

under certain conditions, would not lose its exclusion if it notifies the Commission on Form N-6F of its intent to make an election to be regulated as a business development company. The company only has to file a Form N-6F once.

The Commission estimates that on average approximately 4 companies file these notifications each year. Each of those companies need only make a single filing of Form N-6F. The Commission further estimates that this information collection imposes burden of 0.5 hours, resulting in a total annual PRA burden of 2 hours. Based on the estimated wage rate, the total cost to the industry of the hour burden for complying with Form N-6F would be approximately \$736.

The collection of information under Form N-6F is mandatory. The information provided under the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: November 18, 2020.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90457; File No. SR-CBOE-2020-075]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Make Qualified Contingent Cross Orders Available for FLEX Option Trading

November 18, 2020.

On August 3, 2020, Cboe Exchange, Inc. (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to make Qualified Contingent Cross Orders available for FLEX option trading. The proposed rule change was published for comment in the **Federal Register** on August 20, 2020.<sup>3</sup> On October 1, 2020, the Commission designated a longer period for Commission action on the proposed rule change, until November 18, 2020.<sup>4</sup> On October 23, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change.<sup>5</sup> The Commission has not received any comments on the proposal. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

#### I. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to amend Rule 5.70 and Rule 5.72, as well as Rule 5.33, to make Qualified Contingent Cross ("QCC") Orders available for FLEX trading. 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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 89564 (August 14, 2020), 85 FR 51531.

<sup>4</sup> See Securities Exchange Act Release No. 90062 (October 1, 2020), 85 FR 63312 (October 7, 2020).

<sup>5</sup> Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2020-075/srcboe2020075-7940531-224727.pdf>.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange proposes to amend Rule 5.70 and Rule 5.72, as well as Rule 5.33, to make QCC Orders, which includes Complex QCC Orders and QCC with Stock Orders, available for electronic FLEX trading. Currently, QCC Orders are available only for electronic non-FLEX trading.

QCC Orders facilitate the execution of option orders that are part of Qualified Contingent Trades ("QCTs"),<sup>7</sup> by permitting Trading Permit Holders ("TPHs") to cross options orders without exposure while effecting the trade in the equities leg in another market at a price necessary to achieve the net price. Currently, TPHs may choose to submit the options component

<sup>7</sup> See Rule 5.6(c), definition of "Qualified Contingent Cross or QCC", paragraph (1), which defines a "qualified contingent trade" as a transaction consisting of two or more component orders, executed as agent or principal, where: (A) At least one component is an NMS stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (B) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (C) the execution of one component is contingent upon the execution of all other components at or near the same time; (D) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined by the time the contingent order is placed; (E) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (F) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.

of a QCT as a FLEX Option, yet, are currently unable to execute a FLEX Options component of a QCT on the Exchange in the same efficient, unexposed manner as they may execute a non-FLEX option component of a QCT on the Exchange. The Exchange now seeks to provide TPHs and their customers with the same QCC trading capabilities for FLEX trading that are currently available for non-FLEX trading, thus providing TPHs with the same capability to execute the options parts of QCTs that are comprised of FLEX Options.

Rule 5.6(c) currently provides for the non-FLEX definition of a QCC Order. Specifically, a QCC order is comprised of an originating order to buy or sell at least 1,000 contracts (or 10,000 mini-option contracts) that is identified as being part of a QCT coupled with a contra-side order or orders totaling an equal number of contracts. If a QCC Order has more than one option leg (a “Complex QCC Order”), each option leg must have at least 1,000 standard option contracts (or 10,000 mini-option contracts). A QCC order represents one component of a QCT, which must be paired with a stock order. When a User enters a QCC Order, the User is responsible for executing the associated stock component of the QCT at or near the same time of the QCC order execution, just as a User is ultimately responsible for complying with execution requirements for any order a User submits. Indeed, the Exchange requires TPHs to properly mark all QCC Orders as such, and has a surveillance program in place which assesses TPH compliance with the requirements applicable to QCC Orders, including the requirement that the stock leg of the transaction be executed at or near the same time as the options leg.<sup>8</sup> To execute the associated stock, a User may choose to either (1) separately submit an option order to the Exchange and the stock order to a stock execution venue in time to be executed at or near the same time of each other, or (2) submit a QCC with Stock Order. A QCC with Stock Order is a type of QCC Order (including a Complex QCC Order) entered with a stock component to be electronically communicated by the Exchange to a designated broker-dealer for execution on behalf of the submitting User and, as indicated, are available to Users on a voluntary basis.<sup>9</sup>

<sup>8</sup> See Securities Exchange Act Release No. 15058 (June 17, 2011), 76 FR 35491 (Order Granting Approval of Proposed Rule Change Establishing Qualified Contingent Cross Orders) (“QCC Approval Order”).

<sup>9</sup> See Rule 5.33(a), definition of “QCC with Stock Order”.

