

disapprove the proposed rule change (File No. SR–Nasdaq–2019–057).⁹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87985; File No. SR–CboeBZX–2020–002]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Rules Governing the Give Up of a Clearing Member by a User on Exchange Transactions

January 16, 2020.

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 January 2, 2020, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) 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 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 BZX Exchange, Inc. (the “Exchange” or “BZX Options”) proposes to amend its rules governing the give up of a Clearing Member by a User 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://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary,

and at the Commission’s Public Reference Room.

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 21.12, which governs the give up of a Clearing Member⁵ by a User⁶ on Exchange transactions, to substantially conform to Cboe Exchange, Inc. (“Cboe Options”) Rule 5.10, proposed Cboe EDGX Exchange, Inc. (“EDGX Options”) Rule 21.12, and proposed Cboe C2 Exchange, Inc. (“C2 Options”) Rule 6.30.⁷

Background

Under current Exchange rules, Users entering transactions on the Exchange must either be a Clearing Member or must establish a clearing arrangement with a Clearing Member, and must have a Letter of Guarantee issued by a Clearing Member. In addition, under current Rule 21.12, a User must give up the name of the Clearing Member through which each transaction will be cleared. Every Clearing Member accepts financial responsibility for all BZX Options transactions made by the guaranteed User pursuant to Exchange Rule 22.8(b) (Terms of Letter Guarantee). The proposed amendment will result in a more structured and coherent streamlined give up process on the Exchange as it will align with the give up functionality on BZX Options with that currently available on Cboe

Options, C2 Options, and EDGX Options.

Additionally, beginning in early 2018, certain Clearing Members (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 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.⁸ Therefore, the Exchange is now seeking to amend its Rule 21.17 to align with applicable rules of the Exchanges and also to substantially conform to existing Cboe Options Rule 5.10 and proposed EDGX Options Rule 22.12 and C2 Options Rule 6.30.

Proposed Rule

The Exchange proposes to amend Rule 21.12 by replacing the current rule text with details regarding the give up procedure for a User executing transactions on the Exchange. As amended, Rule 21.12 would provide that a User may indicate, at the time of the trade or through post trade allocation, any Options Clearing Corporation (“OCC”) number of the Clearing Member through which the transaction will be cleared (“give up”)

⁸ Cboe Options recently modified its give up procedure under rule 5.10 to allow clearing trading permit holders to “Opt In” such that the clearing trading permit holder (“TPH”) may specify which Cboe Options TPH organizations are authorized to give up that clearing trading permit holder. See Securities and Exchange Act Release No. 86401 (July 17, 2019), 84 FR 35433 (July 23, 2019) (SR–CBOE–19–036). Nasdaq PHLX LLC (“PHLX”), NYSE Arca, Inc., (“NYSE Arca”), and NYSE American LLC (“NYSE American”) also recently modified their respect give up rules to adopt an “Opt In” process; see also Securities and Exchange Act Release No. 85136 (February 14, 2019), 84 FR 5526 (February 21, 2019) (SR–PHLX–2018–72), Securities and Exchange Act Release No. 85871 (May 16, 2019), 84 FR 23613 (May 22, 2019) (SR–NYSEArca 2019–32) and Securities and Exchange Act Release 85875 (May 16, 2019), 84 FR 23591 (May 22, 2019) (SR–NYSEAMER–2019–17). The Exchange’s proposal leads to the same result of providing its Clearing Member’s 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. The Exchange’s proposal is substantially the same as the current give up process on Cboe Options.

⁹ The 240th day from publication in the **Federal Register** is March 21, 2020, which is a Saturday. Therefore, the date by which the Commission must take action is designated to be March 20, 2020.

¹⁰ 17 CFR 200.30–3(a)(57).

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).

⁵ The term “Clearing Member” means an Options Member that is self-clearing or an Options Member that clears BZX Options Transactions for other Members of BZX Options. See Exchange Rule 16.1.

