

regarding the unavailability of an order type.

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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of the 30-day operative delay would permit the Exchange to promptly provide notice in its Rules of the unavailability of the Discretionary Pegged Order and further evaluate the impact on system performance. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2022-54 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-NYSEARCA-2022-54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal

efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSEARCA-2022-54 and should be submitted on or before September 19, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95581; File No. SR-NYSEARCA-2022-31]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Rule 6.64P-O

August 23, 2022.

I. Introduction

On May 20, 2022, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to modify NYSE Arca Rule 6.64P-O regarding the automated process for both opening and reopening trading in a series on the Exchange's Pillar trading technology, as described below. The proposed rule change was published for comment in the **Federal Register** on May 27, 2012.³ On June 24, 2022, pursuant to Section 19(b)(2) of the Act,⁴ the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed change.⁵ The Commission has received

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 94959 (May 23, 2012), 87 FR 32203 (May 27, 2022) ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 95150 (Jun. 24, 2022), 87 FR 39141 (Jun. 30, 2022).

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its 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 Commission has waived the five-day pre-filing requirement in this case.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on

no comments on the proposed rule change.

This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to modify NYSE Arca Rule 6.64P–O regarding the automated process for both opening and reopening trading in a series on the Exchange on Pillar as set forth below.⁷

Current Pillar Auction Process⁸

The Exchange states that NYSE Arca Rule 6.64P–O(d) sets forth the Auction Process.⁹ Per NYSE Arca Rule 6.64P–O(d)(1), once the Exchange receives the Auction Trigger for a series,¹⁰ the Auction Process begins and the Exchange sends a Rotational Quote¹¹ to both OPRA and proprietary data feeds indicating that the Exchange is in the process of transitioning from a pre-open state to continuous trading for that series. Per NYSE Arca Rule 6.64P–O(d)(2), once a Rotational Quote has been sent, the Exchange conducts an Auction,¹² provided “there is both a Legal Width Quote and, if applicable, Market Maker quotes with a non-zero offer in the series” within the Opening Timer(s), per NYSE Arca Rule 6.64P–O(d)(3).¹³ The Exchange deems the

Legal Width Quote requirement satisfied if the Calculated NBBO (described below) for the series is uncrossed, contains a non-zero offer, and has a spread that does not exceed a maximum differential that is determined by the Exchange on a class basis and announced by Trader Update.¹⁴ The Calculated NBBO is comprised of the highest bid and lowest offer among all Market Maker quotes and the ABBO during the Auction Process.¹⁵ A Calculated NBBO does not require both Market Maker quotes and ABBO to be present, and may be composed of Market Maker quotes only, of the ABBO only, or a combination thereof.

The Exchange states that, if the foregoing requirements are met (*i.e.*, per NYSE Arca Rule 6.64P–O(d)(2)), the Exchange will conduct an Auction that will either result in a trade or in a quote depending on whether there is (or is not) Matched Volume¹⁶ that can trade at or within the Auction Collars.¹⁷ If there is Matched Volume that can trade at or within the Auction Collars, the Auction will result in a trade at the Indicative Match Price.¹⁸ However, if there is no Matched Volume that can trade at or within the Auction Collars, the Auction will instead result in a quote and the Exchange transitions to continuous trading as set forth in NYSE Arca Rule 6.64P–O(f).¹⁹

Finally, the Exchange states that, per NYSE Arca Rule 6.64P–O(d)(4), unless

otherwise specified by Trader Update, for the first ninety seconds of the Auction Process (inclusive of the thirty-second Opening MMQ Timer(s)), if there is no Legal Width Quote, the Exchange will not conduct an Auction, even if there is Matched Volume, *i.e.*, the series will not open. After the first ninety seconds of the Auction Process, if there is no Matched Volume and the Calculated NBBO is wider than the Legal Width Quote, is not crossed, and does not contain a zero offer, the Exchange will first cancel any Market Orders and MOO Orders and then transition the option series to continuous trading per NYSE Arca Rule 6.64P–O(f).²⁰ Thus, per NYSE Arca Rule 6.64P–O(d)(4)(A), if after the first ninety seconds of the Auction Process there is Matched Volume but the other elements of this provision are satisfied, the series will not open and will remain unopened and the Exchange will not transition to continuous trading until the earlier of (i) a Legal Width Quote is established and an Auction can be conducted; (ii) the series can be opened as provided for in paragraph (d)(4)(A); (iii) the series is halted; or (iv) the end of Core Trading Hours.²¹ The Exchange states that a series that does not meet the requirements of NYSE Arca Rule 6.64P–O(d)(4)(A) may thus be delayed in opening until one of the conditions set forth in NYSE Arca Rule 6.64P–O(d)(4)(B) occur.

