November 15, 2019

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Securities Exchange Act Release No. 86400 (July 17, 2019), 84 FR 35438 (July 23, 2019) (SR-CBOE-2019-035)

Dear Ms. Countryman:

Cboe Exchange, Inc. ("Cboe Options" or the "Exchange") appreciates the opportunity to respond to comments submitted on the above-referenced proposed rule change in which the Exchange proposes to amend the permissible reasons to effect off-floor position transfers and make other nonsubstantive changes in Rule 6.7 (the "Proposal").[1] As described more fully in the Proposal, the Exchange proposes to codify long-standing Exchange guidance regarding permissible off-floor position transfers, as well as add circumstances in which off-floor position transfers would be permitted to the list of circumstances in which off-floor position transfers are currently permitted to occur under Rule 6.7.[2] Two comment letters stating the Proposal in its current form is insufficient were submitted to the Securities and Exchange Commission (the "SEC" or "Commission").[3] The Exchange submits this letter in response to those comments.

As an initial matter, the Exchange represents that the Proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, because it is consistent with purposes for which the current rule was initially adopted and provides transparency within the Exchange's Rules regarding longstanding guidance regarding off-floor position transfers. Additionally, as set forth in the Proposal, several parts of the

[1] In connection with a recent reorganization of the Exchange's Rulebook, the Exchange relocated the rule that describes permissible off-floor position transfers from Rule 6.49A to Rule 6.7. See Securities Exchange Act Release No. 87320 (October 16, 2019), 84 FR 56501 (October 22, 2019) (SR-CBOE-2019-095).

[2] The Proposal also makes various nonsubstantive changes to Rule 6.7.

[3] See letter to Vanessa Countryman, Secretary, Commission from John Kinahan, Chief Executive Officer, Group One Trading, dated September 24, 2019 ("Group One Letter"); and letter to Brent J. Fields, Secretary, Commission from Gerald D. O'Connell, Compliance Coordinator, Susquehanna International Group, LLP, dated August 19, 2019 ("SIG Letter").

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

Proposal are based on the rules of other options exchanges. Therefore, it benefits investors and removes impediments to and promotes a fair and open market.[6]

The purpose of the Proposal is to codify longstanding policies regarding off-floor position transfers and expand the list of limited circumstances in which off-floor position transfers are permissible. First, the Proposal codifies longstanding policies prohibiting an off-floor transfer from resulting in the netting of positions against each other (or in preferential margin or haircut treatment), as well as prohibiting the repeated or routine use of the off-floor transfer procedure in circumvention of the normal auction process.[7] In addition, the Proposal adds circumstances in which off-floor position transfers are permissible that are consistent with those limited circumstances currently in Rule 6.7 and with the rules of other options exchanges. Two of the proposed permissible off-floor transfers are (1) the transfer of positions from one account to another account where no change in ownership is involved (*i.e.*, accounts of the same Person[8]), provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements; and (2) the consolidation of accounts where no change in ownership is involved.[9]

The Proposal Is Consistent with the Purpose of Rule 6.7 and the Exchange's Longstanding Policy Regarding Off-Floor Position Transfers

The Commission originally approved Rule 6.7 (former Rule 6.49A) in December of 1995.[10] The Exchange's purpose for adopting that rule was to identify certain transfers of options positions not subject to the requirements contained in Rule 5.12 (former Rule 6.49), which generally requires

[6] The Exchange notes the SEC (through designated authority) previously approved a separate rule filing that included the Proposal in nearly identical form (as well as a proposed rule change to eliminate an on-floor position transfer process) and found the Proposal to be consistent with the Act. Securities Exchange Act Release No. 34-88437 (October 16, 2018), 83 FR 53336 (October 22, 2018) (SR-CBOE-2018-060). No comment letters were submitted to the SEC during the public comment period in connection with that rule filing. However, following the SEC's approval, SIG submitted to the SEC a petition for review of that approval order. See Petition for Review of Order Approving Proposed Rule Change to Amend Exchange Rule 6.49A, Transfer of Positions; Exchange Act Release No. 84437, File No. SR-CBOE-2018-060 (October 30, 2018). On February 11, 2019, the Exchange withdrew that rule filing. Ultimately, the Exchange submitted the above-referenced rule filing that included the Proposal.

[7] See proposed Rule 6.7(b) and (g). Commenters raised concerns only about the proposed provisions in Rule 6.7(a)(2) and (3), (b), and (g), and therefore the Exchange does not address any other elements of the Proposal in this letter.

[8] The term "Person" means 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.

[9] See proposed Rule 6.7(a)(2) and (3).

