

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87991; File No. SR–C2–2020–001]

### Self-Regulatory Organizations; Cboe C2 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 Trading Permit Holder by a Trading Permit Holder on Exchange Transactions

January 16, 2020.

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 January 2, 2020, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) 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 Act<sup>3</sup> and Rule 19b–4(f)(6) thereunder.<sup>4</sup> 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 C2 Exchange, Inc. (the “Exchange” or “C2 Options”) proposes to amend its rules governing the give up of a Clearing Trading Permit Holder by a Trading Permit Holder 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/options/regulation/rule\\_filings/ctwo/](http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/)), 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 6.30, which governs the give up of a Clearing Trading Permit Holder<sup>5</sup> by a Trading Permit Holder<sup>6</sup> on Exchange transactions, to substantially conform to existing Cboe Exchange, Inc. (“Cboe Options”) Rule 5.10, proposed Cboe EDGX Exchange, Inc. (“EDGX Options”) Rule 21.12, and proposed Cboe BZX Exchange, Inc. (“BZX Options”) Rule 21.12.<sup>7</sup>

##### Background

By way of background, Exchange Rule 6.30 provides that when a Trading Permit Holder executes a transaction on the Exchange, it must give up the name of the Clearing Trading Permit Holder (the “Give Up”) through which the transaction will be cleared. Rule 6.30 also provides that a Trading Permit Holder may only give up a “Designated Give Up”<sup>8</sup> or its “Guarantor.”<sup>9</sup> This limitation is enforced by the Exchange’s trading systems.<sup>10</sup>

A “Designated Give Up” of a Trading Permit Holder refers to a Clearing Trading Permit Holder identified to the Exchange by that Trading Permit Holder as a Clearing Trading Permit Holder the Trading Permit Holder requests the ability to give up and that has been processed by the Exchange as a Designated Give Up.<sup>11</sup> To designate a “Designated Give Up” every Trading Permit Holder (other than a Market-Maker) must submit written notification, in a form and manner prescribed by the Exchange.<sup>12</sup> Specifically, the Exchange uses a

<sup>5</sup> The term “Clearing Trading Permit Holder” means a Trading Permit Holder that has been admitted to membership in the Clearing Corporation pursuant to the provisions of the rules of the Clearing Corporation and is self-clearing or that clears transactions for other Trading Permit Holders. See Exchange Rule 1.1.

<sup>6</sup> The term “Trading Permit Holder” means an Exchange-recognized holder of a Trading Permit. A Trading Permit Holder is deemed a “member” under the Exchange Act. See Exchange Rule 1.1.

<sup>7</sup> See SR–CboeEDGX–2020–001 (filed January 2, 2020) and SR–CboeBZX–2020–002 (filed January 2, 2020).

<sup>8</sup> See Exchange Rule 6.30(b)(1).

<sup>9</sup> See Exchange Rule 6.30(b)(2).

<sup>10</sup> See Exchange Rule 6.30(c).

<sup>11</sup> *Supra* note 7.

<sup>12</sup> See Exchange Rule 6.30(b)(3).

standardized form (“Notification Form”) that a Trading Permit Holder needs to complete and submit to the Exchange’s Membership Services Department (“MSD”).<sup>13</sup> The Exchange notes that a Trading Permit Holder may currently designate any Clearing Trading Permit Holder as a Designated Give Up.<sup>14</sup> Additionally, there is no minimum or maximum number of Designated Give Ups that a Trading Permit Holder must identify. Paragraph (d) of Rule 6.30 also requires that the Exchange notify a Clearing Trading Permit Holder, in writing and as soon as practicable, of each Trading Permit Holder that has identified it as a Designated Give Up. The Exchange however, will not accept any instructions from a Clearing Trading Permit Holder to prohibit a Trading Permit Holder from designating the Clearing Trading Permit Holder as a Designated Give Up. Additionally, there is no subjective evaluation of a Trading Permit Holder’s list of proposed Designated Give Ups by the Exchange.