⁶ The term “User” means any Options Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3 (Access). See Exchange Rule 16.1.

⁷ See SR–CboeEDGX–2020–001 (filed January 2, 2020) and SR–C2–2020–001 (filed January 2, 2020) (collectively referred to as the “EDGX Options and C2 Options Proposed Give Up Rule”).

to either a “Designated Give Up”⁹ or a “Guarantor”,¹⁰ as those roles would be defined in the Rule and discussed in further detail below.¹¹ Further, Rule 21.12 would provide that Clearing Members may elect to “Opt In” and restrict one or more of its OCC number(s) (“Restricted OCC Number”), as defined in the Rule and described in further detail below.¹²

Amended Rule 21.12(b)(1) would define the term “Designated Give Up” as a Clearing Member that a User (other than a Market-Maker)¹³ identifies to the Exchange, in writing, as a Clearing Member the User requests the ability to give up.¹⁴ To designate a Designated Give Up, a User must submit written notification to the Exchange, in a form and manner prescribed by the Exchange (“Notification Form”).¹⁵ A copy of the proposed Notification Form is included with this filing in Exhibit 3. Similarly, should a User no longer want the ability to give up a particular Designated Give Up, the User would have to submit written notification to the Exchange, in a form and manner prescribed by the Exchange.¹⁶

The Exchange notes that, as proposed, a User may designate any Clearing Member as a Designated Give Up, provided that the Designated Give Up has not Opted In, or provided that the User is an Authorized User¹⁷ of that Designated Give Up. Further, there would be no maximum number of Designated Give Ups that a User can identify. The Exchange would notify a Clearing Member, in writing and as soon as practicable, of each User that has identified it as a Designated Give Up.¹⁸

As amended, Rule 21.12(b)(2) would define the term Guarantor as a Clearing

Member that has issued a Letter of Guarantee for the executing User, pursuant to the Rules of the Exchange¹⁹ that are in effect at the time of the execution of the applicable trade.²⁰ An executing User may give up its Guarantor without such Guarantor being a Designated Give Up. The Exchange’s Rule 22.8 provides that a Letter of Guarantee is required to be issued and filed by each Clearing Member through which a User clears transactions. Accordingly, a Market-Maker would only be enabled to give up a Guarantor that had executed a Letter of Guarantee on its behalf pursuant to Rule 22.8. Thus, Market-Makers would not identify any Designated Give Ups.

Proposed Rule 21.12(c) would provide that Clearing Members may request the Exchange restrict one or more of their OCC numbers (“Opt In”) from being given up unless otherwise authorized.²¹ If a Clearing Member Opt In, the Exchange will require written authorization from the Clearing Member permitting a User to give up a Clearing Member’s Restricted OCC number.²² An Opt In would remain in effect until the Clearing Member terminates the Opt In as described in proposed subparagraph (c)(3).²³ If a Clearing Member does not Opt In, that Clearing Member’s OCC number may be subject to being given up by any User that has designated it as a Designated Give Up.²⁴ Proposed Rule 21.12(c)(1) will set forth the process by which a Clearing Member may Opt In.²⁵ Specifically, a Clearing Member may Opt In by sending a completed “Clearing Member Restriction Form” listing all Restricted OCC Numbers and Authorized Users.²⁶ A copy of the proposed form is included in Exhibit 3. A Clearing Member may elect to restrict one or more OCC clearing numbers that are registered in its name at the OCC.²⁷ The Clearing Member would be required to submit the Clearing Member 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.²⁸ This time period is to provide adequate time for the Users of that Restricted OCC Number who are not initially specified by the Clearing Member as Authorized Users to obtain the required written authorization from the Clearing Member for that Restricted OCC Number. Such 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 21.12(c)(2) will set forth the process for Users to give up a Clearing Member’s Restricted OCC Number.²⁹ Specifically, a User desiring to give up a Restricted OCC Number must become an Authorized User.³⁰ The Clearing Member will be required to authorize a User as described in subparagraph (1) or (3) of Rule 21.12(c) (*i.e.*, through a Clearing Member Restriction Form), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the User is a party to, as set forth in Rule 21.12(b)(6).³¹ Pursuant to proposed Rule 21.12(c)(3), a Clearing Member may amend the list of its Authorized Users or Restricted OCC Numbers by submitting a new Clearing Member Restriction Form to the Exchange’s MSD indicating the amendment as described on the form.³² Once a Restricted OCC Number is effective within the System pursuant to Rule 21.12(c)(1), the Exchange may permit the Clearing Member to authorize, or remove authorization for, a User to give up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances.³³ The Exchange will promptly notify Users if they are no longer authorized to give up a Clearing Member’s Restricted OCC Number.³⁴ If a Clearing Member removes a Restricted OCC Number, any User may give up that OCC clearing number once the removal has become effective on or before the next business day, provided that Clearing Member has been designated as a Designated Give Up.³⁵