The Exchange proposes to adopt Rule 5.72(e)<sup>10</sup> to govern FLEX QCC Orders. The proposed rule is simply making QCC Order available for FLEX, and as such, the definition of FLEX QCC Orders is substantively identical as non-FLEX QCC Orders in Rule 5.6(c) and FLEX QCC Orders will execute in substantially the same manner with few differences unique to trading in FLEX Trading. Proposed Rule 5.72(e) provides that a “FLEX QCC” order is comprised of an originating order to buy or sell at least 1,000 standard FLEX Option contracts (or 10,000 mini FLEX option contracts) that is identified as being part of a QCT (as defined in Rule 5.6(c)) coupled with a contra-side order or orders totaling an equal number of contracts. If a FLEX QCC order has more than one option leg (a “Complex FLEX QCC” order), each option leg must have at least 1,000 standard FLEX option contracts (or 10,000 mini FLEX option contracts). This is substantively identical to the non-FLEX QCC definition in Rule 5.6(c). The Exchange notes that Users will enter into the System all FLEX QCC Orders as they would any other FLEX Order pursuant to 5.72(b) (governing the order entry of FLEX Orders) and the applicable FLEX auction rules. As such, the Exchange points out that FLEX QCC Orders may only be submitted for series consistent with the FLEX Rules.<sup>11</sup> Like QCC Orders submitted for non-FLEX trading,<sup>12</sup> FLEX QCC Orders will execute automatically upon entry without exposure pursuant to proposed Rule 5.72(e)(1). The Exchange notes, as there is no FLEX Order Book, the corresponding provisions in Rule 5.6(c)<sup>13</sup> and 5.33(f)(2) regarding QCC Order execution requirements in connection with yielding to prices at which Priority Customer Orders may be resting in the Simple Book<sup>14</sup> and Complex Order Book (“COB”),<sup>15</sup> and in Rule 5.6(c)<sup>16</sup> in connection with pricing QCC Orders at or between the NBBO<sup>17</sup> would not be applicable to QCC Orders submitted to FLEX.<sup>18</sup> Proposed Rule 5.72(e)(1) also

<sup>10</sup> The Exchange also moves current paragraph (e) to paragraph (f).

<sup>11</sup> See Rules 5.72(b), (c), and (d).

<sup>12</sup> See Rule 5.6(c), definition of “Qualified Contingent Cross or QCC”, paragraph (2).

<sup>13</sup> See *id.*

<sup>14</sup> See Rule 5.6(c), definition of “Qualified Contingent Cross or QCC”, subparagraph (2)(A)(i).

<sup>15</sup> See Rule 5.6(c), definition of “Qualified Contingent Cross or QCC”, subparagraph (2)(B)(i) and (iii).

<sup>16</sup> See Rule 5.6(c), definition of “Qualified Contingent Cross or QCC”, subparagraph (2).

<sup>17</sup> See Rule 5.6(c), definition of “Qualified Contingent Cross or QCC”, subparagraph (2)(A)(ii) and (B)(ii).

<sup>18</sup> This is true for any FLEX Order.

provides that a FLEX QCC Order is cancelled if it cannot execute, and that Rule 5.9 (related to exposure of orders on the Exchange) does not apply to FLEX QCC orders, both of which are consistent with the current non-FLEX QCC Rules.<sup>19</sup> Like QCC Orders submitted in non-FLEX classes,<sup>20</sup> QCC orders submitted in FLEX classes must be entered in the standard increment for the class.<sup>21</sup> Therefore, the proposed rule change adds in proposed Rule 5.72(e)(2) that FLEX QCC may only be entered in the increments applicable to FLEX Orders under Rule 5.4(c)(4).

Proposed Rule 5.72(e)(1) also provides that a FLEX QCC with Stock order executes pursuant to Rule 5.33(l). The proposed rule change amends Rule 5.33(1) to specify that the provisions governing QCC with Stock include FLEX QCC with Stock. As such, pursuant to Rule 5.33(l), for a FLEX QCC with Stock Order, a User must include the same requisite information as they must include when submitting such orders for non-FLEX trading pursuant to Rule 5.33(l)(3)(A),<sup>22</sup> and the System will process the option and stock components of such orders in the same manner as it does for non-FLEX QCC orders pursuant to Rule 5.33(l)(3)(B) and (C).<sup>23</sup>

The Exchange seeks to make QCC Orders available for FLEX trading due to the growing customer demand it has received for QCC functionality for FLEX trading. The Exchange notes that a number of TPHs have expressed to the Exchange that use of QCC for FLEX

<sup>19</sup> See Rule 5.6(c), definition of “Qualified Contingent Cross or QCC”, subparagraph (2)(C) and (2)(C), respectively.

<sup>20</sup> See 5.6(c), definition of “Qualified Contingent Cross or QCC”, paragraph (3).

<sup>21</sup> See Rule 5.4(c)(4) (which sets forth minimum increments for FLEX options).

<sup>22</sup> Rule 5.33(l)(3)(A) requires a User to include a net price for the stock and option components in accordance with the minimum increments for stock-option orders and (ii) identify the designated broker-dealer as set forth in Rule 5.33(l)(2).

<sup>23</sup> Rule 5.33(l)(3)(B) provides that the System executes the option component in accordance with Rule 5.6(c), but does not immediately send the User a trade execution report, and automatically communicates the stock component to the designated broker-dealer for execution at a stock trading venue. If the option component(s) of a QCC with Stock Order cannot execute, the System cancels the QCC with Stock Order, including both the stock and option components. Rule 5.33(l)(3)(C) provides that, if the System receives an execution report for the stock component of a QCC with Stock Order from the designated broker-dealer, the Exchange sends the User the trade execution report for the QCC with Stock order, including execution information for both the stock and option components. If the System receives a report from the designated broker-dealer that the stock component of a QCC with Stock Order cannot execute, the Exchange nullifies the option component trade and notifies the User of the reason for the nullification.

options would increase the efficiency of their executions of the options component of a QCT if the options component consists of a FLEX Option. An investor may seek to use a FLEX Option as an appropriate hedge for a stock order but is currently unable to execute a FLEX Option that is part of a QCT on the Exchange in the same unexposed manner as it may execute a non-FLEX option on the Exchange. Currently, if a TPH wants to execute a FLEX Option that is intended to be part of a QCT, it would have to enter the FLEX Option as a FLEX Order separate from the stock portion or as a stock-option order, which must be exposed for at least three seconds prior to execution.<sup>24</sup> Indeed, a clean cross of the FLEX Option component of a stock-option QCT would provide assurance to the parties to the QCT that their hedge will be maintained.<sup>25</sup> This is particularly significant for a variety of managed funds that recognize the benefits to their investors in employing certain hedging strategies through FLEX Options that allow for their investors to mitigate risk and meet their objectives. For example, a strategy may have an investment goal of protecting potential losses down to a certain amount with the ability to participate in return up to a certain cap in a reference asset (e.g., underlying index or ETF) over a target outcome period that is usually a year or more out. Such a strategy may utilize a combination of FLEX call and put options in which expiration corresponds to the target outcome period overlaid on an exposure to the reference asset. On the seed day (or, the day in which the strategy is created and funded), the options package would reflect customized strikes, necessary to target the strategy's trading objectives a year or more in advance and for which existing standard strikes are typically unavailable. The customized FLEX strikes are used for the duration of the life of the strategy and it is key that the appropriate combination of options is guaranteed to maintain the hedge.

