

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85732; File No. SR-CBOE-2019-024)

April 26, 2019

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 6.49A to Eliminate the Exchange's On-Floor Position Transfer Procedure

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 April 16, 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 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) 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 6.49A to eliminate the Exchange's on-floor position transfer procedure. 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).

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 amend Rule 6.49A to delete the provisions related to on-floor position transfers and amend the provision regarding presidential exemptions. Rule 6.49A specifies the circumstances under which Trading Permit Holders may effect transfers of positions, both on and off the trading floor, notwithstanding the prohibition in Rule 6.49(a).⁵ Rule 6.49A(a)(2) permits certain position transfers to occur on the floor of the exchange or on another options exchange. The procedures for such on-floor position transfers are set forth in Rule 6.49A(b) and (c), as well as Interpretations and Policies .01 through .03. The Exchange no longer wants to make available on-floor transfers of positions, so the proposed rule change deletes paragraphs (a)(2), (b), and (c), and Interpretations and Policies .01 through .03⁶ from Rule 6.49A.⁷ The on-floor position transfer

⁵ Rule 6.49 generally requires transactions of option contracts listed on the Exchange for a premium in excess of \$1.00 to be effected on the floor of the Exchange or on another exchange.

⁶ The Exchange proposes to move the provision in Interpretation and Policy .03 that states the on-floor transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process to proposed paragraph (g), as that provision applies to both the current on-floor and off-floor position transfer procedures.

⁷ The proposed rule change makes conforming changes to the paragraph lettering and numbering in current subparagraph (a)(1) (proposed subparagraph (a)). Because, as

procedure is administratively burdensome on the Exchange, and is currently used by Trading Permit Holders on a limited basis. As the Exchange noted when the rule was adopted, the Exchange’s “on-floor” procedure was intended to help ensure that Trading Permit Holders with a need to transfer positions in bulk as part of a sale or disposition of all or substantially all of a Trading Permit Holder’s assets or options positions were able to get the best possible price for the positions while also ensuring that other Trading Permit Holders have an adequate opportunity to make bids and offers on the positions that are being transferred.⁸ In addition, the Exchange noted the “on-floor” position transfer procedure could be used by Market-Makers that, for reasons other than a forced liquidation, such as an extended vacation, wished to liquidate their entire, or nearly their entire, open positions in a single set of transactions, subject to certain restrictions.⁹

For example, the Exchange’s on-floor transfer of positions rule was also intended to address the common situation in which a Designated Primary Market-Maker (“DPM”) sold its business or in which a Market-Maker, for reasons other than a forced liquidation, such as an extended vacation, wished to liquidate its entire, or nearly entire, position in a single set of transactions.¹⁰ Currently, because DPMs have been largely consolidated in the hands of firms rather than individuals, such transfers are, for the most part unnecessary; if an individual takes an extended vacation, another member of the firm handles the firm’s book. Accordingly, the Exchange believes that the on-floor

proposed, Rule 6.49A will only relate to off-floor transfers, the proposed rule change renames Rule 6.49A and adds a heading to proposed paragraph (a).

⁸ See Exchange Act Release No. 36647 (December 28, 1995), 61 FR 566 (January 8, 1996) (Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and 2 to a Proposed Rule Change Relating to the Transfer of Positions on the Floor of the Exchange in Cases of Dissolution and other Situations) (SR-CBOE-95-36).

⁹ Id. Among other restrictions, repeated and frequent use of the on-floor procedure in Rule 6.49A by a TPH is not permitted.

¹⁰ Id.

transfer of positions procedure no longer serves the uses for which it was originally adopted. The Exchange also notes that at least one other options exchange with a trading floor and a transfer of positions rule does not offer an on-floor transfer procedure.¹¹

Current paragraph (d) (proposed paragraph (b)) contains exemptions to Rule 6.49A(a) that are approved by the Exchange's president.¹² The proposed rule change permits the President or a designee to grant an exemption to the Rule 6.49(a) prohibition if, in his or her judgment, allowing the off-floor transfer is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. The proposed rule change updates language consistent with the change to only permit off-floor transfers. Additionally, the additional circumstances in which the President or a designee may grant an exemption are similar to those that the President or a designee may consider when taking action under emergency conditions pursuant to Rule 6.17.

The proposed rule change makes no changes to permissible off-floor position transfers.

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.¹³ Specifically, the Exchange believes the proposed rule change is

¹¹ See, e.g., Nasdaq OMX PHLX LLC ("Phlx") 1058.

¹² Similar to the rules of other exchanges, the proposed rule change also lets a designee of the Exchange president grant an exemption. See, e.g., Arca Rule 6.78-O(f).

¹³ 15 U.S.C. 78f(b).

consistent with the Section 6(b)(5)¹⁴ 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 is consistent with the Section 6(b)(5)¹⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change to eliminate the on-floor position transfer procedure promotes just and equitable principles of trade, helps remove impediments to and perfect the mechanism of a free and open market and a national market system, and promotes efficient administration of the Exchange, as it eliminates a complex procedure that is of limited use to Trading Permit Holders today but still imposes an administrative burden on the Exchange. The proposed rule change removes impediments to and perfects the mechanism of a free and open market, because it is similar to rules of other options exchanges. The Exchange also notes that at least one other options exchange with a trading floor and a transfer of positions rule does not offer an on-floor transfer procedure,¹⁶ and at least one other options exchange lets a designee of the Exchange president grant an exemption.¹⁷ Additionally, the additional circumstances in which the President or a designee may grant an exemption are similar to those

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ Id.

¹⁶ See, e.g., Nasdaq OMX PHLX LLC (“Phlx”) 1058.

¹⁷ See, e.g., NYSE Arca, Inc. (“Arca”) Rule 6.78-O(f).

that the President or a designee may consider when taking action under emergency conditions pursuant to Rule 6.17, and thus the proposed rule change does not significantly expand the Exchange's President's authority to take action when necessary or appropriate for the maintenance of a fair and orderly market and to protect investors.

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 the proposed rule change will impose any burden on intramarket competition, as the current on-floor position transfer procedure is of limited use to Trading Permit Holders today but still imposes an administrative burden on the Exchange. The proposed elimination of the on-floor position transfer promotes efficient administration of the Exchange, as it eliminates this complex procedure that is limited in application. Market participants will still be able to effect transactions on the Exchange pursuant to the normal auction process if an off-floor transfer is not permissible.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition. As discussed above, at least one other options exchange with a trading floor and a transfer of positions rule does not offer an on-floor transfer procedure,¹⁸ and at least one other options exchange lets a designee of the Exchange president grant an exemption.¹⁹ Additionally, the additional circumstances in which the President or a designee may grant an exemption are similar to those that the President or a designee may consider when taking action under emergency conditions pursuant to Rule 6.17, and thus the proposed rule change does not

¹⁸ See, e.g., Nasdaq OMX PHLX LLC ("Phlx") 1058.

¹⁹ See, e.g., NYSE Arca, Inc. ("Arca") Rule 6.78-O(f).

significantly expand the Exchange's President's authority to take action when necessary or appropriate for the maintenance of a fair and orderly market and to protect investors.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹ 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.²²

At any time within 60 days of the filing of such 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

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6).

²² 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.

Commission shall institute proceedings under Section 19(b)(2)(B)²³ of the Act 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. Please include File Number SR-CBOE-2019-024 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-2019-024. 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

²³ 15 U.S.C. 78s(b)(2)(B).

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-2019-024 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.²⁴

Jill M. Peterson
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).