For purposes of Rule 6.30, a “Guarantor” of an executing Trading Permit Holder refers to a Clearing Trading Permit Holder that has issued a Letter of Guarantee for the executing Trading Permit Holder under the Rules of the Exchange that are in effect at the time of the execution of the applicable trade.<sup>15</sup> An executing Trading Permit Holder may give up its Guarantor without having to first designate it to the Exchange as a “Designated Give Up.”<sup>16</sup> Additionally, the Exchange notes that a Market-Maker is only enabled to give up the Guarantor of the Market-Maker pursuant to Exchange Rule 22.8 and also does not need to identify any Designated Give Ups.<sup>17</sup>

Beginning in early 2018, certain Clearing Trading Permit Holders (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 Trading Permit Holders have recently identified the current give up process as a significant source of risk for clearing firms. SIFMA-affiliated Clearing Trading Permit Holders subsequently requested

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Supra* note 8.

<sup>16</sup> The Exchange already knows each Trading Permit Holder’s Guarantor and as such, no further designation or identification is required of Trading Permit Holders to enable their respective Guarantors. See Exchange Rule 6.30(b)(6).

<sup>17</sup> See Exchange Rule 6.30(b)(5).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b–4(f)(6).

that the Exchanges alleviate this risk by amending Exchange rules governing the give up process.<sup>18</sup>

#### Proposed Rule Change

Based on the above, the Exchange now seeks to amend its rules regarding the current give up process in order to allow a Clearing Trading Permit Holder to “opt in”, at the Options Clearing Corporation (“OCC”) clearing number level, to a feature that, if enabled by the Clearing Trading Permit Holder, will allow the Clearing Trading Permit Holder to specify which Trading Permit Holders are authorized to give up that OCC clearing number. As proposed, Rule 6.30 will continue to require that Trading Permit Holders identify to the Exchange, via the Notification Form, all Clearing Trading Permit Holders that the Trading Permit Holder would like to have the ability to give up (*i.e.*, Designated Give Ups).<sup>19</sup> However, the Exchange proposes to modify the language of paragraph (a) to provide that a Trading Permit Holder may indicate, at the time of the trade or through post trade allocation, any OCC number of the Clearing Trading Permit Holder through which the transaction will be cleared.<sup>20</sup> The Exchange proposes to also add to Rule 6.30(a) that Clearing Trading Permit Holders may elect to “Opt In,” as defined in paragraph (c) of the proposed Rule and described further

<sup>18</sup> 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) (“Cboe Options Rule 5.10 Amendment”). 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 Trading Permit Holder’s the 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 existing give up process on Cboe Options.

<sup>19</sup> *Id.*

<sup>20</sup> The Exchange notes that Cboe Options plans to amend paragraph (a) of Rule 5.10 to conform to proposed paragraph (a) of C2 Options Rule 6.30 and EDGX Options Rule 21.12 with a slight modification as it relates to floor trading on Cboe

below, and restrict one or more of its OCC number(s) (“Restricted OCC Number”).<sup>21</sup> A Trading Permit Holder may Give Up a Restricted OCC Number provided the Trading Permit Holder has written authorization as described in paragraph (c)(2) (“Authorized Trading Permit Holder”).<sup>22</sup> The Exchange notes that if a Trading Permit Holder identifies a particular Clearing Trading Permit Holder as a Designated Give Up, but that Clearing Trading Permit Holder has restricted its OCC number(s) and has not authorized the Trading Permit Holder to give it up, then the Exchange will not give effect to the designation on the Notification Form (*i.e.*, the Trading Permit Holder will not be able to give up that Clearing Trading Permit Holder even though it was identified as a Designated Give Up). Similarly, if a Clearing Trading Permit Holder authorizes a Trading Permit Holder to give up its Restricted OCC Number(s), the Exchange will not enable that Clearing Trading Permit Holder as a give up for that Trading Permit Holder until and unless the Trading Permit Holder identifies that Clearing Trading Permit Holder as a Designated Give Up on a Notification Form. In light of Clearing Trading Permit Holders having the ability to restrict their OCC numbers from being given up by unauthorized Trading Permit Holders, the Exchange also proposes to eliminate the process for Clearing Trading Permit Holders to “reject” trades. As such, the Exchange proposes to eliminate subparagraphs (e) and (f) of Rule 6.30 and any other references to the process in Rule 6.30.<sup>23</sup>