Additionally, the Exchange notes that the Rules currently permit Compression orders, which execute without exposure against another Compression order(s) totaling an equal number of options contracts, for trading in FLEX SPX options.<sup>26</sup> That is, like the proposed

<sup>24</sup> See Rule 5.72(c)(1)(F); Rule 5.73(c)(3); and Rule 5.74(c)(3).

<sup>25</sup> Amendment No. 1 adds additional explanation and detail in support the use of QCC Orders in FLEX trading.

<sup>26</sup> Amendment No. 1 adds explanation regarding another order type that may already execute without exposure in FLEX Options in support of FLEX QCC Orders.

FLEX QCC Orders, FLEX Compression orders are not exposed in a FLEX Auction pursuant to Rule 5.72.<sup>27</sup>

As noted above, to qualify as a QCT, the execution of one component is contingent upon the execution of all other components at or near the same time. The Exchange conducts surveillance of TPHs to ensure that TPHs execute the options component of a QCT at or near the same time as the stock component, in accordance with the QCT exemption.<sup>28</sup> Therefore, there is compliance risk for TPHs if they do not execute the options component at or near the same time of execution of the stock component. Providing TPHs with QCC Order functionality for FLEX Options will reduce the compliance burden on TPHs by providing a more efficient means of executing the options component of a QCT if the options component consists of a FLEX Option, as QCC Orders did for non-FLEX options.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (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>29</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>30</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>31</sup> requirement that the rules of an exchange not be designed

<sup>27</sup> See Securities Exchange Release Nos. 89707 (August 28, 2020), 85 FR 55040 (September 3, 2020) (SR-CBOE-2020-074) (Notice of Filing of a Proposed Rule Change Relating To Adopt Compression Orders); and 90179 (October 14, 2020), 85 FR 66590 (October 20, 2020) (SR-CBOE-2020-074) (Order Granting Approval of a Proposed Rule Change To Adopt Position Compression Cross ("PCC") Orders for SPX). As is the case with the proposed FLEX QCC orders, there would be no NBBO or protection of customer orders for the recently approved compression orders for FLEX Options.

<sup>28</sup> See *supra* note 1; see also *infra* note 34.

<sup>29</sup> 15 U.S.C. 78f(b).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

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

to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposal to make the QCC Order type available for electronic FLEX trading will facilitate TPHs' execution of the options component of QCTs that are comprised of FLEX Options in the same manner that TPHs may currently execute the options component of QCTs that are comprised of non-FLEX options, thereby removing impediments to and perfecting the mechanism of a free and open market and national market system and, in general, protecting investors. QCC Orders for FLEX Options will execute in the same manner as QCC Orders for non-FLEX options; the proposed rule change merely expands the classes in which the Exchange may make QCC Orders available and provides a specific definition of FLEX QCC Orders for clarity. Moreover, the Exchange notes that stock-option orders (which, by definition, must also be a QCT)<sup>32</sup> are already permitted under the Rules for FLEX Options, and thus, the FLEX Options components of QCTs submitted as stock-option orders may currently execute at any price in FLEX (*i.e.*, are not subject to an NBBO or yielding to Customer orders). The proposed rule change merely provides an alternative, more efficient manner of execution for the option component of larger-sized QCTs.

The Exchange believes the availability of QCC Orders for FLEX Options will allow for a more efficient execution of the options component of a QCT on the Exchange. As noted above, to qualify as a QCT, the execution of one component is contingent upon the execution of all other components at or near the same time. The Exchange conducts surveillance to ensure a TPH executes the stock and option components of a QCT at or near the same time.<sup>33</sup> As a result, if the option component does not execute when initially submitted to the Exchange, a TPH may be subject to compliance risk if it does not execute the option component at or near the same time of the execution of the stock component. Indeed, the Exchange notes that the compliance risk of not being able to execute a FLEX Options portion of a QCT at or near the same time of the execution of the stock component is greater in a FLEX auction, where it must be exposed for at least three seconds prior to execution, than for non-FLEX option orders that must be exposed for at least one second<sup>34</sup> unless submitted

<sup>32</sup> See Interpretation and Policy .03 to Rule 5.33.

<sup>33</sup> See QCC Approval Order.

<sup>34</sup> See Rule 5.9.

into an auction with a shorter exposure period. The Exchange believes the proposed rule change will reduce this compliance risk for TPHs executing FLEX Options that are components of QCTs, which will protect investors and the public interest. Since the purpose of a QCT order is for all components to trade at or near the same time, the Exchange believes it is appropriate to provide TPHs with a mechanism to facilitate immediate execution of FLEX Options that comprise the options component of a QCT to reduce the compliance burden on TPHs when effecting QCTs with a FLEX Option component.

The Exchange believes that proposed Rule 5.72(e), while substantially the same in almost all aspects to Rule 5.6(c) governing non-FLEX QCC, will provide clarity to TPHs regarding the submission of their QCC FLEX Options. The only difference between the FLEX and non-FLEX QCC Orders is that FLEX QCC Orders are not subject to the NBBO or prices of customers in the book. The Exchange notes this difference exists for any order type in non-FLEX trading versus FLEX trading.<sup>35</sup> The Exchange notes that the proposed rule changes do not alter any of the current increments applicable to FLEX Options but merely provide additional detail within the specific provision covering QCC Orders regarding the standard increments already permissible for FLEX Options that will also apply to QCC FLEX Orders.

