

proposed extension would provide regulatory certainty while firms continue to manage health and safety concerns, work absences, and the transition to new workforce arrangements. FINRA believes that this limited extension in temporary relief, together with the requirements for using the temporary relief in Rule 3110.17, would not diminish investor protection.

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

Written comments were neither solicited nor received.

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

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) of the Act<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2022-030 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-FINRA-2022-030. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2022-030 and should be submitted on or before December 1, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022-24509 Filed 11-9-22; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-96242; File No. SR-NYSEARCA-2022-31]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Amend Rule 6.64P-O**

November 4, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 platform, as described below. The proposed rule change was published for comment in the **Federal Register** on May 27, 2012.<sup>3</sup> On June 24, 2022, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> 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.<sup>5</sup> On August 23, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> On October 25, 2022, the Exchange filed Amendment No. 1 to the proposed rule change,<sup>8</sup> and on October 27, 2022, the Exchange filed Amendment No. 2 to the proposed rule change,<sup>9</sup> which replaced and superseded in their entirety both the original filing and Amendment No. 1. The Commission has received no comments on the proposed rule change.

<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. 94959 (May 23, 2012), 87 FR 32203 (May 27, 2022).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>7</sup> See Securities Exchange Act Release No. 95581 (Aug. 23, 2022), 87 FR 52827 (Aug. 29, 2022).

<sup>8</sup> Amendment No. 1 is available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/rule-filings/filings/2022/SR-NYSEArca-2022-31\\_Am.\\_1.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/rule-filings/filings/2022/SR-NYSEArca-2022-31_Am._1.pdf).

<sup>9</sup> Amendment No. 2 is available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/rule-filings/filings/2022/SR-NYSEArca-2022-31\\_Am.\\_2.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/rule-filings/filings/2022/SR-NYSEArca-2022-31_Am._2.pdf).

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

## II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 2

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

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

#### 1. Purpose

The Exchange proposes to modify 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.<sup>10</sup> This Amendment No. 2 supersedes and replaces Amendment No. 1 to the original filing in its entirety.<sup>11</sup>

#### Current Pillar Auction Process

Rule 6.64P-O(d) sets forth the Auction Process.<sup>12</sup> Per Rule 6.64P-O(d)(1), once the Exchange receives the Auction Trigger for a series,<sup>13</sup> the

<sup>10</sup> Rule 6.64P-O (the "Pillar Rule") covers the opening and reopening of option series, which process is identical on the Pillar trading platform. As such, the Exchange will simply refer to the "opening" of a series herein. The Exchange completed its migration to Pillar on July 28, 2022, as announced here: <https://www.nyse.com/trader-update/history#110000440092>.

<sup>11</sup> This Amendment No. 2 updates information regarding the Exchange's completed migration to Pillar and substantively modifies the original filing as follows: (i) proposing additional discretion for the Exchange to establish what constitutes a Legal Width Quote during the Auction Process (ii) adopting a defined term of "initial Auction Process time period"; (iii) adopting functionality to cancel, rather than execute in the Auction, certain Limit Orders after the "initial Auction Process time period" has elapsed; (iv) providing the Exchange discretion to modify by Trader Update the timing for dissemination of Auction Imbalance Information; and (v) removing the specified values for time periods that the Exchange has discretion to modify by Trader Update (*i.e.*, MMQ Opening Timers).

<sup>12</sup> "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 Rule 6.64P-O(a)(5).

<sup>13</sup> "Auction Trigger" refers to the information disseminated by the Primary Market in the

Auction Process begins and the Exchange sends a Rotational Quote<sup>14</sup> 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 Rule 6.64P-O(d)(2), once a Rotational Quote has been sent, the Exchange conducts an Auction,<sup>15</sup> 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 Rule 6.64P-O(d)(3).<sup>16</sup> 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.<sup>17</sup> The Calculated NBBO is comprised of the highest bid and lowest offer among all Market Maker quotes and the ABBO during the Auction Process.<sup>18</sup> 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.

If the foregoing requirements are met (*i.e.*, per 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 Volume<sup>19</sup> that can trade at

underlying security that triggers the Auction Process for a series to begin. See Rule 6.64P-O(a)(7).

<sup>14</sup> "Rotational Quote" refers to the highest Market Maker bid and lowest Market Maker offer on the Exchange when the Auction Process begins and such Rotational Quote will be updated (for price and size) during the Auction Process. See Rule 6.64P-O(a)(13).

<sup>15</sup> "Auction" refers to the opening or reopening of a series for trading either with or without a trade. See Rule 6.64P-O(a)(1).

<sup>16</sup> See Rule 6.64P-O(d)(2). Rule 6.64P-O(d)(3) specifies the parameters of the Opening MMQ Timers, which 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 would add clarity and internal consistency to the rule. See proposed Rule 6.64P-O(d)(3).

<sup>17</sup> See 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 Rule 6.64P-O(a)(10)(C).

<sup>18</sup> See Rule 6.64P-O(a)(8) (defining Calculated NBBO).

<sup>19</sup> "Matched Volume" refers to the number of buy and sell contracts that can be matched at the Indicative Match Price, excluding IO Orders. See 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 Rule 6.62P-O(c)(3).

or within the Auction Collars.<sup>20</sup> 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.<sup>21</sup> However, if there is no Matched Volume that can trade at or within the Auction Collars, the Auction Process will instead result in a quote and the Exchange transitions to continuous trading as set forth in Rule 6.64P-O(f).<sup>22</sup>

Finally, per 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 (hereinafter referred to as the "initial Auction Process time period," as described further below). After the initial Auction Process time period, 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 Rule 6.64P-O(f).<sup>23</sup> The Exchange, however, will not open a series and such series will remain unopened 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) (*i.e.*, there is no Matched Volume and the Calculated NBBO is uncrossed and has a non-zero offer); (iii) the series is halted; or (iv) the end of Core Trading Hours.<sup>24</sup> In other words, a series that does not meet the requirements of Rule 6.64P-O(d)(4)(A) may be delayed in opening until one of the conditions set forth in Rule 6.64P-O(d)(4)(B) occur.