Proposed Change to Auction Process²²

The Exchange states that waiting for market conditions to change before transitioning to continuous trading per the current Pillar Rule may result in missed execution opportunities for eligible interest submitted to the Exchange during the pre-open state. The Exchange further states that this potential (indefinite) delay is inconsistent with the Exchange’s intention of providing a timely and efficient Auction Process. As such, the Exchange proposes to modify NYSE Arca Rule 6.64P–O. In short, the Exchange proposes that after the first ninety seconds of the Auction Process, the Exchange would conduct an Auction of marketable interest based on the spread of the then-current market conditions (*i.e.*, a Calculated NBBO that is uncrossed with a non-zero offer), provided that if the Calculated NBBO exceeds the Legal Width Quote differential established per NYSE Arca Rule 6.64P–O(a)(10)(C) the Exchange would cancel any Market Orders or

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ NYSE Arca Rule 6.64P–O (the “Pillar Rule”) covers the opening and reopening of option series, which process the Exchange states is identical on the Pillar trading platform. As such, the Exchange states it will refer to the “opening” of a series herein. The Exchange completed its migration to Pillar on July 28, 2022. See NYSE Arca Trader Update, available at <https://www.nyse.com/trader-update/history#110000440092>.

⁸ See Notice, *supra* note 3, 87 FR at 32204.

⁹ “Auction Process” refers to the process that begins when the Exchange receives an Auction Trigger for a series and ends when the Auction is conducted. See NYSE Arca Rule 6.64P–O(a)(5).

¹⁰ “Auction Trigger” refers to the information disseminated by the Primary Market in the underlying security that triggers the Auction Process for a series to begin. See NYSE Arca Rule 6.64P–O(a)(7).

¹¹ “Rotational Quote” refers to the highest Market Maker bid and lowest Market Maker offer on the Exchange when the Auction Process begins and such a Rotational Quote will be updated (for price and size) during the Auction Process. See NYSE Arca Rule 6.64P–O(a)(13).

¹² “Auction” refers to the opening or reopening of a series for trading either with or without a trade. See NYSE Arca Rule 6.64P–O(a)(1).

¹³ See NYSE Arca Rule 6.64P–O(d)(2). NYSE Arca Rule 6.64P–O(d)(3) specifies the parameters of the Opening MMQ Timers, which the Exchange states are designed to encourage (but not require) any Market Maker(s) assigned to an option series to submit Legal Width Quotes in connection with the Auction Process. The Exchange proposes a non-substantive change of “30” to “thirty” regarding the Opening MMQ Timer(s), which the Exchange states would add clarity and internal consistency to the

rule. See Notice, *supra* note 3, 87 FR at 32004 n. 4.

¹⁴ See NYSE Arca Rule 6.64P–O(a)(10)(A)–(C). The maximum spread differential for a given series or class of options may be modified by a Trading Official. See NYSE Arca Rule 6.64P–O(a)(10)(C).

¹⁵ See NYSE Arca Rule 6.64P–O(a)(8) (defining Calculated NBBO).

¹⁶ “Matched Volume” refers to the number of buy and sell contracts that can be matched at the Indicative Match Price, excluding IO Orders. See NYSE Arca Rule 6.64P–O(a)(11). An Imbalance Offset Order (“IO Order”) is a Limit Order that is to be traded only in an Auction. See NYSE Arca Rule 6.62P–O(c)(3).