As the Commission has previously found,<sup>36</sup> the execution of QCTs is beneficial to the market as a whole as it contributes to the efficient functioning of the securities markets and the price discovery process. Pursuant to the QCT Release, the options portion of a QCT may consist of non-FLEX or FLEX Options [sic]. However, as noted above, without the availability of QCC Orders for FLEX Options, TPHs are subject to higher compliance risk with respect to QCTs with a FLEX Option component than TPHs who execute QCTs with a non-FLEX option component. The Exchange submits this proposed rule change in response to demand from TPHs and their institutional customers<sup>37</sup> to be able to execute the

options components of QCTs comprised of a FLEX Option in the same manner that they are currently able to execute the options components of QCTs comprised of non-FLEX options. Therefore, the proposed rule change will provide TPHs whose hedging strategies involve FLEX Options with the same functionality currently available to TPHs whose hedging strategies involve non-FLEX Options. The Exchange believes this will provide investors with additional flexibility regarding execution of their hedging strategies related to stock positions, which flexibility ultimately benefits investors.

Moreover, the Commission has stated that, while it believes that order exposure is generally beneficial to options markets, it recognizes that contingent trades can be useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuers, convertible securities, and equity derivatives such as options and that those who engage in contingent trades can benefit the market as a whole by studying the relationships between prices of such securities and executing contingent trades when they believe such relationships are out of line with what they believe to be fair value.<sup>38</sup>

The requirement that a non-FLEX QCC must execute at a price at or between the NBBO merely incorporates an execution requirement applicable to all option order types, as all options must execute at price at or better than the NBBO in accordance with linkage rules.<sup>39</sup> Therefore, this execution requirement is not a heightened execution requirement for an unexposed option order. The additional requirement that a QCC order not execute at the same price as a Priority Customer incorporates the general principle of customer protection in the options markets.<sup>40</sup> If the market model

for a class does not include customer priority, this is a heightened execution requirement for execution of an unexposed order.<sup>41</sup> Even without this additional protection, the Exchange believes the proposed FLEX QCC order will protect investors, as it will provide Users of FLEX Options with the same functionality as Users of non-FLEX options. While the Exchange again notes that there is no FLEX book in which Customer orders (or any FLEX orders) may rest, and therefore the principles of customer priority are not currently applicable to FLEX trading, the Exchange observed the top of Book orders in non-FLEX symbols as a comparison point.<sup>42</sup> In a random sample of data drawn from orders resting at the top of the Book,<sup>43</sup> the Exchange observed that, on average, only 0.34% of all orders resting at the top of the Book were Customer orders. As such, the Exchange believes that, even if there was a book for FLEX Options, there would be minimal risk of executing a FLEX QCC at the same price as a Customer order in the Book. Additionally, primarily broker-dealers and institutional investors engage in FLEX trading. Indeed, executions in FLEX Options are generally larger and held long-term for strategies utilized by broker-dealers and institutional investors, as opposed to the smaller, more frequent trades with shorter expiration durations typically executed by retail investors. The Exchange also understands that many large retail brokerage firms do not accept FLEX Options or otherwise have high minimums which may discourage retail trading in FLEX Options.<sup>44</sup> Therefore, there are minimal retail customer orders submitted into the FLEX market and thus it would be unlikely any would be resting at the top of a FLEX book if one existed for a de minimis (if any) amount

order submitted when there is no customer order resting at the top of the book.

<sup>41</sup> The Exchange has enabled customer priority for all equity option classes that trade on the Exchange (and thus for all classes in which TPHs may submit QCC orders). Therefore, all QCC orders submitted on the Exchange are subject to the same execution pricing requirements as non-QCC orders.

<sup>42</sup> Amendment No. 1 adds a description of the top of Book data sample and the Exchange's observations in connection with the data sample in support of QCC for FLEX trading and that, as proposed, FLEX QCC orders are consistent with the protection of investors.

<sup>43</sup> The random sample was drawn over three days (September 25, September 30, and October 1, 2020) from a different Match Engine each sample day (one of which includes SPY). The sampling of data across different Match Engines is representative of the symbols that trade on the Exchange.

<sup>44</sup> Amendment No. 1 adds additional detail regarding the de minimis amount of retail customer orders submitted into the FLEX market that would require additional protection.

<sup>38</sup> See QCC Approval Order.

<sup>39</sup> See Rule 5.66. In other words, if the definition of a QCC order did not include the provision that it must execute at a price at or better than the NBBO, QCC orders would still be required to execute at a price at or better than the NBBO. The Exchange believes inclusion of this explicit requirement for QCC orders was intended to highlight the difference between execution of the options component and the stock component, which may execute at any price, but was not a unique price requirement necessary for execution of an unexposed order. Every order type on the Exchange approved for non-FLEX trading and FLEX trading has this same distinction.

<sup>40</sup> If there was not a customer order resting at the top of the book, then the second pricing requirement for QCC orders is simply ignored. As there is no book in the FLEX market, the proposed FLEX QCC order is equivalent to a non-FLEX QCC

<sup>35</sup> The Exchange also notes that the requirement that a QCC order execute at a price at or better than the NBBO is not a unique execution requirement—every option order type approved by the Commission must execute at a price at or better than the NBBO in accordance with the linkage plan. See Rule 5.66.

<sup>36</sup> See Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (“QCT Release”); and see QCC Approval Order.

