appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] thereunder. 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 will institute proceedings 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–CboeBZX–2023–065 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–CboeBZX–2023–065. 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–CboeBZX–2023–065 and should be submitted on or before October 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–20168 Filed 9–18–23; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98380; File No. SR–BOX–2023–20]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt Rules To Govern FLEX Equity Options and a New Order Type to Trade FLEX Equity Options on the BOX Trading Floor

September 13, 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 September 1, 2023, BOX Exchange LLC (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 from interested persons.

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

The Exchange proposes to (1) adopt Rules 5055 and 7605 which will govern the trading of flexible exchange options (''FLEX Equity Options'') on BOX; and (2) make related changes to Rules 100 (Definitions), 7620 (Accommodation Transactions), and 12140 (Imposition of Fines for Minor Rule Violations). 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 *https://rules.boxexchange.com/rulefilings.*

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt rules to govern FLEX Equity Options and a new order type to trade FLEX Equity Options on the BOX Trading Floor.[3] The Exchange also proposes to amend Rules 100 (Definitions), 7620 (Accommodation Transactions), and 12140 (Imposition of Fines for Minor Rule Violations) to reflect the introduction of FLEX Equity Option trading on the Exchange. FLEX Equity Options are options with flexible terms such that Participants [4] can customize

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

[2] 17 CFR 240.19b–4.

[3] The term ''Trading Floor'' or ''Options Floor'' means the physical trading floor of the Exchange located in Chicago. The Trading Floor shall consist of one ''Crowd Area'' or ''Pit'' where all option classes will be located. The Crowd Area or Pit shall be marked with specific visible boundaries on the Trading Floor, as determined by the Exchange. A Floor Broker must open outcry an order in the Crowd Area. *See* BOX Rule 100(a)(68).

[4] The term ''Participant'' means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange

expiration date, exercise price, and exercise style. FLEX Equity Options are designed to meet the needs of investors for greater flexibility in selecting the terms of options within the parameters of the Exchange's proposed rules. FLEX Equity Options are not preestablished for trading and are not listed individually for trading on the Exchange. Rather, investors select FLEX Equity Option terms and are limited by the parameters detailed below in their selection of those terms. As a result, FLEX Equity Options allow investors to satisfy more specific, individualized investment objectives than may be available to them in the standardized options market. Specifically, FLEX Equity Options will be subject to proposed Rule 5055 and will be traded as FLEX Open Outcry Orders (''FOO Orders'') on the BOX Trading Floor under proposed Rule 7605. FLEX Equity Options are a type put or call, and allow investors to choose an exercise price of any dollar amount in minimum increments of $0.01,[5] an exercise style of American or European,[6] and an expiration date of any month, business day and year no more than 15 years from the date on which a FLEX Equity Option is executed.[7] As discussed further below, FLEX Equity Options will not be permitted with the same terms as an existing Non-FLEX Equity Option listed on the Exchange.[8] Because of their composition, the Exchange believes that FLEX Equity Options may allow investors to more closely meet their individual investment and hedging objectives by customizing option contracts for the purpose of satisfying particular investment objectives that could not be met by the standardized markets.

Background

The Securities and Exchange Commission (''Commission'') approved the trading of FLEX options in 1993.[9] At the time, the Chicago Board Options Exchange, Inc., now Cboe Exchange, Inc. (''CBOE'') proposed FLEX options based on the Standard and Poor's Corporation 500 and 100 Stock Indexes (referred to as the ''CBOE Order'' herein).[10] These FLEX options were offered as an alternative to an over-the-counter (''OTC'') market in customized equity options.[11] Several years after the initial approval, the Commission approved the trading of additional FLEX options on specified equity securities.[12] In its order, the Commission provided: ''The benefits of the Exchanges' options markets include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of the OCC [Options Clearing Corporation] for all contracts traded on the Exchange.'' [13]

The Exchange notes that FLEX options are currently traded on CBOE, NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and Nasdaq PHLX LLC (''PHLX'').[14] The Exchange notes further that CBOE offers electronic and open outcry FLEX option trading while NYSE American, NYSE Arca, and PHLX offer only open outcry trading of FLEX options.

In August 2017, the Commission approved the Exchange's proposal to adopt rules for an open outcry trading floor.[15] The Exchange based the rules for the BOX Trading Floor on the rules of the options exchanges that had established trading floors at that time. When the BOX Trading Floor was adopted in 2017, it was the first options trading floor to be established since the 1970s.[16] As such, the BOX Trading Floor rules have certain differences to the trading floor rules at the other options exchanges, to account for the unique nature of BOX's Trading Floor and to modernize the existing trading floor rules and surveillance practices. The BOX Trading Floor has been operating since 2017 and is now well-established. The Exchange believes that its unique features for open-outcry trading provide value to Floor Participants. The Exchange now proposes to allow for the trading of FLEX Equity Options as FOO Orders on the BOX Trading Floor.

Proposal

The Exchange proposes to adopt Rule 5055 titled FLEX Equity Options which describes and governs FLEX Equity Options. Rule 5055(a) details the applicability of other Exchange rules with respect to the proposed FLEX Equity Options.[17] Specifically, the trading of FLEX Equity Options is subject to all other Rules applicable to the trading of options on the Exchange, unless otherwise provided in Rules 5055 and 7605.[18] The rules proposed by the Exchange are uniquely applicable to FLEX Equity Options in order to accommodate their special characteristics. For example, the BOX Book [19] and the Complex Order Book [20] shall not be available for transactions in FLEX Equity Options because, consistent with other exchanges' FLEX rules, there will be no pre-established series and no electronic trading of FLEX Equity Options.[21] While electronic trading in FLEX options is available on CBOE,[22] the Exchange at this time intends to introduce FLEX Equity Options on the Trading Floor only, consistent with other markets that trade these customized options solely on their trading floors.[23] The Exchange notes that rules that contemplate the operation of or interaction with the BOX Book and the Complex Order Book will not apply to FLEX Equity Options, given that FLEX Equity Options may only be

and includes an ''Options Participant'' and ''BSTX Participant.'' *See* BOX Rule 100(a)(42).

[5] *See* proposed Rule 5055(e)(1)(iii).

[6] *See* proposed Rule 5055(e)(1)(iv).

[7] *See* proposed Rule 5055(e)(1)(v).

[8] At least one of the following terms must differ between FLEX Equity Options and Non-FLEX Equity Options on the same underlying security: Exercise price, Exercise style, and Expiration date.

[9] *See* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR–CBOE–92–17) (Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, 3, and 4 to Proposed Rule Changes by the Chicago Board Options Exchange, Inc., Relating to Flexible Exchange Options (''FLEX Options'')).

[10] *Id.*

[11] *Id.*

[12] *See* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (SR–CBOE–95–43) (SR–PSE–95–24) (Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendments by the Chicago Board Options Exchange, Inc. and the Pacific Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Options on Specified Equity Securities).

[13] *Id.* The Exchange notes that the Commission found pursuant to Rule 9b-1 under the Act, that FLEX Options, including FLEX Equity Options, are standardized options for purposes of the options disclosure framework established under Rule 9b-1 of the Act. *Id.*

[14] *See* CBOE Rules 4.20–4.22 and 5.70–5.75 *and* NYSE American Rules 900G–910G *and* NYSE Arca Rules 5.30–O–5.41–O *and* PHLX Rule Options 8, Section 34.

[15] *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor) (finding that the proposed rule change was consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange).

[16] *See https://www.optionsplaybook.com/options-introduction/stock-option-history/.*

[17] *See* proposed Rule 5055(a). For example, Rules 7010 (Fees and Charges), 7020 (Days and Hours of Business), 7030 (Units of Trading), and 7080 (Trading Halts) apply to FLEX Equity Options and Non-FLEX Equity Options alike.

[18] *See* proposed Rule 5055(a). Proposed Rule 5055(a) is based on NYSE Arca Rules 5.30–O(a) and (c).

[19] The term ''BOX Book'' means the electronic book of orders on each single option series maintained by the BOX Trading Host. *See* BOX Rule 100(a)(10).

[20] The term ''Complex Order Book'' means the electronic book of Complex Orders maintained by the BOX Trading Host. *See* BOX Rule 7240(a)(8).

[21] *See* proposed Rule 5055(a)(1). Proposed Rule 5055(a)(1) is based on CBOE Rule 5.72(a).

[22] *See, e.g.,* CBOE Rules 5.73 and 5.74.

[23] *See, e.g.,* NYSE Arca Rule 5.30–O(c).

traded as FOO Orders and FOO Orders may not be placed in the BOX Book or the Complex Order Book.[24] Additionally, the Exchange is proposing to codify that Options Exchange Officials have the same duties and ability to enforce rules applicable to the trading of FLEX Equity Options as they do for all other activity on the Trading Floor.[25]

FLEX Equity Options will only be permitted in puts and calls that do not have the same exercise style (American or European), same expiration date and same exercise price as Non-FLEX Equity Options that are already available for trading on the same underlying security.[26] In addition, once, and if, identical option series are listed for trading as Non-FLEX Equity Options, (1) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Equity Option series, and (2) any further trading in the series would be as Non-FLEX Equity Options subject to the non-FLEX trading procedures and rules.[27] Therefore, FOO Orders, whose terms must be different from options that are already available for trading, would not be fungible with interest resting on the BOX Book or Complex Order Book. Accordingly, the Exchange believes FOO Orders would not be able to trade through interest resting on the BOX Book or Complex Order Book nor would interest resting on the BOX Book or Complex Order Book lose priority to FOO Orders.

The Exchange proposes Rule 5055(b) which defines the following terms: FLEX Equity Option, Non-FLEX Equity Option, FLEX Market Maker, and FLEX Open Outcry Order. Specifically, the term ''FLEX Equity Option'' means an option on a specified underlying security that is subject to Rule 5055.[28] ''Non-FLEX Equity Option'' means an option contract that is not a FLEX Equity Option.[29] ''FLEX Open Outcry Order'' (''FOO Order'') means a FLEX Equity Option order as defined in proposed Rule 7605.[30] ''FLEX Market Maker'' means a Market Maker that is qualified by the Exchange to trade FLEX Equity Options and meets the requirements of proposed Rule 5055(k).[31] The proposed functionality for FOO Orders is designed to be similar to the Exchange's existing Qualified Open Outcry (''QOO'') Orders because both order types will be transacted on the Trading Floor and BOX believes they should follow similar procedures, excluding provisions related to the BOX Book, as discussed below.[32] FLEX Equity Options shall not be traded other than as FOO Orders.[33]

The Exchange proposes Rule 5055(c) which states that certain Exchange rules do not apply to transactions in FLEX Equity Options. Specifically, Rule 7600 ''Qualified Open Outcry Orders—Floor Crossing'' and Rule 7620 ''Accommodation Transactions'' do not apply to transactions in FLEX Equity Options.[34] These rules represent order types that currently apply to Non-FLEX Equity Options on the BOX Trading Floor and are specifically excluded given that the Exchange is proposing the FOO Order type to be used exclusively for trading FLEX Equity Options. However, the Exchange proposes that certain Rule 7600 Interpretive Materials apply to FLEX Equity Options; in particular IM–7600–2 [35] and IM–7600–5.[36] IM–7600–2 and IM–7600–5 relate to tied hedge orders and to compliance with Section 11(a)(1) of the Act, respectively, and will apply to the proposed FOO Orders in the same manner as they currently apply to QOO Orders. Because these provisions would apply equally to FLEX Equity Options as they do to Non-FLEX Equity Options, they need not be duplicated for purposes of the proposed rules.

The Exchange proposes Rule 5055(d) which states that FLEX Equity Options will have no trading rotations.[37] Trading rotations are used to open or reopen a series of options on BOX at a single

[24] The Exchange notes that FLEX Equity Options may not trade via the PIP, COPIP, Facilitation and Solicitation Auctions, or as Qualified Contingent Cross (''QCC''), Complex QCC, Customer Cross, and Complex Customer Cross Orders. If the Exchange intended to allow FLEX Equity Options to trade via the PIP, COPIP, Facilitation and Solicitation Auctions, or as (''QCC''), Complex QCC, Customer Cross, and Complex Customer Cross Orders, the Exchange would be required to file a proposed rule change with the Commission to amend its rules to allow for the inclusion of FLEX Equity Options in the relevant rule text.

[25] *See* proposed Rule 5055(f)(2).

[26] *See* proposed Rule 5055(f)(1). Proposed Rule 5055(f)(1) is based on NYSE Arca Rule 5.32–O, Commentary .01.

[27] *See* proposed Rule 5055(f)(2). Proposed Rule 5055(f)(2) is based on NYSE Arca Rule 5.32–O, Commentary .01.

[28] *See* proposed Rule 5055(b)(1). The Exchange notes that proposed Rule 5055(e)(1)(i) provides that FLEX Equity Options on underlying securities may be authorized pursuant to Rule 5020.

[29] *See* proposed Rule 5055(b)(2). Proposed Rule 5055(b)(2) is based on NYSE Arca Rule 5.30–O(b)(11).

[30] *See* proposed Rule 5055(b)(3).

[31] *See* proposed Rule 5055(b)(4).

[32] *See* BOX Rule 7600. *See also* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor).

[33] *See* proposed Rule 5055(b)(3).

[34] *See* proposed Rule 5055(c). Proposed Rule 5055(c) is based on NYSE Arca Rule 5.30–O(d).

[35] BOX IM–7600–2 provides that nothing prohibits a Floor Broker from buying or selling a stock, security futures, or futures position following receipt of an option order, including a Complex Order, provided that prior to announcing such order to the trading crowd: (a) the option order is in a class designated as eligible for ''tied hedge'' transactions (as described below) as determined by the Exchange and is within the designated tied hedge eligibility size parameters, which parameters shall be determined by the Exchange and may not be smaller than 500 contracts per order. Additionally, there shall be no aggregation of multiple orders to satisfy the size parameter, and for Complex Orders involved in a tied hedge transaction at least one leg must meet the minimum size requirement; (b) such Floor Broker shall create an electronic record that it is engaging in a tied hedge transaction in a form and manner prescribed by the Exchange; (c) such hedging position is: (1) comprised of a position designated as eligible for a tied hedge transaction as determined by the Exchange and may include the same underlying stock applicable to the option order, a security future overlying the same stock applicable to the option order or, in reference to an index or Exchange-Traded Fund Shares (''ETF''), a related instrument. A ''related instrument'' means, in reference to an index option, securities comprising ten percent or more of the component securities in the index or a futures contract on any economically equivalent index applicable to the option order. A ''related instrument'' means, in reference to an ETF option, a futures contract on any economically equivalent index applicable to the ETF underlying the option order; (2) brought without undue delay to the trading crowd and announced concurrently with the option order; (3) offered to the trading crowd in its entirety; and (4) offered, at the execution price received by the Floor Broker introducing the option, to any in-crowd Floor Participant who has established parity or priority for the related options; (d) the hedging position does not exceed the option order on a delta basis; (e) all tied hedge transactions (regardless of whether the option order is a simple or Complex Order) are treated the same as Complex Orders for purposes of the Exchange's open outcry allocation and reporting procedures. Tied hedge transactions are subject to the existing NBBO trade-through requirements for options and stock, as applicable, and may qualify for various exceptions; however, when the option order is a simple order, the execution of the option leg of a tied hedge transaction does not qualify for the NBBO trade-through exception for a Complex Trade (defined in Rule 7610(e)); (f) in-crowd Floor Participants that participate in the option transaction must also participate in the hedging position and may not prevent the option transaction from occurring by giving a competing bid or offer for one component of such order; (g) in the event the conditions in the non-options market prevents the execution of the non-option leg(s) at the agreed prices, the trade representing the options leg(s) may be cancelled; and (h) prior to entering tied hedge orders on behalf of Customers, the Floor Broker must deliver to the Customer a written notification informing the Customer that his order may be executed using the Exchange's tied hedge procedures. The written notification must disclose the terms and conditions contained in this Interpretative Material and be in a form approved by the Exchange. *See* BOX IM–7600–2.

[36] BOX IM–7600–5 provides that a Participant shall not utilize the Trading Floor to effect any transaction for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion by relying on an exemption under Section 11(a)(1)(G) of the Exchange Act. *See* BOX IM–7600–5.

[37] *See* proposed Rule 5055(d). Proposed Rule 5055(d) is based on NYSE Arca Rule 5.31–O(b).

price.[38] There is a period of time before the market in the underlying security opens during which orders placed on the BOX Book do not generate trade executions but may participate in the Opening Match.[39] FLEX Equity Options will not be placed on the BOX Book, and therefore will not have trading rotations because there will be no requirement for specific FLEX Equity Option series to be quoted or traded each day. FLEX Equity Options are created with terms unique to individual investment objectives. As such, each investor may require FLEX Equity Options with slightly different terms than those already created. These individually defined FLEX Equity Options are customized for each investor and therefore trading rotations may not be useful for other investors who may create their own FLEX Equity Options because trading rotations are designed, in part, to determine a single opening, or reopening, price based on orders and quotes from multiple Participants. With the bespoke nature of FLEX Options there is not the opportunity, nor need, to bring together multiple orders and quotes as part of a trading rotation.

