

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83968; File No. SR-CBOE-2018-060]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Exchange Rule 6.49A, Transfer of Positions

August 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 16, 2018, 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, II, and III below, which Items have been prepared by the Exchange. 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

The Exchange proposes to amend Rule 6.49A to delete the provisions related to on-floor position transfers, amend the permissible reasons for and procedures related to off-floor position transfers, and make other nonsubstantive changes.

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.

#### 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, amend the permissible reasons for and procedures related to off-floor position transfers, and make other nonsubstantive changes. 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).<sup>3</sup>

##### On-Floor Transfers

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 .03<sup>4</sup> from Rule 6.49A. The on-floor position transfer 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.<sup>5</sup> In addition, the Exchange noted the “on-floor” position

<sup>3</sup> Paragraph (a) of Rule 6.49 (Transactions Off the Exchange) 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.

<sup>4</sup> 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.

<sup>5</sup> 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).

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.<sup>6</sup>

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.<sup>7</sup> 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 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.<sup>8</sup>

##### Off-Floor Position Transfers

Current Rule 6.49A(a)(1) lists the circumstances in which Trading Permit Holders may transfer their positions off the floor. The circumstances currently listed include: (i) The dissolution of a joint account in which the remaining Trading Permit Holder assumes the positions of the joint account; (ii) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions; (iii) positions transferred as part of a Trading Permit Holder’s capital contribution to a new joint account, partnership, or corporation; (iv) the donation of positions to a not-for-profit corporation; (v) the transfer of positions to a minor under the Uniform Gifts to Minor law; and (vi) a merger or acquisition where continuity of ownership or management results.<sup>9</sup>

<sup>6</sup> *Id.* Among other restrictions, repeated and frequent use of the on-floor procedure in Rule 6.49A by a TPH is not permitted.

<sup>7</sup> *Id.*

<sup>8</sup> See, e.g., Nasdaq OMX PHLX LLC (“Phlx”) 1058.

<sup>9</sup> The Exchange notes that other options exchanges have adopted off-floor position transfer procedures based on, and substantially similar to, the Exchange’s procedure in Rule 6.49A(a)(1). See, e.g., Nasdaq OMX PHLX LLC (“Phlx”) Rule 1058; and NYSE Arca, Inc. (“Arca”) Rule 6.78-O(d).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The Exchange proposes to add clarifying language to the first sentence of Rule 6.49A(a) to state that existing positions in options listed on the Exchange of a Trading Permit Holder or of a Non-Trading Permit Holder that are to be transferred on, from, or to the books of a Clearing Trading Permit Holder may be transferred off the Exchange (an “off-floor transfer”) if the off-floor transfer involves one of the events listed in the Rule.<sup>10</sup> The proposed rule change clarifies that Rule 6.49A does not apply to products other than options listed on the Exchange, consistent with the Exchange’s other trading rules.<sup>11</sup> It also clarifies that a Trading Permit Holder must be on one side of the transfer. The proposed rule change also clarifies that positions a Trading Permit Holder is transferring or receiving are held in the account of a Clearing Trading Permit Holder. This language is consistent with how off-floor transfers are currently effected. The proposed rule change also clarifies that both Trading Permit Holders and non-Trading Permit Holders may effect off-floor transfers, except under specified circumstances in which only a Trading Permit Holder may effect an off-floor transfer.<sup>12</sup>

The Exchange notes off-floor transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.<sup>13</sup> Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt off-floor position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

The proposed rule change adds four events where an off-floor transfer would be permitted to occur.

- Proposed subparagraph (a)(1) permits an off-floor transfer to occur if it, pursuant to Rule 4.6 or 4.22, is an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error. This

<sup>10</sup> It is possible for positions transfers to occur between two Non-Trading Permit Holders. For example, one Non-Trading Permit Holder may transfer positions on the books of a Clearing Trading Permit Holder to another Non-Trading Permit Holder pursuant to the proposed rule.

<sup>11</sup> Proposed paragraph (h) also clarifies that the off-floor transfer procedure only applies to positions in options listed on the Exchange, and that transfers of non-Exchange-listed options and other financial instruments are not governed by Rule 6.49A.

<sup>12</sup> See proposed subparagraphs (a)(5) and (7).

