

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88714; File No. SR-NYSECHX-2020-11)

April 21, 2020

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Temporarily Extend the Time within Which Institutional Brokers are required to Report Non-Tape, Clearing-Only Submissions into the Exchange's Systems

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 20, 2020, the NYSE Chicago, Inc. ("NYSE Chicago" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 Substance of the Proposed Rule Change

The Exchange proposes that, for a temporary period that begins on April 20, 2020, and ends on the earlier of the reopening of all the options trading floors or after the end of the day on May 15, 2020, to temporarily extend the time within which Institutional Brokers are required to report non-tape, clearing-only submissions into the Exchange's systems pursuant to Article 21, Rule 6(a)(3). The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes that, for a temporary period that begins on April 20, 2020, and ends on the earlier of the reopening of all the options trading floors or after the end of the day on May 15, 2020, to temporarily extend the time within which Institutional Brokers⁴ are required to report non-tape, clearing-only submissions into the Exchange’s systems pursuant to Article 21, Rule 6(a)(3). The Exchange is proposing this temporary relief due to changes in work flow in the post-trade processing of transactions in the cash equity leg of stock-option orders that are a consequence of the precautionary measures to prevent the spread of COVID-19 taken by options exchanges and their members and by Institutional Brokers.

Role of Institutional Brokers in Equity Leg of Options with Stock Trades

Institutional Brokers are Exchange Participants that provide order handling and execution services for other broker-dealers or institutional clients, including options floor traders. Once an

⁴ The term “Institutional Broker” is defined in Article 1, Rule 1(n) to mean a member of the Exchange who is registered as an Institutional Broker pursuant to the provisions of Article 17 and has satisfied all Exchange requirements to operate as an Institutional Broker on the Exchange. There are currently five Institutional Brokers on the Exchange.

Institutional Broker establishes a relationship with an options floor trader, that options trader can use the Institutional Broker to either execute and clear or only clear the stock leg of complex options transactions with a stock component. This proposed rule change concerns the post-trade processes associated with an options trader using an Institutional Broker to clear the equity leg of an options with stock transaction that the options floor broker reports directly to a FINRA Trade Reporting Facility (“TRF”).

Specifically, an Institutional Broker can authorize its options floor trader clients that execute a stock trade in the over-the-counter (“OTC”) market and use a non-exchange front-end order and execution management system to report the transaction to a TRF to use the Institutional Broker’s MPID and for clearing use the Institutional Broker’s clearing firm.⁵ When such stock trade is reported to the TRF, it is simultaneously also reported for clearing purposes to the Deposit Trust Clearing Corporation (“DTCC”) with the Institutional Broker’s clearing account assigned to both sides of the trade.

The Institutional Broker then uses Brokerplex⁶ as a post-trade tool to transfer the securities to the clearing accounts associated with the actual counter-parties to the equity transaction. This process is governed by Article 21, Rule 6, which concerns the submission of clearing information for transactions executed off of the Exchange. Article 21, Rule 6(a)(1) provides that an Institutional Broker may enter clearing-only submissions into Brokerplex for trades already reported that were executed on another exchange or in the OTC market. As the Rule describes, the purpose of these clearing-only submissions is to transfer securities from one

⁵ Unlike some options floor brokers, Institutional Brokers are members of FINRA and able to report the stock component of a stock-option trade to a TRF.

⁶ Brokerplex is an order entry, management and recordation system provided by the Exchange for use by Institutional Brokers. See Article 17, Rule 5.

Clearing Participant to another.⁷ This transfer of position from one Clearing Participant to another occurs after the trade has been originally reported and sent to DTCC for clearing. When an Institutional Broker uses Brokerplex to transfer a position to another Clearing Participant, the Exchange submits that position transfer to DTCC so that the correct ultimate counter-parties' clearing accounts are identified.

On average, an Institutional Broker can perform anywhere between 30 and 40 transactions per day that would be subject to Article 21, Rule 6(a) where the Institutional Broker transfers positions from one Clearing Participant to another.

To enter clearing-only submissions to transfer positions into Brokerplex, the Institutional Broker needs to obtain from the options floor trader the information about the counter-parties to the equity transaction. Once the Institutional Broker has the relevant information, e.g., the names of each party and number of shares to allocate to each party, the Institutional Broker enters this information into Brokerplex and transfers the positions from its own account (or the account of its clearing firm) to the accounts of the ultimate beneficiaries of the trade. Until the Institutional Broker receives this information from the options floor trader, the Institutional Broker bears the risk of these transactions, which have already been reported in its name. The Institutional Broker is responsible for ensuring that the clearing information it receives from its options floor trader customer is complete before fully submitting the transaction into Brokerplex so that the final allocations are accurate.