Further, the Exchange proposes Rule 5055(e) which provides that FLEX Equity Options will not be preestablished for trading, and must include one of each of the terms of a FLEX Equity Option that are described in the proposed Rule.[40] Specifically, (i) the Exchange may authorize for trading a FLEX Equity Option class on any underlying security if it may authorize trading a Non-FLEX Equity Option class on that underlying security pursuant to Rule 5020,[41] and that has Non-FLEX Equity Options on such security listed and traded on at least one national securities exchange, even if the Exchange does not list that Non-FLEX Equity Option class for trading; [42] (ii) the option type may be put or call; [43] (iii) the exercise price may be any dollar amount in minimum increments of \$0.01; [44] (iv) the exercise style may be American or European; [45] and (v) the expiration date may be any business day (specified to the day, month, and year) no more than 15 years from the date of the FLEX Equity Option transaction.[46] A FLEX Equity Option order may be submitted on any trading day, including the expiration date.[47]

Next, the Exchange proposes Rule 5055(f) titled Additional Conditions of FLEX Equity Options. Proposed Rule 5055(f)(1) limits FLEX Equity Option terms such that options on an underlying security otherwise eligible for FLEX trading will only be permitted in puts and calls that do not have the same exercise style (American or European), same expiration date and same exercise price as Non-FLEX Equity Options that are already available for trading on the same underlying security.[48] Notwithstanding the foregoing, FLEX Equity Options that may in the future have the same terms as Non-FLEX Equity Options will be permitted before the options are listed for trading as Non-FLEX Equity Options. Once and if the identical option series are listed for trading as Non-FLEX Equity Options: (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Equity Option series,[49] and (ii) any further trading in the series would be as Non-FLEX Equity Options subject to the non-FLEX trading procedures and rules,[50] in addition to any other rules that apply to Non-FLEX Equity Options.[51] In the event a Non-FLEX Equity Option series is added intra-day, the holder or writer of a FLEX Equity Option position established under the FLEX trading procedures would be permitted to close such position under the FLEX trading procedures against another closing only FLEX Equity Option position for the balance of the trading day on which the series is added.[52] In the event the Non-

[38] *See* BOX Rules 7070(e)(2) and (l).

[39] *See* BOX Rules 7070(a) and (e). The Exchange notes that trading rotations are referred to in BOX Rule 7070(e) as the Opening Match.

[40] Proposed Rule 5055(e) is based on NYSE Arca Rule 5.32–O. The Exchange notes that it is not proposing FLEX Index Options and thus has not incorporated applicable provisions as Index Options do not trade on BOX.

[41] Rule 5020 provides criteria for the listing of options on several different underlying types of securities, including securities registered with the SEC under Regulation NMS of the Act (''NMS stock''), Exchange-Traded Fund Shares, and Index-Linked Securities. *See* BOX Rule 5020.

[42] *See* proposed Rule 5055(e)(1)(i). Proposed Rule 5055(e)(1)(i) is based on NYSE Arca Rule 5.32–O(f)(1).

[43] *See* proposed Rule 5055(e)(1)(ii). Proposed Rule 5055(e)(1)(ii) is based on NYSE Arca Rule 5.32–O(b)(2).

[44] *See* proposed Rule 5055(e)(1)(iii). Proposed Rule 5055(e)(1)(iii) is based on NYSE Arca Rule 5.32–O(f)(2) (exercise prices and premiums may be stated in terms of: (i) a dollar amount; (ii) a method for fixing at the time a FLEX Request for Quote or FLEX Order is traded; or (iii) a percentage of the price of the underlying security at the time of the trade or as of the close of trading on the NYSE Arca on the trade date). The Exchange notes that the proposal only includes exercise, bid, and offer prices in terms of a dollar amount.

[45] *See* proposed Rule 5055(e)(1)(iv). Proposed Rule 5055(e)(1)(iv) is based on NYSE Arca Rule 5.32–O(b)(3).

[46] *See* proposed Rule 5055(e)(1)(v). Proposed Rule 5055(e)(1)(v) is based on NYSE Arca Rules 5.32–O(b)(4) and (6). The Exchange notes that it has omitted the exception for FLEX Index Options because BOX does not list FLEX Index Options and FLEX Index Options are not part of this proposal.

[47] *See* proposed Rule 5055(e)(1)(v)(a). It is the Exchange's understanding from conversations with the Options Clearing Corporation (''OCC'') that the OCC is able to process FLEX transactions that occur on the expiration date. The Exchange notes that NYSE Arca's rules do not contain a similar provision. However, the Exchange believes, based on Participant feedback, that FLEX Option orders on NYSE ARCA are allowed on the expiration date. The Exchange notes that the exercise of options contracts is governed by the Rule 9000 series including exercise cut-off times and contrary exercise advices.

[48] *See* proposed Rule 5055(f)(1). Proposed Rule 5055(f)(1) is based on NYSE Arca Rule 5.32–O, Commentary .01. The Exchanges notes that its system enforces the requirement that a FLEX Equity Option does not have the same exercise style (American or European), same expiration date and same exercise price as a Non-FLEX Equity Option that is already available for trading on the same underlying security. Specifically, the system will reject an order in a FLEX Equity Option if the order is received with the same exercise style (American or European), same expiration date and same exercise price as a Non-FLEX Equity Option that is already available for trading on the same underlying security on the Exchange.

[49] An open position resulting from a transaction on the Exchange becomes fungible post-trade and is separate from the execution occurring on the Exchange. For example, assume a Participant buys one (1) American style AAPL call option expiring on October 9, 2024, with a strike price of 150, which is a FLEX series because there is no standard option listed with those same terms. Now assume, while holding this position, a standard option with the same terms is listed (American style AAPL call option expiring on October 9, 2024, with a strike price of 150). After this standard option is listed, the Participant purchases one (1) contract in this non-FLEX option series. After this second transaction, the Participant will have an open position of two (2) contracts in the standard AAPL call expiring on October 9, 2024, with a 150 strike price.

[50] This includes all priority and trade-through requirements on the Exchange (*see, e.g.,* Rule 7130).

[51] *See* proposed Rule 5055(f)(2). Proposed Rule 5055(f)(2) is based on NYSE Arca Rule 5.32–O, Commentary .01. The Exchange notes that FLEX Equity Options previously traded as part of a Complex FOO Order or Multi-Leg FOO Order where the respective Non-FLEX Equity Option series is later listed may not be traded as part of a Complex FOO Order or Multi-leg FOO Order except as provided in proposed Rules 5055(f)(3) and 7605(d)(3) once such Non-FLEX Equity Option series has been listed on the Exchange. *See* proposed Rules 7605(d)(1) and 7605(d)(3). For example, assume a Participant executes a Complex FOO Order to buy strategy A+B where A and B are both FLEX Equity Option series. Now assume that prior to the opening on the next trading day, a Non-FLEX Equity Option series with the same terms (underlying security, type, exercise price, exercise style, and expiration date) as A has been listed on the Exchange. If the Participant decided to close out their open position in strategy A + B, it would need to be done as two separate orders for the component legs of the original order: (i) selling B, a FLEX Equity Option, by submitting a FOO Order, and (ii) selling the corresponding Non-FLEX Equity Option series that has the same terms as A because A has become fungible with the Non-FLEX Equity Option series with the identical terms. Trading in A would be subject to the Non-FLEX trading procedures and rules. *See* proposed Rule 5055(f)(2).

[52] *See* proposed Rule 5055(f)(3). Proposed Rule 5055(f)(3) is based on NYSE Arca Rule 5.32–O, Commentary .01. The Exchange notes that Complex

Continued

FLEX Equity Option series is added on a trading day after the position is established, the holder or writer of a FLEX Equity Option position established under the FLEX trading procedures would be permitted to close such position as a non-FLEX transaction consistent with the requirements of Rule 5055(f)(2).

The Exchange proposes Rule 5055(g) which states that the minimum quoting and trading increment for FLEX Equity Option contracts traded on BOX will be one cent ($0.01) for all series.[53]

The Exchange proposes Rule 5055(h) which states that FLEX Equity Options will be subject to the exercise by exception provisions of Rule 805 of the OCC, titled Expiration Exercise Procedure.[54] Rule 805 provides provisions for the automatic exercise of certain options upon expiration.

The Exchange proposes Rule 5055(i) which details position limits for FLEX Equity Options. Specifically, 5055(i)(1) states that FLEX Equity Options will not be subject to position limits, except as long as the options positions remain open, positions in FLEX Equity Options that expire on a third Friday-of-the-month shall be aggregated with positions in Non-FLEX Equity Options on the same underlying security and shall be subject to the position and exercise limits set forth in this proposed rule, and in the current BOX rules.[55] Positions in FLEX Equity Options shall not be taken into account when calculating position limits for Non-FLEX Equity Options, other than for positions in FLEX Equity Options that expire on a third Friday-of-the-month, as discussed below.[56]

The Exchange proposes to specify that, if the Exchange determines that a higher margin requirement is advisable in light of the risks associated with a FLEX Equity Option position, the Exchange may, pursuant to its authority under Rule 10130(b), consider imposing higher margin requirements upon the account maintaining the position. Additionally, it should be noted that the clearing firm carrying the account will be subject to capital charges under Rule 15c3–1 under the Act[57] to the extent of any margin deficiency resulting from a higher margin requirement imposed by the Exchange.[58]

The Exchange notes that, unlike NYSE Arca Rule 5.35–O(b), the Exchange is not proposing to include a requirement that each Participant (other than a Market Maker) that maintains a position on the same side of the market in excess of the standard position limit for Non-FLEX Equity Options of the same class on behalf of its own account or for the account of a customer shall report information on the FLEX Equity Option position, positions in any related instrument, the purpose or strategy for the position and the collateral used by the account. Proposed Rule 5055(i)(1) would also differ from NYSE Arca Rule 5.35–O(b) in that the Exchange is proposing to better tailor the Rule's description of the Exchange's ability to impose a higher margin requirement with the Exchange's existing authority to impose higher margin as described in Rule 10130(b). The Exchange believes this would better maintain consistency with its existing rules and would more accurately describe the process by which the Exchange would consider imposing higher margin requirements in practice.

The Exchange also believes that the separate reporting requirement for FLEX Equity Option positions, along with a requirement for the Exchange to monitor margin requirements for FLEX Equity Option positions separately from the manner in which the Exchange considers margin generally, add administrative burdens on Participants and the Exchange that do not meaningfully contribute to the management of margin in the options markets. The Exchange notes that the text of NYSE Arca Rule 5.35–O(b), along with comparable rule text at other exchanges that offer FLEX equity options, was originally adopted over 25 years ago when FLEX equity options were first permitted to trade without position limits.[59] The options markets have changed significantly since that time, including with respect to technology and surveillance capabilities. Moreover, market participants are now much more familiar with trading FLEX equity options and managing their associated risks. The OCC and FINRA both manage their own robust margin requirements that apply to Exchange Participants whether or not they trade in FLEX Equity Options.[60] The Exchange further understands that, since FLEX equity options have traded on exchanges without position limits, no options exchange has used its authority to increase margin requirements due to large FLEX equity option positions. And, to the extent it ever became necessary to do so, the Exchange believes it already has the authority under Rule 10130(b) to increase margin requirements with respect to any FLEX Equity Option position. Accordingly, the Exchange does not believe it is necessary or appropriate to continue to mandate a duplicative reporting requirement and separate margin calculation that imposes additional administrative burdens on Participants and the Exchange with limited attendant benefits.

The Exchange proposes Rule 5055(j) which governs exercise limits for FLEX Equity Options. Specifically, proposed Rule 5055(j) states that exercise limits for FLEX Equity Options shall be equivalent to the position limits established in this proposal; accordingly, there shall be no exercise limits for FLEX Equity Options.[61] FLEX Equity Options will not be taken into account when calculating exercise limits for Non-FLEX Equity Options, except that as long as the option positions remain open, positions in FLEX Equity Options which expire on a

FOO Orders and Multi-Leg FOO Orders, discussed below, may be traded with one or more closing only component legs. The Exchange notes that proposed Rule 5055(f)(3) differs from NYSE Arca Rule 5.32–O, Commentary .01 in that it includes a provision detailing the interaction between proposed Rules 5055(f)(2) and (3).

[53] *See* proposed Rule 5055(g). Proposed Rule 5055(g) is based on CBOE Rule 5.4(c)(4). The Exchange notes that minimum increments in percentage terms have been omitted because they are not part of this proposal.

[54] *See* proposed Rule 5055(h). Proposed Rule 5055(h) is based on NYSE Arca Rule 5.32–O(f)(4).

[55] *See* BOX Rules 3120 (Position Limits) and 3140 (Exercise Limits). The Exchange notes that Complex FOO Orders and Multi-Leg FOO Orders when executed result in position changes for the individual component legs of the transaction based on the composition of the Complex or Multi-Leg FOO Order.

[56] *See* proposed Rule 5055(i). Proposed Rule 5055(i) is based on NYSE Arca Rules 5.35–O(a)(iii) and (b). The Exchange notes that Index Options and Binary Return Derivatives (''ByRDs'') are not traded on BOX and therefore FLEX Index Options and FLEX ByRDs will not be traded on BOX and are not included in proposed Rule 5055(i). *See also* CBOE Rule 8.35 *and* NYSE American Rule 906G *and* PHLX Rule Options 8, Section 34(e).

[57] *See* 17 CFR 240.15c3–1.

[58] *See* proposed Rule 5055(i)(1). Proposed Rule 5055(i)(1) is based on NYSE Arca Rule 5.35–O(b).

[59] *See* Securities Exchange Act Release Nos. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997) (SR–Amex–96–19; SR–CBOE–96–79; SR–PCX–97–09) (Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc. and the Chicago Board Options Exchange, Inc., and Order Granting Approval to Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Elimination of Position and Exercise Limits for FLEX Equity Options) (approval of a pilot program for the elimination of position and exercise limits on FLEX Equity Options) *and* 42223 (December 10, 1999), 64 FR 71158 (December 20, 1999) (SR–Amex–99–40; SR–PCX–99–41; SR–CBOE–99–59) (Order Granting Accelerated Approval to Proposed Rule Change Relating to the Permanent Approval of the Elimination of Position and Exercise Limits for FLEX Equity Options).

[60] *See, e.g.,* FINRA Rule 4210(f)(2); OCC Rule 601.

[61] *See* proposed Rule 5055(j). Proposed Rule 5055(j) is based on NYSE Arca Rule 5.36–O. *See also* proposed Rule 5055(i).

third Friday-of-the-month shall be aggregated with positions in Non-FLEX Equity Options on the same underlying security and will be subject to Non-FLEX Equity Option exercise limits as applicable.[62]

The Exchange proposes Rule 5055(k) which details the Letter of Guarantee required for Market Makers to trade FLEX Equity Options. Specifically, proposed Rule 5055(k) states that no Market Maker shall effect any transaction in FLEX Equity Options unless a Letter of Guarantee has been issued by a clearing member organization and filed with the Exchange pursuant to Rule 8070 specifically accepting financial responsibility for all FLEX Equity Option transactions made by such Market Maker and such letter has not been revoked under Rule 8070(c).[63] A Letter of Guarantee will be required for a Market Maker to be qualified to trade FLEX Equity Options.

Similarly, the Exchange proposes Rule 5055(l), which provides that no Floor Broker[64] shall effect any transaction in FLEX Equity Options unless a Letter of Authorization has been issued by a clearing member organization and filed with the Exchange specifically accepting responsibility for the clearance of FLEX Equity Option transactions of the Floor Broker, and that such letter will remain in effect until a written revocation is received by the Exchange.[65]

FLEX Open Outcry (''FOO'') Orders

The Exchange proposes to introduce a new order type to facilitate FLEX Equity Option transactions on the BOX Trading Floor. Specifically, the Exchange proposes to adopt a FOO Order type and to model it after a current order type on the Trading Floor—QOO Orders.[66] Trading FLEX options on an exchange floor in a similar manner as non-FLEX options is consistent with how FLEX orders are traded on another exchange.[67] FOO Orders must consist of options with terms as defined in proposed Rule 5055. Further, FOO Orders are limited solely to FLEX Equity Options.[68] FOO Orders are limited solely to the BOX Trading Floor and may be entered only by Floor Brokers.[69] Floor Brokers must also be registered under Rule 7550. Prior to the announcement of such FOO Orders in the trading crowd, Floor Brokers must record all FOO Orders pursuant to Rule 7580(e)(1).[70] FOO Orders may be traded by FLEX Market Makers, which must be registered under Rule 8000 and must be Floor Market Makers in good standing under Rule 8500.[71] FLEX Market Makers will be subject to Rule 8510, including provisions for the course and conduct of dealings, class assignments, and option priority and parity, unless otherwise specified in proposed Rule 7605. The Exchange shall qualify at least three FLEX Market Makers in accordance with a FLEX-specific qualification process prescribed by the Exchange to perform as Market Makers in FLEX Equity Options on the Trading Floor.[72] Additionally, a Floor Broker shall ascertain that at least one FLEX Market Maker is present in the Crowd Area prior to announcing an order for execution.[73] The Exchange notes that the Commission provided in its order approving the BOX Trading Floor that this requirement, among others, is designed to increase the opportunities for another Floor Participant to compete to interact with the orders on the Trading Floor.[74] For FLEX Equity Options, this means that at least one of the FLEX Market Makers, out of the at least three required to be qualified by the Exchange, is present in the Crowd Area when the FOO Order is announced.[75]

On the BOX Trading Floor today, a Floor Broker may bring an unmatched order to the Trading Floor in order to seek liquidity. The Floor Broker may announce the unmatched order (*i.e.,* the initiating side of a QOO Order) to the trading crowd in an attempt to source the contra-side. After finding sufficient quantity to match the initiating side pursuant to Rules 7580(e)(2) and 7600(b), the Floor Broker is then able to submit a two-sided QOO Order to the BOG[76] as required.[77] Floor Brokers may also enter single-sided orders into the BOX Book using BOX's electronic interface. Specifically, a Floor Broker may receive a matched or unmatched order via a telephone call on the Trading Floor[78] or may have the matched or unmatched order sent electronically to the Floor Broker's order entry mechanism on the Trading Floor prior to submitting the QOO Order to the BOG. Similar to how QOO Orders are introduced on the Trading Floor

[62] *See* proposed Rule 5055(i).