<sup>13</sup> See proposed paragraph (h).

proposed rule change codifies previous, long-standing Exchange guidance regarding what off-floor transfers are permissible and will permit transactions to be properly recorded in the originally intended accounts.<sup>14</sup>

- Proposed subparagraph (a)(2) permits an off-floor transfer if it is a transfer of positions from one account to another account where there is no change in ownership involved (*i.e.*, the accounts are for the same Person<sup>15</sup>), provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements.<sup>16</sup> The proposed rule change provides market participants with flexibility to maintain positions in accounts used for the same trading purpose in a manner consistent with their businesses. Such transfers are not intended to be transactions among different market participants, as there would be no change in ownership permitted under the provision, and would also not permit transfers among different trading units for which accounts are otherwise required to be maintained separately.<sup>17</sup>

- Proposed subparagraph (a)(3) similarly permits an off-floor transfer if it is a consolidation of accounts<sup>18</sup> where no change in ownership is involved. This proposed rule change is similar to rules of other options exchanges.<sup>19</sup>

- Proposed subparagraph (a)(10) permits an off-floor transfer if it is a transfer of positions through operation of law from death, bankruptcy, or otherwise.<sup>20</sup> This provision is consistent with applicable laws, rules, and regulations that legally require transfers in certain circumstances. This proposed rule change is consistent with the

<sup>14</sup> See Cboe Options Regulatory Circular RG03–62. Note Rule 4.22 was not referenced in that circular, as it did not exist at that time. However, it contains similar language regarding corrections of errors as Rule 4.6, and therefore the Exchange believes it is appropriate to include in the proposed rule change. The proposed rule change is also similar to Cboe Futures Exchange, LLC (“CFE”) Rule 420(a)(i).

<sup>15</sup> Rule 1.1(ff) 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.

<sup>16</sup> The proposed rule change is similar to CFE Rule 420(a)(ii).

<sup>17</sup> Various rules (for example, Regulation SHO in certain circumstances) require accounts to be maintained separately, and the proposed rule change is consistent with those rules.

<sup>18</sup> This refers to the consolidation of entire accounts (*e.g.*, combining two separate accounts (including the positions in each account into a single account)).

<sup>19</sup> See, *e.g.*, Phlx Rule 1058(a)(7); and Arca Rule 6.78–O(d)(1)(vii).

<sup>20</sup> The proposed rule change is similar to CFE Rule 420(a)(iii).

purposes of other circumstances in the current rule, such as the transfer of positions to a minor or dissolution of a corporation.

The Exchange believes these proposed events have similar purposes as those in the current rule, which is to permit market participants to move positions from one account to another and to permit transfers upon the occurrence of significant, non-recurring events.<sup>21</sup> As noted above, the proposed rule change is consistent with current Exchange guidance or rules of other self-regulatory organizations.

The proposed rule change renumbers current subparagraphs (a)(1)(i) through (v) to be proposed subparagraphs (a)(5) through (9) and moves current subparagraph (a)(1)(vi) to proposed subparagraph (a)(4), with nonsubstantive changes. These permissible circumstances for off-floor transfers are consistent with the rules of other options exchanges.<sup>22</sup>

Proposed paragraph (b) codifies Exchange guidance regarding certain restrictions on permissible off-floor transfers related to netting of open positions and to margin and haircut treatment. Proposed subparagraph (b)(1) states, unless otherwise permitted by Rule 6.49A, when effecting an off-floor transfer pursuant to paragraph (a), no position may net against another position (“netting”), and no position transfer may result in preferential margin or haircut treatment.<sup>23</sup> Netting occurs when long positions and short positions in the same series “offset” against each other, leaving no or a reduced position. For example, if a Trading Permit Holder wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the Rule, the Trading Permit Holder could not transfer the offsetting series, as they would net against each other and close the positions.

However, netting is permitted for off-floor transfers on behalf of a Market-Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market-Maker nominees are trading

<sup>21</sup> See proposed paragraph (g).

<sup>22</sup> See, *e.g.*, Phlx Rule 1058(a)(1) through (6); and Arca Rule 6.78–O(d)(1)(i) through (vi).

<sup>23</sup> See Cboe Options Regulatory Circular RG03–62. For example, positions may not transfer from a customer, joint back office, or firm account to a Market-Maker account. However, positions may transfer from a Market-Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

for the same Trading Permit Holder organization, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market-Maker account at the Clearing Corporation. In such instances, all Market-Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market-Maker account (commonly referred to as a "universal account") at the Clearing Corporation.<sup>24</sup> Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market-Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market-Maker may have a nominee with an appointment in class XYZ on Cboe Options, and have another nominee with an appointment in class XYZ on Phlx, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Cboe Options transactions and another for Phlx transactions) at the Clearing Corporation rather into a universal account (in which account the positions may net). The proposed rule change permits off-floor transfers from these separate exchange-specific accounts into the Market-Maker's universal account in this circumstance to achieve this purpose.