As noted above, amended Rule 21.12 would provide that a User may only give up (A) a Clearing Member that has

⁹ See proposed Exchange Rule 21.12(b)(1).

¹⁰ See proposed Exchange Rule 21.12(b)(2).

¹¹ See proposed Exchange Rule 21.12(a); *see also* paragraph (a) of the EDGX Options and C2 Options Proposed Give Up Rule. The Exchange notes that paragraph (a) of Cboe Options 5.10 slightly differs from the proposed paragraph (a) on the Exchange, EDGX Options, and C2 Options; however, Cboe Options plans to amend its paragraph (a) of Rule 5.10 to conform to proposed Exchange, EDGX Options, and C2 Options rules with slight differences as it relates to floor trading.

¹² *Id.*

¹³ For purposes of this rule, references to “Market-Maker” shall refer to a Member acting in the capacity of a Market-Maker and shall include all Market-Maker capacities.

¹⁴ See proposed Exchange Rule 21.12(b)(1); *see also* Cboe Options 5.10(b)(1).

¹⁵ See proposed Exchange Rule 21.12(b)(3); *see also* Cboe Options Rule 5.10(b)(3).

¹⁶ See proposed Exchange Rule 21.12(b)(7); *see also* Cboe Options Rule 5.10(b)(7).

¹⁷ An “Authorized User” refers to a User that has written authorization as described in proposed Rule 21.12(c)(2) to give up a Restricted OCC Number. *See* proposed Exchange Rule 21.12(a).

¹⁸ *Supra* note 14.

¹⁹ See Exchange Rule 22.8 (Letters of Guarantee).

²⁰ See proposed Exchange Rule 21.12(b)(2); *see also* Cboe Options Rule 5.10(b)(2).

²¹ See proposed Exchange Rule 21.12(c); *see also* Cboe Options Rule 5.10(c).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ See proposed Exchange Rule 21.12(c)(1); *see also* Cboe Options Rule 5.10(c)(1).

²⁶ This form will be available on the Exchange’s website. The Exchange will also maintain, on its website, a list of the Restricted OCC Numbers, which will be updated on a regular basis, and the Clearing Member’s contact information to assist Users (to the extent they are not already Authorized Users) 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.

²⁷ *Supra* note 29.

²⁸ *Supra* note 29.

²⁹ See proposed Exchange Rule 21.12(c)(2); *see also* Cboe Options Rule 5.10(c)(2).

