

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-86401; File No. SR-CBOE-2019-036)

July 17, 2019

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Rules Governing the Give Up of a Clearing Trading Permit Holder by a Trading Permit Holder on Exchange Transactions

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 July 3, 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, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the 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 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 provided in Exhibit 5.

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.

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<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).

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 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 Clearing TPH (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 Clearing TPH that a TPH (other than a Market-Maker<sup>5</sup>) identifies to the Exchange, in writing, as a Clearing TPH that the TPH would like to have the ability to give up. To designate a “Designated Give Up” a TPH must submit

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<sup>5</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).

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 Clearing TPH 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 the Exchange notify a Clearing TPH, 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 Clearing TPH to prohibit a TPH from designating the Clearing TPH 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 Clearing TPH 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>6</sup> An executing TPH may give up its Guarantor without having to first designate it to the Exchange as a “Designated Give Up.”<sup>7</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.

Beginning in early 2018, certain Clearing TPHs (in conjunction with 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

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<sup>6</sup> See Cboe Options Rule 3.28, Cboe Options Rule 6.72, and Cboe Options Rule 8.5.

<sup>7</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.

SIFMA-affiliated Clearing Members have recently identified the current give-up process as a significant source of risk for clearing firms. SIFMA-affiliated Clearing Members subsequently requested that the Exchanges alleviate this risk by amending Exchange rules governing the give up process.<sup>8</sup>

### Proposed Rule Change

Based on the above, the Exchange now seeks to amend its rules regarding the current give up process in order to allow a Clearing TPH to “opt in”, at The Options Clearing Corporation (“OCC”) clearing number level, to a feature that, if enabled by the Clearing TPH, will allow the Clearing TPH to specify which TPH organizations are authorized to give up that OCC clearing number. As proposed, Rule 6.21, will continue to provide that for each transaction in which a TPH participates, the TPH must immediately give up the name of the Clearing Trading Permit Holder through which the transaction will be cleared (“give up”). Rule 6.21 will also continue to require that TPHs identify to the Exchange, via the Notification Form, all Clearing TPHs that the TPH would like to have the ability to give up (i.e., Designated Give Ups). However, the Exchange proposes to also add to Rule 6.21(a) that Clearing TPHs may elect to “Opt In,” as defined in paragraph (c) of the proposed Rule and described further below, and

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<sup>8</sup> Nasdaq PHLX LLC (“Phlx”) recently modified its give up procedure to allow clearing members to “opt in” such that the clearing member may specify which Phlx member organizations are authorized to give up that clearing member. See Phlx Rule 1037. See also Securities and Exchange Act Release Nos. 84624 (November 19, 2018), 83 FR 60547 (Notice); 85136 (February 14, 2019), 84 FR 5526 (February 21, 2019) (SR-Phlx-2018-72) (Approval Order). NYSE Arca, Inc., (“Nyse Arca”) and NYSE American LLC (“NYSE American”) also recently submitted rule filings to modify their respective give up rules to adopt an “opt in” process. See SR-NYSEArca 2019-32 and SR-NYSEAMER-2019-17. The Exchange’s proposal leads to the same result of providing its Clearing TPHs the ability to control risk and includes Phlx’s, NYSE Arca’s and NYSE American’s “opt in” process, but it otherwise differs slightly in process from their give up rules. For example, the Exchange intends to maintain its provisions relating to Designated Give Ups and eliminate its provisions relating to the rejection of a trade.

restrict one or more of its OCC number(s) (“Restricted OCC Number”). A TPH may Give Up a Restricted OCC Number provided the TPH has written authorization as described in paragraph (c)(ii) (“Authorized TPH”). The Exchange notes that if a TPH identifies a particular Clearing TPH as a Designated Give Up, but that Clearing TPH has restricted its OCC number(s) and has not authorized the TPH to give it up, then the Exchange will not give effect to the designation on the Notification Form (i.e., the TPH will not be able to give up that Clearing TPH even though it was identified as a Designated Give Up). Similarly, if a Clearing TPH authorizes a TPH to give up its Restricted OCC Number(s), the Exchange will not enable that Clearing TPH as a give up for that TPH until and unless the TPH identifies that Clearing TPH as a Designated Give Up on a Notification Form. In light of Clearing TPHs having the ability to restrict their OCC numbers from being given up by particular TPHs, the Exchange also proposes to eliminate the process for Clearing TPHs to “reject” trades. As such, the Exchange proposes to eliminate subparagraphs (e) and (f) of Rule 6.21 and any other references to the process in Rule 6.21.