¹⁷ “Auction Collar” refers to the price collar thresholds for the Indicative Match Price for an Auction, with the upper Auction Collar being the offer of the Legal Width Quote and the lower Auction Collar being the bid of the Legal Width Quote, provided that if the bid of the Legal Width Quote is zero, the lower Auction Collar will be one MPV above zero for the series. And, if there is no Legal Width Quote, the Auction Collars will be published in the Auction Imbalance Information as zero. See NYSE Arca Rule 6.64P–O(a)(2).

¹⁸ See NYSE Arca Rule 6.64P–O(d)(2)(A). “Indicative Match Price” refers to the price at which the maximum number of contracts can be traded in an Auction, including the non-displayed quantity of Reserve Orders and excluding IO Orders, subject to the Auction Collars. If there is no Legal Width Quote, the Indicative Match Price included in the Auction Imbalance Information will be calculated without Auction Collars. See NYSE Arca Rule 6.64P–O(a)(9).

¹⁹ See NYSE Arca Rule 6.64P–O(d)(2)(B).

²⁰ See NYSE Arca Rule 6.64P–O(d)(4)(A).

²¹ See NYSE Arca Rule 6.64P–O(d)(4)(B).

²² See Notice, *supra* note 3, 87 FR at 32204.

MOO Orders before conducting the Auction.

As further proposed, marketable Limit Orders would trade in the Auction bound by the Calculated NBBO (*i.e.*, the highest bid and lowest offer among all Market Maker quotes and the ABBO), which executions may be earlier and more efficient than afforded under the current Pillar Rule. If there is no marketable interest after such cancelation, the Exchange would open on a quote.²³

The Exchange states that the proposed change to the Pillar Rule (the details of which are described below) would promote competitive liquidity by allowing series to open at then current market prices and would promote a fair and orderly opening process by improving the speed and efficiency of the Auction Process without impairing price discovery.

First, the Exchange proposes to codify existing rule text into the defined phrase the “initial Auction Process time period” in proposed NYSE Arca Rule 6.64P–O(a)(5)(i). As proposed, the initial Auction Process time period would mean, “unless otherwise specified by Trader Update, the first ninety seconds after the commencement of the Auction Process,” which definition the Exchange states simply codifies (and relocates) identical text that appears in the preamble of both sentences in NYSE Arca Rule 6.64P–O(d)(4).²⁴ The Exchange states that this proposed change is non-substantive and would streamline and add clarity to the existing rule.²⁵

Next, the Exchange proposes to modify the definition of Legal Width Quote, including by leveraging the newly defined “initial Auction Process time period.” NYSE Arca Rule 6.64P–O(a)(10)(C) provides that, to be deemed a Legal Width Quote, the spread of the Calculated NBBO may not exceed a maximum differential that is determined by the Exchange on a class

basis and announced by Trader Update.²⁶

The Exchange states that, by rule, the Exchange has discretion to establish for each option class the maximum allowable spread of the Calculated NBBO within which the Exchange will conduct an Auction, provided that the other elements of a Legal Width Quote are met.²⁷ The Exchange states that nothing in NYSE Arca Rule 6.64P–O(a)(10)(C) precludes the Exchange from establishing one set of Calculated NBBO spreads for the first ninety seconds of the Auction Process and a second (wider) set of Calculated NBBO spreads for any time after the first ninety seconds. The Exchange states, however, that, in the interest of clarity and for the avoidance of potential confusion, the Exchange proposes to expand the definition of Legal Width Quote (rather than modify by Trader Update) in the Pillar Rule to provide that “after the initial Auction Process time period, the Exchange will not impose limits for the maximum differential for the spread between the Calculated NBBO.”²⁸

The Exchange states that, although adopting proposed NYSE Arca Rule 6.64P–O(a)(10)(D) is consistent with its authority under the Pillar Rule to determine the maximum allowable Calculated NBBO spread to qualify a series as having a Legal Width Quote, the proposed rule change would make clear that the Exchange would no longer impose these established spread limits (as announced by Trader Notice per NYSE Arca Rule 6.64P–O(a)(10)(C)) after the initial Auction Process time period. The Exchange states that this rule change would add clarity and transparency to the Auction Process to the benefit of all market participants.²⁹ The Exchange further states that, because the Auction Process, including the Auction Collars, the presence of Matched Volume, and the determination of the Indicative Match Price, are dependent upon a Calculated NBBO that qualifies as a Legal Width Quote,

the Exchange proposes that any Auction conducted consistent with proposed 6.64P–O(a)(10)(D) would follow the current Auction Process except as described below.³⁰

