SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98038; File No. SR–NYSEARCA–2023–49]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 6.40P–O

August 1, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to modify Rule 6.40P–O (Pre-Trade and Activity-Based Risk Controls) to allow certain order types to be excluded from the Activity-Based Risk Controls.

The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to modify Rule 6.40P–O (Pre-Trade and Activity-Based Risk Controls) to allow certain order types to be excluded from the Activity-Based Risk Controls. Specifically, the Exchange proposes to allow OTP Holders and OTP Firms (collectively, ''OTPs'')[3] the ability to exclude orders marked as GTX[4] from counting towards the limits established by the Activity-Based Risk Controls and to exclude GTX orders from cancellation when an Activity-Based Risk Limit is breached.[5]

The Exchange offers OTPs the option of utilizing Activity-Based Risk Controls to assist OTPs in managing risk related to submitting orders during periods of increased and significant trading activity.[6] OTPs acting as Market Makers must apply one of the Activity-Based Risk Controls to all of its orders and quotes, whereas an OTP not acting as a Market Maker may, but is not required to, apply one of the Activity-Based Risk Controls to its orders.[7] To determine when an Activity-Based Risk Control has been breached, the Exchange will maintain a Trade Counter that will be incremented every time an order (or quote) trades, including any leg of a Complex Order, and will aggregate the number of contracts traded during each such execution.[8] When designating one of the three Activity-Based Risk Controls, an OTP must indicate the action that it would like the Exchange to take if an Activity-Based Risk Limit is exceeded.[9] Currently, the Exchange affords OTPs the ability to exclude certain orders from being considered by a Trade Counter.[10] The order types that an OTP may opt to exclude are orders designated as IOC or FOK, which order types are designed to cancel if not executed on arrival.[11] In addition, the Exchange exempts certain orders from being cancelled or blocked—specifically Auction-Only orders (submitted solely for the purpose of being executed in an opening auction) and GTC Orders, which by their terms are meant to eventually execute unless specifically cancelled by the order-sender.[12]

The Exchange proposes to modify Rule 6.40P–O(c)(2)(B) to add GTX to the order types that may be excluded by Trade Counters in tracking Activity-Based Risk Controls.[13] In addition, for OTPs that select the automated breach action of ''Cancel and Block,'' the Exchange proposes to modify Rule 6.40P–O(c)(2)(C)(iii) to provide OTPs the option of instructing the Exchange not to cancel unexecuted GTX orders in the event of a breach.[14]

An order marked GTX, such as an ECO GTX Order, will cancel after executing to the extent possible with a COA Order in a Complex Order Auction.[15] As such, GTX orders are never ranked (as resting interest) in the Consolidated Book. Because GTX orders are submitted for the sole purposes of executing in a COA or cancelling, the Exchange believes providing OTPs the option of exempting these orders from the Activity-Based Risk Controls would enable these OTPs to exclude GTX orders from being counted and avoid potentially triggering their risk settings (prematurely), resulting in the cancellation of open orders. Likewise, the Exchange believes that allowing OTPs to instruct the Exchange not to cancel any unexecuted GTX orders if their risk setting is breached would likewise afford such OTPs additional flexibility. This proposed handling of GTX orders is consistent with how the Exchange currently handles GTX orders per (pre-Pillar) Commentary .01 to Rule 6.40–O (Risk Limitation Mechanism).[16]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An Options Trading Permit or ''OTP'' is issued by the Exchange for effecting approved securities transactions on the Exchange. *See* Rule 1.1. An ''OTP Holder'' is a natural person, in good standing, who has been issued an OTP and an ''OTP Firm'' is a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange. *See id.* The Exchange notes that an OTP may be acting as a Market Maker, which market participant is subject to heightened requirements. *See, e.g.,* Rule 6.37AP–O(b), (c).

[4] *See supra* note 16 (for description of orders marked as GTX).

[5] *See* proposed Rules 6.40P–O(c)(2)(B) and (c)(2)(C)(iii).

[6] *See* Rule 6.40P–O(a)(3)(A)–(C) (describing the three potential Activity-Based Risk Controls: Transaction-Based Risk Limit; Volume-Based Risk Limit; and Percentage-Based Risk Limit).

[7] *See* Rule 6.40P–O(c)(2)(A).

[8] *See* Rule 6.40P–O(c)(2)(B).

[9] *See* Rule 6.40P–O(c)(2)(C) (describing the potential automated breach actions of Notification Only, Block Only, and Cancel and Block).

[10] *See* Rule 6.40P–O(c)(2)(B).

[11] *See id. See* also Rule 6.62P–O(b)(2) (IOC) and (3) (FOK).

[12] *See* Rule 6.40P–O(c)(2)(C)(iii).

[13] *See* proposed Rule 6.40P–O(c)(2)(B) (providing, in relevant part, that an OTP ''may opt to exclude any orders designated IOC, FOK, or GTX from being considered by a Trade Counter.'')

[14] *See* proposed Rule 6.40P–O(c)(2)(C)(iii) (providing, in relevant part, that an OTP ''may opt to exclude orders designated as GTX from being cancelled.'').