<sup>20</sup> "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 Rule 6.64P-O(a)(2).

<sup>21</sup> See 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 Rule 6.64P-O(a)(9).

<sup>22</sup> See Rule 6.64P-O(d)(2)(B).

<sup>23</sup> See Rule 6.64P-O(d)(4)(A).

<sup>24</sup> See Rule 6.64P-O(d)(4)(B).

## Proposed Change to Auction Process

First, the Exchange proposes to codify existing rule text (contained in paragraph (d)(4) of the Rule) into the defined phrase the “initial Auction Process time period” in proposed Rule 6.64P–O(a)(5)(i).<sup>25</sup> As proposed, the initial Auction Process time period would mean, “an Exchange-determined time period after the commencement of the Auction Process as specified by Trader Update.”<sup>26</sup> Given that the Exchange has discretion to modify the “ninety second” time period referenced in Rule 6.64P–O(d)(4)—and has modified this time period since adopting the Pillar Rule—the Exchange proposes to remove reference to a specific time period, which would add clarity and transparency to the Auction Process.<sup>27</sup> Consistent with this change, the Exchange likewise proposes to modify Rule 6.64P–O(d)(3), to remove reference to “30 seconds” which is the default value for the length of each MMQ Opening Timer, “[u]nless otherwise specified by Trader Update.”<sup>28</sup> Given that the Exchange has modified this time period since adopting the Pillar Rule, the Exchange believes that removing reference to a specific time period would add clarity and transparency to the Auction Process.<sup>29</sup>

Next, the Exchange proposes to modify Rule 6.64P–O(a)(10)(C) to clarify the Exchange’s discretion to determine the presence of a Legal Width Quote. 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 (herein referred to as the “Maximum Calculated NBBO Spread”).<sup>30</sup> The Exchange proposes to clarify that the Exchange has authority to modify the Maximum Calculated NBBO Spread during the Auction Process and that any such modifications (like the Exchange-determined Maximum Calculated NBBO Spread) would likewise be announced by Trader Update.<sup>31</sup> This proposed clarification, which is consistent with its existing authority under Rule 6.64P–O(a)(10), would add specificity and transparency to the Auction Process to the benefit of all market participants. The Exchange notes that other options exchanges likewise specify that their discretion to modify the opening parameters for each option series applies during the opening auction process and likewise includes the requirement that each such change is announced to their market participants.<sup>32</sup>

The Exchange proposes to modify Rule 6.64P–O(d)(4) to provide that, after the initial Auction Process time period has elapsed, the Exchange may open a series when the Calculated NBBO is wider than the Legal Width Quote, is not crossed, and does not contain a zero offer (the “wide Calculated NBBO”) provided the Exchange first cancels certain interest.<sup>33</sup> Specifically, before the Exchange can open a series, with a quote, and transition to continuous trading (per Rule 6.64P–O(f)) based on a wide Calculated NBBO, the Exchange must first cancel Market Orders, MOO Orders, and Limit Orders to buy (sell)

priced equal to or higher (lower) than the Indicative Match Price.<sup>34</sup> The Exchange believes that the proposed cancellation of such executable Limit Orders would help prevent executions at potentially extreme prices. Consistent with this change, the Exchange proposes to add a caveat to Rule 6.64P–O(d)(2)(A)—which provides for the trading of certain executable interest at the Indicative Match Price—to make clear that the trading behavior set forth in this provision is subject to proposed Rule 6.64P–O(d)(4).<sup>35</sup> Although the functionality set forth in Rule 6.64P–O(d) is designed to allow the affected series to open on a quote (and not a trade), the Exchange acknowledges the possibility that such series may open on a trade because orders or quotes may arrive as the Exchange is evaluating trading interest and whether such interest qualifies as a Legal Width Quote.<sup>36</sup>

The proposed cancellation of Market Orders and MOO Orders before opening a series is consistent with the current Pillar Rule and thus would continue to protect Market Orders and MOO Orders from being executed before transitioning to continuous trading, per paragraph (f) of the Pillar Rule when there is a wide Calculated NBBO.<sup>37</sup> The proposed cancellation of Limit Orders to buy (sell) priced equal to or higher (lower) than the Indicative Match Price, is new. The Indicative Match Price refers to the opening price for a series and represent the price at which the maximum number of contracts can be traded in an Auction. Thus, the proposal to cancel Limit Orders to buy (sell) priced equal to or higher (lower) than the Indicative

<sup>25</sup> See 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:”). Consistent with the proposed defined term of “initial Auction Process time period,” the Exchange proposes to remove the references to ninety (90) seconds.

<sup>26</sup> See proposed Rule 6.64P–O(a)(5)(i) (defining “initial Auction Process time period”).

<sup>27</sup> On August 19, 2002 [sic], the Exchange announced by Trader Update that, effective August 22, 2022, “the Exchange will reduce the time period after the start of the Auction Process when the Exchange may open a series on a quote without requiring a Legal Width Quote (provided there is no crossing interest) to 15 seconds, from the current 90 seconds,” available here: <https://www.nyse.com/trader-update/history#110000462552> (the “Opening Timer Update”).