The Exchange proposes to amend NYSE Arca Rule 6.64P–O(d)(4) regarding the conduct of an Auction after the conclusion of the initial Auction Process time period (*i.e.*, after the first ninety seconds).³¹ The Exchange states that, as noted herein, the Pillar functionality (per NYSE Arca Rule 6.64P–O(d)(4)(A)) permits a series to open based on a “wide” Calculated NBBO (that is uncrossed with a non-zero offer), but only if there is no Matched Volume, which requirement the Exchange states may delay openings and result in missed execution opportunities.³² To address what the Exchange views as unintended potential delay, the Exchange proposes that after the initial Auction Process time period and consistent with proposed paragraph (a)(10)(D) of this rule (which removes the limit on the maximum allowable Calculated NBBO spread), the Exchange would conduct an Auction regardless of Matched Volume as long as the Calculated NBBO is not crossed, and does not contain a zero offer.³³ The Exchanges states that this proposed functionality would allow marketable Limit Orders to execute in the Auction, which may result in certain option series opening earlier than are opened under the current rule and increase execution opportunities for Limit Orders at then-current market prices.³⁴

³⁰ See NYSE Arca Rule 6.64P–O(d)(2)(A)–(B) (describing the process of opening a series with a trade or a quote depending on whether there is Matched Volume).

³¹ See proposed NYSE Arca Rule 6.64P–O(d)(4) (which the Exchange states includes the aforementioned non-substantive change to refer to the newly defined “initial Auction Process time period” rather than the first ninety seconds after the Auction Process). The Exchange states it is not altering Auction functionality for the initial Auction Process time period. See Notice, *supra* note 3, 87 FR at 32205 n. 26.

³² See proposed NYSE Arca Rule 6.64P–O(d)(4)(B) (setting forth the necessary market conditions to open a series that has not opened per paragraph (d)(4) of the Pillar Rule). The Exchange states that, if the Exchange opens a series per NYSE Arca Rule 6.64P–O(d)(4)(A), it first cancels any Market Order or MOO Orders before conducting an Auction and transitioning to continuous trading. See Notice, *supra* note 3, 87 FR at 32005 n. 27.

³³ See proposed NYSE Arca Rules 6.64P–O(d)(4)(A), 6.64P–O(a)(10)(D).

³⁴ See proposed NYSE Arca Rules 6.64P–O(d)(4)(A), 6.64P–O(a)(10)(D). See also NYSE Arca Rule 6.64P–O(a)(9)(A) (providing, in relevant part, that “the Indicative Match Price would not be lower (higher) than the highest (lowest) price of a Limit Order to buy (sell) ranked Priority 2—Display Orders that is eligible to participate in the Auction”). In addition, the Exchange proposes to remove as inapplicable the text in current NYSE

²³ As described further below, the Exchange states that, consistent with NYSE Arca Rule 6.64P–O(d)(2)(B), an Auction conducted per proposed NYSE Arca Rule 6.64P–O(d)(4)(A) would open on a quote if there is no Matched Volume).

²⁴ See proposed NYSE Arca Rule 6.64P–O(a)(5)(I). See also NYSE Arca Rule 6.64P–O(d)(4) (providing that “[u]nless otherwise specified by Trader Update, for the first ninety seconds of the Auction Process . . .” and “[n]inety seconds after the Auction Process begins:”).

²⁵ See *id.* See proposed NYSE Arca Rule 6.64P–O(d)(4)(A) (replacing reference to the first ninety seconds after the Auction Process with the proposed definition of the “initial Auction Process time period,” which the Exchange states would add clarity and internal consistency to the Rule, making it easier to navigate and comprehend).