³⁰ *Id.*

³¹ *Id.*

³² See proposed Exchange Rule 21.12(c)(3) and (e); *see also* Cboe Options Rule 5.10(c)(3) and (e).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

previously been identified and processed by the Exchange as a Designated Give Up for that User, provided that the Designated Give Up has not Opted In, or provided that the User is an Authorized User of that Designated Give Up, or (B) a Guarantor for that user.³⁶ This proposed requirement would be enforced by the Exchange's trading systems.³⁷ Specifically, the Exchange has configured its trading systems to only accept orders from a User that identifies a Designated Give Up or Guarantor for that User. For any Restricted OCC Number, the Exchange's trading systems will only accept orders for that number from an Authorized User that has also designated that Clearing Member as a Designated Give Up. The System would reject any order entered by a User not meeting the aforementioned criteria. The Exchange notes that it would notify a User in writing when an identified Designated Give Up becomes effective (*i.e.*, when a Clearing Member has been identified by the User as a Designated Give Up, has been enabled by the Exchange's trading systems to be given up).³⁸ A Guarantor for a User, by virtue of having an effective Letter of Guarantee on file with the Exchange, would be enabled to be given up for that User without any further action by the User.³⁹ The Exchange notes that this configuration (*i.e.*, the trading systems accepting only orders that identify a Designated Give Up or a Guarantor) is intended to help reduce keypunch errors (errors involving erroneous data entry), and prevent the User from mistakenly giving up the name of a Clearing Member that it does not have the ability to give up a trade. However, in light of Clearing Members having the ability to restrict their OCC numbers from being given up by unauthorized Users, the Exchange does not propose to adopt a process for Clearing Members to "reject" trades.⁴⁰

The Exchange also proposes in Rule 21.12(f) three scenarios in which a give up on a transaction may be changed

³⁶ See proposed Exchange Rule 21.12(b)(3); see also Cboe Options Rule 5.10(b)(3).

³⁷ See proposed Exchange Rule 21.12(d); see also Cboe Options Rule 5.10(d).

³⁸ See proposed Exchange Rule 21.12(e); see also Cboe Options Rule 5.10(e).

³⁹ See proposed Exchange Rule 21.12(b)(6); see also Cboe Options Rule 5.10(b)(6).

⁴⁰ See paragraph (f) of existing EDGX Options Rule 21.12 and C2 Options Rule 6.30(f). The Exchange notes, that the EDGX Options and C2 Options Proposed Give Up Rule seeks to eliminate existing paragraph (f). Further, Cboe Options Rule 5.10 does not have a process for Clearing Members to "reject" trades.

without Exchange involvement.⁴¹ First, if an executing User has the ability through an Exchange system to do so, it could change the give up on a trade to another Designated Give Up, provided it's an Authorized User for any Restricted OCC Number, or its Guarantor.⁴² The Exchange notes that Users often make these changes when, for example, there is a keypunch error. The ability of the executing User to make any such change would end at the "Trade Date Cutoff Time".⁴³ Next, the modified rule would provide that, if a Designated Give Up has the ability to do so, it may change the give up on a transaction for which it was given up to (A) another Clearing Member affiliated with the Designated Give Up or (B) a Clearing Member for which the Designated Give Up is a back office agent.⁴⁴ The ability to make such a change would end at the Trade Date Cutoff Time.⁴⁵ The Exchange notes that often Clearing Members themselves have the ability to change a give up on a trade for which it was given up to another Clearing Member affiliate or Clearing Member for which the Designated Give Up is a back office agent. Therefore, Exchange involvement in these instances is not necessary. In addition, the proposed rule provides that if both a Designated Give Up or Guarantor and a Clearing Member have the ability through an Exchange system to do so, the Designated Give Up or Guarantor and Clearing Member may each enter trade records into the Exchange's systems on the next trading day ("T+1") that would effect a transfer of the trade in a non-expired option series from that Designated Give Up (or Guarantor) to that Clearing Member.⁴⁶ The Designated Give Up or Guarantor could not make any such change after the T+1 Cutoff Time.⁴⁷ The Exchange notes that a Designated Give Up or Guarantor must notify, in writing, the Exchange and all the parties to the trade, of any such change made

⁴¹ See proposed Exchange Rule 21.12(f); see also Cboe Options Rule 5.10(f).

⁴² See proposed Exchange Rule 21.12(f)(1); see also Cboe Options Rule 5.10(f)(1).