[10] Securities Exchange Act Release No. 36647 (December 28, 1995), 61 FR 566 (January 8, 1996) (SR-CBOE-95-36) ("Initial Rule Approval").

transactions of option contracts be effected on the Exchange or another exchange.[11] As stated in the Initial Rule Approval, and as acknowledged in the SIG Letter, "[t]he Exchange has a long-standing policy of prohibiting off-floor transfers of option positions between accounts, individuals, or entities where a change in beneficial ownership would result. The Exchange, however, previously has made exceptions to this general policy under certain limited circumstances, allowing otherwise prohibited transactions to be completed off the floor of the Exchange."[12]

To be clear, it is not, and has not been, the Exchange's intent or interpretation of Rule 6.7 (former Rule 6.49A) that off-floor position transfers may freely occur when there is no change in ownership (or beneficial ownership), particularly in circumstances that result in netting, favorable margin treatment, or repeating or recurring transfers, or that result in the avoidance of the normal auction market process. Additionally, there are no specific provisions that would allow these sort of off-floor position transfers for Market-Makers in particular. However, the SIG Letter suggests the approach of the Rule should be to allow for off-floor transfers without restriction where there is "no material change of beneficial ownership." The Exchange initially notes that a "no change" transfer as defined in the SIG Letter, which SIG believes should be permissible without restriction, conflicts with the long-standing policy and approach reflected in the pending rule change filing.[13] A SIG no change transfer would allow for unlimited transfers where no material change in beneficial ownership would result,[14] while the long-standing Exchange policy prohibits an off-floor transfer that results in a change in ownership (including beneficial ownership) unless an exception applies. SIG states that the reference to the long-standing policy in the Initial Rule Approval suggested that Rule 6.7 was focused on exceptions to the full on-floor requirement for trading positions where a change of beneficial ownership existed, and was not meant to alter no change off-floor transfers for which the on-floor requirement did not apply.[15] This is a contradictory statement. The purpose of Rule 6.7 as initially adopted was in fact to codify exceptions to the on-floor requirement in Rule 5.12 (whether there was a change in ownership/beneficial ownership or not) were permitted, as explicitly stated in the Initial Rule Approval. However, none of those exceptions permit a SIG "no change" transfer, making SIG's assertion that the on-floor requirement did not apply to a SIG "no change" transfer unclear.

The Exchange reiterates that Rule 5.12 continues to require options positions, subject to the limits and exceptions set forth in Rule 6.7 and the Proposal, if approved, to be offered on the Exchange (or another exchange which trades the options). Rule 6.7 currently (and as proposed to be amended) clearly delineates situations in which off-floor position transfers may be effected. As noted by the Commission, the exceptions currently listed in Rule 6.7 allow "off-floor transfers in several narrowly-defined situations where the transfer results in some degree of continuity in the ownership or management of the position or transfer is necessitated by certain legal or similar reasons, or where

[11] See Initial Rule Approval at 566 and note 4; see also SIG Letter at 7 – 8.
[12] See Initial Rule Approval at 566; see also SIG Letter at 7.
[13] See SIG Letter at 7.
[14] See SIG Letter at 1.
[15] See SIG Letter at 7.

the President of the Exchange judges that the market value of the Transferor's business will be compromised, or judges that market conditions make the transfer process impractical."[16] None of these situations involve regular business practices, such as risk management or hedging activities. Instead, they are related to infrequent occurrences that arise for legal purposes (e.g., mergers, acquisitions, bankruptcies) or other non-business related events (e.g., donations to not-for-profit entities, gifts to minors). Additionally, the Exchange believes a SIG "no change" transfer is a broadly defined situation, which would also be inconsistent with the initial purpose of the rule and current exceptions.

Based on this long-standing policy, it is not clear to the Exchange why SIG believes that the Exchange has historically provided abilities for no change off-floor transfers by Market-Makers (particularly without the frequency, netting, or separate account restrictions contained in the Proposal).[17] This belief directly contradicts the long-standing policy SIG cited above, which (as noted above) prohibits off-floor transfers of option positions between accounts, and between entities where any change (material or otherwise) of beneficial ownership would result (as well as between individuals), subject to the limited exceptions specified in Rule 6.7. None of the exceptions currently delineated in Rule 6.7 permit the type of "no change" transfer SIG believes is currently permissible.[18] The Initial Rule Approval (along with the Exchange's longstanding policy and regulatory circulars that describe the Exchange's application of Rule 6.7) directly contradicts SIG's unsupported presumption that off-floor transfers of positions that result in no material change in beneficial ownership are understood to be acceptable.[19]