²⁶ See NYSE Arca Rule 6.64P–O(a)(10)(C) (which the Exchanges states provides that a Trading Official may establish maximum differentials for one or more series or classes of options, which differ from those established by the Exchange).

²⁷ To qualify as a Legal Width Quote, the Calculated NBBO must also be uncrossed and must contain a non-zero offer, which requirements the Exchange states are not being modified by this rule change. See NYSE Arca Rule 6.64P–O(a)(10)(A)–(B).

²⁸ See proposed NYSE Arca Rule 6.64P–O(a)(10)(D).

²⁹ The Exchange states that, similar to the Exchange, other options exchanges have rules granting them broad discretion to modify the opening parameters for each option series, which modifications are disseminated or announced to market participants over data feeds or trader notice. See Notice, *supra* note 3, 87 FR at 32205 n. 24.

The Exchange states that, although Limit Orders would be eligible to execute based on this proposed functionality, whether a Market Order or MOO Order may participate in the proposed Auction depends on the width of the market at the time of the Auction. Specifically, as proposed, if the Calculated NBBO spread is wider than the differential established per paragraph (a)(10)(C) of this rule, the Exchange would cancel Market Orders and MOO Orders before conducting the Auction, which proposed handling the Exchange states is consistent with the current Pillar Rule.³⁵ Conversely, as proposed, and consistent with the current Pillar Rule, Market Orders and MOO Orders are not canceled and will participate in an Auction that is based on a Calculated NBBO that is less than or equal to the Calculated NBBO spread limit established per NYSE Arca Rule 6.64P–O(a)(10)(C).³⁶ As further proposed, after the cancellation of any Market Orders or MOO Orders as applicable, the Auction Process will proceed consistent with paragraph (d)(2)(A)–(B) of this rule and the Exchange will execute Matched Volume (if any) to the extent possible before transitioning to continuous trading.³⁷

The Exchange states that, taken together, the proposed changes to NYSE Arca Rules 6.64P–O(a)(10)(D) and (d)(4) would allow any series that has not

Arca Rule 6.64P–O(d)(4)(A) indicating that the “Auction is not intended to end with a trade, but it may result in a trade even if there is no Legal Width Quote if orders or quotes arrive during the period when the Exchange is evaluating the status of orders and quotes” as well as text indicating that the Exchange would “transition to continuous trading as described in paragraph (f) of this Rule.” See proposed NYSE Arca Rule 6.64P–O(d)(4)(A).

³⁵ See NYSE Arca Rule 6.64P–O(d)(4)(A)(i) (providing that Market Orders and MOO Orders are cancelled “[a]ny time a series is opened or reopened when there is no Legal Width Quote,” *i.e.*, when the Calculated NBBO exceeds the maximum allowable spread limit set forth in NYSE Arca Rule 6.64P–O(a)(10)(C)).

³⁶ See *id.* The Exchange states that, to avoid potential confusion regarding the distinct handling of Market Orders and MOO Orders under proposed NYSE Arca Rule 6.64P–O(d)(4)(A) depending upon whether an Auction is conducted based on a Calculated NBBO spread that is in compliance with NYSE Arca Rule 6.64P–O(a)(10)(C) or with proposed NYSE Arca Rule 6.64P–O(a)(10)(D), the Exchange has intentionally avoided reference to the presence of a Legal Width Quote in the proposed Rule. See, e.g., proposed NYSE Arca Rule 6.64P–O(d)(4)(A); Notice, *supra* note 3, 87 FR at 32206 n. 31.

³⁷ See, e.g., NYSE Arca Rule 6.64P–O(d)(2)(A)–(B) (providing that “[i]f there is Matched Volume that can trade at or within the Auction Collars, the Auction will result in a trade at the Indicative Match Price” or, “[i]f there is no Matched Volume that can trade at or within the Auction Collars,” the Auction will not result in a trade and the Exchange will transition to continuous trading as described in paragraph (f) of this Rule and the Auction will result in a quote”).