<sup>37</sup> Amendment No. 1 specifies the customer base for FLEX trading.

of time that would require additional protection. As discussed above, the Exchange believes the benefits of exposure on an order on the Exchange are outweighed by the benefits offered by immediate execution of these contingent order types. The Exchange does not believe market participants that engage in hedging strategies involving FLEX Options should not have access to the same functionality as market participants with hedging strategies involving non-FLEX options.

The Exchange does not believe the propose rule change raises price protection concerns that market participants may submit FLEX QCC Orders for a FLEX series with slightly different terms than a non-FLEX series in order to get better pricing. Such risk, if any, exists today with respect to all FLEX trading. The Exchange again points out that the linkage rules and customer priority are currently not applicable to any orders submitted to FLEX, wherein there is no order book. The Exchange has observed no trends of TPHs submitting FLEX orders in order to avoid trading in the non-FLEX market. The Exchange believes the risk (if any) of a market participant trading a FLEX Option rather than a non-FLEX option with slightly different terms to use the FLEX market as a substitute for the non-FLEX market and achieve such a result is minimal. This possibility exists today with respect to all options the Exchange lists for FLEX and non-FLEX trading. The Exchange has not observed market participants attempting to trade in the FLEX market rather than the non-FLEX market for this purpose in classes in which this is possible today and believes there would be minimal, if any, benefit to do so. The Exchange compiled a dataset of all FLEX series listed on the Exchange in the last year<sup>45</sup> that matched non-FLEX series on the underlying, expiration date, put/call and exercise-style, but had different strikes. From the dataset, the Exchange was able to observe the differences in strike prices between FLEX series and listed series.<sup>46</sup> The Exchange found that 99.90% of all SPX and SPXW FLEX series created were over \$1.00 away from the matching SPX/SPXW listed series strikes, and that 90.10% of these were over \$100.00 away from the matching listed series strikes. It also found that 97.61% of all equity and ETP

FLEX series created were over \$1.00 away from the matching listed series strikes, and that 83% of these were over \$10.00 away from the matching listed series strikes and 44.97% of these were over \$100.00 away from the matching listed series strikes. As a result, the Exchange believes that there is minimal (if any) risk that market participants desire or attempt to use the FLEX market as a substitute to avoid trading in the non-FLEX market.

The Exchange believes attempting to execute an order in the FLEX market as a substitute for the non-FLEX market would minimize execution opportunities for that order. Such trading would be inefficient for market participants and could introduce price and execution risk to market participants' trading strategies given the reduced liquidity, participation, and price discovery in the FLEX market compared to the non-FLEX market.<sup>47</sup> Additionally, series with different terms have different prices and serve different investment purposes, so trading a "similar" FLEX series may not achieve the same investment objective as the non-FLEX series a TPH initially sought to trade. The Exchange notes if a FLEX QCC Order executes at a price through the book of the "similar" non-FLEX series, while that would be a better price for one transaction participant, it would be a worse price for the participant on the opposite side, and thus it may be more difficult for the TPH to find sufficient contra party interest. For example, suppose the market for Aug ABC 800 call with a multiplier of 100 is 10.20–11.00. If a market participant sought interest from counterparties to execute a FLEX QCC Order to buy an Aug ABC 795 call with at 10.00, it is unlikely another market participant would sell at that price if they were looking to sell the Aug ABC 800 call, given that participant could sell the "similar" non-FLEX option series at 10.20, which would be a better price for that seller. Given the likely difficulties (such as reduced liquidity and potentially longer timeframe to receive execution) of trading in the FLEX market as a substitute for trading an economically equivalent option in the non-FLEX market (such as to obtain a better execution price), the Exchange believes the risk of this occurring is de minimis. The Exchange believes that any such risk is even lower for FLEX QCC Orders given the additional requirements that apply to FLEX QCC Orders, even without the heightened execution price requirement that a QCC

Order cannot execute at the same price as a Priority Customer. The benefits of QCC Orders apply to FLEX options in the same manner as they do for non-FLEX options, which benefits the Exchange believes significantly outweigh any price protection risk that may exist in the FLEX market.

Ultimately, as noted above, QCC Orders in FLEX Options will execute in a substantially similar manner as QCC Orders in non-FLEX options. In addition to this, the Exchange notes that the Rules currently permit Compression orders in FLEX SPX options which, like QCC Orders for FLEX trading, may execute immediately without exposure as opposed to being submitted to a FLEX Auction despite there being no NBBO or customer priority in the FLEX market. Finally, the Exchange notes that QCC functionality is a widely adopted industry order type wherein multiple other options exchanges currently have QCC functionality in place.<sup>48</sup>

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because QCC functionality is already available for non-FLEX options. The Exchange is simply proposing to make QCC Orders available for additional classes (FLEX Option classes). The Exchange notes that the proposed order type will be available to all Users on a voluntary basis, and Users are not required to use QCC Orders when executing QCTs. Users may continue to execute the options component of QCTs that are comprised of FLEX Options in the same manner as they do today. The proposed rule change will provide FLEX Traders with the same functionality that is currently available to non-FLEX Traders with respect to execution of option components of QCTs. The Exchange believes all TPHs should have access to this functionality so they can all execute option components of QCTs in the same manner, regardless of whether they choose to hedge the stock portions of QCTs with FLEX or non-FLEX options.

<sup>45</sup> From October 14, 2019 through October 9, 2020.

<sup>46</sup> Amendment No. 1 provides additional data in support of QCC Orders for FLEX trading, particularly demonstrating that there is minimal risk of trading in the FLEX market as a substitute for trading an economically equivalent option in the non-FLEX market.

<sup>47</sup> See Sections VII and X of the ODD regarding risks associated with FLEX Options.