Article 21, Rule 6(a)(3) requires an Institutional Broker to enter all such non-tape, clearing-only submissions into the Exchange's systems for a non-Exchange transaction (i.e., the

⁷ Pursuant to Article 1, Rule 1, the term "Clearing Participant" means a Participant that has been admitted to membership in a Qualified Clearing Agency, i.e., DTCC, pursuant to the Rules of the Qualified Clearing Agency.

equity legs that an options floor trader reports directly to a TRF) within three (3) hours of the execution of such transaction. If an Institutional Broker does not meet this three-hour requirement, there is no risk that a trade would not clear.⁸ Nevertheless, an Institutional Broker who does not meet this three-hour requirement would be out of compliance with Exchange rules.

Under normal trading conditions, i.e., when the options trading floors are open and Institutional Brokers are working in their offices, the three-hour window provides sufficient time for the Institutional Broker to identify which options floor trader was involved in the trade and then obtain from that options trader the identity of the counter-parties so that transfers of securities under Article 21, Rule 6(a)(1) can be completed within three hours.

Disruptions from Social Distancing Measures

On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic.⁹ To slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses.

In response, since March 23, 2020, the four largest options trading floors have been temporarily closed.¹⁰ To the extent options floor traders continue trading and use Institutional

⁸ Notwithstanding the current 3-hour reporting requirement in Article 21, Rule 6(a)(3), such trades are reported to DTCC by the time DTCC's systems close, which is 8:30 p.m. ET.

⁹ See WHO Director-General's Opening Remarks at the Media Briefing on COVID-19 (March 11, 2020), available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

¹⁰ See Press Release, dated March 18, 2020, announcing that NYSE Arca and NYSE American options trading floors will temporarily close beginning March 23, 2020, available here: <https://ir.theice.com/press/news-details/2020/New-York-Stock-Exchange-to-Move-Temporarily-to-Fully-Electronic-Trading/default.aspx>; Nasdaq PHLX Options Trader Alert #2020-7, dated March 15, 2020, announcing that NYSE PHLX will suspend open outcry trading beginning March 17, 2020, available here: <https://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2020-7>; Press Release, dated

Brokers to transfer the clearing for the stock leg of options with stock transactions, they are doing so in a work-from-home capacity and not from the options trading floors, potentially making it more time consuming to communicate the details of a trade and make adjustments within the three hours permitted under Article 21, Rule 6(a)(3). Specifically, in response to these workflow changes, Institutional Brokers have authorized their options trading clients to use the Institutional Broker MPID and clearing firm information on specified non-exchange front-end order and execution management systems.¹¹ Because the options floor traders have been authorized by the Institutional Broker to report the equity leg directly to the TRF via such electronic systems, the Institutional Broker may not be aware that a trade has happened until it sees the trade appear in its clearing account, and then may not know which options floor trader entered the trade until the options floor trader that entered the trade contacts the Institutional Broker.

With this temporary change in workflow, the current three-hour time period specified in Article 21, Rule 6(a)(3) may not provide sufficient time for an Institutional Broker to both obtain and then submit into Brokerplex the clearing information needed to allocate such off-Exchange transactions to the correct counterparties.

Proposed Rule Change

Given the current changes to Institutional Broker workflow that have resulted from the

March 12, 2020, announcing that Cboe Options Exchange will temporarily close its trading floor beginning March 16, 2020, available here: <http://ir.cboe.com/~media/Files/C/CBOE-IR-V2/press-release/2020/press-release-cboe-announces-trading-floor-closure.pdf>.

¹¹ While Institutional Brokers can authorize such use at any time, the Exchange understands that when the options trading floors are open, Institutional Brokers do not authorize this workflow process, and that once all of the options trading floors are open, Institutional Brokers will remove such authorization.

temporary closures of options trading floors, the Exchange proposes that, for a temporary period that begins on April 20, 2020, and ends on the earlier of the reopening of all the options trading floors or after the end of the day on May 15, 2020, to temporarily extend the time that Institutional Brokers must enter non-tape, clearing-only submissions into Brokerplex as required under Article 21, Rule 6(a)(3).