<sup>28</sup> See proposed Rule 6.64P–O(d)(3) (providing that “[e]ach Opening MMQ Timer will be an Exchange-determined period that is announced by Trader Update”).

<sup>29</sup> See Opening Timer Trader Update, *supra* note 27 (announcing that, effective August 22, 2022, each Opening MMQ Timer will be reduced to 5 seconds, from the current value of 30 seconds). The Exchange proposes the non-substantive change to re-organize the existing text for clarity purposes (*i.e.*, moving the clause “[e]ach opening MMQ Timer” to the beginning of the proposed rule). See *id.*

<sup>30</sup> See Rule 6.64P–O(a)(10)(C) (which also provides a Trading Official may establish maximum differentials for one or more series or classes of options, which differ from those established by the Exchange). To qualify as a Legal Width Quote, the Calculated NBBO must also be uncrossed and must contain a non-zero offer, which requirements are not being modified by this rule change. See Rule 6.64P–O(a)(10)(A)–(B).

<sup>31</sup> See proposed Rule 6.64P–O(a)(10)(C). See Rule 6.64P–O(a)(10)(A)–(B).

<sup>32</sup> See, *e.g.*, Cboe Options Exchange, Inc. (“Cboe”) Rule 5.31(a) (definitions of Maximum Composite Width and Opening Collar, each of which the exchange “may modify during the opening auction process (which modifications the Exchange disseminates to all subscribers to the Exchange’s data feeds that deliver opening auction updates”); Cboe EDGX Options Exchange, Inc. (“EDGX”) Rule 21.7(a) (same); Cboe BZX Options Exchange, Inc. (“BZX”) Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar); Cboe C2 Exchange Inc. (“C2”) Rule 6.11(a) (same).

<sup>33</sup> See proposed Rule 6.64P–O(d)(4). Consistent with the proposed definition of the “initial Auction Process time period” and its use in the proposed rule, the Exchange proposes to delete reference to “ninety seconds” regarding the Auction Process. See *id.*

<sup>34</sup> See proposed Rule 6.64P–O(d)(4). The Exchange proposes to re-locate the text regarding the potential race condition resulting in a trade from Rule 6.64P–O(d)(4)(A) to proposed Rule 6.64P–O(d)(4) and to replace reference to “Auction” with “Auction Process” for the sake of clarity as well as to delete current paragraph (d)(4)(A) of the Pillar Rule as obsolete because the text describing the wide Calculated NBBO is contained in proposed Rule 6.64P–O(d)(4) and the transition to continuous trading is no longer dependent upon the presence of Matched Volume under the proposed functionality. See *id.*

<sup>35</sup> See proposed Rule 6.64P–O(d)(2)(A). As is the case today—which behavior remains unchanged by proposed Rule 6.64P–O(d), the Exchange will open on a quote and transition to continuous trading (per Rule 6.64P–O(f)) in the absence of executable interest (*i.e.*, there is no Matched Volume that can trade at or within the Auction Collars). See Rule 6.64P–O(d)(2)(B).

<sup>36</sup> See proposed Rule 6.64P–O(d)(4) (regarding the potential race condition resulting in a trade).

<sup>37</sup> See 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”). The Exchange believes this proposed change is non-substantive as it simply relocates existing text in the more streamlined proposed rule.

Match Price when the Calculated NBBO is wider than the Legal Width Quote would allow the Exchange to help ensure that potentially executable Limit Orders would be cancelled rather than execute at potentially extreme prices before the Exchange transitions to continuous trading.<sup>38</sup> The Exchange believes that this proposed handling would likewise allow the Exchange to proceed with a timely opening of each series—which opening would have otherwise been delayed until market conditions changed per the current Pillar Rule.<sup>39</sup>

Because the proposed change to Rule 6.64P–O(d)(4) would allow any series that has not opened by the end of the initial Auction Process time period the ability to open on a quote based on a wide Calculated NBBO, the Exchange proposes to eliminate as unnecessary Rule 6.64P–O(d)(4)(B), which paragraph contemplates a series not being able to open because the Calculated NBBO is wider than—and thus does not qualify as—a Legal Width Quote. The Exchange believes these proposed conforming changes are necessary given that the proposed changes to Rule 6.64P–O(d)(4) render paragraph (d)(4)(B) of the Rule unnecessary.

In addition, the Exchange proposes to modify Rule 6.64P–O(c), which provides that “Auction Imbalance Information is updated at least every second until the Auction is conducted, unless there is no change to the information,” to authorize the Exchange to modify the time within which it updates this information and to announce any such changes by Trader Update.<sup>40</sup> Given the proposed change to allow the Exchange to open certain series after the initial Auction Process time period after first cancelling certain interest, the Exchange anticipates that it may not be necessary to update the Auction Imbalance Information at least every second. The Exchange seeks flexibility in the frequency for imbalance publication as it plans to monitor the impact of the proposed

<sup>38</sup> The Exchange notes that “[i]f there is no Legal Width Quote, the Indicative Match Price included in the Auction Imbalance Information will be calculated without Auction Collars.” See Rule 6.64P–O(a)(9).

<sup>39</sup> See, e.g., Rule 6.64P–O(d)(4)(A) and (B). The Exchange notes that any Auction interest that is not cancelled in series that open per proposed Rule 6.64P–O(d)(4) would be handled in the same manner as all other Auction interest that is present when the Exchange transitions from the Auction Process to continuous trading per Rule 6.64P–O(f)(1)–(3).

