thereby enable clearing firms to continue to provide the listed options market with vital clearing services, which helps protect investors and the public interest consistent with the Securities Exchange Act of 1934 (the “Act”).

### Implementation Date

The Exchange proposes to announce the implementation date of the proposed rule change in an Exchange Notice, to be published no later than thirty (30) days following Commission approval. The implementation date will be no later than sixty (60) days following Commission approval. The Exchange notes this additional time gives CTPHs time to provide authorization of all TPHs that they would like to authorize as having the ability to give the CTPH up and gives the Exchange time to process those lists and configure its system accordingly.

### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</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 facilitation transactions in securities, to

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<sup>10</sup> Similarly, no changes are being proposed to the Give Up Change Form and Give Up Change Form for Accepting Clearing Trading Permit Holders.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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>13</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Particularly, as discussed above, several bank-affiliated clearing firm members have recently expressed concerns relating to the current give up process which permits TPHs to identify any CTPH as a Designated Give Up for purposes of clearing particular transactions. Also as noted above, the CTPHs have relayed that the Federal Reserve has recently identified the current give-up process (i.e., a process that lacks authorization) as a significant source of risk for clearing firms. The Exchange believes the proposed changes to Rule 6.21 help alleviate this risk by requiring TPHs to receive affirmative authorization from CTPHs in order to be able to use that CTPH for purposes of clearing transactions. The Exchange believes this authorization provides proper safeguards and protections for CTPHs as it alleviates CTPHs of certain risks that can be associated with any TPH giving them up and of which they have no control. The Exchange also believes its proposed Authorization Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from CTPHs, which ensures seamless administration of the Rule.

The Exchange believes that its proposed change to its give up rule strikes the right balance between the various views and interests across the industry. For example, although the proposed change now requires TPHs to seek authorization from CTPHs (other than their Guarantors) in order to have the ability to give them up, each TPH will still have the ability to

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<sup>13</sup> Id.



give up their Guarantor without obtaining further authorization. Additionally, the Exchange notes that CTPH authorization will not be on a trade-by-trade basis. Accordingly, the rule still provides for a procedure for a CTPH to “reject” a trade in accordance with the Rules, both on the trade date and T+1, which provides recourse to those CTPHs which, notwithstanding prior authorization to use them generally as a Give Up, should not be obligated to clear certain trades for which they are given up (provided they have a valid reason to reject the trade). The Exchange also notes that ultimately, the trade can always be assigned to the Guarantor of the executing TPH.<sup>14</sup> Accordingly, the Exchange believes the proposed rule change is reasonable and continues to provide certainty that a CTPH will always be responsible for a trade, which protects investors and the public interest.

The Exchange believes the corresponding changes to Rule 6.21, makes clear the proposed change to the give up process and maintains clarity in the rules, thereby protecting investors and the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intramarket competition because it will apply equally to all similarly situated TPHs and CTPHs. The Exchange also notes that, should the proposed changes make Cboe Options more attractive

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<sup>14</sup> As noted in the filing that originally adopted current Rule 6.21, the Exchange believes that the executing TPH’s Guarantor, absent a CTPH that agrees to accept the trade, should become the Give Up on any trade which an Authorized Give Up determines to reject in accordance with the rule, because the Guarantor, by virtue of having issued a Letter of Guarantee or Authorization, has already accepted financial responsibility for all Exchange transactions made by the executing TPH. See Securities Exchange Act Release No. 72668 (July 24, 2014), 79 FR 44229 (July 30, 2014) (SR-CBOE-2014-048).

for trading, market participants trading on other exchanges can always elect to become TPHs on Cboe Options to take advantage of the trading opportunities.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2018-55 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-2018-55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies 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-2018-55, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Eduardo A. Aleman  
Assistant Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).