Additionally, while the Commenters believe that the proposed rule change to prohibit off-floor transfers from resulting in the netting of open interest is too restrictive, this is a long-standing Exchange interpretation of Rule 6.7, which the Proposal attempts to codify into the Rules to bring more transparency regarding permissible off-floor transfers.[20] The Exchange also notes that the rules of another options exchange currently state that no position may net itself against another position when transferring positions off the exchange, which rule the Commission already found to be consistent with the Exchange Act.[21] As a result, even if the Proposal did not prohibit off-floor transfers

[16] See Initial Rule Approval at 567 (the Commission found it reasonable and consistent with the Act to provide for off-floor transfers to be effected in certain limited circumstances).
[17] See SIG Letter at 7.
[18] The Exchange notes that, other than the permissible off-floor transfers set forth in Rule 6.7, the only other off-floor transfers of positions between affiliated accounts that are permissible are those that occur in connection with a business reorganization where continuity of ownership results. See Cboe Options Regulatory Circular RG03-62 (July 24, 2003).
[19] See SIG Letter at 8.
[20] See Cboe Options Regulatory Circular RG03-62 (July 24, 2003) (which states that transfers that occur under the permissible situations in Rule 6.7 may not result in the netting of open interest).
[21] See Nasdaq PHLX, LLC ("PHLX") Rule 1058(c); see also Securities Exchange Act Release No. 66023 (December 21, 2011), 76 FR 81553 (December 28, 2011) (SR-Phlx-2011-118) (approval of PHLX

from netting open interest, it would have no impact on the Exchange's current practice. Further, if the Commenters or any other market participants effected an off-floor transfer of positions in an option listed on PHLX, such transfer may be deemed a violation of PHLX Rule 1058(c). Therefore, the Exchange believes that adoption of proposed Rule 6.7(b) will remove impediments to and perfect the mechanism of a free and open market and a national market system by conforming this aspect of the off-floor transfer procedure to the corresponding rule of another Exchange.

Given that the Commission has already approved a netting prohibition with respect to off-floor position transfers and that Market-Makers in particular can initially elect whether to maintain positions in a single "universal" account (discussed below) or in separate accounts, the Exchange questions SIG's concern about "allowing the off-setting positions to co-exist without an economic purpose, can serve to misleadingly inflate the economic realities of overall open interest." The Exchange believes if SIG is concerned about the negative impact of maintaining open interest in off-setting positions, it would not choose to maintain those positions in separate accounts and only net certain off-setting positions whenever it chooses. As discussed below, this concern could easily be addressed by use of a universal account. Because netting is currently prohibited by Exchange practice and the rules of another options exchange (and because Market-Makers and others do currently maintain separate accounts), if SIG's concern were valid, misleading inflation of the economic realities of overall open interest would already exist and bring into question the existing practice of maintaining positions in separate accounts in any case.

The proposed rule change to codify the Exchange's current restriction on the netting of opening positions through an off-floor transfer is part of the Exchange's efforts to add transparency to the rules regarding off-floor position transfers and harmonize off-floor transfer rules across options exchanges (of which the Commenters have indicated they are in favor). The Exchange also believes having restrictions on instances where off-floor netting would be permitted actually serves to provide more transparency regarding open interest overall, because open interest must be closed through transactions on an exchange, and thus contributes to a fair and orderly market.

The Proposal Is Not Too Restrictive

The Exchange disagrees with the Commenters' statements that the Proposal is too restrictive. Specifically, SIG described the Proposal as being "overly restrictive" with respect to "no change" transfers.[22] SIG stated that the Proposal does not "fully address the means and complexities by which [Market-Maker] organizations manage the risk of providing liquidity in options" and "overly restricts [Market-Makers] from being able to make no change transfers that would help reduce that risk."[23]

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proposed rule change to prohibit permissible off-floor transfers from resulting in netting of open interest) ("PHLX Filing"). The Exchange notes it intends to update the Proposal to reflect that proposed Rule 6.7(b) is based on PHLX Rule 1058(c).

[22] See SIG Letter at 1.

[23] Id. at

Similarly, Group One stated its belief that the Proposal is "unnecessarily restrictive, particularly concerning transfers involving no change in beneficial ownership ('no change transfers')." While Group One is generally supportive of proposed Rule 6.7(a)(2), as it believes "adoption of this provision . . . will be of benefit to market participants by giving them flexibility in managing their business," Group One expressed concerns about proposed paragraph (g) that does not permit this procedure to be used repeatedly or routinely in circumvention of the normal auction process, which the Exchange discusses further below.[24]

With respect to SIG's concerns that the Proposal does not permit off-floor position transfers where there is no material change in beneficial ownership, as noted above, such transfers are not permitted by current Rule 6.7. Even Group One acknowledged that proposed paragraph (a)(2) adds flexibility (and thus does not restrict the ability) to the use of off-floor position transfers.[25] The Exchange questions what rule SIG believes provides Market-Makers with the ability to perform position transfers between affiliated Market-Maker accounts that result in no material change in beneficial ownership.[26] The Exchange did not adopt the currently permissible off-floor position transfers to provide Trading Permit Holders, including Market-Makers, with methods to manage risk. Rather, the circumstances under which off-floor position transfers are permissible relate to legal or similar reasons. Therefore, if the Exchange determined to not pursue the Proposal in its current form, a TPH would not be able to effect a "no change" transfer (as defined by SIG) under current Rule 6.7.