<sup>40</sup> See proposed Rule 6.64P–O(c) (providing that “[u]nless otherwise provided by Trader Update, Auction Imbalance Information is updated at least every second until the Auction is conducted, unless there is no change to the information”).

change after which it will be in a position to better assess the appropriate frequency for publication of the Auction Imbalance Information. In addition, this proposed discretion, which is consistent with other options exchanges, would afford the Exchange flexibility, including to respond to market conditions.<sup>41</sup>

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 Rule 6.64P–O(d)(3)(C). Per Rule 6.64P–O(d)(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 Rule 6.64P–O(d)(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.<sup>42</sup>

The Exchange believes 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 believes that expanding the opportunities for each Market Maker

<sup>41</sup> See, e.g., Nasdaq Options Market (“NOM”) Section 8(b)(3) (providing that “Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 5 seconds beginning between 9:20 and 9:28, or a shorter dissemination interval as established by the Exchange, with the default being set at 9:25 a.m. The start of dissemination, and a dissemination interval, shall be posted by Nasdaq on its website.”).

<sup>42</sup> 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 Proposed Rules 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 Opening MMQ Timer, the Exchange will begin a second Opening MMQ Timer”).

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 believes 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 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

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 Rule 6.37–O (Obligations of Market Makers) regarding “Unusual Conditions—Auctions” to add an open parenthesis in the cross reference to Rule 6.64P–O(a)(10).<sup>43</sup> The Exchange believes 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 Rule 6.62P–O (Orders and Modifiers). The Exchange proposes to update the reference in 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.<sup>44</sup> The proposed change would correct an inadvertent error adding clarity and transparency to Exchange rules. Similarly, the Exchange proposes to update the reference in Rule 6.62P–O(h)(6)(B) to correctly cross-reference the defined term Complex Order, which is set forth in Rule 6.62P–O(f) (rather than paragraph (e)).<sup>45</sup> The proposed change would correct an inadvertent error adding clarity and transparency to Exchange rules.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>46</sup> in general, and furthers the

<sup>43</sup> See proposed Rule 6.37–O(c).

<sup>44</sup> See proposed Rule 6.62P–O(e)(3)(C)(ii).

<sup>45</sup> See proposed Rule 6.62P–O(h)(6)(B).

<sup>46</sup> 15 U.S.C. 78f(b).

objectives of Section 6(b)(5),<sup>47</sup> in particular, because it is 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 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.

#### Proposed Change to Pillar Auction Process

Overall, the Exchange believes the proposed changes to its Auction Process would promote a fair and orderly market by mitigating the potential for extreme executions when a series opens in a wide market and improving the speed and efficiency of the Exchange's opening process without impairing price discovery. The Exchange believes the proposed change should result in better and more consistent prices on Auction executions and facilitate a fair and orderly transition to continuous trading.

The Exchange believes the proposal to amend Rule 6.64P–O to remove specific values or time periods when the Exchange is authorized to change (and in some cases has changed) such values/timers by Trader Update would add clarity and transparency to the rule and alleviate potential confusion resulting from stale values remaining in rule text. As such, this proposed change would 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.

The Exchange believes the proposed change to make clear that the Exchange's discretion to modify the Maximum Calculated NBBO Spread that would qualify as a Legal Width Quote during the Auction Process would promote just and equitable principles of trade to the benefit of investors because such change would add clarity and transparency to the rule and help avoid potential investor confusion. The proposed change would also align the Exchange's rule text with that of Cboe and its affiliates with regard to the specific discretion applying during the Auction Process.<sup>48</sup>

The Exchange believes the proposal to amend Rule 6.64P–O(d)(4) to allow the Exchange to conduct an Auction on a

wide Calculated NBBO once it has cancelled certain trading interest would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors. In particular, the Exchange believes that the proposed change would improve the speed and efficiency of the Exchange's opening process without impairing price discovery, which should result in better and more consistent prices on Auction executions. The proposed cancellation of Market Orders, MOO Orders, and Limit Orders to buy (sell) priced equal to or higher (lower) than the Indicative Match Price, would allow the Exchange to proceed with a timely opening of each series while preventing extreme executions for series opened based on a wide Calculated NBBO. The proposal to cancel Limit Orders to buy (sell) priced equal to or higher (lower) than the Indicative Match Price when the Calculated NBBO is wider than the Legal Width Quote, which functionality is new, would allow the Exchange to help ensure that potentially executable Limit Orders would be cancelled rather than execute at potentially extreme prices before the Exchange transitions to continuous trading (in a wide market). As such, the Exchange believes that providing for the cancellation of potentially executable interest (Market Orders, MOOs and Limit Orders alike) would protect investors as it would continue to limit the risk of execution of orders at extreme prices.

The Exchange believes its proposed conforming change to eliminate as unnecessary Rule 6.64P–O(d)(4)(B) given the changes to Rule 6.64P–O(d)(4) (to allow any series that has not opened by the end of the initial Auction Process time period the ability to open based on a wide Calculated NBBO after cancelling executable interest) would remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors because it would allow the Exchange to proceed with a more timely opening of each series—which opening may have otherwise been delayed per the current Pillar Rule until market conditions changed. Further, the Exchange believes this conforming change would add clarity, specificity, transparency, and internal consistency to the proposed rule making it easier for market participants to navigate and comprehend.