[63] *See* proposed Rule 5055(k). Proposed Rule 5055(k) is based on NYSE Arca Rule 5.41–O(a). The Exchange notes that, while NYSE Arca allows an existing Letter of Guarantee to be amended specifically to include FLEX transactions upon approval by the OCC, the Exchange's proposal does not include such a provision because the Exchange will require a separate Letter of Guarantee. The Exchange notes that a Market Maker's Letter of Guarantee will remain effective until a revocation is received by the Exchange.

[64] A Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Trading Floor, of accepting and handling options orders. A Floor Broker must be registered as an Options Participant prior to registering as a Floor Broker. *See* BOX Rule 7540.

[65] *See* proposed Rule 5055(l). Proposed Rule 5055(l) is based on NYSE Arca Rule 5.41–O(b). The Exchange notes that, while NYSE Arca allows an existing Letter of Authorization to be amended specifically to include FLEX transactions upon approval by the OCC, the Exchange's proposal does not include such a provision because the Exchange will require a separate Letter of Authorization. The Exchange notes that a Floor Broker's Letter of Authorization will remain effective until a written revocation is received by the Exchange.

[66] *See* proposed Rule 7605. *See also* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor) (finding that the proposed rule change was consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange).

[67] CBOE allows a FLEX Order to be represented and executed in the same manner as a non-FLEX Order. *See* CBOE Rule 5.72(d). The Exchange notes that CBOE Rule 5.72(d) also contains provisions that limit the priority rules applicable to FLEX Orders. *Id.* at 5.72(d)(2) and (3).

[68] *See* proposed Rule 7605(a).

[69] *See* proposed Rule 7605(b). Proposed Rule 7605(b) is based on BOX Rules 7600(a)(2) and (3) and NYSE Arca Rule 5.41–O(b). Additionally, the Exchange is proposing to add a statement clarifying that Floor Brokers must record all FOO Orders pursuant to Rule 7580(e)(1) prior to the announcement of such FOO Orders, which is the requirement for all orders on the Trading Floor.

[70] BOX Rule 7580(e)(1) outlines the requirements for a Floor Broker to record and systematize any orders prior to announcement of such order in the trading crowd.

[71] *See* proposed Rule 7605(c). Proposed rule 7605(c) is based on NYSE Arca Rules 5.37–O(a) and 5.41–O(a). The Exchange notes that, while NYSE Arca requires at least three FLEX Qualified Market Makers per class, the Exchange's proposal does not qualify FLEX Market Makers per class.

[72] *Id.* FLEX Market Maker qualification will include an examination requiring knowledge of FLEX Equity Options, including FLEX Equity Option terms, FLEX Market Maker qualification requirements, FLEX Market Maker quoting obligations, and FOO Order trading procedures.

[73] *See* proposed Rule 7605(e)(3). Proposed Rule 7605(e)(3) is similar to BOX Rule 7580(a), which applies to QOO Orders on the Trading Floor and requires a Floor Broker to ascertain that at least one Floor Market Maker is present in the Crowd Area prior to announcing an order for execution.

[74] *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor).

[75] The Exchange notes that the requirement to have at least three qualified FLEX Market Makers is a baseline that must be met in order for any FLEX Equity Option to be traded on the Trading Floor. The requirement that at least one FLEX Market Maker be present when an FOO Order is announced is an additional order-by-order requirement that promotes order competition and is the same requirement for QOO Orders currently.

[76] The BOX Order Gateway (''BOG'') is a component of the Trading Host which enables Floor Brokers and/or their employees to enter transactions on the Trading Floor. *See* BOX Rule 100(b)(2).

[77] *See* IM–7600–4.

[78] When a Floor Broker receives an order, matched or unmatched, via telephone, the Floor Broker must enter the order electronically into the Floor Broker's order entry mechanism.

today, FOO Orders may be brought to the floor as matched or unmatched orders with a Floor Broker receiving the matched or unmatched order via the same methods that Floor Brokers receive them currently on the Trading Floor.[79] The Exchange again notes that trading FLEX options on an exchange floor in a similar manner as non-FLEX options is consistent with how FLEX orders are traded on another exchange.[80]

Next, pursuant to proposed Rule 7605(d), FOO Orders may be Complex Orders (''Complex FOO Order'') or Multi-Leg Orders (''Multi-Leg FOO Order'') as defined in Rules 7240(a)(7) and (10) with no more than the applicable number of legs, as determined by the Exchange and communicated to Participants,[81] including tied hedge orders as defined in IM–7600–2.[82] However, the priority provisions of Rules 7240(b)(2) and (3) do not apply to Complex FOO Orders or Multi-Leg FOO Orders because there will be no Complex Order Book for such orders, nor will there be a BOX Book for the individual FLEX Equity Option components of the Complex FOO Orders or Multi-Leg FOO Orders.[83] Each option leg of a Complex FOO Order or Multi-Leg FOO Order must be for a FLEX Equity Option series with the same underlying security and must have the same exercise style (American or European).[84] If a Non-FLEX Equity Option series is added intra-day for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order, the holder or writer of a position in the component leg(s) resulting from such Complex FOO Order or Multi-Leg FOO Order would be permitted to close its position(s) pursuant to proposed Rule 5055(f)(3). If a Non-FLEX Equity Option series is added for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order on a trading day after the position is established, the holder or writer of a position in the component leg(s) resulting from such Complex FOO Order or Multi-Leg FOO Order would be required to execute separate FLEX and non-FLEX transactions consistent with the requirements of proposed Rule 5055(f)(2) for each of the component leg(s) of the Complex FOO Order or Multi-Leg FOO Order to close its position(s).[85]

Announcement, Representation, and Execution of a FOO Order

The Exchange proposes Rule 7605(e) which details announcement and representation of FOO Orders on the BOX Trading Floor that is consistent with the current Trading Floor requirements.[86] Specifically, the Exchange proposes that all FOO Orders must be represented to the trading crowd as provided in Rule 7580(e)(2)[87] prior to submitting the agency FOO Order as part of a two-sided order to the Trading Host. The Exchange notes that Floor Brokers may bring unmatched orders (*i.e.,* the initiating side of a FOO Order) to the Trading Floor in order to seek a contra-side. Once a contra-side is sourced, the Floor Broker shall submit the two-sided FOO Order to the BOG.[88] When a Floor Broker submits a FOO Order for execution, the order will be executed in accordance with the proposed rules. A FOO Order on the Exchange is not deemed executed until it is processed by the Trading Host. All transactions occurring from the Trading Floor must be processed by the Trading Host. Floor Brokers are responsible for handling all orders in accordance with Exchange priority rules.

There will be an initiating side and a contra-side of a FOO Order. The initiating side is the order which must be filled in its entirety. The contra-side must guarantee the full size of the initiating side of the FOO Order and can be composed of multiple firms. When the Floor Broker is soliciting interest from the trading crowd when the initiating side was announced or to the extent the trading crowd offers a better price, the contra-side will be the solicited interest from the trading crowd.[89] If the Floor Broker had sufficient interest to match against the initiating side when the initiating side was announced, such Floor Broker interest will be the contra-side to the initiating side. If Floor Participants[90] responded with interest to the initiating

[79] *See, e.g.,* Securities Exchange Act Release No. 80720 (May 18, 2017), 82 FR 23657, 23666 (May 23, 2017) (SR–BOX–2016–48) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change to Adopt Rules for an Open-Outcry Trading Floor) (''[A] Floor Broker may receive a matched or unmatched order via a telephone call on the Trading Floor or may have the matched or unmatched order sent electronically to the Floor Broker's order entry mechanism on the Trading Floor . . . .'').

[80] CBOE allows a FLEX Order to be represented and executed in a similar manner as a non-FLEX Order. *See* CBOE Rule 5.72(d). The Exchange notes that CBOE Rule 5.72(d) also contains provisions that limit the priority rules applicable to FLEX Orders. *Id.* at 5.72(d)(2) and (3).

[81] The Exchange notes that this process is the same as current Rule 7600(a)(4) for QOO Orders on the BOX Trading Floor. *See* BOX Information Circular 2022–18 (June 7, 2022), *https://boxoptions.com/assets/IC-2022-18-Upcoming-Enhancements-to-Complex-Orders.pdf* (providing that the maximum number of legs for Complex Orders is currently 16). A separate notice will be issued for Complex FOO Orders and Multi-Leg FOO Orders.

[82] The Exchange notes that tied hedge orders may not be smaller than 500 contracts per order. *See* IM–7600–2(a).

[83] The Exchange notes that, as with a simple FOO Order, the priority and allocation rules applicable to Complex FOO Orders and Multi-Leg FOO Orders are in proposed Rules 7605(i) (allocation of the initiating side of a FOO Order against the contra-side of the FOO Order and interest from the Trading Crowd) and (k) (Floor Broker guarantee when crossing orders) and current Rule 7610 (priority among Floor Participants in the Trading Crowd).

[84] *See* proposed Rule 7605(d). Proposed Rule 7605(d) is based on CBOE Rules 1.1 (definition of ''Complex Order'') and 5.70(b) and BOX Rule 7600(a)(4). The Exchange does not reference FLEX Index Options or related attributes because Index Options are not traded on BOX and FLEX Index Options are not proposed herein.

[85] *See* Proposed Rule 7605(d)(3). The Exchange is proposing Rule 7605(d)(3) to clarify the treatment of Complex FOO Orders and Multi-Leg FOO Orders when a Non-FLEX Equity Option is subsequently listed for a component leg.

[86] Proposed Rule 7605(e) is based on BOX Rules 7600(a), (a)(1), (b) and (c). The Exchange notes that the QOO Order provisions related to market conditions, the NBBO, the BOX Book, book sweep, the Complex Order Book, auctions, and away routing have been omitted because there will be no NBBO, no BOX Book, no Complex Order Book, no electronic auctions, and no book sweep for FOO Orders. *See* BOX Rules 7600(c)-(e) and (h). A book sweep is the number of contracts, if any, of the initiating side of a QOO Order that the Floor Broker is willing to relinquish to orders and quotes on the BOX Book that have priority pursuant to Rules 7600(d)(1) and (2). *See* BOX Rule 7600(h). Book sweeps will not apply to FOO Orders. As provided in proposed Rules 5055(f)(1) and (2), FOO Orders must have different terms from orders on the BOX Book and, therefore, could not execute against interest on the BOX Book. For the same reason, the Complex Order priority provisions in Rules 7240(b)(2) and (3), which address the priority of Complex Orders and interest on the BOX Book, do not apply to Complex FOO Orders or Multi-Leg FOO Orders. *See* proposed Rule 7605(d). The priority and allocation of FOO Orders will be determined by proposed Rules 7605(i) and (k) and current Rule 7610. *See supra* note 83. The Exchange also notes that proposed Rule 7605(e) requires that Floor Brokers announcing a FOO Order give Floor Participants a reasonable amount of time to respond, as provided in Rule 100(b)(5). Proposed Rule 7605(e) further provides that the Exchange shall establish, and announce via Regulatory Notice, a minimum period of time that qualifies as a reasonable amount of time that a Floor Broker must allow Floor Participants to respond, which must be between three seconds and five minutes. This differs from current Rule 7600(c), which simply states that Floor Brokers must allow adequate time for Floor Participants to participate in the transaction as provided in Rule 100(b)(5).

[87] BOX Rule 7580(e)(2) provides that ''A Floor Broker must announce an agency order that he is representing to the trading crowd before submitting the order to the BOG for execution. This announcement must take place whether the Floor Broker is representing a single-sided order and soliciting contra-side interest, or the Floor Broker has sufficient interest to match against the agency order already. If a Floor Broker is holding two agency orders, he will choose which order is the initiating side.''

[88] *See* proposed IM–7605–1. Proposed IM–7605–1 is based on IM–7600–4.

[89] The Exchange notes that priority of bids and offers from Floor Participants in the trading crowd is determined by Rule 7610.

[90] The term ''Floor Participant'' means Floor Brokers as defined in Rule 7540 and Floor Market Makers as defined in Rule 8510(b). *See* BOX Rule 100(a)(26).

side where the Floor Broker provided sufficient interest to match against the initiating side, the Floor Broker will allocate the initiating side of the FOO Order pursuant to proposed Rule 7605(i).[91] The Exchange notes that this negotiation and agreement that occurs in the trading crowd does not result in a final trade, but rather a ''meeting of the minds'' that is then submitted through the BOG for execution. Consistent with current Trading Floor operations, all FOO Orders must be announced to the trading crowd, as provided in Rule 7580(e)(2), prior to the FOO Order being submitted to the BOG.[92] An Options Exchange Official will certify that the Floor Broker adequately announced the FOO Order to the trading crowd.

The FOO Order is not deemed executed until it is processed by the Trading Host. Once the Floor Broker submits the FOO Order to the BOG there will be no opportunity for the submitting Floor Broker,[93] or anyone else, to alter the terms of the FOO Order. After announcing the FOO Order to the trading crowd, the Floor Broker must submit the FOO Order to the BOG for processing by the Trading Host without undue delay, provided that the executing Floor Broker must give Floor Participants a reasonable amount of time to respond, as provided in Rule 100(b)(5). Additionally, the Exchange shall establish, and announce via Regulatory Notice, a minimum period of time (which amount of time must be between three seconds and five minutes) that qualifies as a reasonable amount of time for responses under proposed Rule 7605(e)(2). Such threshold will constitute the minimum possible time that a Floor Broker must give to the trading crowd to respond to a FOO Order; however, based on the characteristics and circumstances of each specific FOO Order, a reasonable amount of time, as provided in Rule 100(b)(5), may require a response interval longer than the minimum threshold. An Options Exchange Official may not waive the minimum threshold established by the Exchange.

The Exchange notes that the proposed floor interaction practice is consistent with the process in BOX Rule 7600 for QOO Orders on the BOX Trading Floor where the main differences are that FOO Orders will not be eligible for the BOX Book or the Complex Order Book, there is no NBBO, and that Floor Brokers must allow Floor Participants a minimum period of time to respond to FOO Orders. Consistent with QOO Orders, a FOO Order is not deemed executed until it is processed by the Trading Host.[94] The Exchange notes that a reasonable amount of time for Floor Participants to respond to a FOO Order, the same as a QOO Order, will be interpreted on a case-by-case basis by an Options Exchange Official based on current market conditions and trading activity on the Trading Floor, provided, for FOO Orders, the minimum threshold discussed above must be satisfied.[95]

The Exchange proposes Rule 7605(f) which states that the minimum size for FLEX Equity Options transactions and quotations shall be one (1) contract.[96] The Exchange also proposes Rule 7605(g) which states that there are no maximum differences between the bid and the offer for FLEX Equity Option quotes.[97]

Pursuant to proposed Rule 7605(h), FLEX Market Makers have an obligation to quote a FLEX Equity Option in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market.[98]

Allocation of FOO Orders

Next, the Exchange proposes Rule 7605(i) which details the allocation process for FOO Orders. Specifically, the FOO Order will be matched by the Trading Host against the contra-side of the FOO Order, regardless of whether the contra-side order submitted by the Floor Broker is ultimately entitled to receive an allocation pursuant to proposed Rules 7605(i)(1)–(2). If no Floor Participant, other than the executing Floor Broker, is entitled to an allocation, then no further steps are necessary. If however, Floor Participants are entitled to an allocation, the remaining balance of the initiating side of the FOO Order will be allocated as described below.[99]

First, if the FOO Order satisfies the provisions of proposed Rule 7605(k), discussed below, the executing Floor Broker is entitled to 40% of the remaining quantity of the initiating side of the FOO Order.[100] Next, FLEX Market Makers that respond with interest when the Floor Broker announces the FOO

[91] *See* proposed Rule 7605(e)(1). Proposed Rule 7605(e)(1) is based on BOX Rule 7600(a)(1). The Exchange notes that provisions related to market conditions, the NBBO, the BOX Book, book sweep, and the Complex Order Book have been omitted because there will be no NBBO, no BOX Book, no Complex Order Book, and no book sweep for FOO Orders. *See supra* note 86. The priority and allocation of FOO Orders will be determined by proposed Rules 7605(i) and (k) and current Rule 7610. *See supra* note 83.