Proposed paragraph (c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an off-floor transfer is effected may be:

(1) The original trade prices of the positions that appear on the books of the trading Clearing Trading Permit Holder, in which case the records of the transfer must indicate the original trade dates for the positions;<sup>25</sup> provided, transfers to correct errors bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices;

(2) mark-to-market prices of the positions at the close of trading on the transfer date;

(3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date;<sup>26</sup> or

(4) the then-current market price of the positions at the time the off-floor transfer is effected.<sup>27</sup>

This proposed rule change provides market participants that effect off-floor transactions with flexibility to select a transfer price based on the circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Proposed paragraph (d) requires a Trading Permit Holder and its Clearing Trading Permit Holder (to the extent that the Trading Permit Holder is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an off-floor transfer from or to the account of a Trading Permit Holder(s).<sup>28</sup> The notice must indicate:

- The Exchange-listed options positions to be transferred;
- the nature of the transaction;
- the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred;
- the name of the counterparty(ies);
- the anticipated transfer date;
- the method for determined the transfer price; and
- any other information requested by the Exchange.

The proposed notice will ensure the Exchange is aware of all off-floor transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules. Additionally, requiring notice from the Trading Permit Holder(s) and its Clearing Trading Permit Holder(s) will ensure both parties are in agreement with respect to the terms of the off-floor transfer. The proposed rule change is similar to rules of other

options exchanges.<sup>29</sup> As noted in proposed subparagraph (d)(2), receipt of notice of an off-floor transfer does not constitute a determination by the Exchange that the off-floor transfer was effected or reported in conformity with the requirements of Rule 6.49A.

Notwithstanding submission of written notice to the Exchange, Trading Permit Holders and Clearing Trading Permit Holders that effect off-floor transfers that do not conform to the requirements of Rule 6.49A will be subject to appropriate disciplinary action in accordance with the Rules.

Similarly, proposed paragraph (e) requires each Trading Permit Holder and each 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 to the Exchange pursuant to proposed subparagraph (d)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Trading Permit Holder or Clearing Trading Permit Holder provide. The proposed rule change is similar to rules of other options exchanges.<sup>30</sup>

The proposed rule change moves current paragraph (d) regarding other exemptions to proposed paragraph (f). The exemptions permitted by this paragraph are those approved by the Exchange's president.<sup>31</sup> 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

<sup>24</sup> For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

<sup>25</sup> The proposed rule change is similar to CFE Rule 420(c).

<sup>26</sup> This notice provision applies only to transfers involving a Trading Permit Holder's positions and not to positions of Non-Trading Permit Holder parties, as they are not subject to the Rules. In addition, no notice would be required to effect off-floor transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

<sup>29</sup> See, e.g., Phlx Rule 1058(b) and (c); and Arca Rule 6.78-O(d)(2).

<sup>30</sup> See, e.g., Phlx Rule 1058(c); and Arca Rule 6.78-O(c).

<sup>31</sup> 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).

<sup>24</sup> *Id.*

<sup>25</sup> Phlx Rule 1058(c) requires position transfers to occur at the same prices that appear on the books of the transferring member.

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.

## 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.<sup>32</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>33</sup> 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)<sup>34</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting the off-floor transfers in very limited circumstances such as where there is no change in beneficial ownership, to contribute to a non-profit corporation, to transfer to a minor or a transfer by operation of law is reasonable to allow a TPH to accomplish certain goals efficiently. The rule permits off-floor transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a TPH that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a TPH that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a TPH may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine off-floor transfers between entities or accounts—even if there is no change in beneficial ownership as a result of the transfer—

is inconsistent with the purposes for which Rule 6.49A was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (e) to Rule 6.49A that the transfer of positions procedures set forth in Rule 6.49A are intended to facilitate non-recurring movements of positions.

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 Exchange believes the proposed rule change benefits investors, as it adds transparency to the Rules by codifying certain long-standing guidance regarding what types of off-floor transfers are permissible. The purpose of the additional circumstances in which market participants may conduct off-floor transfers is consistent with the purpose of the circumstances currently permitted in Rule 6.49A. Therefore, the proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. It also permits presidential exemptions when they are necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and are in the public interest. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change requiring notice and maintenance of records will ensure the Exchange is able to review off-floor transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a-3 and 17a-4 under the Act.