The Exchange proposes to modify Rule 6.64P–O(c) to authorize the Exchange to modify the time within which it updates Auction Imbalance Information and to announce any such

changes by Trader Update would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors because the Exchange anticipates that as a result of its proposed changes to the Auction Process that updates the Auction Imbalance Information may not be required as frequently as is set forth in the current rule. The Exchange believes that the flexibility afforded by the proposed change would enable it to monitor client feedback and to then determine the appropriate frequency of the publication of the Auction Imbalance Information. In addition, consistent with the rules of other options exchanges, it would afford the Exchange flexibility, including to respond to market conditions.<sup>49</sup>

The Exchange believes its proposal to modify the requirements to open a series for option series that have two or more assigned Market Makers would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors because it would continue to provide Market Makers assigned to such series the opportunity to submit a quote while potentially promoting a more timely opening once at least two quotes (even if from a single Market Maker) have been submitted and would add clarity and transparency to Exchange rules. The Exchange believes the proposed rule change would provide more flexibility in terms of how market depth in the affected series 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 proposed change may increase the availability of Legal Width Quotes in more series and would add clarity and transparency to Exchange rules. Improving the validity of the opening price benefits all market participants and also benefits the reputation of the Exchange as being a venue that provides accurate price discovery. To the extent that this proposed rule change results in an option series opening sooner, which, in turn would increase the times during which investors may conduct trading in these options, this proposed change would benefit investors and the investing public.

<sup>47</sup> 15 U.S.C. 78f(b)(5).

<sup>48</sup> See *supra* note 32 (citing the discretion of Cboe and its affiliates to modify the opening auction parameters during the opening process).

<sup>49</sup> See *supra* note 41 (regarding NOM's discretion to establish intervals for its dissemination of an Order Imbalance Indicator and to post such interval(s) to NOM's website, per Section 8(b)(3)).

The Exchange believes that the proposed non-substantive and conforming changes to Rule 6.64P–O (including to delete paragraph (d)(4)(B)) would promote just and equitable principles of trade because such changes would streamline Rule 6.64P–O, thus adding clarity to the Auction Process making it easier to comprehend and navigate to the benefit of market participants and would promote transparency and internal consistency within Exchange rules making them easier to comprehend and navigate.

#### Additional Proposed Non-Substantive or Clarifying Changes to Exchange Rules

The Exchange believes that the proposed non-substantive and clarifying changes that update/correct inaccurate references would promote transparency and internal consistency within Exchange rules making them easier to comprehend and navigate.<sup>50</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 operates in a competitive market and regularly competes with other options exchanges for order flow. The Exchange does not believe that the proposed rule change would impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because all market participants may trade in any series that opens subject to the proposed (modified) opening process.

The Exchange believes that the proposed change to the Auction Process, which would allow certain unopened series to open in a wide market after the Exchange first cancelled potentially executable interest, would not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it is designed to open series on the Exchange in a fair, orderly and timely manner while at the same time mitigating the potential for extreme executions. Further, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as all market participants that participate in the opening process may benefit equally from the proposal, as the rules of the

Exchange apply equally to all market participants.

The Exchange does not believe that the proposed change to open those series with more than one assigned Market Maker based on two quotes regardless of the source would result in an undue burden on competition. Market Makers are encouraged but not required to quote in their assigned series at the open regardless of whether a Market Maker is one of several assigned to a series or is the only one. As such, this proposal would not subject any Market Maker to additional obligations. Thus, the Exchange does not believe this proposed change would result in an undue burden on intra-market competition as it would apply equally to all similarly-situated Market Makers regarding their assigned series. The Exchange believes that the proposal to allow a series with more than one assigned Market Maker to open based on two quotes regardless of the source would continue to encourage participation of Market Makers at the open, may increase the availability of Legal Width Quotes in more series, thereby allowing more series to open (sooner). Improving the validity of the opening price benefits all market participants and also benefits the reputation of the Exchange as being a venue that provides accurate price discovery. With respect to inter-market competition, the Exchange notes that most options exchanges do not require Market Makers to quote during the opening.<sup>51</sup>

Additionally, the non-substantive changes proposed by the Exchange, including removing reference to specific values or time periods where the Exchange has discretion to modify such values/timers by Trader Update, provide additional clarity and detail in the Exchange's rules, reduce the potential for investor confusion, and are not changes made for any competitive purpose.

#### *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. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to

a national securities exchange.<sup>52</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,<sup>53</sup> 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 foster cooperation and coordination with persons engaged in 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, and that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

#### Proposed Change to the Pillar Auction Process

The Commission believes that the proposal to define the term "initial Auction Process time period"<sup>54</sup> is consistent with the Exchange's discretion, under current NYSE Arca Rule 6.64P–O(d)(4), to modify the ninety second time period referenced in NYSE Arca Rule 6.64P–O(d)(4), provided that any such changes are announced by Trader Update.<sup>55</sup> The Exchange represents that it has modified this time period by Trader Update since adopting the Pillar Rule.<sup>56</sup> Similarly, the proposed change to remove reference to "30 seconds" as the default value for the length of each MMQ Opening Timer<sup>57</sup> is consistent with the Exchange's discretion to modify this value, as specified by Trader Update, under current NYSE Arca Rule 6.64P–O(d)(3). The Exchange represents that it has modified this time period since adopting the Pillar Rule.<sup>58</sup> The proposed

<sup>52</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>53</sup> 15 U.S.C. 78f(b)(5).

<sup>54</sup> See Proposed NYSE Arca Rule 6.64P–O(a)(5)(i).

<sup>55</sup> See NYSE Arca Rule 6.64P–O(d)(4).

<sup>56</sup> See *supra* note 27 and accompanying text (describing how, on August 19, 2022, the Exchange announced by Trader Update that, effective August 22, 2022, "the Exchange will reduce the time period after the start of the Auction Process when the Exchange may open a series on a quote without requiring a Legal Width Quote (provided there is no crossing interest) to 15 seconds, from the current 90 seconds," available at <https://www.nyse.com/trader-update/history#110000462552>).

