

List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 25, 2019; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.*, and 39 CFR 3015.5; *Public Representative*: Christopher C. Mohr; *Comments Due*: October 3, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87107; File No. SR-CBOE-2019-044]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change To Adopt Rule 6.49B, Off-Floor RWA Transfers

September 25, 2019.

I. Introduction

On August 6, 2019, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“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 adopt Cboe Rule 6.49B to add an exception to the general prohibition against off-floor position transfers. The proposed rule change was published for comment in the **Federal Register** on August 14, 2019. ³ The Commission received two comment letters on the proposal. ⁴ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Cboe Rule 6.49(a) generally requires transactions of option contracts listed on the Exchange for a premium in excess of \$1.00 to be effected on the Exchange or on another exchange. Notwithstanding the prohibition set forth in Rule 6.49(a), Cboe Rule 6.49A(a)

specifies several circumstances under which Trading Permit Holders (“TPHs”) may effect transfers of positions off exchange.

The Exchange proposes to adopt new Cboe Rule 6.49B to add an additional exception to the prohibition in Rule 6.49(a). Rule 6.49B provides that notwithstanding Rule 6.49, existing positions in options of a TPH or non-TPH (including an affiliate of a TPH) that are listed on the Exchange may be transferred on, from, or to the books of a Clearing Trading Permit Holder off the Exchange if the transfer establishes a net reduction of RWA attributable to those options positions (an “RWA Transfer”). ⁵

An RWA transfer could not result in a change in ownership, as it must occur between accounts of the same Person. ⁶ Further, RWA Transfers may occur on a routine, recurring basis ⁷ and may result in the netting of positions. ⁸ However, RWA Transfers may not result in preferential margin or haircut treatment. ⁹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, ¹⁰ and the rules and regulations thereunder applicable to a national securities exchange. ¹¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, ¹² 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 Commission notes that two comment letters received from options

market makers support the proposal. ¹³ One believed that the proposed rule will allow for “[m]ore efficient capital management” that would facilitate the ability of options market makers “to provide additional liquidity in the listed options market.” ¹⁴

The Commission believes that proposed Rule 6.49B should provide market makers with the flexibility to reduce RWA exposure by moving their positions between accounts. ¹⁵ To the extent they do so and are able to net positions as a result, it should facilitate the ability of Clearing Trading Permit Holders to provide capital to clear trades, which should facilitate liquidity provision in support of fair and orderly markets and to the benefit of investors. ¹⁶

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, ¹⁷ that the proposed rule change (SR-CBOE-2019-044) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. ¹⁸

Jill M. Peterson,

Assistant Secretary.

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¹³ See *supra* note 4. One commenter noted that the proposal “provides proper justifications for fewer restrictions” on transfers involving no material change of beneficial ownership. See SIG Letter, *supra* note 4, at 2. The other commenter stated that permitting RWA Transfers “allows options market makers to recognize, in a more economically rational way, the risk reducing benefits of a balanced derivative portfolio—to the benefit of investors generally.” See IMC Letter, *supra* note 4, at 2.

¹⁴ See IMC Letter, *supra* note 4, at 2.

¹⁵ See, e.g., Notice, *supra* note 3, at 40462 (“These are merely transfers from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.”). The Exchange also compared Rule 6.49B as having a “similar result as changing a give up or CMTA . . . just at a different time.” See *id.*

¹⁶ The Commission notes that, as is true for all other off-floor transfers permitted under Rule 6.49A, RWA Transfers may not result in preferential margin or haircut treatment. See proposed Rule 6.49B(d).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

⁵ See proposed Rule 6.49B.

⁶ See proposed Rule 6.49B(e). Cboe Rule 1.1 defines “Person” as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof. The Exchange represents that any RWA Transfers will be subject to all applicable recordkeeping requirements applicable to TPHs and Clearing Trading Permit Holders under the Act. See Notice, *supra* note 3, at 40463 n.24.

⁷ See proposed Rule 6.49B(b).

⁸ See proposed Rule 6.49B(c).

⁹ See proposed Rule 6.49B(d).

¹⁰ 15 U.S.C. 78f.

¹¹ 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).

¹² 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 86603 (August 8, 2019), 84 FR 40460 (“Notice”).

⁴ See Letters from Andrew Stevens, General Counsel, IMC Chicago, LLC, to Vanessa Countryman, Secretary, Commission, dated September 4, 2019, available at <https://www.sec.gov/comments/sr-cboe-2019-044/sr-cboe2019044-6072179-191467.pdf> (“IMC Letter”), and Gerald D. O’Connell, Compliance Coordinator, Susquehanna International Group, LLP (“SIG”), to Brent J. Fields, Secretary, Commission, dated August 19, 2019, available at <https://www.sec.gov/comments/sr-cboe-2019-035/sr-cboe2019035-5985436-190350.pdf> (“SIG Letter”).