<sup>48</sup> See e.g. Nasdaq Phlx Rules Options 3, Section 12 (electronic QCC orders), and Options 8, Section 32(e) (open outcry QCC orders); Nasdaq ISE Options 3, Section 12; BOX Options Rule 7110(c)(6); MIAX Options Rule 516(j); and NYSE Arca Options Rule 6.90–O.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is merely making functionality currently available on the Exchange to additional option classes. As noted above, QCC Order functionality is currently available at other options exchanges, which may determine make QCC functionality available to additional option classes as well, including flexible options. To the extent the proposed rule change makes the Exchange a more attractive trading venue for market participants on other exchanges, those market participants may elect to become Exchange market participants.

Overall, the Exchange believes the proposed rule change is appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, the economically efficient execution of securities transactions.

*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 comments on the proposed rule change.

**II. Proceedings To Determine Whether To Approve or Disapprove SR-CBOE-2020-075, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration**

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>49</sup> to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposal.

<sup>49</sup> 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *See id.*

Pursuant to Section 19(b)(2)(B) of the Act,<sup>50</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with the Act, and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.<sup>51</sup>

The Exchange's proposal would expand the use of QCC Orders to electronic FLEX options. A QCC Order is comprised of an originating order to buy or sell at least 1,000 standard option contracts (or 10,000 mini-option contracts) that is identified as being part of a qualified contingent trade ("QCT") coupled with a contra-side order or orders totaling an equal number of contracts and meeting the other conditions described below. As the Exchange stated in its proposal, QCC Orders facilitate the execution of option orders that are part of a QCT,<sup>52</sup> by permitting TPHs to cross non-FLEX options orders without exposure to the market while effecting a trade in the NMS stock component of the order at a price necessary to achieve a net price. The Commission granted an exemption for QCTs that meet certain requirements from Rule 611(a) of Regulation NMS ("QCT Exemption Order").<sup>53</sup> The QCT Exemption Order enables each NMS stock component of a QCT trade to be exempt from Rule 611(a) of Regulation NMS for any trade-throughs.<sup>54</sup> As the Commission previously stated in the QCC Approval Order, QCC Orders are permitted if the QCC Order is (1) part of a QCT under Regulation NMS; (2) for at least 1,000 contracts; (3) executed at a

<sup>50</sup> *Id.*

<sup>51</sup> 15 U.S.C. 78f(b)(5).

<sup>52</sup> A QCT is a transaction consisting of two or more component orders that involve both an option and equity stock component where the execution of one component is contingent upon the execution of all the other components at or near the same time. *See supra* note 7 (defining a QCT, which requires, among other things, that "at least one component must be an NMS stock, as defined in Rule 600 of Regulation NMS . . .").

<sup>53</sup> *See* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) ("QCT Exemption Release"), which modifies a release initially granting the QCT exemption, Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) ("Original QCT Exemption Release").

<sup>54</sup> *See id.*

price at or between the NBBO; and (4) cancelled if there is a public customer on the electronic book.<sup>55</sup>

The Commission also stated in the QCC Approval Order that the four required elements of the QCC Order "strikes an appropriate balance for the options market in that it is narrowly drawn and establishes a limited exception to the general principle of exposure and retains the general principle of customer priority in the options markets."<sup>56</sup> The Exchange has stated that due to the structure of the FLEX options market, such as the lack of a customer order book and that FLEX options have no NBBO, that the applicable QCC Order requirements as to these matters are not applicable to FLEX orders and therefore are not applicable to the proposed FLEX QCC Order. The requirements for a QCC Order to execute at or between the NBBO and that a QCC Order cannot be executed at the same price as a customer order on the book are intended to mitigate the risks to market quality in both the options and underlying equity markets. The Exchange, however, has not detailed why such protections, and the underlying rationale for such protections, are unnecessary considering that FLEX options market participants would be granted an exception to the FLEX options electronic auction order exposure requirements, as well as the equity market trade-through rules, when executing a FLEX QCC Order under its proposal. The Commission therefore believes, as discussed in more detail below, that the Exchange's proposal raises questions as to whether its proposal is consistent with the protection of investors and other requirements of Section 6(b)(5) of the Act, in addition to the maintenance of fair and orderly markets.<sup>57</sup>

Electronic FLEX options trading differs from electronic non-FLEX options because they allow TPHs to customize terms of the option contract (e.g., exercise style, expiration date, and strike price). Notably, FLEX options lack an order book and a requirement to yield to public customer interest. Electronic FLEX option transactions are also conducted through auctions which require an exposure interval that may

<sup>55</sup> *See* QCC Approval Order, *supra* note 8, 76 FR at 35492. *See also* CBOE Rule 5.6(c)(2), which states, among things, that a "QCC Order with one option leg may execute automatically upon entry without exposure if the execution price: (i) Is not at the same price as a Priority Customer order resting in the Book; and (ii) is at or between the NBBO."

<sup>56</sup> *See* QCC Approval Order, *supra* note 8, 76 FR at 35492.

<sup>57</sup> 15 U.S.C. 78f(b)(5).

not be less than three seconds prior to execution.<sup>58</sup> As the Commission has stated in the past, order exposure in the options markets provides an incentive to options market makers to provide liquidity and therefore plays an important role in ensuring competition and price discovery in the options markets.<sup>59</sup> The proposed FLEX QCC Order would permit TPHs to execute a FLEX options component of a QCT without the regular FLEX auction exposure requirement. Therefore, when applying the unique characteristics of the FLEX options market to the current QCC Order framework, the Commission believes there are questions as to whether the Exchange's proposal is consistent with the guidance in the QCC Approval Order and the principles underlying the order, and whether the proposal is consistent with Section 6(b)(5) of the Act.