SIG further states that the "substantial *restrictions* on *no change* transfers will curtail flexibility more than necessary – not only because of unreasonable transfer limitations but also because of the alternatives. . . . [and] leaves [Market-Makers] with choices that are often costly and inefficient. For example, carrying offsetting positions until expiration can be costly and trading them independently (rather than crossing) would often mean 'paying the quoted spread', which is often a prohibitively expensive risk-strategy cost. On this point, public investors are harmed when added expenses translate into wider quotes from [Market-Makers]." Noting again that the Proposal adopts no new restrictions on off-floor position transfers, but in fact only adopts narrowly defined, additional circumstances under which such transfers are permissible, the Exchange disputes the characterization of the Proposal as creating restrictions and curtailing flexibility. The Exchange does not agree with the statement that the on-exchange auction process is costly and inefficient. On-exchange transactions are subject to Exchange Rules and fees that are filed with the Commission, and may be used in the same manner by all market participants, regardless of whether a market participant is a Market-Maker and is opening or closing a position. The Exchange also notes that the costs of carrying positions to expiration and trading them independently and paying the quoted spread are borne by all market participants, not just Market-Makers. The Exchange does agree that tighter quotes benefit investors and the options market in general; however, the Exchange is not

[24] See Group One Letter at 1 and 2.
[25] See Group One Letter at 1.
[26] The Exchange notes that the rules of other options exchanges contain substantially similar rules that permit off-floor position transfers that are generally necessary due to a legal reason (such as bankruptcy or a merger), but not as a risk management tool.

proposing at this time that special relief be afforded to Market Makers through off-floor position transfers under Rule 6.7.

Other procedures do exist to support and encourage Market-Maker liquidity and foster tighter quotes for the benefit of investors and the options markets in general. For example, as discussed below, the Exchange has taken great strides to help offset the adverse impact of recent bank capital requirements on the ability of Market-Makers to provide liquidity to the options market. Additionally, when expressing the concern that not permitting a Market-Maker to execute crosses or effect off-floor transfers will negatively impact investors, SIG did not acknowledge a currently available option almost universally used by Market-Makers — The Options Clearing Corporation's ("OCC") universal Market-Maker account program. Under the program, positions in Market-Maker subaccounts registered across multiple options exchanges automatically transfer into a single universal account and net against other positions in the universal account. Universal subaccount transfers occur automatically at the time of clearing each Exchange-reported transaction. SIG references the ability to use such an account earlier in its letter, noting that use of such an account is permissible under the Proposal and that positions put into such an account to automatically offset each other.[27] Therefore, there is in fact a cost-efficient method available for Market-Makers to offset positions, and thus not create this perceived harm on investors. While the Exchange is not proposing any risk-management alternatives to the universal account, it is certainly not taking any away. To be clear, an OCC universal account is actually single account. Separately, if a Market-Maker, such as SIG, decides to have separate accounts for its option positions rather than use a single universal account, it would maintain those positions in separate accounts and trade them separately in accordance with the Exchange Rules. If a Market-Maker elects to maintain separate accounts, the Exchange believes any off-floor transfers between those accounts should be subject to the requirements of Rule 6.7 and the Proposal (and other applicable Exchange Rules).

The Exchange appreciates the importance of Market-Makers with respect to listed options trading as the primary providers of liquidity. This is demonstrated by the Exchange's significant efforts in recent years to attempt to ease the adverse impact of bank capital requirements on market participants, particularly Market-Makers, in the listed options market.[28] The Exchange also understands that Market-Makers engage in risk management hedging strategies using a variety of management tools. Both commenters reference the Exchange's recent adoption of Rule 6.8, which Rule provides Trading Permit Holders and non-Trading Permit Holders with a procedure in which it may effect transfers of

[27] See SIG Letter at 3.