Proposed Rule 6.30(c) provides that Clearing Trading Permit Holders may request the Exchange restrict one or more of their OCC clearing numbers (“Opt In”) from being given up unless otherwise authorized.<sup>24</sup> If a Clearing Trading Permit Holder opts In, the Exchange will require written authorization from the Clearing Trading Permit Holder permitting a Trading Permit Holder to give up a Clearing Trading Permit Holder’s Restricted OCC Number.<sup>25</sup> An Opt In would remain in effect until the Clearing Trading Permit Holder terminates the Opt In as described in proposed subparagraph (3).<sup>26</sup> If a Clearing Trading Permit

<sup>21</sup> See proposed Exchange Rule 6.30(a); see also Cboe Options Rule 5.10(a).

<sup>22</sup> *Id.*

<sup>23</sup> The Exchange notes that Cboe Options similarly eliminated the process for which Clearing Trading Permit Holders may “reject” trades in Rule 5.10. See the Cboe Options Rule 5.10 Amendment.

<sup>24</sup> See proposed Exchange Rule 6.30(c); see also Cboe Options Rule 5.10(c).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

Holder does not Opt In, that Clearing Trading Permit Holder’s OCC number may be subject to being given up by any Trading Permit Holder that has designated it as a Designated Give Up.<sup>27</sup> Proposed Rule 6.30(c)(1) will set forth the process by which a Clearing Trading Permit Holder may Opt In.<sup>28</sup> Specifically, a Clearing Trading Permit Holder may Opt In by sending a completed “Clearing Trading Permit Holder Restriction Form” listing all Restricted OCC Numbers and Authorized Trading Permit Holders.<sup>29</sup> A copy of the proposed form is included in Exhibit 3. A Clearing Trading Permit Holder may elect to restrict one or more OCC clearing numbers that are registered in its name at OCC.<sup>30</sup> The Clearing Trading Permit Holder would be required to submit the Clearing Trading Permit Holder Restriction Form to the Exchange’s MSD as described on the form.<sup>31</sup> Once submitted, the Exchange requires ninety days before a Restricted OCC Number is effective within the System.<sup>32</sup> This time period is to provide adequate time for the Trading Permit Holders of that Restricted OCC Number who are not initially specified by the Clearing Trading Permit Holder as Authorized Trading Permit Holders to obtain the required written authorization from the Clearing Trading Permit Holder for that Restricted OCC Number. Such Trading Permit Holders 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 6.30(c)(2) will set forth the process for Trading Permit Holders to give up a Clearing Trading Permit Holder’s Restricted OCC Number.<sup>33</sup> Specifically, a Trading Permit Holder desiring to give up a Restricted OCC Number must become an Authorized Trading Permit Holder.<sup>34</sup> The Clearing Trading Permit Holder will be required to authorize a Trading Permit Holder as described in subparagraph (1) or (3) of

<sup>27</sup> *Id.*

<sup>28</sup> See proposed Exchange Rule 6.30(c)(1); see also Cboe Options Rule 5.10(c)(1).

<sup>29</sup> 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 Trading Permit Holder’s contact information to assist Trading Permit Holders (to the extent they are not already Authorized Trading Permit Holders) with requesting authorization for a Restricted OCC Number. The Exchange may utilize additional means to inform its Trading Permit Holders of such updates on a periodic basis.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> See proposed Exchange Rule 6.30(c)(2); see also Cboe Option Rule 5.10(c)(2).