opened by the end of the initial Auction Process time period the ability to open based on a Legal Width Quote derived from then-market conditions. As such, the Exchange proposes to modify NYSE Arca Rule 6.64P–O(d)(4)(B) to update the cross-reference from paragraph (d)(4)(A) to paragraph (d)(4) and to eliminate as superfluous paragraph (d)(4)(B)(ii), which refers to waiting until “the series can be opened as provided for in paragraph (d)(4)(A).”³⁸ The Exchange believes these proposed conforming changes are necessary given that the proposed changes to 6.64P–O(a)(10)(D) (removing the limit on the Calculated NBBO spread to qualify as Legal Width Quote) and (d)(4)(A) (addressing the conduct of an Auction after the initial Auction Process time period under the expanded definition of Legal Width Quote) render paragraph (d)(4)(B)(ii) of the rule unnecessary.

The Exchange states that it is not making any changes to the requirements to conduct an Auction during the initial Auction Process time period, and that the proposed changes relate solely to those series that remain unopened after the conclusion of the initial Auction Process time period because the Calculated NBBO spread is too wide. The Exchange states that the initial Auction Process time period affords market participants sufficient opportunity to absorb available pricing information, including Market Makers that are generally responsible for pricing the market. The Exchange states that, if the Calculated NBBO remains wide by the end of the initial Auction Process time period, the Exchange believes it is unlikely to tighten if the Exchange were to further delay the opening of a series. The Exchange states it has observed that on a typical trading day, in the current system, nearly 98% of all series are opened by 9:32 a.m. Eastern Time. As such, the Exchange states it anticipates that the majority of series would be opened within ninety seconds of the Auction Process and would not be impacted by the proposed rule change. However, for the minority of option series that have not opened within the first ninety seconds, the Exchange states that it is necessary and appropriate to allow such series to open based on prices consistent with then-current market conditions, provided the Calculated NBBO for the series is not

³⁸ See proposed NYSE Arca Rules 6.64P–O(d)(4)(A)–(B). The Exchange also proposes conforming changes to re-number the remaining paragraphs in light of the proposed deletion, which the Exchange states would add clarity and internal consistency to the rule. See Notice, *supra* note 3, 87 FR at 32006 n. 33.

crossed, and does not contain a zero offer.

The Exchange states that the proposed modification to the Auction Process would continue to protect Market Orders and MOO Orders from being executed (by cancelling such orders before conducting the proposed Auction) when the Calculated NBBO spread exceeds the spread differential established per current NYSE Arca Rule 6.64P–O(a)(10)(C) before conducting the proposed Auction. In addition, the Exchange states that the proposed modification would allow any eligible Limit Orders to be executed in the proposed Auction, bound by the Calculated NBBO. According to the Exchange, the Calculated NBBO (even if wide) represents the best-priced quotes by Market Makers (which participants generally are responsible for pricing the market) and/or the ABBO, the presence of which indicates that another market has opened.³⁹

The Exchange further states that, consistent with current functionality (and with the approved Pillar Rule), the Exchange would not permit any opening transactions to trade through any better-priced interest on any Away Market, even if it is permitted to do so.⁴⁰ Rather, because interest in the Auction would not trade outside of the Calculated NBBO (which defines the then-current market for the series), any Limit Orders executed in the proposed Auction would, bound by Auction collars, would trade at a price that is equal to or better than the price(s) available at other exchanges.⁴¹ Per NYSE Arca Rule

³⁹ The Exchanges states that options exchanges have varying opening processes and have made separate determinations on what constitutes individual, reasonable opening market widths. The Exchange further states that, if other options exchanges opened a series with a market width, it is reasonable to open the series for trading on the Exchange as well (as orders submitted to other exchanges may be trading at those widths). See Notice, *supra* note 3, 87 FR at 32206 n. 34.

⁴⁰ The Exchange states that, although the intermarket linkage rules exempt from trade-through liability trades occurring during the opening process, the Exchange would continue to restrict transactions occurring at the open to the NBBO. See, e.g., NYSE Arca Rule 6.94–O(b)(2) (exempting from trade-through liability those transactions that “traded through a Protected Quotation being disseminated by an Eligible Exchange during a trading rotation”). A “Protected Quotation” is the Best Bid or Best Offer disseminated by OPRA and displayed by an Eligible Exchange. See NYSE Arca Rule 6.92–O(15)–(16). See also Notice, *supra* note 3, 87 FR at 32206 n. 35.

