

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86910; File No. SR-CBOE-2019-055)

September 10, 2019

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 4.10(b) Regarding the Notice Requirement in Connection with Trading Permit Holders that Clear Market-Maker Trades

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 5, 2019, Cboe Exchange, Inc. (the “Exchange”) 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 Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 Rule 4.10(b) regarding the notice requirement in connection with Trading Permit Holders (“TPHs”) that clear Market-Maker trades. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove the Rule 4.10(b)(2) requirement that the Exchange issue monthly notices regarding a Trading Permit Holder’s (“TPH’s”) proportion of market making clearing business to TPHs that clear Market-Maker trades.

Current Rule 4.10 generally provides for restrictions that the Exchange may place on “TPHs” that have failed to perform their contracts, are insolvent or in such financial or operational condition or otherwise conducting business in such a manner that they cannot be permitted to continue in business with safety to their customers or creditors or the Exchange. Current Rule 4.10(b) applies specifically to TPHs that clear Market-Maker trades. Rule 4.10(b)(2) provides that proposed Significant Business Transactions (“SBTs”)⁵ of such TPHs are subject to prior approval of the Chief Executive Officer (“CEO”) or President of the Exchange, when the TPHs’ Market-Maker clearance activities exceed, or would exceed, as a result of the proposed SBT: 15% of cleared Exchange Market-Maker contract volume for the most recent three months; an average of 15% of the number of Exchange registered Market-Makers as of each month and for the most recent three

⁵ See Rule 4.10(b)(1)(i)-(vii).

months; or 25% of Market-Maker gross deductions (haircuts) defined by SEC Rule 15c3-1 (a)(6) or (c)(2)(x) carried by the Clearing Trading Permit Holder(s) in relation to the aggregate of such haircuts carried by all other Market-Maker clearing organizations for any month end within the most recent three months. Current Rule 4.10(b)(2) also provides that the Exchange must notify in writing each TPH that clears Market-Maker trades within 10 business days from the close of each month of that TPH's proportion of the market making clearing business, whether or not such business exceeds the parameters listed above. The Exchange now proposes to remove this Exchange notification requirement from Rule 4.10(b)(2).

In particular, the Exchange has determined that its administrative burden to proactively produce monthly notices, whether or not a Market-Maker clearing TPH's business exceeds the paragraph (b)(2) parameters, greatly exceeds the benefit in administering monthly notices due to the limited number of SBTs actually filed with the Exchange per year. The Exchange also notes that because proposed SBTs are infrequent, the receipt of monthly notices is not an integral part of a TPH's financial and operational maintenance on a month-to-month basis. If a Market-Maker clearing TPH anticipates an SBT that may require prior Exchange approval, then the TPH may contact the Exchange to determine whether the TPH exceeds the parameters. The proposed rule change makes this explicit in the rule. As a result, the Exchange believes that removing the current notice requirement from Rule 4.10(b)(2) will remove burdensome Exchange procedures without impacting the ability of a Market-Maker clearing TPH to assess its clearance activities in light of an SBT or to continue to conduct business on the Exchange.

The restrictions that Rule 4.10 imposes on TPHs will continue to apply. The Exchange notes that removing this administrative burden will also enable the Exchange to better allocate its regulatory resources, focusing on the overall monitoring of TPH business and satisfaction of

these restrictions to ensure adequate financial and operational capabilities to continue to perform contracts and otherwise conduct business safely for customers, creditors, and the Exchange. Additionally, the Exchange notes that the corresponding rules of other options exchanges currently do not contain a provision that requires such exchanges to send monthly notice to clearing members or otherwise indicate to their clearing members that they exceed, or may exceed, substantially similar criteria on the respective exchanges as a result of an SBT.⁶ Such corresponding rules of other options exchanges have previously been filed with the Commission.

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ 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

⁶ See NASDAQ Options Rules Chapter 3, Sec. 15; NASDAQ BX Options Rules Chapter 3, Sec. 15; MIAX Options Rule 306.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

is consistent with the Section 6(b)(5)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed change will remove impediments to and perfect the mechanism of a free and open market and national market system, and generally protect investors. Specifically, the Exchange believes that by removing an administrative burden in producing monthly notices for all Market-Maker clearing TPHs that greatly outweighs the benefit of such notices, due to the infrequent number of SBTs per year, the Exchange will be able to reallocate regulatory resources to focus on the overall monitoring of TPH business and satisfaction of the Rule 4.10 restrictions that continue to apply to ensure adequate financial and operational capabilities to continue to perform contracts and otherwise conduct business safely for market participants, thereby protecting market participants. The Exchange also believes that the proposed rule change does not impact a Market-Maker clearing TPH's regular financial or operational maintenance or ability to assess and conduct a SBT because SBTs occur infrequently. The proposed rule change makes it clear that if a Market-Maker clearing TPH anticipates an SBT that may require prior Exchange approval, then the TPH may contact the Exchange to determine whether the TPH exceeds the parameters under Rule 4.10(b)(2). In addition to this, the Exchange believes that the proposed rule change will not present any new or unique issues for clearing TPHs because the rules of other options exchanges, which have substantially similar SBT parameters and have previously been filed with the Commission, do not require the exchanges to provide monthly notices to their members

⁹ Id.

regarding their proportion of market making clearing business or otherwise indicate to their members that they exceed, or may exceed, SBT parameters.¹⁰

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. In particular, the proposed rule change is not intended to address competitive issues but rather is concerned with facilitating less burdensome and more efficient regulatory administration. The Exchange does not believe that the proposed rule change will impose any intramarket competition, because all Market-Maker clearing TPHs are free to contact the Exchange to determine its standing in regard to the SBT parameters. The proposed rule change does not change the restrictions imposed on these TPHs, which will continue to apply to Market-Maker Clearing TPHs in the same manner. Further, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition because the rules of other options exchanges, which have been previously filed with the Commission, provide for substantially similar parameters in connection with the impact of a clearing member's SBTs but do not contain a provision that requires such exchanges to send monthly notice to clearing members or otherwise indicate to their clearing members that they exceed such criteria.¹¹

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.

¹⁰ See supra note 6.

¹¹ Id.

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

Because the 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 Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2019-055 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-2019-055. 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, D.C. 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-2019-055 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.¹⁴

Jill M. Peterson
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).