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

Rule 6.30(c) (*i.e.*, through a Clearing Trading Permit Holder Restriction Form), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the Trading Permit Holder is a party to, as set forth in Rule 6.30(b)(6).<sup>35</sup> Pursuant to proposed Rule 6.30(c)(3), a Clearing Trading Permit Holder may amend the list of its Authorized Trading Permit Holders or Restricted OCC Numbers by submitting a new Clearing Trading Permit Holder Restriction Form to the Exchange's MSD indicating the amendment as described on the form.<sup>36</sup> Once a Restricted OCC Number is effective within the System pursuant to Rule 6.30(c)(1), the Exchange may permit the Clearing Trading Permit Holder to authorize, or remove authorization for, a Trading Permit Holder to give up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances.<sup>37</sup> The Exchange will promptly notify Trading Permit Holders if they are no longer authorized to give up a Clearing Trading Permit Holder's Restricted OCC Number.<sup>38</sup> If a Clearing Trading Permit Holder removes a Restricted OCC Number, any Trading Permit Holder may give up that OCC clearing number once the removal has become effective on or before the next business day, provided that Clearing Trading Permit Holder has been designated as a Designated Give Up.<sup>39</sup>

The Exchange also proposes to amend current subparagraph (c) (System) (to be relettered to paragraph (d)) of Rule 6.30 to clarify that in addition to the Exchange's system not accepting orders that identify a give up that is not at the time a Designated Give Up or a Guarantor, the System will also reject any order that designates a Restricted OCC Number for which the Trading Permit Holder is not an Authorized Trading Permit Holder.<sup>40</sup>

The Exchange proposes to amend current paragraph (d) (Notice to Clearing Trading Permit Holders) (to be relettered to paragraph (e)) of Rule 6.30 to provide that the Exchange will provide notice to Trading Permit Holders that they are authorized or unauthorized by Clearing Trading Permit Holders.<sup>41</sup>

The Exchange also proposes to amend current paragraph (g) (Other Give Up

Changes) (to be relettered to subparagraph (f)) of Rule 6.30 to provide that a Trading Permit Holder may change the give up on the trade to another Designated Give Up, provided it's an Authorized Trading Permit Holder for any Restricted OCC Number, or to its Grantor.<sup>42</sup> Additionally, the Exchange seeks to define a specific "Trade Date Cutoff Time"<sup>43</sup> and "T+1 Cutoff Time" in the rule text of proposed paragraph (f).<sup>44</sup>

The Exchange proposes to amend current paragraph (h) (Responsibility) (to be relettered to paragraph (g)) of Rule 6.30 to eliminate any applicable reference to current paragraph (e) or (f) of the Rule and to conform with Cboe Options Rule 5.10(g).

The Exchange also proposes to adopt subparagraph (h) of Rule 6.30 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 Trading Permit Holders."<sup>45</sup> This language will make clear that the Exchange will regulate an intentional 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.<sup>46</sup>

Lastly, the Exchange proposes to amend its current Trading Permit Holder Notification of Designated Give Ups Form ("Designated Give Ups Form"). As of October 7, 2019 the Exchange and each of its affiliated options exchanges (*i.e.*, C2 Options, BZX Options, and Cboe Options (collectively, "Cboe Markets")) are on the same technology platform. To provide further harmonization across the Cboe Markets and provide more seamless administration of the Give up rule, the Exchange proposes to eliminate the current Designated Give Ups Form and adopt a new form which would be applicable to all Cboe Markets going forward. The proposed Designated Give Ups Form is included in Exhibit 3.

<sup>42</sup> See proposed Exchange Rule 6.30(f); *see also* Cboe Options Rule 5.10(f).

<sup>43</sup> 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). *See* proposed Exchange Rule 6.30(f)(1); *see also* Cboe Options Rule 5.10(f)(1).

<sup>44</sup> The "T+1 Cutoff Time" is 1:00 p.m. Eastern Time on T+1; *see* proposed Exchange Rule 6.30(f)(3); *see also* Cboe Options Rule 5.10(f)(3) (which provides a cutoff time of 12:00 p.m. Central Time).

<sup>45</sup> *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).

<sup>46</sup> *See, e.g.*, Cboe Options Rule 5.10(h).

### 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.<sup>47</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>48</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 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)<sup>49</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Particularly, as discussed above, several clearing firms affiliated with SIFMA have recently expressed concerns relating to the current give up process, which permits Trading Permit Holders to identify any Clearing Trading Permit Holder 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 6.30 help alleviate this risk by enabling Clearing Trading Permit Holders to "Opt In" to restrict one or more of its OCC clearing numbers (*i.e.*, Restricted OCC Numbers), and to specify which Authorized Trading Permit Holders may give up those Restricted OCC Numbers. As described above, all other Trading Permit Holders would be required to receive written authorization from the Clearing Trading Permit Holder before they can give up that Clearing Trading Permit Holder's

<sup>47</sup> 15 U.S.C. 78f(b).