[92] *See* proposed Rule 7605(e)(2). Proposed Rule 7605(e)(2) is based on BOX Rules 7600(b) and (c). The Exchange notes that provisions related to market conditions, the NBBO, the BOX Book, book sweep, and the Complex Order Book have been omitted because there will be no NBBO, no BOX Book, no Complex Order Book, and no book sweep for FOO Orders. *See supra* note 86. The priority and allocation of FOO Orders will be determined by proposed Rules 7605(i) and (k) and current Rule 7610. *See supra* note 83.

[93] The Exchange notes that trades may be allocated as provided in proposed Rule 7605(j). The Exchange notes further that the Exchange may nullify a transaction or adjust the execution price of a transaction in accordance with Rule 7170 (Nullification and Adjustment of Options Transactions including Obvious Errors). *See also* BOX Rule 7640(b) (relating to trading disputes and adjustment or nullification of transactions on the Trading Floor).

[94] *See* proposed Rule 7605(e).

[95] *See* BOX Rule 100(b)(5). The Exchange notes that an Options Exchange Official takes into account various factors including complexity of the trade, general prevailing market conditions, and activity on the Trading Floor at the time the order is announced.

[96] *See* proposed Rule 7605(f). Proposed Rule 7605(f) is based on NYSE Arca Rule 5.32–O(b)(7).

[97] *See* proposed Rule 7605(g). Proposed Rule 7605(g) is based on NYSE Arca Rule 5.37–O(d). The Exchange notes that it has omitted the first part of NYSE Arca Rule 5.37–O(d), which provides FLEX Appointed Market Makers need not provide continuous FLEX Quotes and the Exchange has included the second part of NYSE Arca Rule 5.37–O(d), which provides FLEX Appointed Market Makers need not quote a minimum bid-offer spread in FLEX Equity Options. The Exchange has omitted the first part of NYSE Arca Rule 5.37–O(d) because, pursuant to proposed Rule 7605(h), the Exchange is instead proposing that FLEX Market Makers be obligated to quote FLEX Equity Options in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market, which the Exchange believes will promote a robust and competitive market for FOO Orders on the Trading Floor and facilitate a fair and orderly market for the trading of FLEX Equity Options on the Exchange. The Exchange further notes that on NYSE Arca, FLEX Appointed Market Makers are appointed in classes of FLEX index options. FLEX Qualified Market Makers are appointed in FLEX equity options on NYSE Arca. Further, FLEX Appointed Market Makers have an obligation to enter a quote in response to a request for quote in a FLEX index option while FLEX Qualified Market Makers do not have a similar obligation for FLEX equity options. The Exchange believes that this distinction is the reason why NYSE Arca Rule 5.37–O(d) only specifically exempts FLEX Appointed Market Makers from quoting with a minimum bid-offer spread since they are the only FLEX market makers with the requirement to respond to a request for quote. Similarly, the Exchange is proposing that there be no maximum differences between the bid and offer for FLEX Equity Option quotes that, pursuant to Proposed Rule 7605(h), a FLEX Market Maker is required to provide in response to a request for quote by a Floor Broker or Options Exchange Official.

[98] *See* proposed Rule 7605(h). Proposed Rule 7605(h) is based on BOX Rule 8510(c)(2). The Exchange notes that proposed Rule 7605(h) does not include the provisions of current Rule 8510(c)(2) related to quote spread parameter requirements and quotation sizes, which requirements are provided separately in proposed Rules 7605(f) and (g).

[99] *See* proposed Rule 7605(i). Proposed Rule 7605(i) is based on BOX Rule 7600(d)(3). The Exchange notes that provisions of BOX Rules 7600(d)(1)–(2) were omitted from proposed Rule 7605(i) because those provisions are related to the BOX Book, which is inapplicable to FOO Orders.

[100] *See* proposed Rule 7605(i)(1). The Exchange notes that proposed Rule 7605(i)(1) is based on BOX Rule 7600(d)(3)(i).

Order to the trading crowd, as outlined in Rule 7580(e)(2) and proposed Rule 7605(e), are allocated.[101] When multiple Floor Participants respond with interest, priority in the Trading Crowd is established pursuant to Rule 7610.[102] Last, if interest remains after Floor Participants that responded with interest receive their allocation, the remaining quantity of the initiating side of the FOO Order will be allocated to the executing Floor Broker.[103] The Exchange again notes that similar allocation and priority provisions are already established and apply to responses for QOO Orders on the BOX Trading Floor.[104]

The Exchange proposes that after execution of the FOO Order, the executing Floor Broker is responsible for providing the correct allocations of the initiating side of the FOO Order to an Options Exchange Official or his or her designee, if necessary, who will properly record the order in the Exchange's system.[105] The executing Floor Broker must provide the correct allocations to an Options Exchange Official or his or her designee, in writing, without unreasonable delay.[106] The Exchange notes that the same procedure for recording trade allocations applies to QOO Orders on the BOX Trading Floor today.

Similar to the allocation process in place for QOO Orders, the Exchange proposes to allow for a participation guarantee for certain FOO Orders executed by Floor Brokers on the Trading Floor. Specifically, when a Floor Broker holds an option order of the eligible order size or greater, the Floor Broker is entitled to cross 40% of the remaining contracts of the original order, after all bids or offers at better prices are filled, with other orders that the Floor Broker is holding.[107] The Exchange may determine, on an option by option basis, the eligible size for an order on the Trading Floor to be subject to this guarantee; however, the eligible order size may not be less than 50 contracts. In determining whether an order satisfies the eligible order size requirement, any Complex FOO Order or Multi-Leg FOO Order must contain one leg alone which is for the eligible order size or greater.[108] Nothing in the proposed rule is intended to prohibit a Floor Broker from trading more than their percentage entitlement if the other Participants of the trading crowd do not choose to trade the remaining portion of the order.[109] The Exchange notes that the proposed guarantee process is similar to the guarantee process currently in place for QOO Orders on the BOX Trading Floor.[110]

The below examples are designed to illustrate the allocation of the initiating side of a FOO Order.

Example 1—Assume a Floor Broker wishes to execute a FOO Order for 500 contracts. When he announces the order, FLEX Market Maker 1 and FLEX Market Maker 2 both respond to the FOO Order for 250 contracts each at the same price as the Floor Broker's contra-side. FLEX Market Maker 1 responded first so he will have time priority over FLEX Market Maker 2. Since the FOO Order is for at least 50 contracts, the Floor Broker is entitled to match at least 40% of the initiating side with the Floor Broker's contra-side.

Result: The initiating side of the FOO Order will match against the Floor Broker's contra-side order for the full 500 contracts. After the execution of the FOO Order, because other Floor Participants are entitled to an allocation, the executing Floor Broker is then responsible for providing an Options Exchange Official or his or her designee the following allocation of the initiating side of the FOO Order:

1. 200 contracts (40%, or 500 * .40) for the contra-side order submitted by the Floor Broker
2. 250 contracts for FLEX Market Maker 1 with time priority
3. Remaining 50 contracts to FLEX Market Maker 2

Example 2—Assume a Floor Broker wishes to execute a FOO Order for 40 contracts. When he announces the order, FLEX Market Maker 1 and FLEX Market Maker 2 both respond to the FOO Order for 20 contracts each at the same price as the Floor Broker's contra-side. FLEX Market Maker 1 responded first so he will have time priority over FLEX Market Maker 2. Since the FOO Order is for less than 50 contracts, the Floor Broker is not entitled to a 40% guarantee.

Result: The initiating side FOO Order will match against the Floor Broker's contra-side for the full 40 contracts. After execution of the FOO Order, because other Floor Participants are entitled to an allocation, the executing Floor Broker is then responsible for providing an Options Exchange Official or his or her designee with the following allocation of the initiating side of the FOO Order:

1. 20 contracts for FLEX Market Maker 1 with time priority
2. 20 contracts for FLEX Market Maker 2
3. The initiating side is filled and the executing Floor Broker will receive no allocation.

Example 3—Assume a Floor Broker wishes to execute a FOO Order for 40 contracts in ABC at 1.05 (initiating side is to sell). When he announces the order, FLEX Market Maker 1 and FLEX Market Maker 2 both respond to the FOO Order for 20 contracts each. FLEX Market Maker 1 responded first at an improved price to buy 20 at 1.06 so he will have price priority over FLEX Market Maker 2.[111] Since the FOO Order is for less than 50 contracts, the Floor Broker is not entitled to a 40% guarantee.

Result: The Floor Broker will submit two FOO Orders for 20 contracts each: a FOO Order at 1.06 for 20 contracts and a FOO Order at 1.05 for 20 contracts. The initiating side of each FOO Order will match against the Floor Broker's contra-side orders for the full 20 contracts. After execution of the FOO Orders, the executing Floor Broker is then responsible for providing an Options Exchange Official or his or her

[101] *See* proposed Rule 7605(i)(2). The Exchange notes that proposed Rule 7605(i)(2) is based on BOX Rule 7600(d)(3)(ii).

[102] *Id.* Priority under Rule 7610 is determined first by price and then by sequence. Specifically, on the Trading Floor, the highest (lowest) bid (offer) shall have priority; when two or more bids (offers) represent the highest (lowest) price, priority shall be afforded to such bids (offers) in the sequence in which they were made. If, however, the bids (offers) of two or more Floor Participants are made simultaneously, or if it is impossible to determine clearly the order of time in which they are made, such bids (offers) will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis. The Floor Broker announcing the order is responsible for determining the sequence in which bids or offers are vocalized on the Trading Floor from Floor Participants in response to the Floor Broker's bid, offer, or call for a market. Rule 7610 also provides priority provisions where a Floor Broker requests a market in order to fill a large order and the Floor Participants provide a collective response. *See* BOX Rule 7610.

[103] *See* proposed Rule 7605(i)(3). The Exchange notes that proposed Rule 7605(i)(3) is based on BOX Rule 7600(d)(3)(iii).

[104] The Exchange notes that FOO Order allocation and priority differs from QOO Order provisions related to the priority of orders on the BOX Book. *See* BOX Rules 7600(c)–(e) and (h), and 7600(f)(1) and (3). *See also supra* note 86.

[105] *See* proposed Rule 7605(j). Proposed Rule 7605(j) is based on BOX Rule 7600(d)(4).

[106] *Id.*

[107] *See* proposed Rules 7605(i), 7605(k)(1) and (3). Proposed Rules 7605(k)(1) and (3) are based on BOX Rules 7600(f)(1) and (3).

[108] *See* proposed Rule 7605(k)(2). Proposed Rule 7605(k)(2) is based on BOX Rule 7600(f)(2).

[109] *See* proposed Rule 7605(k)(4). Proposed Rule 7605(k)(4) is based on BOX Rule 7600(f)(4).

[110] The Exchange notes that the proposed FOO Order priority differs from QOO Order priority because BOX Rules 7600(d)(1)–(2) contain provisions that describe priority related to the BOX Book, which is inapplicable to FOO Orders.

[111] Pursuant to Rule 7610, FLEX Marker Maker 1 would have priority over FLEX Market Maker 2 even if FLEX Market Maker 2 responded first because FLEX Market Maker 1 responded at a better price.

designee with the following allocation of the initiating side of the FOO Orders:

1. FOO Order at 1.06—20 contracts for FLEX Market Maker 1.
2. FOO Order at 1.05—20 contracts for FLEX Market Maker 2.
3. The executing Floor Broker will receive no allocation of either FOO Order.

Additional Provisions

The Exchange also proposes that all orders entrusted to a Floor Broker will be considered Not Held Orders, unless otherwise specified by a Floor Broker's client. A Not Held Order is an order marked ''not held'', ''take time'', or which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed.[112]

The Exchange further proposes IM–7605–1 which allows Floor Brokers to bring unmatched orders (*i.e.,* the initiating side of a FOO Order) to the Trading Floor in order to seek contra-side interest. Once a contra-side is sourced pursuant to current Rule 7580(e)(2) and proposed Rule 7605(e), the Floor Broker shall submit the two-sided FOO Order to the BOG.[113] The Exchange notes that this provision is identical to IM–7600–4, with the exception of internal rule references, which applies to QOO Orders on the BOX Trading Floor.

The Exchange proposes IM–7605–2 to guide conduct on the floor.[114] In particular, the Floor Broker must disclose all securities that are components of the Public Customer order which is subject to crossing before requesting bids and offers for the execution of all components of the order. Once the trading crowd has provided a quote, it will remain in effect until a reasonable amount of time has passed, there is a significant change in the price of the underlying security, or the market given in response to the request has been improved. In the case of a dispute, the term ''significant change'' will be interpreted on a case-by-case basis by an Options Exchange Official based upon the extent of recent trading in the option and in the underlying security, and any other relevant factors.[115] The Participants of the trading crowd who established the market will have priority over all other orders that were not announced in the trading crowd at the time that the market was established and will maintain priority over such orders except for orders that improve upon the market. When a Floor Broker announces an order to the trading crowd pursuant to Rule 7580(e)(2), it shall be the responsibility of the Floor Participant who established the market to alert the Floor Broker of the fact that the Floor Participant has priority. Complex FOO Orders, Multi-Leg FOO Orders or tied hedge orders on opposite sides of the market may be crossed, provided that the Floor Broker holding such orders proceeds in the manner described in proposed Rule 7605 and IM–7600–2 as appropriate. Floor Participants may not prevent a Complex Order from being completed by giving a competing bid or offer for one component of such order.[116] In determining whether an order satisfies the eligible tied hedge order size requirement, any Complex FOO Order or Multi-Leg FOO Order must contain one leg which, standing alone, is for the eligible order size or greater.[117] A Floor Broker crossing a Public Customer FOO Order with an order that is not a Public Customer Order, when providing for a reasonable opportunity[118] for the trading crowd to participate in the transaction, shall disclose the Public Customer Order that is subject to crossing.

The Exchange proposes to amend Rule 100(b)(3) to provide: ''All Exchange options transactions shall be executed automatically by the Trading Host as provided in applicable Exchange Rules.''[119] The Exchange notes that Rule 100(b)(3) already applies to Non-FLEX Equity Options. The proposed amendment is to replace specific rule references with a more general reference to avoid any unintended ambiguity and permit the Rule to apply in connection with FLEX Equity Options.

The Exchange proposes to amend Rule 7620, titled Accommodation Transactions, and IM–7620–1 to exclude FLEX Equity Options as defined in proposed Rule 5055.[120] The Exchange notes that Rule 7620(b) currently states that it applies to all options except for option classes participating in the Penny Interval Program under Rule 7260, and IM–7620–1(b) currently states that it applies to all options including those in the Penny Interval Program. The proposed amendments will ensure consistency with proposed Rule 5055(c), which provides that Rule 7620 (Accommodation Transactions) shall not apply to transactions in FLEX Equity Options.

The Exchange has not yet determined the fees for FOO transactions executed on the Trading Floor. Prior to commencing trading of the proposed FOO Orders on the Trading Floor, the Exchange intends to submit a proposed rule change to the Commission setting forth the proposed fees.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional message traffic associated with the listing of new series that may result from the introduction of FLEX Equity Options.[121] Additionally, the Exchange will have surveillance coverage in place to monitor issues unique to FLEX trading.

The proposed FLEX Equity Option rules are based predominately on the rules of NYSE Arca. However, the Exchange omitted certain NYSE Arca rules from the proposed rules discussed herein due to differences in the scope and operation of FLEX Option[122] trading at NYSE Arca, compared to the scope and operation of the proposed FLEX Equity Option trading herein. The Exchange is not including NYSE Arca rule provisions that relate to FLEX Index Options as Index Options are not traded on BOX and FLEX Index Options are not proposed herein.[123] In particular, NYSE Arca Rule 5.39–O requires net liquidating equity of $100,000 in an account in which

[112] *See* proposed Rule 7605(l). Proposed Rule 7605(l) is based on BOX Rule 7600(g). *See also* NYSE Arca Rules 5.34–O and 6.62–O(f). The Exchange notes that NYSE Arca Rule 5.34–O provides a Floor Broker with additional discretion with respect to the number of FLEX contracts to be purchased or sold. The Exchange is not proposing the same discretion for FOO Orders so that the requirements for Floor Brokers handling FOO Orders are the same as handling QOO Orders currently on the Trading Floor.

[113] *See* proposed IM–7605–1. Proposed IM–7605–1 is based on IM–7600–4.

[114] *See* proposed IM–7605–2. Proposed IM–7605–2 is based on IM–7600–1.

[115] The Exchange believes that, by providing the Options Exchange Official with the ability to consider any other relevant factors, Options Exchange Officials will retain the necessary discretion to perform their duties if a new or unforeseen circumstance arises.

[116] The Exchange notes that while a Complex Order could be prevented from being completed by competing bids or offers on multiple components of such orders, competing bids or offers in any one of the multiple components may not prevent a Complex Order from being completed and each one is prohibited.

[117] *See* proposed IM–7605–2(d). The eligible tied hedge order size requirement is determined by the Exchange and may not be smaller than 500 contracts per order. *See* BOX IM–7600–2.

[118] The Exchange is proposing that a minimum response period, which must be between three seconds and five minutes, shall be established by the Exchange and announced via Regulatory Notice. *See* proposed Rule 7605(e)(2).