As discussed above, the proposed rule change is similar to rules of other options exchanges, and thus further removes impediments to and perfects the mechanism of a free and open market.

## 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 amended off-floor transfer procedure will apply to all Trading Permit Holders in the same manner. Use of the off-floor transfer procedure is voluntary, and all Trading Permit Holders may use the procedure to transfer position off the floor as long as the criteria in the proposed rule are satisfied. 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 proposed rule change also provides market participants that experience the limited permissible, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants, as they are similar to requirements in the rules of other options exchanges, as discussed above. The Exchange believes these are reasonable requirements that will ensure the Exchange is aware of all off-floor transfers so that it can monitor and review them to determine whether they are effected in accordance with the Rules.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition. The proposed off-floor position transfer procedure is not intended to be a competitive trading tool. The Exchange does not believe the proposed changes to the off-floor position transfer procedure are material, as they codify certain longstanding guidance and clarify the procedure. This procedure is

<sup>32</sup> 15 U.S.C. 78f(b).

<sup>33</sup> 15 U.S.C. 78f(b)(5).

<sup>34</sup> *Id.*

of limited application during unique circumstances. Additionally, as discussed above, the proposed rule change in part is similar to rules of other options exchanges. The Exchange believes having similar rules related to off-floor transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their off-floor transfers comply with multiple sets of rules.

*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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2018-060 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-2018-060. 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-CBOE-2018-060 and should be submitted on or before September 25, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-83973; File No. SR-FICC-2017-021]

**Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a Recovery & Wind-Down Plan and Related Rules**

August 28, 2018.

On December 18, 2017, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2017-021 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to adopt a recovery and wind-down plan

and related rules.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on January 8, 2018.<sup>4</sup> On February 8, 2018, the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> On June 25, 2018, the

<sup>3</sup> On December 18, 2017, FICC filed the proposed rule change as advance notice SR-FICC-2017-805 with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act") and Rule 19b-4(n)(1)(i) of the Act ("Advance Notice"). 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b-4(n)(1)(i), respectively. The Advance Notice was published for comment in the **Federal Register** on January 30, 2018. In that publication, the Commission also extended the review period of the Advance Notice for an additional 60 days, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act. 12 U.S.C. 5465(e)(1)(H); Securities Exchange Act Release No. 82580 (January 24, 2018), 83 FR 4341 (January 30, 2018) (SR-FICC-2017-805). On April 10, 2018, the Commission required additional information from FICC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, which tolled the Commission's period of review of the Advance Notice until 60 days from the date the information required by the Commission was received by the Commission. 12 U.S.C. 5465(e)(1)(D); see 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); see Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled "Commission's Request for Additional Information," available at <https://www.sec.gov/rules/sro/ficc-an.htm>. On June 28, 2018, FICC filed Amendment No. 1 to the Advance Notice to amend and replace in its entirety the Advance Notice as originally filed on December 18, 2017. Securities Exchange Act Release No. 83744 (July 31, 2018), 83 FR 38413 (August 6, 2018) (SR-FICC-2017-805). FICC submitted a courtesy copy of Amendment No. 1 to the Advance Notice through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the Advance Notice has been publicly available on the Commission's website at <https://www.sec.gov/rules/sro/ficc-an.htm> since June 29, 2018. On July 6, 2018, the Commission received a response to its request for additional information in consideration of the Advance Notice, which, in turn, added a further 60-days to the review period pursuant to Section 806(e)(1)(E) and (G) of the Clearing Supervision Act. 12 U.S.C. 5465(e)(1)(E) and (G); see Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled "Response to the Commission's Request for Additional Information," available at <https://www.sec.gov/rules/sro/ficc-an.htm>. The Commission did not receive any comments. The proposal, as set forth in both the Advance Notice and the proposed rule change, each as modified by Amendment No. 1, shall not take effect until all required regulatory actions are completed.

<sup>4</sup> Securities Exchange Act Release No. 82431 (January 2, 2018), 83 FR 871 (January 8, 2018) (SR-FICC-2017-021).

<sup>5</sup> Securities Exchange Act Release No. 82669 (February 8, 2018), 83 FR 6653 (February 14, 2018) (SR-DTC-2017-021, SR-FICC-2017-021, SR-NSCC-2017-017).

<sup>6</sup> Securities Exchange Act Release No. 82913 (March 20, 2018), 83 FR 12997 (March 26, 2018) (SR-FICC-2017-021).

<sup>35</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.