Proposed Rule 6.21(c) provides that Clearing TPHs may request the Exchange restrict one or more of their OCC clearing numbers (“Opt In”) from being given up unless otherwise authorized. If a Clearing TPH Opt In, the Exchange will require written authorization from the Clearing TPH permitting a TPH to give up a Clearing TPH’s Restricted OCC Number. An Opt In would remain in effect until the Clearing TPH terminates the Opt In as described in subparagraph (iii). If a Clearing TPH does not Opt In, that Clearing TPH’s OCC number may be subject to being given up by any TPH that has designated it as a Designated Give Up. Proposed Rule 6.21(c)(i) will set forth the process by which a Clearing TPH may Opt In. Specifically, a Clearing TPH may Opt In by sending a completed “Clearing TPH Restriction Form” listing all

Restricted OCC Numbers and Authorized TPHs.<sup>9</sup> A copy of the proposed form is included in Exhibit 3. A Clearing TPH may elect to restrict one or more OCC clearing numbers that are registered in its name at OCC. The Clearing TPH would be required to submit the Clearing TPH Restriction Form to the Exchange's MSD as described on the form. Once submitted, the Exchange requires ninety days before a Restricted OCC Number is effective within the System. This time period is to provide adequate time for the TPH users of that Restricted OCC Number who are not initially specified by the Clearing TPH as Authorized TPHs to obtain the required written authorization from the Clearing TPH for that Restricted OCC Number. Such member users would still be able to give up that Restricted OCC Number during this ninety day period (i.e., until the number becomes restricted within the System).

Proposed Rule 6.21(c)(ii) will set forth the process for TPHs to give up a Clearing TPH's Restricted OCC Number. Specifically, a TPH desiring to give up a Restricted OCC Number must become an Authorized TPH. The Clearing TPH will be required to authorize a TPH as described in subparagraph (i) or (iii) of Rule 6.21(c) (i.e., through a Clearing TPH Restriction Form), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the TPH is a party to, as set forth in Rule 6.21(b)(vi). Pursuant to proposed Rule 6.21(c)(iii), a Clearing TPH may amend the list of its Authorized TPHs or Restricted OCC Numbers by submitting a new Clearing TPH Restriction Form to the Exchange's MSD indicating the amendment as described on the form. Once a Restricted OCC Number is effective within the System pursuant to Rule

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<sup>9</sup> This form will be available on the Exchange's website. The Exchange will also maintain, on its web site, a list of the Restricted OCC Numbers, which will be updated on a regular basis, and the Clearing TPH's contact information to assist TPH organizations (to the extent they are not already Authorized TPH Organizations) with requesting authorization for a Restricted OCC Number. The Exchange may utilize additional means to inform its members of such updates on a periodic basis.

6.21(c)(i), the Exchange may permit the Clearing TPH to authorize, or remove authorization for, a TPH to give up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances. The Exchange will promptly notify TPH organizations if they are no longer authorized to give up a Clearing TPH's Restricted OCC Number. If a Clearing TPH removes a Restricted OCC Number, any TPH may give up that OCC clearing number once the removal has become effective on or before the next business day, provided that Clearing TPH has been designated as a Designated Give Up.

The Exchange also proposes to amend current subparagraph (c) (System) (to be renumbered to subparagraph (d)) of Rule 6.21 to clarify that in addition to the Exchange's system not accepting orders that identify a give up that is not at the time a Designated Give Up or a Guarantor, the System will also reject any order that designates a Restricted OCC Number for which the Trading Permit Holder is not an Authorized TPH.

The Exchange proposes to amend current subparagraph (d) (Notice to Clearing Trading Permit Holders) (to be renumbered to subparagraph (e)) of Rule 6.21 to provide that the Exchange will provide notice to TPHs that they are authorized or unauthorized by Clearing TPHs.