<sup>57</sup> See Proposed NYSE Arca Rule 6.64P–O(d)(3).

<sup>58</sup> See *supra* note 29 and accompanying text (describing how, on August 19, 2022, the Exchange announced by Trader Update that effective August 22, 2022, each Opening MMQ Timer will be

<sup>50</sup> See *supra* notes 43–45.

<sup>51</sup> See, e.g., Cboe and its affiliated exchanges.

changes would thus update and align Exchange rules with current Exchange-specified time periods under current NYSE Arca Rule 6.64P–O(d)(4) and NYSE Arca Rule 6.64P–O(d)(3), thereby enhancing transparency to and promoting a fair and orderly Auction Process.

The Commission believes that the proposal to specify that the maximum allowable spread between the Calculated NBBO that is determined by the Exchange for each option contract on a class basis may be modified by the Exchange during the Auction Process, and that such maximum differentials, including any modifications thereto, will be announced by Trader Update<sup>59</sup> would, consistent with current NYSE Arca Rule 6.64P–O(a)(10), clarify that the Exchange has discretion to modify such maximum differentials during the Auction Process, and that any modifications to such maximum differentials would be announced by Trader Update, consistent with the current NYSE Arca rule.<sup>60</sup> The Commission thus believes that this proposal would add greater specificity to the current rule text, thereby enhancing clarity and transparency for and to the benefit of all market participants.<sup>61</sup>

The Commission believes that the proposal to provide that the Exchange may open a series that has not opened by the end of the initial Auction Process time period when the spread of the Calculated NBBO is wider than that required to constitute a Legal Width Quote, provided that the Exchange cancels potentially executable interest before proceeding to continuous trading under NYSE Arca Rule 6.64P–O(f),<sup>62</sup> would allow the Exchange to timely open an option series in such instances,

reduced to 5 seconds, from the current value of 30 seconds).

<sup>59</sup> See Proposed NYSE Arca Rule 6.64P–O(a)(10)(C).

<sup>60</sup> See NYSE Arca Rule 6.64P–O(a)(10)(C) (providing that, a “Legal Width Quote” is a Calculated NBBO that, among other requirements, has a spread between the Calculated NBBO for each option contract that does not exceed a maximum differential that is determined by the Exchange on a class basis and announced by Trader Update, provided that a Trading Official may establish differences other than the above for one or more series or classes of options).

<sup>61</sup> Other options exchange rules specify that the exchange has discretion to modify the opening parameters for each option series during the opening auction process, provided each such change is announced to market participants. See, e.g., Cboe Options Exchange, Inc. (“Cboe”) Rule 5.31(a) (defining the term “Maximum Composite Width”); Cboe EDGX Options Exchange, Inc. (“EDGX”) Rule 21.7(a).

<sup>62</sup> See Proposed NYSE Arca Rule 6.64P–O(d)(4). The proposed rule also requires, among other things, a Calculated NBBO that is not crossed and that does not contain a zero offer. See *id.*

while protecting such canceled auction interest from potentially executing at unexpectedly extreme prices.<sup>63</sup>

As proposed in Amendment No. 2, before the Exchange can open a series with a quote and transition to continuous trading when the spread of the Calculated NBBO is wider than the Legal Width Quote, the Exchange must first cancel Market Orders, MOO Orders, and Limit Orders to buy (sell) priced equal to or higher (lower) than the Indicative Match Price.<sup>64</sup> The Commission believes that this proposed measure to cancel potentially executable interest<sup>65</sup> before the Exchange proceeds to continuous trading, with the Auction resulting in a quote, is reasonably designed to remove impediments to the timely opening of a series while also protecting investors and the public interest by protecting potentially executable auction interest from potentially executing at unexpectedly extreme prices before transitioning to continuous trading pursuant to NYSE Arca Rule 6.64P–O(f). Therefore, the Commission believes that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act.

The Commission believes that proposed conforming changes to delete

<sup>63</sup> Consistent with this change, the Exchange proposes to add a caveat to NYSE Arca Rule 6.64P–O(d)(2)(A)—which provides for the trading of certain executable interest at the Indicative Match Price—to make clear that the trading behavior set forth in this provision is subject to Proposed NYSE Arca Rule 6.64P–O(d)(4). The Exchange notes that, although the functionality set forth in NYSE Arca Rule 6.64P–O(d) is designed to allow the affected series to open on a quote (and not a trade), the Exchange acknowledges the possibility that such series may open on a trade because orders or quotes may arrive as the Exchange is evaluating trading interest and whether such interest qualifies as a Legal Width Quote. See, e.g., *supra* Section II; Proposed NYSE Arca Rules 6.64P–O(d)(2)(A), 6.64P–O(d)(4).

<sup>64</sup> See Proposed NYSE Arca Rule 6.64P–O(d)(4). In a related change, the Exchange is also proposing to re-locate the text regarding the potential race condition resulting in a trade from Rule 6.64P–O(d)(4)(A) to Proposed NYSE Arca Rule 6.64P–O(d)(4) and to replace reference to “Auction” with “Auction Process” in NYSE Arca Rule 6.64P–O(d)(4) for the sake of clarity. As a conforming change, the Exchange is also proposing to delete current paragraph (d)(4)(A) of the Pillar Rule as obsolete because the text describing the opening based on a wide Calculated NBBO is contained in Proposed NYSE Arca Rule 6.64P–O(d)(4), and the transition to continuous trading is no longer dependent upon the presence of Matched Volume under the proposed rules. See, e.g., NYSE Arca Rule 6.65P–O(d)(4)(A); Proposed NYSE Arca Rule 6.64(d)(4).