[28] See Rule 5.88 (which describes a procedure for compression forums on the Exchange's trading floor); Rule 5.89 (which describes on-floor risk-weighted asset ("RWA") transactions in SPX options); and Rule 6.8 (which permits off-exchange option position transfers that establish net reductions of risk-weighted assets); see also http://www.cboe.com/aboutcboe/government-relations/policy-positions-advocacy#bankcapital (which home page for Cboe's Market Policy and Government Affairs Division describes the actions Cboe has taken to address the adverse consequences of bank capital requirements).

options positions off of the Exchange to establish net reductions of risk-weighted assets attributable to the Trading Permit Holder or non-Trading Permit Holder.[29] As described in the rule filing to adopt that procedure, the purpose of that rule was specifically to address the adverse consequences of bank capital requirements on Clearing Trading Permit Holders, which consequences the Exchange believes impacts liquidity in the listed options market.[30] In other words, that exception to the requirement that an options transaction occur on an Exchange was adopted specifically to address a risk management issue that has had a significant, negative impact on market participants. Additionally, the Exchange committed to the Commission that it will reevaluate Rule 6.8 in the event the U.S. Congress or federal regulators modify bank capital requirements in the future to determine whether any corresponding changes to the proposed rule (including potential deletion of the rule) are appropriate, because the Exchange was seeking to temporarily address bank capital requirements while it separately pushes for a broad, permanent legislative and regulatory solution.[31]

Rule 6.8 is intended to address a specific circumstance, and is not necessarily intended to be permanent, because the Exchange continues to believe it is best for the options market to "expose the maximum number of positions to the auction market."[32] Unlike the RWA off-floor position transfer procedure in Rule 6.8, the Exchange did not adopt the off-floor position transfer procedure in Rule 6.7 to facilitate risk management practices, and is not proposing additional exceptions for that purpose. The Exchange disputes SIG's comment that the filing to adopt Rule 6.8 regarding off-floor RWA transfers supports SIG's belief that "no change" market-maker transfers can and should be permitted broadly.[33] First, Rule 6.8 does not permit RWA transfers to result in a change in ownership (i.e., an RWA transfer may only occur between accounts of the same Person), just as proposed Rule 6.7(a)(2) only permits off-floor transfers between accounts of the same Person. The Exchange, therefore, does not believe Rule 6.8 supports SIG's belief that "no change" market-maker transfer can and should be permitted broadly, because a SIG "no change" transfer may occur between accounts of different Persons or with different owners as long as the change in beneficial ownership is not material. Additionally, the justification set forth in that rule filing was clearly to allow certain off-floor transfers

[29] The Exchange notes to date, it is not aware of any other options exchanges that have adopted rules similar to Cboe Options' Rule 6.8.

[30] See Securities Exchange Act Release No. 86603 (August 8, 2019), 84 FR 40460 (August 14, 2019) (SR-CBOE-2019-044); see also Securities Exchange Act Release Nos. 87107 (September 25, 2019), 84 FR 52149 (October 1, 2019) (SR-CBOE-2019-044) (order approving the proposed rule change to adopt an off-floor RWA transfer rule); and 87320 (October 16, 2019), 84 FR 56501 (October 22, 2019) (SR-CBOE-2019-095) (proposed rule change to relocate rule to permit off-floor RWA transfers from Rule 6.49B to Rule 6.8).

[31] Similarly, Rule 5.89 regarding on-floor RWA transactions in SPX options will only be in effect until October 2020 unless the Exchange requests an extension.

[32] See Securities Exchange Act Release No. 36241 (September 15, 1995), 60 FR 49430, 49431 (September 25, 1995) (SR-CBOE-95-36) (notice of proposed rule change to adopt Rule 6.49A (current Rule 6.7) to permit certain off-floor position transfers).

[33] See SIG Letter at 5.

for a specific, narrow purpose – to offset RWA due to bank capital requirements. The statement that an RWA off-floor transfer was analogous to an individual transferring funds from a checking account to a savings account provides no support for a SIG "no change" transfer, as SIG suggest. As noted above, a SIG "no change" transfer may involve a change – just not a material change – in beneficial ownership, which implies different entities (and thus different Persons) own the accounts. Therefore, a SIG "no change" transfer is not supported by a statement comparing different accounts of the same Person (or same entity).

Group One similarly believes that the proposed broad availability of no change transfers in Rule 6.8 should be extended to all no change transfers and that all of the explanations provided in support of Rule 6.8 are equally as applicable to all no change transfers.[34] Unlike SIG, a Group One "no change" transfer involves no change in beneficial ownership. However, the Exchange reiterates the purpose of Rule 6.8 was to address the specific issue of the impact of bank capital requirements on risk-weighted assets, while the purpose of the Proposal is in no way related to risk management practices. Rather, as discussed above, the Proposal is intended to codify certain longstanding guidance regarding off-floor transfers, harmonize off-floor transfer positions with those of other options exchanges, and add narrow, limited circumstances in which off-floor transfers are permissible that are consistent with the circumstances in which off-floor transfers are currently permitted under Rule 6.7.