[15] On the Exchange, an OTP may designate an Electronic Complex Order (or ECO) as GTX. *See* Rule 6.91P–O(b)(2). An ''ECO GTX Order'' is an order sent in response to a Complex Order Auction (or COA) and such order is not displayed, must be entered during the Response Time Interval of a COA, must be on the opposite side of the COA Order, and must specify the price, size, and side of the market. Any remaining size of an ECO GTX Order that does not trade with the COA Order will be cancelled at the end of the COA. *See* Rule 6.91P–O(b)(2)(C).

[16] *See* Rule 6.40–O, Commentary .01 (providing, in relevant part, that upon the triggering of an established risk limit, the Exchange would cancel all open orders and quotes in the affected series but

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The Exchange believes that providing OTPs this additional flexibility may encourage more OTPs to utilize the risk settings, which benefits all market participants. The Exchange also believes that the proposed change would result in risk settings that may be better calibrated to suit the needs of certain OTPs (*i.e.,* those that routinely utilize GTX orders) and should encourage OTPs to direct additional order flow and liquidity to the Exchange.

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Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change, which implementation will be no later than 90 days after the effectiveness of this rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market by providing OTPs greater control and flexibility over setting their risk tolerance, which may enhance the efficacy of the risk settings. Orders marked GTX, including ECO GTX Orders, will cancel after executing to the extent possible with a COA Order as part of a Complex Order Auction. As such, GTX orders are never ranked (as resting interest) in the Consolidated Book. The Exchange believes that certain market participants utilize GTX orders to access liquidity on the Exchange. Thus, the proposed change is designed to accommodate participants that utilize GTX orders in this manner by enabling them to exclude GTX orders from being counted and avoid potentially triggering their risk settings (prematurely), resulting in the cancellation of open orders. In addition, allowing OTPs the option to exclude unexecuted GTX orders from being cancelled in the event of a breach would allow OTPs to utilize this order type without fear of such orders being cancelled before having the opportunity to trade in a Complex Order Auction. As noted herein, this proposed handling of GTX orders (*i.e.,* excluding such orders from cancellation upon triggering of a risk setting) is consistent with how the Exchange currently handles GTX orders per (pre-Pillar) Commentary .01 to Rule 6.40–O (Risk Limitation Mechanism).

The Exchange believes that providing OTPs this additional flexibility may encourage more OTPs to utilize the risk settings, which benefits all market participants. Further, the proposed change would promote just and equitable principles of trade because it would result in risk settings that may be better calibrated to suit the needs of certain OTPs (*i.e.,* those that routinely utilize GTX orders) and should encourage OTPs to direct additional order flow and liquidity to the Exchange. To the extent additional order flow is submitted to the Exchange as a result of the proposed change, all market participants stand to benefit from increased trading. The Exchange notes that an OTP has the option of utilizing risk settings for all orders submitted to the Exchange and, as proposed, would have the additional option of excluding from these risk settings any GTX orders in a given options class submitted to the Exchange.

This proposed change, which was specifically requested by some OTPs, would foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities as it will be available to all OTPs and may encourage more OTPs to utilize this enhanced functionality to the benefit of all market participants.

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 is proposing a market enhancement that would provide OTPs with greater control and flexibility over setting their risk tolerance and, potentially, more protection over risk exposure. The proposal is structured to offer the same enhancement to all OTPs and would not impose a competitive burden on any participant. The Exchange does not believe that the proposed enhancement to the existing Activity-Based Risk Controls would impose a burden on competing options exchanges. Rather, the availability of these controls may foster more competition. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. When an exchange offers enhanced functionality that distinguishes it from the competition and participants find it useful, it has been the Exchange's experience that competing exchanges will move to adopt similar functionality. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the marketplace as a whole as it can result in enhanced processes, functionality, and technologies.

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

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 Act [19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–(f)(6)(iii),[22] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The

would exclude from such cancellation any ''orders entered in response to an electronic auction that are valid only for the duration of the auction ('GTX')''.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange 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 Exchange has satisfied this requirement.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed optional functionality may offer OTPs additional control and flexibility in utilizing the Exchange's Activity-Based Controls and therefore may encourage more OTPs to utilize these risk settings for their orders. Further, the Exchange represents that the proposed handling of GTX orders is consistent with how the Exchange currently handles GTX orders pursuant to Commentary .01 to Rule 6.40–O (Risk Limitation Mechanism).[23] Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[24]

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) [25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–49 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–2023–49. 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 (*https://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 the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–49 and should be submitted on or before August 28, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

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[23] *See supra* note 16 and accompanying text.

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

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98035; File No. SR–IEX–2023–06]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a New Fixed Midpoint Peg Order Type

August 1, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 19, 2023, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Pursuant to the provisions of Section 19(b)(1) under the Act,[3] and Rule 19b–4 thereunder,[4] IEX is filing with the Commission a proposed rule change to add a new fixed midpoint peg order type that pegs to the less aggressive of the order's limit price or the Midpoint Price,[5] but does not re-price based on changes to the NBBO.[6] The Exchange has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [7] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[8]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend IEX Rule 11.190 to add a new fixed midpoint peg order type that pegs to the less aggressive of the order's limit price or the Midpoint Price but does not re-price based on changes to the NBBO. As detailed below, a fixed midpoint peg order will cancel back to the User [9] if the NBBO changes such that the resting price of the fixed midpoint peg order is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] *See* IEX Rule 1.160(t).

[6] *See* IEX Rule 1.160(u).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4.

[9] *See* IEX Rule 1.160(qq).