<sup>65</sup> The Exchange represents that, pursuant to NYSE Arca Rule 6.64P–O(f)(1)–(3), Auction interest that is not cancelled in the particular series that open per Proposed NYSE Arca Rule 6.64P–O(d)(4) would be handled in the same manner as all other Auction interest that is present when the Exchange transitions from the Auction Process to continuous trading under Exchange rules. See *supra* note 39 and accompanying text.

NYSE Arca Rule 6.64P–O(d)(4)(B) as unnecessary would provide greater clarity and promote internal consistency among Exchange rules because proposed changes to NYSE Arca Rule 6.64P–O(d)(4) would render such rule obsolete.<sup>66</sup>

The Commission believes that the related proposed rule change to authorize the Exchange to modify the frequency with which it updates Auction Imbalance Information, provided such changes are announced by Trader Update,<sup>67</sup> is consistent with the proposed changes to NYSE Arca Rule 6.64P–O(d)(4) allowing the Exchange to open a series on a quote following the Initial Auction Process time period after canceling potentially executable interest. The current rule<sup>68</sup> provides for the publication of Auction Imbalance Information at least every second,<sup>69</sup> and the Exchange represents that, given the proposal to cancel potentially executable interest under proposed changes to NYSE Arca Rule 6.64P–O(c), it may not be necessary to update Auction Imbalance Information with such frequency. The Commission believes that the proposal thus provides the Exchange with the flexibility to monitor the impact of the proposed rule change so as to better assess the appropriate frequency for publication of Auction Imbalance Information that would continue to provide market participants with the transparency necessary to participate in and benefit from the price discovery that may take place during the opening auction, consistent with the interests of market participants and a fair and orderly auction process.<sup>70</sup>

In addition, the Commission believes that the proposal to modify the

<sup>66</sup> See *supra* Section II (describing how proposed changes to NYSE Arca Rule 6.64P–O(d)(4), which would allow any series that has not opened by the end of the initial Auction Process time period the ability to open on a quote, provided that the Exchange cancels potentially executable interest before proceeding to continuous trading, based on a wide Calculated NBBO, would render NYSE Arca Rule 6.64P–O(d)(4)(B) obsolete because it contemplates a series not being able to open because the spread of the Calculated NBBO is wider than, and thus does not qualify as, a Legal Width Quote).

<sup>67</sup> See Proposed NYSE Arca Rule 6.64P–O(c).

<sup>68</sup> See NYSE Arca Rule 6.64P–O(c).

<sup>69</sup> NYSE Arca Rule 6.64P–O(c) provides that “Auction Imbalance Information is updated at least every second until the Auction is conducted, unless there is no change to the information. The Exchange will begin disseminating Auction Imbalance Information at the following times: (1) Core Open Auction Imbalance Information will begin at 8:00 a.m. Eastern Time. (2) Trading Halt Auction Imbalance Information will begin at the beginning of the trading halt.”

<sup>70</sup> Other options market rules provide options exchanges with similar discretion. See, e.g., Nasdaq Options Market Section 8(b)(3).

requirements to open a series during the Initial Auction Process time period for option series with two or more assigned Market Makers by requiring, among other things,<sup>71</sup> that at least two quotes with a non-zero offer be submitted by any single Market Maker, rather than from two assigned Market Makers, as under the current rule,<sup>72</sup> would continue to encourage Market Makers to quote during the opening process, while also providing additional flexibility with respect to how market depth in the affected series is established, thereby facilitating price discovery consistent with then current market conditions.

#### Other Exchange Rules: Proposed Non-Substantive Changes

The Commission believes the proposed non-substantive changes to certain Exchange rules<sup>73</sup> do not raise regulatory issues as they would, among other things, correct typographical errors, conform current rules to proposed changes, and correct or update certain cross references, thereby promoting ease of use for market participants and enhancing the internal consistency of Exchange rules.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act<sup>74</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 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](mailto: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.

<sup>71</sup> See Proposed NYSE Arca Rule 6.64P-O(d)(3)(C).

<sup>72</sup> See NYSE Arca Rule 6.64P-O(d)(3)(c).

<sup>73</sup> See, e.g., *supra* Section II; Proposed NYSE Arca Rules 6.37O, 6.62P-O, 6.64P-O(d)(3)-(4).

<sup>74</sup> 15 U.S.C. 78f(b)(5).

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 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 December 1, 2022.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**.

The Commission believes there is good cause for the Commission to accelerate effectiveness of the proposed rule change because, as proposed, the changes set forth in Amendment No. 2, including the cancellation of potentially executable interest before proceeding to continuous trading under Exchange rules,<sup>75</sup> would remove impediments to and enable the Exchange to proceed with the timely opening of option series that have not opened by the end of the initial Auction Process time period because the spread of the Calculated NBBO is wider than that required to

<sup>75</sup> See Proposed NYSE Arca Rule 6.64P-O(d)(4).

qualify as a Legal Width Quote,<sup>76</sup> while also protecting otherwise potentially executable interest from trading at prices that are potentially extreme.