⁴³ The "Trade Date Cutoff Time" is established by the Clearing Corporation (or 15 minutes thereafter if the Exchange receives and is able to process a request to extend its time of final trade submission to the Clearing Corporation). *Id.*

⁴⁴ See proposed Exchange Rule 21.12(f)(2); see also Cboe Options Rule 5.10(f)(2).

⁴⁵ *Id.*

⁴⁶ See proposed Exchange Rule 21.12(f)(3); see also Cboe Options Rule 5.10(f)(3).

⁴⁷ The "T+1 Cutoff Time" is 1:00 p.m. Eastern Time on T+1; see proposed Exchange Rule 21.12(f)(3); see also Cboe Options Rule 5.10(f)(3) (which provides a cutoff time of 12:00 p.m. Central Time).

pursuant to this provision.⁴⁸ This notification alerts the parties and the Exchange that a change to the give up has been made. Finally, the Designated Give Up or Guarantor would be responsible for monitoring the trade and ensuring that the other Clearing Member has entered its side of the transaction timely and correctly. If either a Designated Give Up (or Guarantor) or Clearing Member cannot themselves enter trade records into the Exchange's systems to effect a transfer of the trade from one to the other, the Designated Give Up (or Guarantor) may request the ability from the Exchange to enter both sides of the transaction in accordance with amended Rule 21.12(f)(3).

The Exchange proposes Rule 21.12(g) to state that a Clearing Member would be financially responsible for all trades for which it is the give up at the Applicable Cutoff Time (for purposes of the proposed rule, the "Applicable Cutoff Time" shall refer to the T+1 Cutoff Time for non-expiring option series and to the Trade Date Cutoff Time for expiring option series).⁴⁹ The Exchange notes, however, that nothing in the proposed rule shall preclude a different party from being responsible for the trade outside of the Rules of the Exchange pursuant to OCC Rules, any agreement between the applicable parties, other applicable rules and regulations, arbitration, court proceedings or otherwise.⁵⁰ Additionally, the proposed Rule does not preclude these factors from being considered in a different forum (*e.g.*, court or arbitration), nor does it preclude any Clearing Member that violates any provision of amended Rule 21.12 from being subject to disciplinary actions in accordance with Exchange rules.

The Exchange also proposes to adopt subparagraph (h) of Rule 21.12 to provide that an intentional misuse of this Rule is impermissible, and may be treated as a violation of Rule 3.1, titled "Business Conduct of Members".⁵¹ This language will make clear that the Exchange will regulate an intentional

⁴⁸ *Id.*

⁴⁹ See proposed Exchange Rule 21.12(g); see also Cboe Options Rule 5.10(g).

⁵⁰ See proposed Interpretation and Policy .01 to Exchange Rule 21.12 ("Nothing herein will be deemed to preclude the clearance of Exchange transactions by a non-User pursuant to the By-Laws of the Options Clearing Corporation so long as a Clearing Member who is a User is also designated as having responsibility under these Rules for the clearance of such transactions."); see also Interpretation and Policy .01 to Cboe Options Rule 5.10.

⁵¹ See Cboe Options Rule 5.10(h), which states that intentional misuse of Rule 5.10 may be treated as a violation of Rule 8.1 (Just and Equitable Principles of Trade).

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.⁵²

Lastly, the Exchange proposes to amend its current Member Notification of Designated Give ups Form ("Designated Give ups Form"). As of October 7, 2019 the Cboe affiliated Options Exchanges are on the same technology platform. To provide further harmonization across the Cboe affiliated Options Exchanges and provide more seamless administration of the Give Up rule, the Exchange proposes to adopt the forms currently applicable to the Cboe Exchange, Inc., which will be applicable to all Cboe affiliated Options Exchanges. The proposed Designated Give Up forms are 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 Section 6(b) of the Act.⁵³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵⁴ 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)⁵⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Detailing in the rules how Users would give up Clearing Members provides transparency and operational