[119] *See* proposed Rule 100(b)(3).

[120] *See* proposed Rule 7620.

[121] The Exchange will report FLEX Equity Option trades and, if necessary, trade cancels to OPRA.

[122] The term ''Flexible Exchange Option'' or ''FLEX Option'' means a customized options contract. *See* NYSE Arca Rule 5.30–O(b)(4) *and* CBOE Rule 1.1 (definition of, ''FLEX Option'').

[123] *See* NYSE Arca Rules 5.39–O and 5.40–O.

transactions in FLEX Index Options will be conducted. As the Exchange does not trade Index Options, FLEX Index Options are not proposed herein, and the Exchange already imposes minimum net capital requirements,[124] it does not propose additional requirements.

Next, NYSE Arca Rule 5.40–O requires at least $1 million of net liquidating equity in the account of a FLEX Appointed Market Maker. However, FLEX Appointed Market Makers are appointed for FLEX Index Options on NYSE Arca but are not required for FLEX Equity Options.[125] Instead, NYSE Arca only requires FLEX Qualified Market Makers for FLEX Equity Options.[126] And, this subset of Market Makers is not required to have at least $1 million of net liquidating equity. Therefore, the Exchange's proposal does not propose to include additional net liquidating equity requirements for FLEX Market Makers. The Exchange notes that Market Makers, including Floor Market Makers and FLEX Market Makers are still subject to several financial requirements, including net liquidating equity in its Market Maker account of not less than $200,000.[127] Additionally, the Exchange believes that the large infrastructure needed to trade as a Market Maker, including their adequacy of capital and operational capacity is such that current Market Makers are likely to have net liquidating equity well beyond $1 million. In fact, another exchange which trades FLEX Options has removed a net liquidating equity requirement while still requiring market makers to maintain net capital sufficient to comply with the requirements of Rule 15c3–1, under the Act.[128] The Exchange has a similar provision, Rule 10200, that requires each Participant subject to Rule 15c3–1 under the Act to comply with the capital requirements prescribed therein among other requirements.[129]

An additional difference in the appointment of FLEX Market Makers is that NYSE Arca appoints FLEX Qualified Market Makers to each FLEX Equity Option of a given class, while the Exchange will qualify FLEX Market Makers for all FLEX Equity Options. The Exchange believes that the structure of its Trading Floor, with one crowd or trading area, will operate more efficiently without qualifying FLEX Market Makers by class.[130] Accordingly, a Floor Broker or Options Exchange Official may request a FLEX Equity Option quote in any class from a FLEX Market Maker. The Exchange notes that FLEX Market Makers will be subject to Rule 8510, including provisions for the course and conduct of dealings, class assignments, and option priority and parity, unless otherwise specified in proposed Rule 7605.[131]

Further, the Exchange notes differences between the proposed quoting obligations and those applicable on NYSE Arca. Specifically, a NYSE Arca FLEX Qualified Market Maker may, but shall not be obligated to, enter a FLEX Quote in response to a Request for Quotes on a FLEX Equity Option of the class in which he or she is qualified.[132] However, a FLEX Official on NYSE Arca may call upon FLEX Qualified Market Makers appointed in a class of FLEX Equity Options to make FLEX Quotes in response to a specific Request for Quotes in that class of FLEX Equity Options whenever in the opinion of the FLEX Official the interests of a fair, orderly and competitive market are best served by such action and shall make such a call upon FLEX Qualified Market Makers whenever no FLEX Quotes are made in response to a specific Request for Quotes.[133] The Exchange's proposal differs from NYSE Arca's rule in that FLEX Market Makers have an obligation to quote a FLEX Equity Option in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market.[134] The Exchange believes that the proposed quoting requirements allow reasonable opportunities for Floor Brokers to get quotes on FOO Orders and notes that the quoting requirements for QOO Orders on the BOX Trading Floor are similar to those proposed for FOO Orders.[135]

Among other NYSE Arca provisions not incorporated by the Exchange, are certain of NYSE Arca's ''Special Terms for FLEX Equity Options.''[136] Specifically, these special terms include that exercise prices and premiums may be stated in terms of: (i) a dollar amount; (ii) a method for fixing at the time a FLEX Request for Quote or FLEX order is traded; or (iii) a percentage of the price of the underlying security at the time of the trade or as of the close of trading on the NYSE Arca on the trade date. The Exchange will only offer exercise prices and premiums in a dollar amount because the additional methods for fixing prices are a matter of individual preference, and the Exchange believes that the requirements of Participants will be met by pricing exercise prices and premiums in a dollar amount.[137]

Another NYSE Arca provision not adopted by the Exchange in this proposal allows discretionary orders where Floor Brokers have discretion regarding the quantity of FLEX contracts traded.[138] The Exchange prohibits discretion regarding quantity, and other terms, including the choice of the class of options to be bought or sold, and whether any such transaction shall be one of purchase or sale except to any discretionary transactions executed by a Floor Market Maker for an account in which he has an interest.[139] The Exchange believes that proposed Rule 7605(l) combined with current Rule 7590, allowing Floor Brokers to have discretion over some terms of a FOO

[124] *See* BOX Rules 8010, 8080, and 10200.

[125] *See* NYSE Arca Rule 5.37–O(a).

[126] *See id.* The Exchange notes that NYSE Arca allows but does not require appointment of two or more FLEX Appointed Market Makers to FLEX Equity Options in lieu of appointing FLEX Qualified Market Makers.

[127] *See* BOX Rule 8080(a)(1). Rule 8080 also requires Market Makers to maintain net capital sufficient to comply with the requirements of Rule 15c3–1 under the Act and each Market Maker that is a Clearing Participant shall also maintain net capital sufficient to comply with the requirements of the OCC. *See* BOX Rules 8080(a)(2) and (b). *See also* BOX Rule 8010 (''To qualify for registration as a Market Maker, an Options Participant must meet the requirements established in SEC Rule 15c3–1(a)(6)(i) . . .'').

[128] *See* CBOE Rule 11.6 *and* Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR–CBOE–2019–059) (Notice of Filing and Immediate Effectiveness of a proposed rule change to amend certain rules relating to market makers upon migration to the trading system used by CBOE affiliated exchanges).

[129] *See* BOX Rule 10200 (Participants must comply with the additional requirements of the Rule 10200 Series and Market Makers must comply with the minimum financial requirements contained in Rule 8010).

[130] Pursuant to BOX Rule 8150(e), whenever a BOX Floor Market Maker enters the trading crowd he must undertake the obligations specified in Rule 8510(d) (In Classes of Option Contracts to Which Assigned—Affirmative Obligations). Since there is only one trading crowd on the BOX Floor, in practice this results in all BOX Floor Market Makers being required to quote all classes on the Trading Floor. The same will apply to FLEX Market Makers.

[131] *See* proposed Rules 7605(f)-(h) (providing FOO Order quoting obligations). The Exchange notes that current Floor Market Maker quoting obligations and restrictions are detailed in Rule 8510.

[132] *See* NYSE Arca Rule 5.37–O(b).

[133] *See* NYSE Arca Rule 5.37–O(c).

[134] *See* proposed Rule 7605(h).

[135] *See* BOX Rule 8510(c)(2). The Exchange notes that proposed Rule 7605(h) and current Rule 8510(c)(2) are similar except that proposed Rule 7605(h) does not include the provisions of current Rule 8510(c)(2) related to quote spread parameter requirements and quotation sizes, which requirements are provided separately in proposed Rules 7605(f) and (g).

[136] *See* NYSE Arca Rule 5.32–O(f)(2).

[137] The Exchange's belief that the requirements of Participants will be met by stating exercise prices and premiums in a dollar amount is based on conversations with Participants regarding their preferences for stating the terms of exercise prices and premiums.

[138] *See* NYSE Arca Rule 5.34–O.

[139] *See* BOX Rule 7590 and proposed Rule 7605(l).

Order such as price and time while not allowing discretion over terms such as quantity, strikes a balance between allowing Floor Brokers to provide full services to clients and preventing erroneous trades based on differing expectations or miscommunications between Floor Brokers and their clients. The Exchange notes that Rule 7600(g) governing QOO Orders is identical to proposed Rule 7605(l) and believes that consistency of handling between QOO Orders and FOO Orders may reduce confusion and increase efficiency on the Trading Floor.

Another NYSE Arca rule not proposed by the Exchange provides that NYSE Arca may designate FLEX Officials.[140] The Exchange is not proposing a similar rule because Rule 100(b)(6) already provides that any Exchange employee or officer designated as an Options Exchange Official will from time to time as provided in these rules have the ability to recommend and enforce rules and regulations relating to trading access, order, decorum, health, safety and welfare on the Exchange. Specifically, Options Exchange Officials have duties enumerated in Rules 100(b)(5), 7610, 7640, and 8510, as well as in proposed Rule 7605 regarding announcement, quoting, and recording of FOO Orders, priority in the trading crowd, disputes on the trading floor, and obligations and restrictions applicable to Floor Market Makers and FLEX Market Makers. The Exchange believes that Options Exchange Officials will have the authority necessary to enforce the proposed FLEX Equity Option and FOO Order rules such that designation of a unique FLEX Official would be redundant and unnecessary, as the Exchange's existing Options Exchange Officials will have the ability to perform the same functions as a separately designated FLEX Official. Specifically, the duties of FLEX Officials on NYSE Arca are mainly related to their Request for Quotes (''RFQ'') procedure unique to FLEX Options trading on NYSE Arca.[141] The Exchange has elected not to adopt a similar procedure, as discussed below, instead basing the FOO Order process on the QOO Order process already monitored by Options Exchange Officials. Additionally, the Exchange's system is designed to review the terms of a FLEX Equity Option for compliance with the applicable Rules as opposed to being a requirement of an Options Exchange Official to review.[142] Options Exchange Officials will continue to be responsible for monitoring all open outcry activity on the Trading Floor. Therefore, the Exchange will not require a separate official to govern any unique process for FLEX Equity Options. Additionally, the Exchange represents that Options Exchange Officials will receive appropriate training on the terms of FLEX Equity Options and all rules applicable to FLEX Equity Options and FOO Orders, including their responsibility to certify that a Floor Broker has adequately announced a FOO Order to the trading crowd,[143] consistent with the manner in which they are currently trained with respect to QOO Orders.[144] The Exchange further notes that NYSE Arca's rules do not require the exchange to designate FLEX Officials.[145]

Another NYSE Arca rule provision not proposed by the Exchange is NYSE Arca Rule 5.35–O(b), which would require that each Participant (other than a Market Maker) that maintains a position on the same side of the market in excess of the standard position limit for Non-FLEX Equity Options of the same class on behalf of its own account or for the account of a customer report information on the FLEX Equity Option position, positions in any related instrument, the purpose or strategy for the position and the collateral used by the account. As described above, the options markets have changed significantly since this provision was originally adopted and the Exchange does not believe it is necessary or appropriate to continue to mandate a duplicative reporting requirement that imposes additional administrative burdens on Participants and the Exchange with limited attendant benefits. The Exchange is also proposing to better tailor the language in proposed Rule 5055(i) to its existing authority to impose higher margin requirements on Participants.

As mentioned above, rather than adopt the NYSE Arca RFQ procedure for FLEX Equity Options,[146] the Exchange instead proposes to utilize the current process used on the BOX Trading Floor for QOO Orders with the addition of a minimum time period that a Floor Broker must allow Floor Participants when responding to FOO Orders.[147] The Exchange believes that using the order announcement and responsive quote process for both QOO Orders and FOO Orders on the BOX Trading Floor will result in less confusion and greater efficiency for all BOX Trading Floor Participants.

The Exchange notes that the manner in which the Exchange has proposed rules with respect to announcement of orders and responsive quotes is similar to how CBOE treats its FLEX Options; specifically, CBOE allows a FLEX Order[148] to be represented and executed in a similar manner as a non-FLEX Option.[149] The Exchange believes CBOE's approach is consistent with the Act and proposes to also require Floor Brokers to allow for a reasonable amount of time to participate in FLEX Equity Option transactions. Further, unlike CBOE, the Exchange proposes to establish and announce, via Regulatory Notice, a minimum period of time that a Floor Broker must allow Floor Participants to respond (which amount of time must be between three seconds and five minutes). The Exchange believes that it is unnecessary to specify a specific maximum time period for responses to FLEX orders as Options Exchange Officials on BOX's Trading Floor will be responsible both to enforce the minimum period of time and to ensure that Floor Participants have a reasonable amount of time to respond to FOO Orders.[150] The Exchange notes that the proposed order announcement procedure for FOO Orders is similar to

[140] *See* NYSE Arca Rule 5.38–O.

[141] NYSE Arca Rule 5.38–O provides that ''[a] FLEX Official is responsible for: (1) reviewing the conformity of FLEX Requests for Quotes and FLEX Quotes to the terms and specifications contained in Rule 5.32–O [Terms of FLEX Options]; (2) posting FLEX Requests for Quotes for dissemination; (3) determining the BBO; (4) ensuring that FLEX contracts are executed in conformance with the priority principles set forth in Rule 5.33–O; and (5) calling upon FLEX Qualified Market Makers to make FLEX Quotes in specific classes of FLEX Equity Options as provided in paragraph (c) of Rule 5.37–O.'' *See* NYSE Arca Rule 5.38–O.

[142] *See supra* note 48. The Exchange notes that NYSE Arca Rule 5.38–O(b)(1) provides that it is the responsibility of their FLEX Officials to review the terms of a FLEX order.

[143] *See* proposed Rule 7605(e)(2).

[144] BOX Rules currently provide that the President of the Exchange and his or her designated staff shall be responsible for monitoring, among other things, the activities of Floor Participants and their associated persons and shall establish standards and procedures for the training and qualification of Floor Participants and their associated persons active on the Trading Floor. *See* BOX Rule 100(b)(1).

[145] *See* NYSE Arca Rule 5.38–O(a) (''The Exchange *may* at any time designate an Exchange employee to act as a FLEX Official in one or more classes of FLEX Options [emphasis added]. . . .'').

[146] *See* NYSE Arca Rule 5.33–O.

[147] *See* proposed Rule 7605 and current Rule 7600. The minimum time period, which must be between three seconds and five minutes, will be established by the Exchange and communicated via Regulatory Notice. *See* proposed Rule 7605(e)(2). *See also* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor).

[148] ''FLEX Orders'' are orders submitted in FLEX Options. *See* CBOE Rule 5.70.

[149] *See* CBOE Rule 5.72(d). The Exchange notes that CBOE Rule 5.72(d) also contains provisions that limit the priority rules applicable to FLEX Orders. *See* CBOE Rules 5.72(d)(2) and (3).

[150] *See supra* note 147 and accompanying text.

the rules and procedures currently in place for QOO Orders on the BOX Trading Floor.

Minor Rule Violation Plan

The Exchange's disciplinary rules, including Exchange Rules applicable to ''minor rule violations,'' are set forth in the Rule 12000 Series of the Exchange's current Rules. The MRVP provides that in lieu of commencing a disciplinary proceeding, the Exchange may, subject to the certain requirements set forth in the Rule, impose a fine, not to exceed $5,000, on any Options Participant, or person associated with or employed by an Options Participant, with respect to any Rule violation listed in Rules 12140(d) or (e) as discussed below. Any fine imposed pursuant to this Rule that (i) does not exceed $2,500 and (ii) is not contested, shall be reported on a periodic basis, except as may otherwise be required by Rule 19d-1 under the Act or by any other regulatory authority. Further, the Rule provides that any person against whom a fine is imposed under the Rule shall be served with a written statement setting forth: (i) the Rule(s) allegedly violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine must be paid or contested, which date shall be not less than twenty-five (25) calendar days after the date of service of such written statement. Rules 12140 (d) and (e) set forth the list of specific Exchange Rules under which an Options Participant or person associated with or employed by an Options Participant may be subject to a fine for violations of such Rules and the applicable fines that may be imposed by the Exchange. As with all the violations incorporated into its MRVP, the Exchange will proceed under this Rule only for violations that are minor in nature. Any other violation will be addressed pursuant to Rules 12030 (Letters of Consent) or 12040 (Charges).

The Exchange proposes to amend its MRVP to add certain rules relating to FLEX Equity Options to the list of rules eligible for minor rule violation plan treatment by amending Rule 12140. Specifically, the Exchange proposes to amend Rule 12140(e)(3), which covers the failure to properly execute a QOO Order, to include Failure to Properly Execute a FOO Order (proposed Rule 7605).[151] Additionally, the Exchange proposes to amend Rule 12140(e)(9), which covers compliance with quotation requirements for Floor Market Makers and is designed to sanction violations thereof, to include violations of proposed Rule 7605(h), which proposes quoting requirements similar to those contained in Rule 8510(c)(2) regarding Floor Market Maker obligations.[152]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[153] in general, and furthers the objectives of Section 6(b)(5) of the Act[154] in particular, in that it is designed 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. Specifically, the Exchange believes the adoption of the proposed rules allowing FLEX Equity Options to trade on the BOX Trading Floor as FOO Orders is consistent with the goals of the Act to remove the impediments to and perfect the mechanism of a free and open market because it will benefit Participants by providing an additional venue for Participants to provide and seek liquidity for customized, large, or complex FLEX option orders. As the Commission noted in its order granting FLEX Equity Option trading on CBOE and what was then the Pacific Stock Exchange (now NYSE Arca), trading FLEX Equity Options on an exchange is an alternative to trading customized options in OTC markets and carries with it the advantages of exchange markets such as transparency, parameters and procedures for clearance and settlement, and a centralized counterparty clearing agency.[155] Therefore, the Exchange believes the proposed rule change will promote these same benefits for the market as a whole by providing an additional venue for market participants to seek liquidity for customized, large-sized, or complex FLEX option orders. The Exchange believes that providing an additional venue for these FLEX orders will benefit investors, the national market system, Participants, and BOX by increasing competition for order flow and executions, and thereby spur product enhancements and potentially result in lower prices for exchange services related to FLEX Equity Options.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices as the Exchange will review all current surveillance in light of any changes required, including surveillance and technology to detect disruptive or manipulative trading activity for FOO Orders on the Trading Floor, and will modify or add any surveillance as appropriate.