⁴¹ See, e.g., NYSE Arca Rule 6.64P–O(b)(2)(A) (A) (providing that, “[i]f there is Matched Volume that can trade at or within the Auction Collars, the Auction will result in a trade at the Indicative Match Price); NYSE Arca Rule 6.64–O(a)(3), (9), and (11) (defining Auction Collars, Indicative Match Price, and Matched Volume, respectively). See also Notice, *supra* note 3, 87 FR at 32206 n. 36.

6.64P–O(f)(3)(A), any interest remaining after such Action is then evaluated for potential routing prior to being posted to the Consolidated Book. Further, the Exchange states that there are other price protections available to limit the risk of executions at a wider market price.⁴² Thus, the Exchange believes that the risk of an extreme execution based on the Calculated NBBO available after the initial Auction Process time period may be mitigated for the aforementioned reasons. The Exchange believes that, on balance, the benefits to market participants of having the series open earlier outweighs this mitigated risk.

Finally, the Exchange also proposes to modify the requirements to open a series during the initial Auction Process time period for option series with two or more assigned Market Makers, per NYSE Arca Rule 6.64P–O(d)(3)(C). The Exchange states that, per NYSE Arca Rule 6.64P–O(3)(C)(i), if there are two or more Market Makers assigned to a series, the Exchange will conduct the Auction, without waiting for the Opening MMQ Timer to end, as soon as there is both a Legal Width Quote and at least two assigned Market Makers have submitted a quote with a non-zero offer. Per NYSE Arca Rule 6.64P–O(3)(C)(ii), if at least two Market Makers assigned to a series have not submitted a quote with a non-zero offer by the end of the Opening MMQ Timer, the Exchange will begin a second Opening MMQ Timer. The Exchange proposes to modify these provisions to provide that the Exchange would require that at least two quotes with non-zero offers be submitted during the Opening MMQ Timer, which quotes may be sent by one or more Market Makers.⁴³

⁴² See, e.g., NYSE Arca Rule 6.41P–O(a)(1), (b) (regarding the Arbitrage Check, which the Exchange states is applied pre-open). The Exchange states that the price protection mechanisms it employs during continuous trading are based on the NBBO, or Auction Prices as applicable; NYSE Arca Rule 6.41P–O(c)(4)(B) (regarding the Intrinsic Value Check); NYSE Arca Rule 6.62P–O(a)(4)(A) (regarding Limit Order Price Protection); and NYSE Arca Rule 6.62P–O(a)(4)(B) (regarding Trading Collars). See also Notice, *supra* note 3, 87 FR at 32207 n. 37.

⁴³ See proposed NYSE Arca Rule 6.64P–O(d)(2) (providing that “[o]nce a Rotational Quote has been sent, the Exchange will conduct an Auction when there is both a Legal Width Quote and, if applicable, Market Maker quotes with a non-zero offer in the series (subject to the Opening MMQ Timer(s) requirements in paragraph (d)(3) of this Rule”) and NYSE Arca Rule 6.64P–O(d)(3)(C)(i) (providing that “[t]he Exchange will conduct the Auction, without waiting for the Opening MMQ Timer to end, as soon as there is both a Legal Width Quote and at least two quotes with a non-zero offer submitted by assigned Market Maker(s)”) and (d)(3)(C)(ii) (providing that “[i]f the Exchange has not received at least two quotes with a non-zero offer from any Market Maker(s) assigned to a series by the end of

The Exchange states that the proposed change continues to encourage (but not require) Market Makers to participate at the open, which may increase the availability of Legal Width Quotes in more series, thereby allowing more series to open in a timely manner. The Exchange states that expanding the opportunities for each Market Maker to enter the market—whether by each Market Maker submitting one quote or a single Market Maker submitting two quotes—could result in the depth of liquidity that market participants have come to expect in options with multiple assigned Market Makers, and a more stable trading environment. The Exchange states that the proposed rule change would provide more flexibility in terms of how market depth is achieved (*i.e.*, based on quotes from a single Market Maker as opposed to two) and may result in a more timely and efficient opening process. Further, the Exchange states that the proposed change may increase the availability of Legal Width Quotes in more series and would add clarity and transparency to Exchange rules.