The Exchange also proposes to adopt subparagraph (g) of Rule 6.21 to provide that an intentional misuse of this Rule is impermissible, and may be treated as a violation of Rule 4.1, titled "Just and Equitable Principles of Trade". This language will make clear that the Exchange will regulate an intentional misuse of this Rule, and that such behavior would be a violation of

Exchange rules. The proposed language is similar to corresponding provisions in other exchanges' give-up rules.<sup>10</sup>

Lastly, the Exchange proposes to amend its current Trading Permit Holder Notification of Designated Give-Ups Form ("Designated Give-Ups Form"), effective October 7, 2019. The Exchange notes that it will be migrating its trading platform onto new technology on October 7, 2019. Following the technology migration, the Exchange and each of its affiliated options exchanges (i.e., Cboe C2 Exchange, Inc., Cboe BZX Exchange, Inc. and Cboe BYX Exchange, Inc. (collectively, "Cboe Markets")) will be on the same technology platform. To provide further harmonization across the Cboe Markets and provide more seamless administration of the Give-Up rule, the Exchange proposes to eliminate the current Designated Give Ups Form and adopt a new form which would be applicable to all Cboe Markets going forward.<sup>11</sup> The proposed Designated Give-Ups Form is included in Exhibit 3.

### 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 the operative date. The implementation date will be no later than sixty (60) days following the operative date.

### 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

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<sup>10</sup> See e.g., Phlx Rule 1037(e).

<sup>11</sup> The Exchange notes that it will not give effect to any instructions on the Designated Give-Ups Form for a particular Cboe Market until and unless such market files a rule change to adopt the new form. The Exchange anticipates filing copycat rule filings for each of its affiliated options exchange in the near future.



Section 6(b) of the Act.<sup>12</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>13</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 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>14</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 clearing firms affiliated with SIFMA have recently expressed concerns relating to the current give up process, which permits member organizations to identify any Clearing TPH as a Designated Give Up for purposes of clearing particular transactions, and have 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 that the proposed changes to Rule 6.21 help alleviate this risk by enabling Clearing TPHs to ‘Opt In’ to restrict one or more of its OCC clearing numbers (i.e., Restricted OCC Numbers), and to specify which Authorized TPHs may give up those Restricted OCC Numbers. As described above, all other TPHs would be required to receive written authorization from the Clearing TPH before they can give up that Clearing TPH’s Restricted OCC Number. The Exchange believes that this

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

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> Id.

authorization provides proper safeguards and protections for Clearing TPHs as it provides controls for Clearing TPHs to restrict access to their OCC clearing numbers, allowing access only to those Authorized TPHs upon their request. The Exchange also believes that its proposed Clearing Trading Permit Holder Restriction Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from Clearing TPHs, which ensures seamless administration of the Rule.

The Exchange believes that the proposed Opt In process strikes the right balance between the various views and interests across the industry. For example, although the proposed rule would require TPHs (other than Authorized TPHs) to seek authorization from Clearing TPHs in order to have the ability to give them up, each TPH will still have the ability to give up a Restricted OCC Number that is subject to a Letter of Guarantee without obtaining any further authorization if that TPH is party to that arrangement. The Exchange also notes that to the extent the executing TPH has a clearing arrangement with a Clearing TPH (i.e., through a Letter of Guarantee), a trade can be assigned to the executing TPH's guarantor. Accordingly, the Exchange believes that the proposed rule change is reasonable and continues to provide certainty that a Clearing TPH would be responsible for a trade, which protects 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 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 would apply equally to all similarly situated TPHs. The Exchange also notes that, should the proposed changes make the Exchange more attractive for

trading, market participants trading on other exchanges can always elect to become TPHs on the Exchange to take advantage of the trading opportunities. Furthermore, the proposed rule change does not address any competitive issues and ultimately, the target of the Exchange's proposal is to reduce risk for Clearing TPHs under the current give up model. Clearing firms make financial decisions based on risk and reward, and while it is generally in their beneficial interest to clear transactions for market participants in order to generate profit, it is the Exchange's understanding from SIFMA and clearing firms that the current process can create significant risk when the clearing firm can be given up on any market participant's transaction, even where there is no prior customer relationship or authorization for that designated transaction. In the absence of a mechanism that governs a market participant's use of a Clearing TPH's services, the Exchange's proposal may indirectly facilitate the ability of a Clearing TPH to manage their existing customer relationships while continuing to allow market participant choice in broker execution services. While Clearing TPHs may compete with executing brokers for order flow, the Exchange does not believe this proposal imposes an undue burden on competition. Rather, the Exchange believes that the proposed rule change balances the need for Clearing TPHs to manage risks and allows them to address outlier behavior from executing brokers while still allowing freedom of choice to select an executing broker.

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 written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6)<sup>16</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### 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-2019-036 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.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-CBOE-2019-036. 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-2019-036 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>17</sup>

Jill M. Peterson  
Assistant Secretary

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