General

The Exchange believes that proposed Rule 5055(a) stating that the trading of FLEX Equity Options is subject to all other Rules applicable to the trading of options on the Exchange, unless otherwise provided in Rules 5055 and 7605, is consistent with the Act because it will ensure that, except where otherwise provided in Rules 5055 and 7605, the Exchange's existing rules will continue to apply to FLEX Equity Options, which will provide increased consistency for Participants trading FLEX Equity Options and Non-FLEX Equity Options on BOX. The Exchange reiterates that rules which contemplate the operation of or interaction with the BOX Book and the Complex Order Book will not apply to FLEX Equity Options, given that FLEX Equity Options may only be traded as FOO Orders and FOO Orders may not be placed in the BOX Book or the Complex Order Book.[156] Specifically, proposed Rule 5055(a) will specify that the BOX Book and the Complex Order Book shall not be applicable for transactions in FLEX Equity Options and thereby provide clarity for market participants that FLEX

[151] *See* proposed Rule 12140(e)(3). The Exchange notes that adding proposed Rule 7605 for FOO Orders to current Rule 12140(e)(3) is consistent with the existing provision to enforce current Rule 7600 for QOO Orders because Floor Participants have the same general requirements for executing FOO and QOO Orders on the Trading Floor. The Exchange notes further that fines defined under Rule 12140(e)(3) may apply to any failure to properly execute a FOO Order in accordance with applicable provisions of proposed Rule 7605 governing such execution requirements. Proposed Rule 7605(h), however, which relates to a FLEX Market Maker's quoting obligation, is specifically proposed for inclusion in proposed Rule 12140(e)(9).

[152] *See* proposed Rule 12140(e)(9). The Exchange notes that proposed Rule 7605(h) and current Rule 8510(c)(2) are similar except that proposed Rule 7605(h) does not include the provisions of current Rule 8510(c)(2) related to quote spread parameter requirements and quotation sizes, which requirements are provided separately in proposed Rules 7605(f) and (g). However, the Exchange believes it is appropriate to include proposed Rule 7605(h) with Rule 8510(c)(2) in the MRVP given the similar nature of the underlying requirement to provide quotations.

[153] 15 U.S.C. 78f(b).

[154] 15 U.S.C. 78f(b)(5).

[155] *See* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (SR–CBOE–95–43) (SR–PSE–95–24) (Order Approving the Trading of Flexibly Structured Equity Options by CBOE and PSE).

[156] *See supra* notes 83 and 86 and accompanying text.

Equity Options may only be traded on the Trading Floor. As described above, while electronic trading in FLEX options is available on one market today, the Exchange at this time intends to introduce FLEX Equity Options on the Trading Floor only, consistent with other markets that trade these customized options solely on their trading floors. The Exchange also believes that providing further detail about rules that shall not apply in proposed Rule 5055(c) is consistent with the Act because it will provide clarity for market participants about existing rules that will not be applicable to FLEX Equity Options on BOX. In particular, specifying that Rules 7600 and 7620 will not apply to FLEX Equity Options will avoid potential confusion about which order types apply to FLEX Equity Options on BOX, as the Exchange is instead proposing Rule 7605 to apply to transactions in FLEX Equity Options. Specifically, Rule 7600 contains priority provisions related to the BOX Book and the Complex Order Book neither of which are applicable to transactions in FLEX Equity Options. The Exchange notes that another exchange excludes similar rules from application to transactions in FLEX Equity Options.[157] However, proposed Rule 5055(c) also specifies that IM–7600–2 and IM–7600–5 shall apply to FLEX Equity Options. The Exchange believes that expressly applying these provisions is consistent with the Act because, although the remainder of Rule 7600 will not apply to FOO Orders, IM–7600–2, and IM–7600–5 relate, respectively, to tied hedge orders and to compliance with Section 11(a)(1) of the Act and should apply to the proposed FOO Orders in the same manner as they currently apply to QOO Orders. Specifically, tied hedge orders are a combination of an option and hedging position that must follow the procedures set forth in IM–7600–2 which is designed to protect investors and the public interest with provisions that limit the types of combinations considered to be tied hedge orders as well as prescribing Floor Broker duties for the handling of such orders. The Exchange believes that expressly applying IM–7600–2 to FOO Orders is consistent with the Act, as this will provide greater consistency between the trading of FLEX Equity Options and Non-FLEX Equity Options on the BOX Trading Floor and reduce the potential for market participant confusion. Next, IM–7600–5 prevents Participants from utilizing the Trading Floor to effect any transactions for their own account, the account of an associated person, or an account with respect to which the Participant or an associated person thereof exercises investment discretion by relying on an exemption under Section 11(a)(1)(G) of the Act (''G Exemption''). IM–7600–5 thereby provides notice to Floor Participants that when utilizing the trading floor to effect transactions in covered accounts, they cannot rely on the G Exemption and must rely on other available exemptions to the prohibition in Section 11(a)(1) of the Act.[158] In this manner, IM–7600–5 provides increased clarity to Floor Participants about their ability to comply with Section 11(a)(1) of the Act and it is therefore consistent with the Act and would protect investors and the public interest to continue to apply this rule to FOO Orders.

The Exchange believes that the definitions proposed in Rule 5055(b) will provide increased clarity to market participants which will protect investors and the public interest by specifying definitions for FLEX Equity Options and Non-FLEX Equity Options, and by specifying that FLEX Equity Option transactions will be governed as proposed in Rule 7605 and shall not be traded other than as FOO Orders. The Exchange believes further that the term ''FLEX Market Maker'' will clarify the difference between Floor Market Makers and FLEX Market Makers, where the latter are qualified for trading FLEX Equity Options and have an obligation to provide quotes in response to FOO Orders. The Exchange notes that, should it decide to propose additional order types or electronic trading for FLEX Equity Options, it will revise the defined term ''FLEX Open Outcry Order'' accordingly.

The Exchange believes that proposed Rule 5055(d) which specifies that there shall be no trading rotations in FLEX Equity Options is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system because it provides notice to Participants regarding the mechanisms applicable to FLEX trading, which will not include trading rotations due to the customized nature of FLEX Equity Options and the fact that there will be no requirement for specific FLEX Equity Option series to be quoted or traded each day.[159] The Exchange notes that QOO Orders on the Trading Floor can only participate in a trading rotation if entered into the BOX Book and as discussed herein FLEX Equity Options will not be eligible to be placed on the BOX Book.[160] The Exchange also notes that another exchange does not hold trading rotations for FLEX Equity Options.[161]

FLEX Equity Option Terms

The Exchange believes that some of the terms of FLEX Equity Options pursuant to proposed Rule 5055(e) serve to perfect the mechanism of a free and open market and a national market system because they will permit investors to customize some of the terms of their FLEX Equity Options to implement more precise trading strategies and hedges which may not be possible using Non-FLEX Equity Options.[162] These investors may have improved capability to execute strategies to meet their specific investment objectives by using customized FLEX Equity Options. However, only certain terms are subject to flexible structuring by the parties to FLEX Equity Option transactions, and most of such terms have a specified number of alternative configurations. The Exchange believes that these restrictions are reasonable and designed to further the objectives of the Act and to promote just and equitable principles of trade because limiting FLEX Equity Option terms enables the efficient, centralized clearance and settlement and active secondary trading of opened FLEX Equity Options. Further, these terms are consistent with those currently offered at another exchange.[163]

Proposed rule 5055(e)(1)(v)(a) allowing a FLEX Equity Option order to be submitted on any trading day, including the expiration date, serves to perfect the mechanism of a free and open market and a national market system because it will allow investors to execute FLEX Equity Options at a time of their choosing. These investors may have improved capability to execute strategies to meet their specific investment objectives. Further, this rule is designed to provide clarity about when FLEX Equity Options may be

[157] *See* NYSE Arca Rules 5.30–O(c) and (d).

[158] *See infra* note 229 and accompanying text (describing the Section 11(a)(1) prohibition and defining ''covered accounts'').

[159] *See* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280, 12284 (March 3, 1993) (SR–CBOE–92–17) (Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Flexible Exchange Options Based on the Nasdaq 100 Index).

[160] *See* BOX Rule 7070(d).

[161] *See* NYSE Arca Rule 5.31–O(b).

[162] *See* proposed Rule 5055(f)(1) (providing that FLEX Equity Options shall be permitted in puts and calls that do not have the same exercise style, same expiration date, and same exercise price as Non-FLEX Equity Options that are already available for trading on the same underlying security).

[163] *See* NYSE Arca Rule 5.32–O.

executed. The Exchange believes that Floor Participants benefit from increased flexibility and clarity.

The Exchange also believes that proposed Rule 5055(f) to prevent FLEX Equity Options and Non-FLEX Equity Options with the same terms from trading concurrently is designed to promote just and equitable principles of trade and prevent fraudulent and manipulative acts and practices.[164] In particular, a Non-FLEX Equity Option trading pursuant to Rule 7600 as a QOO Order has different priority rules than a FOO Order trading pursuant to proposed Rule 7605.[165] Allowing an option with the same terms to trade under both rules concurrently would result in inconsistent order handling and could allow the order priority of QOO Orders to be circumvented. Therefore, the Exchange proposes to prevent this situation by permitting FLEX Equity Option transactions only in options with a different term (exercise style, expiration date, or exercise price) than Non-FLEX Equity Options that otherwise meet the requirements of proposed Rule 5055(e). This is designed to prevent FLEX Equity Options from being surrogates for Non-FLEX Equity Options. Additionally, in the event that a Non-FLEX Equity Option series is added intra-day, the holder or writer of a FLEX Equity Option position established under the FLEX trading procedures would be permitted to close such position under the FLEX trading procedures against another closing only FLEX Equity Option position for the balance of the trading day on which the series is added. In the event that the Non-FLEX Equity Option series is added on a trading day after the position is established, the holder or writer of a FLEX Equity Option position established under the FLEX trading procedures would be permitted to close such position as a non-FLEX transaction consistent with the requirements of proposed Rule 5055(f)(2). This proposed rule will prevent an option with the same terms from trading as both a FLEX Equity Option and a Non-FLEX Equity Option concurrently, while providing a narrow exception for closing positions.[166] Further opening trades in such options would be as Non-FLEX Equity Options subject to the Non-FLEX Equity Option trading procedures and rules, including Rule 7600 for Trading Floor transactions.[167] The Exchange believes that enforcing consistent handling and priority for identical and fungible options prevents fraudulent and manipulative acts and practices, and promotes just and equitable principles of trade to protect investors and the public interest by ensuring consistent treatment of these options. The Exchange further believes that providing a narrow exception to permit the closing of a FLEX Equity Option position for the balance of the trading day on which the fungible Non-FLEX Equity Option is added perfects the mechanism of a free and open market and a national market system because it provides investors the ability to close their open FLEX Equity Option positions the same day as the identical Non-FLEX Equity Option is added.[168] As noted herein, these requirements are consistent with those at another exchange.[169]

Further, the Exchange believes that allowing FLEX Equity Options to trade in minimum increments of $0.01 [170] perfects the mechanism of a free and open market and a national market system because it provides investors with increased ability to meet their specific investment objectives and allows for increased opportunities for price improvement through a finer trading increment. The Exchange notes that another exchange currently trades FLEX Equity Options in minimum increments of $0.01.[171]

The Exchange further believes that subjecting FLEX Equity Options to the exercise by exception provisions of Rule 805 of the OCC [172] fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.[173] Specifically, OCC Rule 805 provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. Application of Rule 805 to FLEX Equity Options provides consistency with Non-FLEX Equity Options and prevents confusion in the clearing process with respect to exercise instructions. The Exchange notes that another exchange provides that FLEX Equity Options shall be subject to the exercise by exception provisions of OCC Rule 805.[174]

Position Limits

Position and exercise limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position and exercise limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that any decision regarding imposing position and exercise limits for FLEX Equity Options must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.[175]

[164] *See* proposed Rule 5055(f)(1).

[165] For example, the BOX Book will be inapplicable to FOO Orders and thus certain priority provisions applicable to QOO Orders are not applicable to FOO Orders. Specifically, FOO Order priority differs from QOO Order provisions related to the priority of orders on the BOX Book. *See* BOX Rules 7600(c)–(e) and (h). The priority of FOO Orders will be determined by proposed Rules 7605(i) and (k) and BOX Rule 7610.

[166] *See* proposed Rule 5055(f)(3). *See also* proposed Rule 7605(d)(3). *See* Exchange Act Release Nos. 62321 (June 17, 2010), 75 FR 36130 (June 24, 2010) (SR–NYSEArca–2010–46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .01 to Rule 5.32 To Permit Certain FLEX Options To Trade Under the FLEX Trading Procedures for a Limited Time on a Closing Only Basis) *and* 62870 (September 8, 2010), 75 FR 56147 (September 15, 2010) (SR–CBOE–2010–078) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Certain FLEX Options To Trade Under the FLEX Trading Procedures for a Limited Time on a Closing Only Basis).

[167] *See* proposed Rule 5055(f)(2). *See* Exchange Act Release Nos. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (SR–CBOE–2008–115) (Notice of Filing of Amendments No. 1 and 2 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendments No. 1 and 2 Thereto, Relating to FLEX Options Expirations); 60548 (August 20, 2009), 74 FR 43191 (August 26, 2009) (SR–NYSEAmex–2009–44) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE AMEX LLC Amending the Permissible Expiration Dates for Flexible Exchange Options); 60549 (August 20, 2009), 74 FR 44415 (August 28, 2009) (SR–NYSE–Arca–2009–75) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Permissible Expiration Dates for Flexible Exchange Options); *and* 60549 (September 16, 2009), 74 FR 48619 (September 23, 2009) (SR–Phlx–2009–81) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to FLEX Option Expirations).

[168] The Exchange notes that investors will be able to close any such positions utilizing Non-FLEX Equity Option trading procedures beginning the next trading day.

[169] *See* NYSE Arca Rule 5.32–O, Commentary .01.

[170] *See* proposed Rule 5055(g).

[171] *See* CBOE Rule 5.4(c)(4). The Exchange notes that minimum increments in percentage terms are not part of this proposal.

[172] *See* proposed Rule 5055(h).

[173] The Exchange notes that Rule 805 of the OCC currently applies to Non-FLEX Equity Options on BOX. *See* BOX Rule 9000(b).

[174] *See* NYSE Arca Rule 5.32–O(f)(4).

[175] The Exchange notes that although no position limits are proposed for FLEX Equity Options, there are several mitigating factors, which include aggregation of FLEX Equity Option and Non-FLEX Equity Option positions that expire on a third Friday-of-the-month and subjecting those positions to position and exercise limits, and daily monitoring of market activity.

Similar to the other exchanges that trade FLEX Equity Options, the Exchange believes that eliminating position and exercise limits for FLEX Equity Options, while requiring positions in FLEX Equity Options that expire on a third Friday-of-the-month to be aggregated with positions in Non-FLEX Equity Options on the same underlying security,[176] removes impediments to and perfects the mechanism of a free and open market and a national market system because it allows BOX to create a product and market that is an improved but comparable alternative to the OTC market in customized options. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process that exists on a public exchange.

The Exchange believes that the proposed elimination of position and exercise limits for FLEX Equity Options may encourage market participants to transfer their liquidity demands from OTC markets to exchanges and enable liquidity providers to provide additional liquidity to BOX through transactions in FLEX Equity Options. The Exchange notes that the Commission previously approved the elimination of position and exercise limits for FLEX Equity Options, finding that such elimination would allow exchanges ''to better compete with the growing OTC market in customized equity options, thereby encouraging fair competition among brokers and dealers and exchange markets.'' [177] The Commission has also stated that the elimination of position and exercise limits for FLEX Equity Options ''could potentially expand the depth and liquidity of the FLEX equity market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.'' [178]

Additionally, the Exchange believes that requiring positions in FLEX Equity Options that expire on a third Friday-of-the-month to be aggregated with positions in Non-FLEX Equity Options on the same underlying security subjects FLEX Equity Options and Non-FLEX Equity Options to the same position and exercise limits on third Friday-of-the-month expirations. These limitations are intended to serve as a safeguard against potential adverse effects of large FLEX Equity Option positions expiring on the same day as Non-FLEX Equity Option positions. The Exchange notes that another exchange has the same requirement.[179]

The Exchange believes that any potential risk of manipulative activity is mitigated by existing surveillance technologies, procedures, and reporting requirements at the Exchange, which allows the Exchange to properly identify disruptive and/or manipulative trading activity. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'') [180] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange also notes that Financial Industry Regulatory Authority, Inc. (''FINRA''), conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement.[181] The Exchange also represents that it is reviewing its procedures to detect potential manipulation in light of any changes required for FLEX Equity Options to confirm appropriate surveillance coverage. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and their underlying securities and are designed to protect investors and the public interest by ensuring that the Exchange has an adequate surveillance program in place.