*Other Exchange Rules: Proposed Non-Substantive or Clarifying Changes*⁴⁴

The Exchange also proposes to make several clarifying or non-substantive changes to certain of its rules. First, the Exchange proposes to modify paragraph (c) of NYSE Arca Rule 6.37–O (Obligations of Market Makers) regarding “Unusual Conditions—Auctions” to add an open parenthesis in the cross reference to NYSE Arca Rule 6.64P–O(a)(10).⁴⁵ The Exchange states that this proposed change would correct an inadvertent omission and would add clarity and transparency to Exchange rules.

Next, the Exchange proposes to correct several cross-references in NYSE Arca Rule 6.62P–O (Orders and Modifiers). The Exchange proposes to update the reference in NYSE Arca Rule 6.62P–O(e)(3)(C)(ii) regarding Day ISO ALO Orders to correctly cross-reference paragraphs (e)(2)(C)–(F) (rather than to paragraphs (e)(2)(C)–(G)) to cover the processing of such ALO Orders once resting.⁴⁶ The Exchange states that the proposed change would correct an inadvertent error adding clarity and transparency to Exchange rules. Similarly, the Exchange proposes to update the reference in NYSE Arca Rule

the Opening MMQ Timer, the Exchange will begin a second Opening MMQ Timer”). See also Notice, *supra* note 3, 87 FR at 32207 n. 38.

⁴⁴ See Notice, *supra* note 3, 87 FR at 15.

⁴⁵ See proposed NYSE Arca Rule 6.37–O(c).

⁴⁶ See proposed NYSE Arca Rule 6.62P–O(e)(3)(C)(ii).

6.62P–O(h)(6)(B) to correctly cross-reference the defined term Complex Order, which is set forth in NYSE Arca Rule 6.62P–O(f) (rather than paragraph (e)).⁴⁷ The Exchanges states that the proposed change would correct an inadvertent error adding clarity and transparency to Exchange rules.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEARCA–2022–31 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁴⁸ to determine whether the proposed rule change 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 proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,⁴⁹ 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 Section 6(b)(5) of the Act⁵⁰ 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 and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.⁵¹ As discussed above, the Exchange is proposing to modify NYSE Arca Rule 6.64P–O regarding the automated process for both opening and reopening trading in a series on the Exchange on Pillar. The Commission has concerns about whether the auction process, as currently proposed, raises the potential risk of the auction resulting in a trade execution at an extreme price and whether the Exchange has in place

⁴⁷ See proposed NYSE Arca Rule 6.62P–O(h)(6)(B).

⁴⁸ 15 U.S.C. 78s(b)(2)(B).

⁴⁹ *Id.*

⁵⁰ 15 U.S.C. 78f(b)(5).

⁵¹ See *id.*

sufficient measures to protect against or mitigate the potential execution of investor orders in the auction at such a price.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change."⁵² 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,⁵³ and any failure of an SRO to provide this information may result in the Commission not having sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rule and regulations.⁵⁴

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act⁵⁵ to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations 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.⁵⁶

⁵² Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁵³ See *id.*

⁵⁴ See *id.*

⁵⁵ 15 U.S.C. 78s(b)(2)(B).

⁵⁶ Section 19(b)(2) of the Act 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 an SRO. See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by September 19, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 3, 2022. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,⁵⁷ and any other issues raised by the proposed rule change under the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2022-31 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-NYSEARCA-2022-31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should

⁵⁷ See *supra* note 3.

submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NYSEARCA-2022-31 and should be submitted on or before September 19, 2022. Rebuttal comments should be submitted by October 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2022-18501 Filed 8-26-22; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 11841]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Edward Hopper's New York" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition "Edward Hopper's New York" at the Whitney Museum of American Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA-5), Suite 5H03, Washington, DC 20522-0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000, and Delegation of

⁵⁸ 17 CFR 200.30-3(a)(57).