In particular, the Commission is concerned that the proposed design of the QCC FLEX Order may negatively impact market quality in the options market by removing certain constraints required under the QCC Approval Order. The Exchange states that stock-option orders are already permitted to include FLEX options and "the FLEX Options components of QCTs submitted as stock-option orders may currently execute at any price in FLEX (*i.e.*, are not subject to an NBBO or yielding to [c]ustomer orders on the book)." However, the Exchange fails to address that FLEX options that are currently part of a stock-option order are able to achieve potential price improvement through the electronic FLEX auction exposure process,<sup>60</sup> while the proposed FLEX QCC Orders eliminates the exposure requirement. As a result, the proposal to allow FLEX QCC Orders will eliminate the opportunity for any price improvement for the option component, thereby allowing the TPH to set the price at which the FLEX options component of the QCT will cross without being subject to any limits such as an NBBO. Furthermore, the elimination of the exposure requirement reduces the overall transparency of the price discovery process within the FLEX market, which potentially harms a wider range of participants, for example, if participants are less able to use historical FLEX option prices to inform about the prices of other, similar FLEX options.

The proposed FLEX QCC Order also raises concerns about its impact to

market quality in the underlying stock leg of a QCC Order. In general, trade-throughs not only harm the individual participants who may receive worse prices, but they also increase wait times and execution risk for limit orders on the book, thereby reducing incentives for market participants to submit limit orders. In this respect, the Commission has previously recognized that any exemption to equity trade-through protection needs to be narrowly drawn. The QCT Exemption Order, in determining the scope of the exemption, states that defining the set of exemptions to trade-through protection too broadly "could unduly detract from the objectives of Rule 611";<sup>61</sup> these objectives include assuring "that markets effect trades at the best available prices," but also "encourag[ing] the display of limit orders by increasing the likelihood that they will receive an execution in a timely manner."<sup>62</sup> Thus, the Commission has determined that the exemption to trade-through prohibition should only be granted if strictly necessary so as to promote these equity market quality goals. In the FLEX market, the Exchange has not provided justification for why the exemption to equity trade-through protection is strictly necessary. Note that, to qualify as a QCT, only "the spread between the prices of the component orders" needs to be defined, not the prices themselves.<sup>63</sup> In the non-FLEX market, if the facilitator of a QCT would be constrained to price both the option and stock legs at their respective NBBOs, the spread between the prices of the two legs would be pre-defined according to the spread between the option NBBO and the stock NBBO. However, in the FLEX market, given the flexibility in determining the price of the FLEX option leg (particularly if not subject to exposure), the Exchange has not explained why a broker could not simply determine a spread, and subsequently adjust the price of the option leg according to the realized price of the stock leg, thus avoiding the need to trade-through the equity market. Likewise, and potentially more concerning, since neither leg of the proposed FLEX QCC Order is constrained to execute at an NBBO, the Exchange has not explained what would prevent a facilitator from determining a spread and setting the price for the

FLEX option leg such that the corresponding stock leg price results in a trade-through.

In addition to the significant concerns discussed above regarding the proposal's consistency with the guidance in the QCC Approval Order, and the principles underlying the order, that need to be addressed, the Exchange provided data on retail orders and market participation in FLEX and non-FLEX options in support of its proposal. The Exchange believes that the limited retail customer participation in the FLEX options market would mitigate the requirement for additional customer protections that exist for QCC Orders in the non-FLEX options market. Specifically, the Exchange states that "there are minimal retail customer orders submitted into the FLEX market and thus it would be unlikely any would be resting at the top of a FLEX book if one existed for a *de minimis* (if any) amount of time that would require additional protection." The Commission is concerned that the proposal does not address how the lack of additional customer protections would be appropriate. The Commission notes that the Exchange did not provide specific data on the level of retail participation or whether that conclusion was based solely on the size of the orders in the FLEX options market. In addition, the Commission notes that the Exchange has stated previously in proposing certain changes to the FLEX options market that they were intended to broaden the base of investors that use FLEX options, including more retail participation.<sup>64</sup> The Commission believes the Exchange has not provided sufficient data to support the conclusion that additional customer protections are unnecessary under the proposal.

The Exchange also stated that it believes that the risk of market participants trading in the FLEX market as a substitute for the non-FLEX market is minimal. The Exchange has provided a summary of data that showed the

<sup>61</sup> See Original QCT Exemption Release, *supra* note 53, 71 FR at 52830.

<sup>62</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37505 (June 29, 2005) (Regulation NMS).

<sup>63</sup> See QCT Exemption Release, *supra* note 53, 73 FR at 19272.

<sup>64</sup> See Securities Exchange Act Release No. 66934 (May 7, 2012), 77 FR 27822, 27824 (May 11, 2012) (SR-CBOE-2012-040) (Notice of Proposed Rule Change Related to Permanent Approval of its Pilot on FLEX Minimum Value Sizes) (stating that "eliminating the minimum value size requirement would further broaden the base of investors that use FLEX [o]ptions to manage their trading and investment risk, including investors that current trade in OTC market for customized options, where similar size restrictions do not apply. The Exchange also believes that this may open up FLEX [o]ptions to more retail investors."). The pilot was permanently approved in Securities Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR-CBOE-2012-040) (Order Granting Approval of Proposed Rule Change Related to Permanent Approval of its Pilot on FLEX Minimum Value Sizes).

<sup>58</sup> See CBOE Rule 5.72(c)(1)(F).

<sup>59</sup> See QCC Approval Order, *supra* note 8, 76 FR at 35492.

<sup>60</sup> See CBOE Rule 5.72(c).

number of customer orders resting in non-FLEX options at the top of the book and differences in strike prices in terms of dollar values between the FLEX and non-FLEX options that had similar terms. However, the data provided still raises questions as to whether the proposal would incentivize market participants to use FLEX options as a substitute for non-FLEX options in order to circumvent price and public customer priority constraints under the QCC Approval Order. For example, the data on strike prices for index options only compared SPX and SPXW listed series with SPX and SPXW FLEX series without considering a broader set of FLEX index options that would apply to the proposed FLEX QCC Order, including less liquid index options. In addition, the data sample on FLEX option strike price values would be more appropriately considered if the price differences between the FLEX and non-FLEX options market were described in proportion to the stock price rather than in dollar values. Moreover, the Exchange's proposal does not provide any information on the market share between FLEX and non-FLEX index options and FLEX and non-FLEX equity and ETP options and its variation over time, which could help inform on whether traders have been steadily migrating between the non-FLEX and FLEX market.