The Exchange believes that proposed Rule 5055(i)(1) further mitigates concerns for potential market manipulation and/or disruption in the underlying markets and thus protects investors and the public interest because the Exchange may determine that a higher margin requirement is necessary in light of the risks associated with a FLEX Equity Option position in excess of the standard limit for Non-FLEX Equity Options of the same class. The Exchange may, pursuant to its authority under Rule 10130(b), impose additional margin upon the account of any Participant, including a Participant maintaining a large FLEX Equity Option position, as a safeguard against potential adverse effects of large FLEX Equity Option positions. The Exchange notes that the clearing firm carrying the account will be subject to capital charges under SEC Rule 15c3–1 to the extent of any margin deficiency resulting from the higher margin requirement. The Exchange also notes that other exchanges currently trading FLEX options have similar position and exercise limits.[182] The Exchange also believes it is consistent with the Act to not include a requirement relating to the reporting of information on FLEX Equity Option positions in excess of the standard position limit for Non-FLEX Equity Options because it will remove an unnecessary administrative burden on Participants and the Exchange, and the Exchange, along with the OCC and FINRA, will retain the ability to monitor large FLEX Equity Options positions and have the ability to increase margin requirements if necessary. The Exchange further believes it is consistent with the Act to better tailor the language in proposed Rule 5055(i) to the Exchange's existing authority to impose higher margin requirements because this will ensure consistency among Participants regarding the manner in which the Exchange may impose additional margin requirements and will increase clarity and accessibility with respect to the Exchange's Rules.

Letters of Guarantee and Authorization

Pursuant to proposed Rule 5055(k), the Exchange will require FLEX Market Makers to provide a Letter of Guarantee issued by a clearing member organization and filed with the Exchange specifically accepting financial responsibility for all FLEX Equity Option transactions made by such person as long as such letter has not been revoked under Rule 8070(c).[183] Market Makers that are qualified by the Exchange and have provided such a Letter of Guarantee will be permitted to trade FLEX Equity Options on BOX.[184]

[176] *See* proposed Rules 5055(i) and (j). *See also* NYSE Arca Rules 5.35–O(a)(iii), (b) and 5.36–O *and* CBOE Rules 8.35 and 8.42 *and* NYSE American Rules 906G and 907G *and* PHLX Rule Options 8, Section 34(e) and (f).

[177] *See* Securities Exchange Act Release No. 42223 (December 10, 1999), 64 FR 71158, 71159 (December 20, 1999) (SR–Amex–99–40) (SR–PCX–99–41) (SR–CBOE–99–59) (Order Granting Accelerated Approval to Proposed Rule Change Relating to the Permanent Approval of the Elimination of Position and Exercise Limits for FLEX Equity Options).

[178] *See id.*

[179] *See* NYSE Arca Rule 5.35–O(b)(i).

[180] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[181] The Exchange notes that it is responsible for FINRA's performance under this regulatory services agreement.

[182] *See* NYSE Arca Rules 5.35–O(a)(iii), (b), and 5.36–O *and* CBOE Rules 8.35 and 8.42 *and* NYSE American Rules 906G and 907G *and* PHLX Rule Options 8, Section 34(e) and (f).

[183] *See* proposed Rule 5055(k).

[184] *See* proposed Rule 7605(c). The Exchange notes that Market Makers are subject to the

Continued

The Exchange believes that requiring a Letter of Guarantee specific to FLEX Equity Options protects investors and the public interest because it signifies that the clearing member has specifically accepted financial responsibility for transactions in FLEX Equity Options entered into by the Market Maker which will protect the counterparties of those trades and such protections will flow to other clearing members and ultimately to the OCC as the central counterparty and guarantor of both FLEX Equity Option and Non-FLEX Equity Option transactions. The Exchange notes that another exchange requires a Letter of Guarantee for FLEX transactions.[185]

Pursuant to proposed Rule 5055(l), prior to effecting any transaction in FLEX Equity Options, Floor Brokers are required to provide a Letter of Authorization issued by a clearing member organization and filed with the Exchange specifically accepting financial responsibility for all FLEX Equity Option transactions made by such person, and such letter remains in effect until a written revocation is received by the Exchange.[186] Floor Brokers that have provided such a Letter of Authorization and are qualified by the Exchange will be permitted to trade FLEX Equity Options on BOX.[187] The Exchange believes that requiring a Letter of Authorization specific to FLEX Equity Options protects investors and the public interest because it signifies that the clearing member has accepted financial responsibility for transactions in FLEX Equity Options entered into by the Floor Broker which will protect the counterparties of those trades and such protections will flow to other clearing members and ultimately to the OCC as the central counterparty and guarantor of both FLEX Equity Option and Non-FLEX Equity Option transactions. The Exchange notes that another exchange requires a separate Letter of Authorization for Floor Brokers to trade FLEX Equity Options.[188]

FOO Orders

The Exchange believes that the proposed rule change to adopt a new order type [189] for FLEX Equity Option transactions on the BOX Trading Floor is consistent with the Act. The Exchange modeled its proposed rule governing FOO Orders after Rule 7600 applicable to QOO Orders to harmonize current procedures on BOX's Trading Floor, which the Exchange believes will reduce investor confusion and thus remove impediments to and perfect the mechanism of a free and open market and a national market system.[190] Specifically, the proposed elements of a FOO Order are designed to aid Floor Brokers in their duties and to maintain order and structure on the Trading Floor. For example, as with a QOO Order, the rules applicable to FOO Orders will ensure that all FLEX Equity Option transactions executed on the Trading Floor by Floor Brokers are systematized before they are represented to the trading crowd and provide an accurate timestamp of when the order was executed by the Floor Broker.[191] As described above, the main differences from QOO Orders are that FOO Orders will not interact with the BOX Book or the Complex Order Book and that Floor Brokers must allow Floor Participants a minimum period of time to respond to FOO Orders.

Under this proposal, Floor Brokers will continue to allow a reasonable amount of time for Floor Participants to participate in a FOO Order. Additionally, the Exchange will establish and communicate via Regulatory Notice a minimum time that Floor Brokers must provide for Floor Participants to respond to FOO Orders, which amount of time must be between three seconds and five minutes. While other exchanges have adopted RFQ processes for FLEX Equity Options,[192] the Exchange has proposed to follow a similar approach for trading FLEX Equity Options as CBOE, which does not have a different open outcry process for FLEX Option transactions as compared to non-FLEX Option transactions, but does establish a different order announcement process that requires a reasonable amount of time for traders to respond to a FLEX Order.[193] In fact, the Exchange notes that CBOE recently changed its process for FLEX Option transactions from conducting a RFQ process to utilizing the same process as for a non-FLEX Option on its trading floor.[194] In its rule filing, CBOE stated that aligning the open outcry process for FLEX Options with that of non-FLEX Options may reduce confusion regarding how FLEX Orders may trade in open outcry and encourage the submission of FLEX Orders for execution.[195]

The Exchange similarly proposes to align its open outcry process for FLEX Equity Options with that of Non-FLEX Equity Options and to establish a minimum time for responses to FOO Orders. The Exchange also believes that, in addition to the required minimum time, it is appropriate to continue to have Options Exchange Officials determine whether Floor Participants have been provided a reasonable amount of time to respond to a FOO Order, which is consistent with the current procedure on the BOX Trading Floor for QOO Orders.[196] The Options Exchange Official will make this determination on a case-by-case basis based on the current market conditions and trading activity on the Trading Floor.[197] Options Exchange Officials are employees of the Exchange, reporting to the Chief Regulatory Officer, and are trained and qualified to enforce the Exchange's rules. The Exchange believes that Options Exchange Officials will ensure that FOO Orders follow the

qualifications in Exchange rules including net capital and financial requirements. *See* BOX Rule 8000 series.

[185] *See* NYSE Arca Rule 5.41–O(a).

[186] *See* proposed Rules 5055(l) and 7605(b).

[187] The Exchange notes that Floor Brokers are subject to registration requirements in Exchange rules including a Floor Broker examination and other factors deemed appropriate by the Exchange. *See* BOX Rule 7550.

[188] *See* NYSE Arca Rule 5.41–O(b).

[189] *See* proposed Rule 7605.

[190] *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Rules for an Open-Outcry Trading Floor) (''After careful review and consideration of the comments received, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.'').

[191] *See* proposed Rule 7605(e). The Exchange notes that in order to execute a FOO Order on the Trading Floor, it must be sent from a Floor Broker's system to the BOG. This requires that the Floor Broker adequately systematized the FOO Order.

[192] *See* NYSE Arca Rule 5.33–O *and* PHLX Rule Options 8, Section 34(c) *and* NYSE American Rule 904G.

[193] *See* CBOE Rule 5.72(d)(1) (providing that FLEX Traders have a reasonable amount of time (which amount of time must be between three seconds and five minutes) from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order (including announcing a crossing transaction pursuant to Rule 5.87) to respond with bids and offers). The Exchange notes that PHLX has also taken a similar approach to CBOE. *See* Securities Exchange Act Release No. 97658 (June 7, 2023), 88 FR 38562 (June 13, 2023) (SR–Phlx–2023–22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Options 8 Rules).

[194] *See* Securities Exchange Act Release No. 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR–CBOE–2019–084) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Operation of its Flexible Exchange Options (''FLEX Options'') Pilot Program Regarding Permissible Exercise Settlement Values for FLEX Index Options).

[195] *Id.*

[196] *See supra* note 147 (describing that the minimum time period, which must be between three seconds and five minutes, will be established by the Exchange and communicated via Regulatory Notice).

[197] The Exchange has a Minor Rule Violation Program (''MRVP'') pursuant to Rule 12140 (Imposition of Fines for Minor Rule Violations). The MRVP provides in part that improper vocalization of a trade may result in sanction. *See* BOX Rule 12140.

Exchange's rules, including that FLEX Market Makers are provided a reasonable amount of time to respond.[198] FLEX Market Makers that do not believe a reasonable amount of time to respond was provided may appeal any related determination of an Options Exchange Official to the Exchange's Chief Regulatory Officer.[199] Additionally, Floor Brokers have a general responsibility to use due diligence to cause orders to be executed at the best price or prices available to them in accordance with the Rules of the Exchange.[200] Further, it shall be considered conduct inconsistent with just and equitable principles of trade for any Floor Broker to intentionally disrupt the open outcry process.[201] Thus, the Exchange believes that the proposed process promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed process provides substantially similar opportunities for Floor Participants to respond to FOO Orders as an RFQ process while maintaining consistency with existing Exchange processes for transactions on the Trading Floor. As noted herein, the proposed open outcry process is safeguarded by enforcement of the Exchange's rules by Options Exchange Officials. The Exchange again notes that, except for the inclusion of a minimum time period that a Floor Broker must allow Floor Participants to respond to FOO Orders, the proposed open outcry process for FOO Orders is similar to the current process for QOO Orders. Therefore, the Exchange believes the proposal will serve to avoid confusion and increase efficiency on the BOX Trading Floor.

Proposed Rule 7605(b) states that FOO Orders will be limited solely to the Trading Floor. The Exchange believes that limiting FOO Orders to the Trading Floor is consistent with the Act because, due to their unique and customizable nature, FLEX Equity Option transactions are well suited for a trading floor environment where the terms of such options can be effectively negotiated. The Exchange notes that other exchanges limit FLEX Equity Options trading to their respective trading floors.[202] To the extent the Exchange determines to adopt an electronic mechanism for the trading of FLEX Equity Options, it will file a subsequent proposed rule change with the Commission.

Proposed Rule 7605(c) provides that FLEX Market Makers must be registered under Rule 8000 and must be Floor Market Makers in good standing under Rule 8500, which protects investors and the public interest by ensuring that Market Makers are qualified to perform their duties, including filing an application, demonstrating knowledge of FLEX Equity Options, and providing additional information as the Exchange may consider necessary. The Exchange shall qualify at least three FLEX Market Makers in accordance with a FLEX-specific qualification process prescribed by the Exchange to provide competition for FOO Orders and reasonable opportunities for Participants to get quotes on FLEX Equity Options. The requirement to qualify at least three FLEX Market Makers is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. Similarly to Floor Market Makers, FLEX Market Makers will also be subject to Rule 8510, including provisions for the course and conduct of dealings, class assignments, and option priority and parity, unless otherwise specified in proposed Rule 7605.[203] Specifically, Rule 8510 provides that transactions of a Floor Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, quoting obligations, restrictions on trading in certain circumstances, and restrictions on conduct related to the allocation of trades. These rules are designed to protect investors and the public interest and are therefore consistent with the Act.

Proposed Rule 7605(d) states that FOO Orders may be Complex FOO Orders or Multi-Leg FOO Orders, including as tied hedge orders, and that these orders may be crossed.[204] However, the priority provisions of Rules 7240(b)(2) and (3) do not apply to Complex FOO Orders or Multi-Leg FOO Orders because there will be no pre-established series and no electronic trading.[205] Further, only FLEX Equity Options on the same underlying and of the same exercise style (American or European) may be part of a Complex FOO Order or Multi-Leg FOO Order. Additionally, if a Non-FLEX Equity Option series is added intra-day for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order, the holder or writer of a FLEX Equity Option position in the component leg(s) resulting from such Complex FOO Order or Multi-Leg FOO Order would be permitted to close its position(s) pursuant to Rule 5055(f)(3). If a Non-FLEX Equity Option series is added for a component leg(s) of a Complex FOO Order or Multi-Leg FOO Order on a trading day after the position is established, the holder or writer of a FLEX Equity Option position in the component leg(s) resulting from such Complex FOO Order or Multi-Leg FOO Order would be required to execute separate FLEX and non-FLEX transactions consistent with the requirements of Rule 5055(f)(2) for each of the component leg(s) of the Complex FOO Order or Multi-Leg FOO Order to close its position(s). These proposed rules are designed to maintain order and structure, to detail the operation of Complex FOO Order and Multi-Leg FOO Order trading on the Trading Floor, and are similar to BOX's current Rule 7600(a)(4). The Exchange is proposing to use similar procedures for the trading of Complex QOO Orders, multi-leg QOO Orders, Complex FOO Orders, and Multi-Leg FOO Orders on the BOX Trading Floor because it will reduce investor confusion and increase efficiency. Additionally, offering order functionality such as Complex FOO Orders, Multi-Leg FOO Orders, and tied hedge orders provides investors with the flexibility and capability to meet their investment and hedging objectives. For these reasons, the Exchange believes that allowing Complex FOO Orders, Multi-Leg FOO Orders, and tied hedge orders removes impediments to and perfects the mechanism of a free and open market and a national market system and is therefore consistent with the Act. The Exchange notes that another exchange allows complex

[198] *See supra* note 147 (describing that the minimum time period, which must be between three seconds and five minutes, will be established by the Exchange and communicated via Regulatory Notice).

[199] *See* BOX Rule 7640(e).

[200] *See* BOX Rule 7570.

[201] *See* BOX IM–7580–4.

[202] *See* NYSE American Rule 904G *and* NYSE Arca Rule 5.33–O *and* PHLX Rule Options 8, Section 34(c).

[203] Pursuant to proposed Rule 7605(h), FLEX Market Makers have an obligation to quote a FLEX Equity Option in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market.

[204] *See* proposed Rule 7605(d), proposed IM–7605–2(d) and current IM–7600–2.

[205] BOX Rules 7240(b)(2) and (3) provide priority provisions for Complex Orders that take into consideration the prices of orders on the BOX Book and the Complex Order Book. Because there will be no BOX Book or Complex Book for Complex FOO Orders, there is no priority of orders on the BOX Book or Complex Book applicable to Complex FOO Orders. This is a distinction from Rule 7600(c), which, for purposes of QOO Orders, excludes the priority rules for Complex Orders contained in Rules 7240(b)(2) and (3) only from multi-leg QOO Orders that are not Complex Orders.

orders and tied hedge orders for FLEX Equity Options.[206]

Another provision designed to maintain order and structure on the Trading Floor is the Exchange's proposal that FOO Orders entrusted to a Floor Broker will be considered a Not Held Order, unless otherwise specified by a Floor Broker's client.[207] In particular, considering orders as Not Held will aid Floor Brokers in their duties on the Trading Floor because it provides clarity to both Floor Brokers and their clients regarding how each order is to be handled. Additionally, this rule is consistent with the current handling of QOO Orders on the BOX Trading Floor which will avoid confusion, increase efficiency, and ensure consistent treatment of orders on the Trading Floor. The Exchange further believes that this proposed rule protects investors and the public interest by clarifying order handling duties and expectations between Floor Brokers and Participants.