It appears if the Exchange determines in the future to permit off-floor transfers that result in no change in beneficial ownership in all cases, the Exchange would have the support of the Commenters. Given that the Proposal is not proposing any new restrictions on such transfers (as such transfers are not permitted by current rules), and is merely adding other limited exceptions to the off-floor transfer prohibition, the Exchange believes this is nothing more than commentary that is not relevant to the Proposal. The Initial Rule Approval includes no discussion about providing flexibility for firms to manage risk, and the Exchange is not seeking to amend Rule 6.7 to add such flexibility at this time. If a new exception to a rule is not as broad as certain market participants would like it to be, that does not mean the exception is creating a restriction. The Commenters have not provided any reasoning as to why the proposed exceptions will create new burdens that do not exist today; they merely wish the Exchange would expand the exceptions to address issues that the Proposal is not intended to address. The Exchange notes again that if the Commission disapproves the Proposal, Commenters would continue to be prohibited from effecting the "no change" transfers they support. While the Commenters believe there may be benefits to the public of broader off-floor transfers, the Exchange continues to believe that it will benefit the public to expose the maximum number of positions to the auction market, allowing exceptions only for legal and administrative reasons, and other narrow exceptions. The Exchange believes permitting such transfers is inconsistent with the Exchange's longstanding policy described above and Rule 6.7. The Exchange discusses the reasonableness of the proposed requirement that off-floor transfers be non-routine and non-recurring, which requirement both Commenters questioned.

[34] See Group One Letter at 2.

In response to SIG's argument that the Proposal "fails to provide justification" and "lacks the required statutory bases" for imposing broad and substantial restrictions on no change transfers, the Exchange notes again that current Rule 5.12 already prohibits such transfers, and there is no current exception permitting such transfers in Rule 6.7. Since the Exchange is not proposing any new restrictions, the Exchange does not believe it is necessary to justify a restriction that is already in place.

As noted above, the Exchange is proposing new exceptions to the general prohibition of off-floor transactions. While the Commenters may want these exceptions to be broader, that does not mean the exceptions are therefore creating restrictions on the types of actions market participants may take. If the Exchange did not pursue the Proposal, there would be no impact on the types of transfers the Commenters, or any market participants, could effect off of the Exchange.

The Proposed Rule Change to Require Permissible Off-Floor Transfers Be Non-Routine and Non-Recurring Is Consistent with Current Rule 6.7

Proposed paragraph (g) states that the off-floor transfer procedure set forth in Rule 6.7 is intended to facilitate non-routine, non-recurring movements of positions. The off-floor transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process. The current permissible off-floor transfers listed in Rule 6.7 are significant, non-recurring events, such as transfers that occur due to a corporate reorganization or bankruptcy, or a gift to a minor. While the current Rule does not specifically state that the off-floor transfer procedure may not be used on a routine and recurring basis, that is consistent with the nature of the current circumstances under which off-floor transfers may be effected. While the Exchange believes adding certain circumstances in which off-floor transfers are permissible is appropriate, the Exchange also believes it is appropriate for these circumstances to be clearly delineated and narrowly defined, in line with the purpose of the current circumstances in which off-floor transfers may be effected.[35]

Group One stated that "[m]ore clarity needs to be provided to the breadth of the current language prohibiting the 'non-routine, non-recurring' use of no change transfers."[36] What constitutes non-routine and non-recurring will be based on facts and circumstances. The term "routine" generally refers to regular or habitual actions taken as part of an established procedure. The term recurring general means something that happens repeatedly. The permissible off-floor transfers may occur pursuant to the Proposal if they do not occur in accordance with an established procedure. Ultimately, it is important that the transfer could occur only in connection with one of the specific events/episodes listed in Rule 6.7 triggering the transfer (*e.g.*, in connection with a merger). If a transfer is prescribed by a Person's procedures to occur at specified times in intervals (such as hourly, daily, weekly, or monthly), the Exchange would view that to be routine and recurring and potentially be a violation of the proposed Rule requirement. The Exchange believes the meaning of these terms

[35] See Initial Rule Approval at 567.
[36] See Group One Letter at 1.

are known and established, and thus the requirement that off-floor positions transfers occur only on a non-routine, non-recurring basis is clear.