Furthermore, the Exchange stated that the proposed FLEX QCC Order would "reduce compliance burden on TPHs by providing a more efficient means of executing the options component of a QCT if the options component consists of a FLEX [option]." The Exchange asserted in its proposal that the compliance risk of not being able to execute a FLEX options portion of a QCT at or near the same time of the execution of the stock component is greater in a FLEX auction where the FLEX order must be exposed for at least three second prior to execution. However, the Exchange has not provided any evidence or data on the number of violations or compliance issues that occurred as a result of needing to execute the FLEX option component after the minimum three second exposure period. Accordingly, the Commission requests data to support the Exchange's assertion on compliance issues, including any information on the overall number of FLEX orders that are part of a stock-option order and the number of compliance issues occurring, including those in relation to the timing of execution of the stock and FLEX option component of the order.

Based on the above, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Act and the requirements that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and in general, to protect investors and the public interest, and whether the proposal is consistent with the maintenance of fair and orderly markets under the Act.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."<sup>65</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>66</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>67</sup> Moreover, "unquestioning reliance" on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.<sup>68</sup>

For the reasons discussed above, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.

### III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is inconsistent with Section 6(b)(5)<sup>69</sup> or any other provision of the Act, or the

rules and regulation thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act, any request for an opportunity to make an oral presentation.<sup>70</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by December 15, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 29, 2020.

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the statements of the Exchange contained in Amendment No. 1, and any other issues raised by the proposed rule change.

Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2020-075 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2020-075. 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

<sup>65</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>66</sup> See *id.*

<sup>67</sup> See *id.*

<sup>68</sup> See *Susquehanna Int'l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 446-47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

<sup>69</sup> 15 U.S.C. 78f(b)(5).

<sup>70</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).



Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2020-075 and should be submitted by December 15, 2020. Rebuttal comments should be submitted by December 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>71</sup>

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

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90409; File No. SR-NYSEArca-2020-95]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE Arca BBO and NYSE Arca Trades by Modifying the Application of the Access Fee and Amending the Fees for NYSE Arca Trades by Adopting a Waiver Applicable to the Redistribution Fee

November 12, 2020.

#### Correction

In Notice document 2020-25391, appearing on pages 73522-73533, in the issue of Wednesday, November 18, 2020, make the following correction:

On page 73533, in the first column, in the thirty-eighth line, the entry "December 9, 2021" is corrected to read "December 9, 2020".

[FR Doc. C1-2020-25391 Filed 11-23-20; 8:45 am]

**BILLING CODE 1301-00-D**

<sup>71</sup> 17 CFR 200.30-3(a)(57) and (58).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90449; File No. SR-PEARL-2020-25]

### Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

November 18, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 5, 2020, MIAX PEARL, LLC ("MIAX PEARL" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the "Fee Schedule") to increase the number of additional Limited Service MIAX Express Order Interface ("MEO") Ports available to Members.<sup>3</sup> The Exchange does not propose to amend the fees for additional Limited Service MEO Ports.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX PEARL's principal office, 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

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

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

<sup>3</sup> The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an "Electronic Exchange Member" or "Market Maker." Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

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 the Fee Schedule to offer two (2) additional Limited Service MEO Ports to Members. The Exchange does not propose to amend the fees charged for the additional Limited Service MEO Ports.

The Exchange initially filed the proposal to increase the number of Limited Service MEO Ports available to Members on June 30, 2020, with no change to the actual fee amounts being charged.<sup>4</sup> The First Proposed Rule Change was published for comment in the **Federal Register** on July 20, 2020.<sup>5</sup> The Exchange notes that the First Proposed Rule Change did not receive any comment letters. Nonetheless, the Exchange withdrew the First Proposed Rule Change on August 24, 2020.<sup>6</sup> On August 25, 2020, the Exchange refiled its proposal to increase the number of Limited Service MEO Ports available to Members (without increasing the actual fee amounts) to provide further clarification regarding the Exchange's annual cost for providing additional Limited Service MEO Ports.<sup>7</sup> The Second Proposed Rule Change was published for comment in the **Federal Register** on September 11, 2020.<sup>8</sup> Like the First Proposed Rule Change, the Second Proposed Rule Change did not receive any comment letters. Nonetheless, the Exchange withdrew the Second Proposed Rule Change on October 23, 2020<sup>9</sup> and submitted SR-PEARL-2020-21 ("Third Proposed Rule Change"). On October 26, 2020, the Exchange withdrew the Third Proposed Rule Change and submitted SR-PEARL-2020-22 ("Fourth Proposed Rule Change"). The Fourth Proposed Rule Change to increase the number of

<sup>4</sup> See Securities Exchange Act Release No. 89316 (July 14, 2020), 85 FR 43898 (July 20, 2020) (SR-PEARL-2020-09) (the "First Proposed Rule Change").

<sup>5</sup> *Id.*

<sup>6</sup> See Comment Letter from Christopher Solgan, VP, Senior Counsel, the Exchange, dated August 24, 2020, notifying the Commission that the Exchange will withdraw the First Proposed Rule Change.

<sup>7</sup> See Securities Exchange Act Release No. 89774 (September 4, 2020), 85 FR 56281 (September 11, 2020) (SR-PEARL-2020-12) (the "Second Proposed Rule Change").

<sup>8</sup> *Id.*

<sup>9</sup> See Comment Letter from Christopher Solgan, VP, Senior Counsel, the Exchange, dated October 19, 2020, notifying the Commission that the Exchange would withdraw the Second Proposed Rule Change.