In addition, the proposed changes to specify that the Exchange may modify, during the Auction Process, the maximum differential for the spread between the Calculated NBBO that is established by the Exchange on a class by class basis to qualify as a Legal Width Quote, provided that any such modification is announced by Trader Update, as well as the proposed change to allow the Exchange to modify the frequency with which Auction Imbalance Information is updated, provided that any such change is announced by Trader Update do not raise regulatory issues as these proposals provide greater specificity to Exchange rules, are not novel, and are, moreover, consistent with the rules of other options exchanges.<sup>77</sup> The Commission believes that related changes in Amendment No. 2, including the proposal to remove specific values or time periods when the Exchange is authorized to change such values or timers by Trader Update would provide greater specificity to the Exchange's current rules, thereby enhancing transparency, eliminating stale values, and aligning the rules with current Exchange practice, as the Exchange represents that it has, on at least one occasion, changed certain values by Trader Update.<sup>78</sup> Similarly, the proposed non-substantive changes to certain Exchange rules<sup>79</sup> do not raise regulatory issues as they would correct typographical errors, make conforming changes to, as well as correct and update certain cross references in Exchange rules thereby promoting ease of use for and enhancing the internal consistency of Exchange rules to the benefit of market participants. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>80</sup> to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>81</sup> that the proposed rule change (SR-NYSEARCA-2022-31), as modified by Amendment

<sup>76</sup> See Proposed NYSE Arca Rule 6.64P-O(d)(4). The proposed rule change also requires, among other things, that the Calculated NBBO is not crossed and does not contain a zero offer. *See id.*

<sup>77</sup> See *supra*, notes 32, 41 and accompanying text.

<sup>78</sup> See *supra* notes 26, 29 and accompanying text.

<sup>79</sup> See *supra* note 74 and accompanying text.

<sup>80</sup> 15 U.S.C. 78s(b)(2).

<sup>81</sup> *Id.*



No. 2 be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>82</sup>

**J. Matthew DeLesDernier,**  
*Deputy Secretary.*

[FR Doc. 2022-24508 Filed 11-9-22; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96234; File No. SR-BOX-2022-28]

### Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Amend Certain Fees and Rebates for Qualified Contingent Cross Transactions

November 4, 2022.

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 October 28, 2022, BOX Exchange LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the Fee Schedule to amend the certain fees and rebates for Qualified Contingent Cross (“QCC”) transactions on the BOX Options Market LLC (“BOX”) options facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s internet website at <http://boxexchange.com>.

#### 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 the Fee Schedule for trading on BOX to amend the certain fees and rebates for Qualified Contingent Cross (“QCC”) transactions.<sup>5</sup> A QCC Order is defined as an originating order (Agency 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, coupled with a contra side order to buy or sell an equal number of contracts.<sup>6</sup>

The Exchange proposes to amend the transactions fees for all Broker Dealers and Market Makers for their QCC transactions on BOX. Specifically, the Exchange proposes to increase the QCC fees for Broker Dealers and Market Makers to \$0.20 from \$0.17 for both the Agency Order and the Contra Order. The Exchange notes that the proposed fees are identical to another exchange in the industry.<sup>7</sup>

The Exchange also proposes to amend certain rebates for QCC transactions.<sup>8</sup> Specifically, the Exchange proposes to amend the rebates in Tiers 2, 3, and 4, for both Rebate 1 and Rebate 2 in the QCC Rebate subsection. In Tier 2, if a Participant’s QCC Agency Order Volume on BOX is 1,500,000 to 2,499,999 contracts, the Exchange proposes to increase Rebate 1 to \$0.16 from \$0.15 and increase Rebate 2 to \$0.24 from \$0.23. In Tier 3, if a

Participant’s QCC Agency Order Volume on BOX is 2,500,000 to 3,499,999 contracts, the Exchange proposes to increase Rebate 1 to \$0.16 from \$0.15 and increase Rebate 2 to \$0.25 from \$0.24. Lastly, in Tier 4, if a Participant’s QCC Agency Order Volume on BOX is 3,500,000 contracts or above, the Exchange proposes to increase Rebate 1 to \$0.17 from \$0.15 and increase Rebate 2 to \$0.27 from \$0.25. The Exchange notes that the proposed rebates are in line with (or in some instances higher than) rebates currently assessed at another exchange.<sup>9</sup>

Lastly, the Exchange proposes to delete the sentence in Section IV.D.1 that states that “if the Participant qualifies for both rebates, only the larger rebate will be applied to the QCC transaction.” The Exchange notes that under the current fee schedule, a market participant can only qualify for 1 of the 2 rebates set forth in Section IV.D.1 and therefore, the Exchange proposes to remove this sentence.

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes to the QCC Rebate structure are reasonable because the proposed changes provide opportunities for Participants to receive higher rebates for increasing the Participant’s Agency QCC Order volume on BOX. The Exchange again notes that a volume-based incentive structure with similar rebates for QCC transactions currently exists at another exchange and that the Exchange is filing this proposal so that BOX can remain competitive with respect to QCC transactions within the options industry.<sup>11</sup> The Exchange also believes that the proposed QCC Rebates are equitable and not unfairly discriminatory as the proposed rebates will apply uniformly to the Participants that reach the applicable tiers. Further, the Exchange continues to believe that applying the proposed rebates where at least one party to the QCC transaction is a Broker Dealer or Market Maker is reasonable, equitable, and not unfairly discriminatory because Public

<sup>82</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> BOX was made aware that competing options exchanges intend to make similar changes to their respective QCC fees and rebates effective for October 3, 2022. As such, the Exchange is filing this proposal so that BOX can remain competitive with respect to QCC transactions within the options industry.

<sup>6</sup> See BOX Rule 7110(c)(6).

<sup>7</sup> See Choe EDGX Exchange, Inc. (“ChoeEDGX”) Fee Schedule.

<sup>8</sup> The Exchange notes that the order volume thresholds in Tiers 1 through 4 remain the same.

<sup>9</sup> See *supra* note 7.

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> *Id.*