<sup>48</sup> 15 U.S.C. 78f(b)(5).

<sup>49</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *See* proposed Exchange Rule 6.30(c)(3); *see also* Cboe Options Rule 5.10(c)(3).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *See* proposed Exchange Rule 6.30(d); *see also* Cboe Options Rule 5.10(d).

<sup>41</sup> *See* proposed Exchange Rule 6.30(e); *see also* Cboe Options Rule 5.10(e).

Restricted OCC Number. The Exchange believes that this authorization provides proper safeguards and protections for Clearing Trading Permit Holders as it provides controls for Clearing Trading Permit Holders to restrict access to their OCC clearing numbers, allowing access only to those Authorized Trading Permit Holders upon their request. The Exchange also believes that its proposed Clearing Trading Permit Holder Restriction Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from Clearing Trading Permit Holders, 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 Trading Permit Holders (other than Authorized Trading Permit Holders) to seek authorization from Clearing Trading Permit Holders in order to have the ability to give them up, each Trading Permit Holder 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 Trading Permit Holder is party to that arrangement. The Exchange also notes that to the extent the executing Trading Permit Holder has a clearing arrangement with a Clearing Trading Permit Holder (*i.e.*, through a Letter of Guarantee), a trade can be assigned to the executing Trading Permit Holder's guarantor. Accordingly, the Exchange believes that the proposed rule change is reasonable and continues to provide certainty that a Clearing Trading Permit Holder 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 Trading Permit Holders. 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 Trading Permit Holders 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 reduce risk for Clearing Trading Permit Holders under the current give up model. 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 Trading Permit Holder's services, the Exchange's proposal may indirectly facilitate the ability of a Clearing Trading Permit Holder to manage their existing customer relationships while continuing to allow market participant choice in broker execution services. While Clearing Trading Permit Holders 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 rule change balances the need for Clearing Trading Permit Holders 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 Act<sup>50</sup> and Rule 19b-4(f)(6)<sup>51</sup> thereunder.

<sup>50</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>51</sup> 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

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)<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup>

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,

Commission. The Exchange has satisfied this requirement.

<sup>52</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>53</sup> 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).

<sup>54</sup> 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).

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-C2-2020-001 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-C2-2020-001. 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-C2-2020-001 and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>55</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87994; File No. SR-NYSEArca-2020-05]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges To Introduce Two New Pricing Tiers, Retail Order Step-Up Tier 3 and Retail Order Step-Up Tier 4

January 16, 2020.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 9, 2020, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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 self-regulatory organization. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges ("Fee Schedule") to introduce two new pricing tiers, Retail Order Step-Up Tier 3 and Retail Order Step-Up Tier 4. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts of such statements.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

#### 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 the Fee Schedule to introduce two new pricing tiers, Retail Order Step-Up Tier 3 and Retail Order Step-Up Tier 4. The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for ETP Holders<sup>4</sup> to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective January 9, 2020.<sup>5</sup>

##### Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>6</sup>

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."<sup>7</sup> Indeed, equity trading is currently dispersed across 13 exchanges,<sup>8</sup> 31 alternative trading systems,<sup>9</sup> and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information for November 2019, no single exchange has more than 18% market share (whether including or excluding auction

<sup>4</sup> All references to ETP Holders in connection with this proposed fee change include Market Makers.

<sup>5</sup> The Exchange originally filed to amend the Fee Schedule on January 2, 2020 (SR-NYSEArca-2020-02). SR-NYSEArca-2020-02 was subsequently withdrawn and replaced by this filing.

<sup>6</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>7</sup> See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Final Rule).

<sup>8</sup> See Cboe U.S. Equities Market Volume Summary, available at [https://markets.cboe.com/us/equities/market\\_share](https://markets.cboe.com/us/equities/market_share). See generally <http://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

<sup>9</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

<sup>55</sup> 17 CFR 200.30-3(a)(12).