As noted above, Institutional Brokers that have authorized options floor traders to enter equity transactions directly into a non-exchange front-end order and execution management system may not be aware of an equity transaction reported to a TRF in its name until the trade appears on its clearing account. Once they become aware of such a trade, Institutional Brokers proactively obtain information about such trades to allocate them to the correct counterparties. When the options trading floors are open, an options floor trader will communicate directly with the Institutional Broker for the reporting and clearing of the equity transaction. In this case, the Institutional Broker knows as the trade occurs which options floor trader customer is responsible for the transaction and knows who to subsequently contact to obtain the necessary clearing information. With options trading floors temporarily closed and options floor traders working from home, Institutional Brokers must now reach out to individual traders to identify who effected the transaction and the names of all counterparties. It may then take several more telephone calls before the Institutional Broker is able to obtain the complete allocation information for such transaction. The Institutional Broker may not be able to obtain the full scope of the information it needs to submit from the options floor trader, e.g., names of parties to a trade and specific allocations to each party, in order to transfer securities from one Clearing Participant to another pursuant to Article 21, Rule 6(a)(1) and enter it into Brokerplex within the current three-hour time requirement.

As a result, three of the five Institutional Brokers, which represent over 80% of the order flow on the Exchange, have sought relief from the Exchange with respect to the time requirement in Article 21, Rule 6(a)(3). The Exchange expects the relief sought by this proposed rule change to impact, at most, 30 to 40 transactions per day, which represents approximately 15% of all transactions conducted by Institutional Brokers through Brokerplex. These trades are often large in size and involve multiple counterparties and, therefore, require more time to allocate among the various participants relative to trades that involve a single counterparty.

The Exchange notes the proposed rule change would have no impact on trade reporting or clearing of trades, as all trades would have already been reported to the Consolidated Tape in accordance with applicable trade reporting rules of the TRF and submitted to DTCC for clearing. Until such time that an Institutional Broker has information from the options floor trader about the counterparties to the trade, it bears the risk of the transaction. That risk is only transferred from the Institutional Broker when the Institutional Broker allocates the trades to the appropriate (and actual) parties to the trade based on the information it receives from the options floor trader.

Accordingly, the Exchange proposes that, for a temporary period that begins on April 20, 2020, and ends on the earlier of the reopening of all the options trading floors or after the end of the day on May 15, 2020, Institutional Brokers may enter non-tape, clearing-only submissions into the Exchange's systems for non-Exchange transaction by 8:00 p.m. ET of the day of the trade, rather than within three hours as required under the rule. The Exchange believes that extending the time to enter clearing-only submissions until 8:00 p.m. ET during this temporary period is appropriate because the Brokerplex system closes at that time and thus, the proposed time would provide that all clearing-only submissions would be entered on the same day that a trade has been consummated. Because all such submissions would be required by 8:00 p.m., the

Exchange would be able to report such submissions, i.e., the Institutional Broker's transfer of positions from the Institutional Broker's account to the appropriate counter-party to the trade, to the clearing agency before DTCC's systems close.

Given the unique circumstances of the precautionary measures to prevent the spread of COVID-19, the Exchange believes that extending the time to enter clearing-only submissions to 8:00 p.m. ET would be appropriate. In practice, Institutional Brokers generally make these submissions once they have complete information. Institutional Brokers have a strong incentive to submit such submissions into Brokerplex because they bear the risk for the transaction until it can be allocated to the correct counterparties. Accordingly, even during this temporary period, clearing-only submissions related to transactions that occur earlier in the trading day will likely be entered into Brokerplex as soon as the Institutional Broker receives the necessary information, which would likely be well before 8:00 p.m. ET. However, for complex transactions that take the Institutional Broker a longer time to gather the information - even for transactions that occurred earlier in the trading day - the temporary extension until 8:00 p.m. ET would give them sufficient time to obtain the necessary information in order to meet their obligation to ensure that the information is complete before entering it into Brokerplex.

Because the proposed rule change would not impact trading, the timely reporting of transactions to the Consolidated Tape, or clearing, the Exchange believes the proposed 8:00 p.m. ET cut-off strikes the appropriate balance between continuing to require that Institutional Brokers enter clearing-only submissions on the day that a trade is consummated and providing them with additional time to enter such submissions when their normal workflow is impeded as a result of changes to workflow that are outside of their control. The Exchange notes that the proposed rule change would not require any technology changes.

The Exchange proposes to effect this change by adding Commentary .05 to Article 21, Rule 6 that sets forth the proposed rule text that would replace Article 21, Rule 6(a)(3) during a temporary period that begins on April 20, 2020, and ends on the earlier of the reopening of all the options trading floors or after the end of the day on May 15, 2020. The Exchange believes that this temporary relief will permit Institutional Brokers to comply with the reporting requirements in Article 21, Rule 6(a) during a period when their staff and staff of options floor traders are working from home and completing such tasks within three hours is less straightforward and more complex.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade; 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. As a result of uncertainty related to the ongoing spread of the COVID-19 virus, four major options trading floors have been temporarily closed. In addition, social-distancing measures have been implemented throughout the country to reduce the spread of COVID-19, resulting in staff of options floor traders and Institutional Brokers working from home.