Group One also states that "a no change transfer is inherently different than a trade that occurs in the normal auction market process" and that it is "unaware of any normal auction market process that would allow for a single market participant to transact with itself in order to move a position across two accounts maintained by that same market participant."[37] While Group One references accounts of the "same market participant," it also references a "no change transfer" which, again, could result in a position transfer between accounts of different entities (and thus different market participants) with the same beneficial owner. The Exchange believes accounts of different Persons, even with the same beneficial owner, could be used to circumvent the normal auction process if, for example, those accounts were being used for different trading businesses. Therefore, the Exchange limited the proposed exception to transfers between accounts of the same Person.

The Exchange reiterates that Rule 5.12 prohibits all off-floor positions transfers, unless specifically permitted by an exception. None of the current or proposed exceptions permit a transfer between accounts for risk purposes if there is a change in beneficial ownership. With respect to transacting on an exchange (as opposed to an off-exchange transfer), the Exchange notes that a market participant is not required to transact with itself to close a position, but, if it chooses to do so, such transaction would need to be in accordance with applicable rules, including but not limited to Section 9(a)(1) of the Act. A market participant also has other choices besides crossing on an exchange when an off-floor transfer is not available, such as maintaining the positions separately and closing them independently through trading on an exchange or, in the case of a Market-Maker, using a universal account in the first place. The Exchange appreciates that there are costs and restrictions associated with transacting on an exchange versus transferring positions off-exchange. However, as noted above, the Exchange does not believe a market participant should be able to avoid the normal auction market process, except in those circumstances specified in Rule 6.7 and the Proposal, and instead believes it will best serve the options market to expose the maximum number of positions to the auction market.

If the same Person has multiple segregated accounts or aggregation units for its business and is regularly moving positions back and forth between them, the Exchange would need to conduct an examination to determine the reason for the repeated transfers. An examination requires extensive Exchange resources and, from what the Exchange understands based on feedback from firms, can be a time-consuming, burdensome process. Additionally, unlike in a universal account, the Commenters seek to transfer some but not all positions in these accounts on a regular basis. As part of the examination process, the Exchange would need to review why some but not all positions were transferred. The Exchange believes if these transfers were necessary for risk management purposes of affiliated market-makers, the automatic transfers (which occur regularly and may result in netting) that occur within a universal account provide Commenters with the ability to achieve the same results in a timelier and more objective and effective manner. Given the availability of universal accounts, the

[37] See Group One Letter at 2.

Exchange does not believe the cost of offering a broad off-floor account transfer process that would require resource-extensive exams by the Exchange to review firm compliance outweighs the potential benefits of offering another alternative, particularly when that alternative may reduce liquidity and transparency in the market. Moreover, regardless of whether there is post-transfer Exchange examination of the activity, the Exchange generally believes that off-floor transfers should not occur on a routine, recurring basis in the first place.

As described above, the circumstances in Rule 6.7 under which off-floor position transfers may occur are narrow and intended to be used infrequently when necessitated by certain legal or similar situations. PHLX noted when proposing its current off-floor position transfer rule that "members prefer to transfer positions as opposed to trading out of them [to reduce] administrative overhead and cost. In the typical situation, a member is undergoing a structural change and a one-time movement of positions offers efficiency in that process."[38] The Exchange similarly believes this to be the purpose of permitting Trading Permit Holders to avail themselves of off-floor position transfers under the Proposal. Rule 6.7 was not meant to replace the normal auction market, and that "repeated and frequent use" by the same members was not permitted.[39] The Proposal incorporates that concept from the Initial Rule Approval into the rules for more transparency and clarity around permissible off-floor transfers.

The Exchange acknowledges that Rule 6.8 regarding off-floor RWA transfers permits those transfers to occur on a routine and recurring basis. As discussed above, unlike Rule 6.7, the Exchange adopted Rule 6.8 specifically for risk management purposes. Rule 6.8 is intended to provide market participants with a procedure that may help them alleviate the adverse consequences created by bank capital requirements. Given the purpose of that rule and the need to effect transfers for RWA purposes, the Exchange believes permitting routine, recurring transfers under that rule is appropriate. As represented in the rule filing to adopt Rule 6.8, the Exchange will re-evaluate Rule 6.8 when there are regulatory or legislative changes to bank capital requirements that reduce or eliminate those consequences, and potentially the need for Rule 6.8. The Exchange believes in general and in the long-term that exposing the maximum number of positions to the auction market will increase transparency and liquidity in the options market, which contributes to a fair and open market and ultimately benefits investors and the public interest.

