



Cboe Options Regulatory Circular RG18-039

Date: October 19, 2018

To: Trading Permit Holders

From: Regulatory Division

RE: On-Floor and Off-Floor Position Transfers

Cboe Exchange, Inc. ("Cboe Options" or the "Exchange") is issuing this Regulatory Circular to advise Trading Permit Holders ("TPHs") of changes to Rule 6.49A that were recently approved by the SEC and are now in effect (see approval order for Cboe Options Rule Filing [SR-Cboe-2018-060](#), which is available [here](#)).

As described in more detail in the rule filing and below, Rule 6.49A was amended to (i) delete provisions related to the on-floor position transfer process; and (ii) amend the criteria and procedures related to off-floor position transfers.

On-Floor Position Transfer Pursuant to Cboe Rule 6.49A (Eliminated)

Rule 6.49A was amended to remove language permitting on-floor transfers and the corresponding on-floor transfer procedures. Rule 6.49A now only includes provisions permitting off-floor position transfers that meet certain criteria.

Off-Floor Position Transfers Pursuant to Cboe Rule 6.49A

Rule 6.49A, as amended, permits off-floor transfers of existing positions in options listed on the Exchange of a TPH or of a Non-TPH that are to be transferred on, from, or to the books of a Clearing TPH off-floor if the off-floor transfer involves one or more of the enumerated circumstances provided in Rule 6.49A. The off-floor transfer procedures are intended to facilitate non-routine, non-recurring transfers of positions and are not to be used repeatedly or routinely to circumvent the normal auction process (see Rule 6.49A(g)). Please note the off-floor transfer procedures set forth in Rule 6.49A are only applicable to positions in options listed on the Exchange and may be subject to other laws, rules and regulations, including rules of other self-regulatory organizations (see Rule 6.49A(h)).

- **Permitted Transfers**

Rule 6.49(a) permits off-floor transfers of options listed on the Exchange of a TPH or a Non-TPH that are transferred on, from, or to the books of a Clearing TPH if the transfer involves one or more of the following events:

- (1) pursuant to Cboe Rule 4.6 or 4.22, an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;

- (2) the transfer of position from one account to another account where no change in ownership involved (i.e., the accounts of the same Person (as defined in Rule 1.1)¹), provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;
- (3) the consolidation of accounts where no change in ownership is involved;
- (4) merger, acquisition, consolidation or similar non-recurring transaction for a Person;
- (5) the dissolution of a joint account in which the remaining TPH assumes the positions of the joint account;
- (6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;
- (7) positions transferred as part of a TPH's capital contribution to a new joint account, partnership, or corporation;
- (8) the donation of positions to a not-for-profit corporation;
- (9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or
- (10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.

In addition to the events noted above, the Exchange's President (or senior-level designee) may grant an exemption that would allow for an on-floor transfer in limited circumstances. See Rule 6.49A(f) for the particular requirements for such an exemption.

- **Netting, Margins and Haircuts**

Subject to certain exceptions, Rule 6.49A(b) provides that, when effecting an off-floor transfer no position may net against another position and no position transfer may result in preferential margin or haircut treatment.

Under Rule 6.49A(b)(2), netting is permitted for off-floor transfers on behalf of a Market-Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market-Maker nominees are trading for the same TPH organization and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot clear easily into the same Market-Maker account at The Options Clearing Corporation ("OCC"). In such circumstances, all Market-Maker positions in the exchange-specific accounts for the multiply listed class may be automatically transferred on their trade date into one universal Market-Maker account at OCC. Netting may also be permitted in certain instances that are subject to a Presidential Exemption described in Rule 6.49A(f).

- **Permitted Transfer Price Methodologies**

Rule 6.49A(c) lists the acceptable methodologies for determining the transfer price of options positions transferred pursuant to the procedures set forth in Rule 6.49A.

To the extent the transfer price is consistent with applicable laws, rules, and regulations, including tax and accounting rules and regulations, the transfer price at which an off-floor transfer is effected may be:

¹ Under Rule 1.1(ff), 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.

- (1) the original trade prices of the positions that appear on the books of the transferring Clearing TPH, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct errors must be transferred at the correct original trade prices;
- (2) mark-to-market prices of the positions at the close of trading on the transfer date;
- (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date; or
- (4) the then-current market price of the positions at the time the off-floor transfer is effected.

- **Prior Written Notice Requirement**

Pursuant to Rule 6.49A(d), a TPH(s) and its Clearing TPH(s) (to the extent that a TPH is not self-clearing) must submit written notice to the Exchange prior to effecting an off-floor transfer from or to the account(s) of a TPH. Please note that this prior written notice requirement applies only to transfers involving a TPH's positions and not to positions of non-TPHs. In addition, no notice would be required to effect off-floor transfers to correct bona fide errors as described in Rule 6.49A(a)(1).

The written notice must be emailed to 6.49A-Notifications@cboe.com. The notice must indicate:

- (1) the Exchange-listed options positions to be transferred;
- (2) the nature of the transaction;
- (3) the enumerated provision(s) in Rule 6.49A(a) pursuant to which the positions are being transferred;
- (4) the anticipated transfer date;
- (5) the method for determining the transfer price under Rule 6.49A(d); and
- (6) any other information requested by the Exchange.

Receipt of written notice does not constitute a determination by the Exchange that the off-floor transfer conforms with the requirements of Rule 6.49A. TPHs and Clearing TPHs that effect off-floor transfers that do not conform to the requirements of proposed Rule 6.49A will be subject to disciplinary action.

- **Record Keeping Requirement**

Pursuant to Rule 6.49A(e), each TPH and each Clearing TPHs is a party to an off-floor transfer must make and retain records of the information provided to the Exchange as required by Rule 6.49A(d)(1) (see the "Prior Written Notice Requirement" discussion above) as well as information on: (1) the actual Exchange-listed options transferred; (2) the actual transfer date; and (3) the actual transfer price (and the original trade dates, if applicable). The Exchange may also request that the TPH or Clearing TPH to provide other information.

Additional Information

Please refer to Rule 6.49A ([available here](#)) and Rule Filing SR-Cboe-2018-060 (see links above) for additional information. Any further questions may be directed to Regulatory Interpretations at RegInterps@cboe.com or (312) 786-8141.