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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-84437; File No. SR-CBOE-2018-060]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change to Amend Exchange Rule 6.49A, Transfer of Positions

October 16, 2018

I. Introduction

On August 16, 2018, the Cboe Exchange, Inc. (the “Exchange” or “Cboe”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposal to amend Rule 6.49A (Transfer of Positions). The proposed rule change was published for comment in the Federal Register on September 4, 2018.³ The Commission did not receive any comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Cboe Rule 6.49 generally requires a Trading Permit Holder (“TPH”) to effect transactions in listed options on an exchange.⁴ Notwithstanding that provision, Cboe Rule 6.49A permits certain types of transfers involving a TPH’s positions to be effected off the floor.⁵ In addition, Cboe Rule 6.49A provides a procedure for an “on-floor” transfer of positions.⁶ As described in more detail in the Notice,⁷ the Exchange proposes to amend Rule 6.49A to eliminate

¹ 15 U.S.C. 78s(b)(1).

² 17 C.F.R. 240.19b-4.

³ See Securities Exchange Act Release No. 83968 (August 28, 2018), 83 FR 44938 (September 4, 2018) (“Notice”).

⁴ See Cboe Rule 6.49(a).

⁵ See Cboe Rule 6.49A(a).

⁶ See Cboe Rule 6.49A(b)-(c).

⁷ See Notice, supra note 3.

the on-floor position transfer process,⁸ amend the criteria and procedures related to off-floor position transfers, amend the exemption provision, and make other non-substantive changes.

With respect to off-floor transfers, Cboe Rule 6.49A(a) currently sets forth specific events under which off-floor transfers are permitted. The Exchange proposes to delineate several additional events and add them to the list of permitted off-floor transfers in proposed Rule 6.49A.⁹ For example, the additional events address correcting bona fide errors in trade recording, consolidating accounts without a change in beneficial ownership, and transfers by operation of law.¹⁰

In addition, proposed Rule 6.49A(b) codifies prior Exchange guidance regarding certain restrictions on permissible off-floor transfers related to the netting of open positions and to margin and haircut treatment.¹¹ Among other things, proposed Rule 6.49A(b)(2) will only permit netting for off-floor transfers between separate exchange-specific Market Maker accounts in the limited circumstances set forth in the Rule.¹²

⁸ The Exchange represents that it no longer wants to make available the on-floor transfers of positions because it is administratively burdensome on the Exchange, used by TPHs on a limited basis, and no longer serves the uses for which it was originally adopted. Id. at 44938.

⁹ Id. at 44939. The proposed amendments to Rule 6.49A(a) also add clarification that Rule 6.49A does not apply to products other than options listed on the Exchange consistent with the Exchange's other trading rules, a TPH must be on one side of the transfer, and that positions a TPH are transferring or receiving are held in the account of the Clearing Trading Permit Holder. Id.

¹⁰ See proposed Cboe Rule 6.74A(a).

¹¹ See proposed Cboe Rule 6.74A(b).

¹² See proposed Cboe Rule 6.74A(b)(2). See also Notice, supra note 3, at 44939-40. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class may be automatically transferred on their trade date into one universal Market Maker account at the Clearing Corporation. See id.

Further, proposed Rule 6.49A(d) will require a TPH and its Clearing Trading Permit Holder (to the extent the TPH is not self-clearing) to submit written notice to the Exchange prior to effecting an off-floor transfer from or to the account of a TPH(s).¹³ Proposed Rule 6.49A(e) will require that each TPH and Clearing Trading Permit Holder that is a party to an off-floor transfer must make and retain records of the information provided in the written notice, as well as information on the Exchange-listed options that are ultimately transferred, the transfer date, transfer price, and any other information the Exchange may request.¹⁴

In addition, the Exchange is clarifying and updating Proposed Rule 6.49A(f), which allows the Exchange to grant an exemption from Rule 6.49(a) in cases where allowing an off-floor transfer would be necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest.¹⁵

Finally, the Exchange is adding new proposed Rule 6.49A(g) to state that the off-floor position transfer process described in the Rule is “intended to facilitate non-routine, non-recurring movements of positions” and is “not to be used repeatedly or routinely in circumvention of the normal auction market process.”¹⁶

¹³ See proposed Cboe Rule 6.74A(d).

¹⁴ See proposed Cboe Rule 6.74A(e).

¹⁵ See proposed Cboe Rule 6.74A(f).

¹⁶ See proposed Cboe Rule 6.74A(g). In addition, proposed Cboe Rule 6.74A(h) is being added to clarify that the off-floor transfer procedure is only applicable to positions in options listed on the Exchange, and that off-floor transfers of positions in Exchange-listed options may be subject to applicable laws, rules and regulations, including rules of other self-regulatory organizations. See proposed Cboe Rule 6.74A(h).

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act,¹⁷ and the rules and regulations thereunder applicable to a national securities exchange.¹⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁹ which requires, among other things, that the rules of a national securities exchange be designed 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 that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by providing a mechanism to permit off-floor position transfers in specified, limited, and narrowly-tailored circumstances. Thus, Rule 6.49A makes clear that off-floor positions transfers are not to be used repeatedly or routinely in circumvention of the normal auction market process.²⁰ While the amended Rule will continue to allow the Exchange to grant an exemption from Cboe Rule 6.49(a), the revised rule text makes it clear that exemptions may only be granted on rare occasions when necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and where the exemption is in the public interest, including due to unusual or extraordinary circumstances.

¹⁷ 15 U.S.C. 78f.

¹⁸ 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).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ See proposed Cboe Rule 6.49A(g).

The Commission further notes that the proposal adds transparency to the off-floor transfer process by codifying certain long-standing Cboe guidance regarding when off-floor transfers are permissible, whether netting is permitted, and the transfer price of an off-floor transfer. The Commission believes that those additional provisions are designed to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Commission believes that the requirement for the parties to provide written notice to the Exchange and maintain detailed records of each transfer will ensure that the Exchange is made aware of off-floor transfers and is able to review them for compliance with applicable rules.

With respect to the elimination of the on-floor transfer package procedure, the Commission notes that TPHs will continue to be able to transact on the Exchange using the regular auction market process.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-CBOE-2018-060) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman,
Assistant Secretary.

²¹ 15 U.S.C. 78s(b)(2).

²² 17 C.F.R. 200.30-3(a)(12).

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