The Proposed Rule Change To Permit Off-Floor Transfers Between Accounts of the Same Person that Are Not Segregated Is Reasonable

The Commenters expressed concerns regarding the proposed separate account delineation in proposed Rule 6.7(a)(2). Specifically, SIG believes the "separate account delineations used to qualify transfers between *no change* [Market-Maker] accounts is unnecessary" and that "the impact of

[38] See PHLX Filing at 69316.
[39] See Initial Rule Approval at 566.

applying these delineations may perhaps be worsened by a degree of ambiguity."[40] SIG also states that "by restricting transfers between *no change* [Market-Maker] accounts using broadly defined separate account delineations, and coupling that with strict prohibitions on routine-use and netting . . . the *proposal* will unnecessarily and unreasonably restrict the ability of affiliated options market-makers . . . to perform risk-reducing *no change* transfers."[41]

The Exchange believes these concerns are unfounded. The "separate account delineation" being challenged by the Commenters permits an off-floor transfer of positions from one account to another account of the same Person, provided the accounts are not in "separate aggregation units or otherwise subject to information barrier or account segregations requirements."[42] First, the language about which the Commenters believe is ambiguous is based on language in another Exchange Rule, which Rule the Commission previously approved and found to be consistent with the Exchange Act.[43] There were no comments or concerns expressed during the public comment period for the rule filing to adopt that Rule that the separate account delineations were vague. Second, the Exchange believes the phrases "information barriers" and "aggregation units" are widely understood throughout the financial industry. Ultimately, these are methods used by Persons to separate accounts for different business (e.g., to separate a market-maker trading unit from a proprietary trading unit) or regulatory purposes (e.g., Regulation SHO). If accounts are subject to such separation for any such purpose, the Exchange believes it is reasonable to not permit off-floor position transfers between such accounts that are otherwise required to be kept separate, as such transfers could be seen as "breaching the wall" put in place by that separation.

Both Commenters suggest it would be better to use a "compliance procedure" to prevent transfers between separate accounts.[44] If a firm has implemented any information or other barriers between accounts of the same entity or affiliated entities, the Exchange believes that is sufficient reason to prohibit off-floor transfers between those accounts. The firm implemented those separations for a purpose, whether it was trading or regulatory. The purposes of these separations are generally to separate the businesses conducted through those accounts, and off-exchange transfers between those accounts could be used as way around those separations. Such off-exchange transfers would bring into question the separation itself and, as a result, the Exchange is proposing to limit the particular exception to transfers within the same aggregation unit or where no information barrier or

[40] See SIG Letter at 3.
[41] See SIG Letter at 1.
[42] See proposed Rule 6.7(a)(2).
[43] Rule 5.89(b), which describes an on-floor trading procedure that Trading Permit Holders may use to offset RWA, states that an RWA transaction is initiated for the account(s) of a Market-Maker, provided that an RWA Package consisting of SPX options from multiple Market-Maker accounts may not be in separate aggregation units or otherwise subject to information barrier or account segregation requirements.
[44] See SIG Letter at 6; Group One Letter at 2.

account segregation requirement exists. Again, with respect to Market-Makers, universal accounts are available and regularly used, making addition of a compliance procedure an unnecessary cost.

The Exchange Believes Harmonization of Off-Floor Position Transfer Procedures Across Options Exchanges Will Benefit Market Participants

The Proposal is part of an initiative the Exchange is leading to harmonize rules of options exchanges regarding permissible off-floor position transfers. Members of the Exchange's Regulatory Division have discussed the Proposal with the regulatory staffs of other options exchanges during meetings of the International Surveillance Group. During those discussions, other options exchanges indicated their support of the Proposal and intent to copy the Proposal (in its current form) as part of this harmonization process. Both the SIG Letter and the Group One Letter acknowledge that structure and uniformity throughout the industry with respect to off-floor position transfers may be beneficial.[45] The Exchange notes for a final time SIG's clear misunderstanding of the Proposal. SIG states that the Exchange included proposed Rule 6.7(a)(2) as part of its efforts to "standardize a process for certain *no change* intra-firm transfers."[46] Proposed Rule 6.7(a)(2) clearly does not permit a transfer to occur that may result in a change in beneficial ownership, regardless of whether the change is material. The proposed exception clearly states it will permit transfers between accounts of the same Person, and thus not between affiliated entities. The Exchange continues to pursue this harmonization effort, as it also believes a uniform off-floor position transfer rule will benefit market participants.

Cboe Options appreciates the opportunity to respond to comments on the above-referenced proposed rule change and urges the Commission to approve it in a timely manner. Please feel free to contact Stephanie Marrin at [redacted] or me at [redacted] if you have any questions related to this matter.

Sincerely,

Laura G. Dickman
Vice President, Associate General Counsel

[45] See SIG Letter at 1 (SIG "applaud[s] [Cboe Options] for initiating an effort to bring much needed uniformity for position transfers to all options exchanges"); and Group One Letter at 1 ("Group One supports [Cboe Options'] efforts in proposing a structure to support position transfers").
[46] See SIG Letter at 9.