The proposed rule change would allow the Exchange to temporarily extend the time by which Institutional Brokers would be required to report non-tape, clearing-only submissions into the Exchange's systems for a given non-Exchange transaction to 8:00 p.m. ET of the day on

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

which the execution of such transaction occurred rather than within three (3) hours of the execution of such transaction. The Exchange believes that this temporary relief is necessary and appropriate in the public interest, and is consistent with the protection of investors, given the changes to workflow that increase the time it takes for Institutional Brokers to obtain complete information about counterparties for such trades during a period when options trading floors are closed and both options floor traders and Institutional Brokers are working from home as precautionary measures to protect the health and safety of their employees and to prevent the spread of COVID-19. In particular, this proposed rule change would have no impact on trade reporting or clearing of trades, as all trades would be reported to the Consolidated Tape in accordance with applicable trade reporting rules of the TRF and submitted to DTCC for clearing in a timely manner. This proposed rule change concerns only post-trade allocations of the equity leg of an options with stock transaction that has already been reported to the DTCC in the name of the Institutional Broker's clearing firm. Until the Institutional Broker reports such submission into Brokerplex with the correct counterparties, the Institutional Broker bears the risk of the transaction. In addition, this proposed rule change would have no impact on trading because Article 21, Rule 6 concerns only the reporting of transactions that have already been consummated and reported to another exchange or trade reporting facility and disseminated to the Consolidated Tape.

Given the unique circumstances of the precautionary measures to prevent the spread of COVID-19, the Exchange believes that extending the time to enter clearing-only submissions to 8:00 p.m. ET is necessary and appropriate in the public interest. The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, and promotes just and equitable principles of trade,

by providing Institutional Brokers with additional time to enter clearing-only submissions so that they may properly and accurately transfer positions from their clearing account to the clearing account of the actual participants on the trade, which submission will remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, protect investors and the public interest. In practice, Institutional Brokers generally make these submissions once they have complete information because they have a strong incentive to do so since they bear the risk for the transaction until it can be allocated to the correct counterparties. Accordingly, even during this temporary period, clearing-only submissions related to transactions that occur earlier in the trading day will likely be entered into Brokerplex as soon as the Institutional Broker receives the necessary information, which would likely be well before 8:00 p.m. ET. However, for complex transactions that take the Institutional Broker a longer time to gather the information - even for transactions that occurred earlier in the trading day - the temporary extension until 8:00 p.m. ET would give them sufficient time to obtain the necessary information in order to meet their obligation to ensure that the information is complete before entering it into Brokerplex. The proposed rule change would also ensure that Institutional Brokers continue to enter clearing-only submissions on the day that a transaction occurs and to do so no later than the time that Brokerplex closes.

Because the proposed rule change would not impact trading, the timely reporting of transactions to the Consolidated Tape, or clearing, the Exchange believes the proposed 8:00 p.m. ET cut-off strikes the appropriate balance between continuing to require that Institutional Brokers enter clearing-only submissions on the day that a trade is consummated and providing them with additional time to enter such submissions when their normal workflow is impeded as a result of changes to workflow that are outside of their control.

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 proposed rule change is not designed to address any competitive issues but rather to provide temporary relief for Institutional Brokers that are required to comply with Article 21, Rule 6(a)(3) during a temporary period when the options trading floors are closed and staff of options floor traders and Institutional Brokers are working from home.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the 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 from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative for 30 days after the date of the filing. Pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange represents that the filing is necessary given the changes to workflow that increase the time it takes for Institutional Brokers to obtain complete information about counterparties for such trades during a period when options trading floors are closed and both options floor traders and Institutional Brokers are working from home as precautionary measures to protect the health and safety of their employees and to prevent the spread of COVID-19. The Exchange represents that the proposed rule change would have no impact on trade reporting or clearing of trades because Article 21, Rule 6 concerns only the reporting of transactions that have already been consummated and reported to another exchange or trade reporting facility and disseminated to the Consolidated Tape. The Commission believes that the proposed rule change would provide additional time to institutional brokers to report these transactions while the options trading floors are closed and market participants' staff are working from home. The Commission notes that the proposal is a temporary measure designed to respond to current, unprecedented market conditions. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

upon filing.²⁰

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSECHX-2020-11 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-NYSECHX-2020-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSECHX-2020-11, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12) and (59).