certainty. The Exchange believes additional transparency removes a potential impediment to, and would contribute to perfecting, the mechanism of a free and open market and a national market system, and, in general, would protect investors and the public interest. Moreover, the Exchange notes that amended Rule 21.12 requires Users to adhere to a standardized process to ensure a seamless administration of the Rule. For example, all notifications relating to a change in give up must be made in writing. The Exchange believes that these requirements will aid the Exchange's efforts to monitor and regulate Users and Clearing Members as they relate to amended Rule 21.12 and changes in give ups, thereby protecting investors and the public interest.

Further, as discussed above, several clearing firms affiliated with SIFMA have recently expressed concerns relating to the current give up process, which permits Users to identify any Clearing Member 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 21.12 help alleviate this risk by enabling Clearing Members to 'Opt In' to restrict one or more of its OCC clearing numbers (*i.e.*, Restricted OCC Numbers), and to specify which Authorized Users may give up those Restricted OCC Numbers. As described above, all other Users would be required to receive written authorization from the Clearing Member before they can give up that Clearing Member's Restricted OCC Number. The Exchange believes that this authorization provides proper safeguards and protections for Clearing Members as it provides controls for Clearing Members to restrict access to their OCC clearing numbers, allowing access only to those Authorized Users upon their request. The Exchange also believes that its proposed Clearing Member Restriction Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from Clearing Members, 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 Users (other than Authorized Users) to seek authorization from Clearing Members in order to have the ability to give them up, each User 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 User is party to that arrangement. The Exchange also notes that to the extent the executing User has a clearing arrangement with a Clearing Members (*i.e.*, through a Letter of Guarantee), a trade can be assigned to the executing User's Guarantor. Accordingly, the Exchange believes that the proposed rule change is reasonable and continues to provide certainty that a Clearing Members 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 Members. 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 Members 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 provide transparency and operational certainty to the Exchange's give up process, and also to reduce risk for Clearing Members. 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 Member's services, the Exchange's proposal may indirectly facilitate the ability of a Clearing Member to manage their existing customer relationships while continuing to allow market participant choice in broker execution services. While Clearing Members 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

⁵² See *e.g.*, Cboe Options Rule 5.10(h).

⁵³ 15 U.S.C. 78f(b).

⁵⁴ 15 U.S.C. 78f(b)(5).

⁵⁵ *Id.*

rule change balances the need for Clearing Members 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: (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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act⁵⁶ and Rule 19b-4(f)(6)⁵⁷ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)⁵⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, the Exchange requested that the Commission waive the 30-day operative delay. The Exchange represented that the proposal establishes a rule regarding the give up of a Clearing Member in order to help clearing firms manage risk while continuing to allow market participants choice in broker execution services. The Commission notes that it recently approved a substantially similar proposed rule change from Phlx, after which other options exchanges subsequently adopted substantially similar rules.⁵⁹ The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public

interest, because the Exchange's proposal raises no new issues. Further, such waiver will permit the Exchange, without further delay, to begin implementing the new standardized give up process, thus aligning its give up process with that of the other option exchanges. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.⁶⁰

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 shall institute proceedings to determine whether the proposed rule 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 email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2020-002 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-CboeBZX-2020-002. This file number should be included on the subject line if email 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-CboeBZX-2020-002 and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶¹

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87987; File No. SR-NYSEARCA-2020-01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend the Rule 11.6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

January 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on January 3, 2020, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁶¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵⁶ 15 U.S.C. 78s(b)(3)(A).

⁵⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

⁵⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁵⁹ See Securities Exchange Act Release No. 85136 (February 14, 2019), 84 FR 5526 (February 21, 2019) (Phlx-2018-72) (order approving a proposed rule change to establish rules governing give ups). See also *supra* note 18 (citing the filings in which other options exchanges adopted substantially similar rules).

⁶⁰ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).