Additionally, the requirement, in proposed IM–7605–2, that Participants disclose Public Customer Orders subject to crossing with an order that is not a Public Customer Order and all securities that are components of the Public Customer Order is designed to maintain order and structure on the Trading Floor.[208] The rule also clarifies that Complex FOO Orders, Multi-Leg FOO Orders, or tied hedge orders on opposite sides of the market may be crossed subject to limitations.[209] The Exchange believes that providing clarity will remove impediments to and perfect the mechanism of a free and open market and a national market system and that full disclosure will prevent fraudulent and manipulative acts and practices by providing complete information to Participants which may prompt them to improve upon the Floor Broker's proposed crossing price. Additionally, rules governing how long a response is in effect and the effect of an established market on priority create order and structure on the Trading Floor.[210] The Exchange believes that such order and structure protects investors and the public and notes that the same rules apply to QOO Orders.[211]

Proposed Rule 7605(e) is designed to aid Floor Brokers in their duties and to maintain structure and order on the Trading Floor. For example, by providing that a FOO Order is not executed until it is processed by the Trading Host,[212] the Exchange is providing an accurate timestamp of when the order was actually executed by the Floor Broker and not just when it was submitted to the Exchange.[213] Additionally, the process whereby Floor Brokers are required to systematize orders in their systems is designed to provide a complete and accurate audit trail and minimize the occurrence of disputes and regulatory violations.[214] After systematization, a Floor Broker's system will then be required to send an order to the BOG. Further, Floor Brokers are responsible for providing the correct allocations of the initiating side of the FOO Order to an Options Exchange Official or his or her designee, if necessary, after order execution.[215] Floor Brokers will also be required to ascertain that at least one FLEX Market Maker is present in the Crowd Area prior to announcing a FOO Order for execution, which is designed to increase competition for FLEX Equity Option interest on the Trading Floor.[216] The Exchange notes that these rules are substantially similar to those currently in place for QOO Orders on the BOX Trading Floor.[217] The Exchange believes that having substantially similar rules for all orders on the BOX Trading Floor will avoid any potential confusion and increase efficiency on the BOX Trading Floor, which will further the objectives and goals of the Act by helping to prevent fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, and removing impediments to and perfecting the mechanisms of a free and open market and a national market system.

FLEX Market Maker Requirements

The Exchange believes that the proposed rules applicable to FLEX Market Makers are reasonable and will foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. Specifically, proposed Rules 7605(f), (g) and (h) state: (1) that the minimum size for FLEX Equity Option transactions and quotations shall be 1 contract; (2) that there are no maximum bid to ask spread differentials for FLEX Equity Option quotes; and (3) that FLEX Market Makers have an obligation to quote a FLEX Equity Option in response to any request for quote by a Floor Broker or Options Exchange Official and must provide a two-sided market.[218] The Exchange believes that these rules reflect the unique nature of FLEX Equity Option trading which occurs relatively infrequently and with option premiums that can vary widely because any exercise price (in minimum increments of $0.01) and any expiration date on a business day within 15 years of trade date may be traded.[219] The Exchange believes that these requirements strike a balance between the complexity of quoting customized options and the need to ensure that Floor Brokers are able to get a quote for any FLEX Equity Option selected by their clients. Further, these requirements remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that there is a procedure in place to receive a two-sided quote for each FOO Order brought to the BOX Trading Floor. The Exchange notes that these requirements are similar to those currently in place at BOX and another options exchange.[220]

Priority of Orders and Allocation of Trades

The Exchange believes that the proposed rule to provide a Floor Broker with a guarantee or entitlement to cross

[206] *See* CBOE Rules 5.70(b) and 1.1 (definition of, ''Complex Order'') (providing that the term ''complex order'' means an order involving the concurrent execution of two or more different series in the same underlying security or index (the ''legs'' or ''components'' of the complex order), for the same account, occurring at or near the same time and for the purpose of executing a particular investment strategy with no more than the applicable number of legs (which number CBOE determines on a class-by-class basis)). The Exchange notes that the term ''complex order'' on CBOE includes both Complex Orders and Multi-Leg Orders, as those terms are defined on BOX. *See also* CBOE Rule 5.87 Interpretations and Policies .07 *and* Securities Exchange Act Release No. 93122 (September 24, 2021), 86 FR 54269 (September 30, 2021) (Order Granting Approval of SR–CBOE–2021–041).

[207] *See* proposed Rule 7605(l). *See also* NYSE Arca Rules 5.34–O and 6.62–O(f).

[208] *See* proposed IM–7605–2(a) and (e).

[209] *See* proposed IM–7605(d).

[210] *See* proposed IM–7600–2(b) and (c).

[211] *See* BOX IM–7600–1. The Exchanges notes that the portion of IM–7600–1 that references BOX Book Priority is not included in proposed IM–7605–2 because, as discussed, the BOX Book is not available for transactions in FLEX Equity Options.

[212] *See* proposed Rule 7605(e)(2).

[213] FOO Orders will be submitted by Floor Brokers to the BOG, which is a component of the Trading Host. A Floor Broker will have a connection to the BOG giving the Floor Broker the ability to submit FOO Orders to the Trading Host.

[214] In order to execute a FOO Order on the Trading Floor, it must be sent from a Floor Broker's system to the BOG. This requires that the Floor Broker adequately systematized the FOO Order prior to announcing the FOO Order to the trading crowd. *See* proposed Rule 7605(b).

[215] *See* proposed Rule 7605(j).

[216] *See* proposed Rule 7605(e)(3).

[217] *See* BOX Rule 7600(d)(4). *See also* BOX Rule 7580(a).

[218] *See* proposed Rules 7605(f)–(h).

[219] *See* proposed Rule 5055(e).

[220] *See* NYSE Arca Rules 5.32–O(b)(7) and 5.37–O(d) *and* BOX Rule 8510(c)(2).

40% of the remaining contracts of the original order, after all bids or offers at better prices are filled, with other orders that he is holding,[221] is reasonable and is consistent with the Act. Specifically, proposed Rules 7605(i) and (k) will reward Floor Brokers who bring orders of an eligible size determined by the Exchange but not less than 50 contracts to the Exchange by guaranteeing them the ability to cross 40% of the remaining contracts of those orders after any better priced interest has been filled. The Exchange believes that establishing an eligible size for such guarantee for at least 50 contracts will encourage larger negotiated transactions while providing Floor Participants with a reasonable opportunity to participate. The Exchange notes that other options exchanges provide a guarantee for FLEX Equity Options on their trading floors.[222] Additionally, the Exchange currently provides a similar guarantee with respect to QOO Orders executed on the BOX Trading Floor.[223] Allowing a similar guarantee for QOO Orders and FOO Orders is intended to maintain consistency and increase efficiency for the different order types offered on the BOX Trading Floor. The Exchange believes that allowing a guarantee will 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 by encouraging Floor Brokers to bring orders to the Trading Floor while maintaining the ability of other Floor Participants to participate in floor transactions and compete for such orders.

The Exchange believes that, after the allocation of any bids and offers at better prices and any eligible Floor Broker guarantee, allocating FLEX Equity Option trades between Floor Participants pursuant to the priority provisions of Rule 7610 is reasonable and promotes just and equitable principles of trade. The Exchange notes that, pursuant to Rule 7610, bids and offers are considered in order of the highest bid/lowest offer and priority shall be afforded to such bids and offers in the sequence in which they are made. In situations where the sequence cannot be determined, Floor Participants are treated on an equal basis and receive an equal number of contracts to the extent mathematically possible.[224] The Exchange believes that Rule 7610 is designed to be a fair and impartial method of trade allocation, to promote competition between Floor Participants, and to encourage quick responses of bids and offers at the best available prices. Additionally, consistent and objective trade allocation on the BOX Trading Floor may encourage FLEX Market Makers to provide liquidity which may improve the quality of responses to FOO Orders. The Exchange notes that Rule 7610 is currently applicable to QOO Orders on the BOX Trading Floor[225] and that other exchanges use a similar procedure.[226] Further, if interest remains after Floor Participants that responded with interest receive their allocation, the remaining quantity of the initiating side of the FOO Order will be allocated to the executing Floor Broker. This allocation is designed to further incentivize Floor Brokers after first allowing Floor Participants an opportunity to participate in the trade.

The Exchange believes that the proposed rule change to add certain minor proposed rules as eligible for a minor rule fine disposition under its MRVP will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes violations of proposed Rules 7605 and 7605(h) to be minor in nature and therefore proposes to add them to the list of rules in Rule 12140(e) eligible for a minor rule fine disposition. Further, the Exchange will be able to carry out its regulatory responsibility more quickly and efficiently by incorporating these violations into the MRVP. The Exchange notes that these violations are consistent with violations at other options exchanges.[227] The Exchange also notes that the proposed additional violations are similar to minor rule violations already designated in the Exchange's MRVP for activities related to the Trading Floor.

The Exchange believes that amending Rule 7620 and IM–7620–1 to exclude FLEX Equity Options is consistent with proposed Rule 5055(c) which provides that Rule 7620 shall not apply to transactions in FLEX Equity Options. The amendment is designed to provide clarity by adding FLEX Equity Options to the exclusion list in Rule 7620 and IM–7620–1 to clarify that neither

[221] *See* proposed Rules 7605(i) and (k).

[222] *See* NYSE American Rule 904G(e)(iii) (providing that ''[i]n the case of FLEX Equity Options only and notwithstanding [Rules 904G(e)(i) and (ii)], whenever the Submitting Member has indicated an intention to cross or act as principal on the trade and has matched or improved the BBO during the BBO Improvement Interval, the Submitting Member will be permitted to execute the contra side of the trade that is the subject of the Request for Quotes, to the extent of at least 40% of the trade'') *and* PHLX Rule Options 8, Section 34(c)(5) (''In the case of FLEX options only and notwithstanding [Section 34(c)(4)], whenever the Requesting Member has indicated an intention to cross or act as principal on the trade and has matched or improved the BBO during the BBO Improvement Interval, the Requesting Member will be permitted to execute the contra side of the trade that is the subject of the RFQs, to the extent of at least 40% of the trade, provided the order is a Public Customer order or an order respecting the Requesting Member's firm proprietary account.''). *See also* NYSE American Rule 904G(f) (''A Submitting Member may effect crossing transactions only on public customer orders or orders respecting the Submitting Member's firm proprietary account.''). The Exchange notes differences between the guarantees on NYSE American and PHLX and the guarantee on BOX. First, neither PHLX nor NYSE American set an eligible order size and BOX proposes an eligible order size, determined by the Exchange, of 50 or more contracts. Further, both NYSE American and PHLX require the contra side of a crossing order subject to the 40% guaranteed allocation to be either a Public Customer order or an order respecting the submitting firm's proprietary account whereas BOX does not impose such limitations. The Exchange believes that not limiting contra side participant types is consistent with the Act because it is consistent with current BOX rules for QOO Orders and removes impediments to and perfects the mechanism of a free and open market and a national market system by allowing more participant types on the contra side of crossing orders which may increase the number of eligible contra-side participants and may result in more transactions on the BOX Trading Floor.

[223] *See* BOX Rule 7600(f).

[224] *See* BOX Rule 7610.

[225] The Exchange notes that split-price priority applicable to QOO Orders is not applicable to FOO Orders. Split-price priority allows a Participant effecting a trade that betters the market to have priority on the balance of that trade at the next pricing increment, even if there are orders in the book at the same price. BOX Book will not be applicable to FOO Orders and thus there is no need for split-price priority. Accordingly, the Exchange does not propose to adopt provisions analogous to Rule 7600(i), IM–7600–6, or IM–7600–7 in proposed Rule 7605.

[226] CBOE Rule 5.72(d)(2) provides that FLEX Orders are allocated only to responses from the trading crowd pursuant to Rule 5.85(a)(1) and (2)(C). Rule 5.85(a)(1) provides that bids and offers with the highest bid and lowest offer have priority and (2)(C) establishes priority between in-crowd market participants at the same price. The Exchange believes that these rules are similar to BOX Rule 7610 and are appropriate for FLEX Equity Option trading. *But see* NYSE Arca Rules 5.30–O(d) (providing that priority and order allocation procedures for open outcry do not apply to FLEX Equity Options) and 5.33–O (providing a RFQ procedure for FLEX transactions including priority provisions that provide priority in certain instances to FLEX Qualified Market Makers and limited priority to the submitting firm if it has matched or improved the market on NYSE Arca). As discussed herein, the Exchange does not believe that a RFQ procedure is necessary for FLEX Equity Option trading on BOX. Similarly, CBOE does not have a specific open outcry procedure for FLEX transactions. *See* CBOE Rule 5.72(d) (providing that a submitting FLEX Trader may represent and execute a FLEX Order on the Exchange's trading floor in the same manner as a Trading Permit Holder may represent and execute an order for a non-FLEX Option).

[227] *See, e.g.,* NYSE Arca Rule 10.12 *and* CBOE Rule 13.15.

Cabinet orders nor Sub-Penny Cabinet orders will be available for FLEX Equity Options. The Exchange believes further that this amendment will protect investors and the public interest by removing potential ambiguity between Rule 7620 and proposed Rules 5055 and 7605 and is therefore consistent with the Act.

Lastly, the amendment of Rule 100(b)(3) to remove specific rule references is designed to clarify that all Exchange options transactions shall be executed automatically by the Trading Host as provided in applicable Exchange Rules. The Exchange believes that this amendment will protect investors and the public interest by removing potential ambiguity created by a list of specific rule references that may not be complete and is therefore consistent with the Act.

The Exchange reiterates that FLEX Equity Options are currently traded on four other options exchanges currently conducting options trading.[228] Therefore, the proposed rules perfect the mechanism of a free and open market and protect investors and the public interest by establishing FLEX Equity Options and FOO Orders on the BOX Trading Floor, which would provide market participants an additional execution venue to provide and seek liquidity for their customized orders, thereby increasing the opportunities to execute such orders to the benefit of all market participants.

Section 11(a) Analysis

The proposed rule change is consistent with Section 11(a) of the Act and the rules thereunder. Section 11(a)(1) of the Act [229] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, ''covered accounts''), unless an exception applies. Sections 11(a)(1)(A)–(I) of the Act [230] and the rules thereunder provide certain exemptions from this general prohibition, including the exemption set forth in Rule 11a2–2(T) under the Act.[231] The proposed rule change would not limit in any way the obligation of a Participant, while acting as a Floor Broker or otherwise, to comply with Section 11(a) of the Act or the rules thereunder.[232]

As described above, the Exchange proposes to apply existing IM–7600–5 to FLEX Equity Options,[233] which states that a Participant shall not utilize the Trading Floor to effect any transaction for a covered account by relying on the G Exemption.[234] Because no covered account transactions utilizing the Trading Floor may rely on the G Exemption, Participants utilizing the Trading Floor to effect transactions for covered accounts may only rely upon other exemptions to the Section 11(a)(1) prohibition.[235]

In addition to statutory exemptions, Rule 11a2–2(T) under the Act,[236] known as the ''effect versus execute'' rule, provides Participants with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits a Participant, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated Participant, acting as a Floor Broker, to execute transactions on the Exchange. To comply with Rule 11a2–2(T)'s conditions, the initiating Participant: (i) must transmit the order from off the Trading Floor; (ii) may not participate in the execution of the transaction once the order has been transmitted to the Participant performing the execution; [237] (iii) may not be affiliated with the executing Participant; and (iv) with respect to an account over which the Participant or an associated person has investment discretion, neither the Participant nor an associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Exchange believes that Participants utilizing FOO Orders on the Trading Floor may comply with the conditions of Rule 11a2–2(T) under the Act.[238]

Rule 11a2–2(T)'s first requirement is that orders for covered accounts be transmitted from off the Trading Floor. The Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[239] Floor Brokers will receive matched or unmatched orders either via telephone, or electronically to the Floor Broker's order entry mechanism. A Participant could submit an order for a covered account from off the Trading Floor to an unaffiliated Floor Broker for representation on the Trading Floor and use the ''effect versus execute'' exemption (assuming the other conditions of the rule are satisfied). A Participant that submits a FOO Order for a covered account utilizing the Trading Floor, and who wishes to rely on the ''effect versus execute'' exemption, must submit the order from off the Trading Floor.

Second, Rule 11a2–2(T) requires that neither the initiating Participant nor an associated person of the initiating Participant participate in the execution of the transaction at any time after the order for the transaction has been transmitted. At no time following the submission of a FOO Order utilizing the Trading Floor will the submitting

[228] FLEX options are currently traded on CBOE, NYSE American, NYSE Arca, and PHLX.

[229] 15 U.S.C. 78k(a)(1).

[230] 15 U.S.C. 78k(a)(1)(A)–(I).

[231] 17 CFR 240.11a2–2(T).

[232] A Floor Broker may utilize the Trading Floor to effect a transaction for a covered account only pursuant to Rule 7540 and for purposes of liquidating error positions.

[233] *See* proposed Rule 5055(c) (stating that IM–7600–5 shall apply to FLEX Equity Options).

[234] 15 U.S.C. 78k(a)(1)(G). Section 11(a)(1)(G) of the Act provides an exemption from the general prohibition in Section 11(a)(1) of the Act for any transaction for a member's own account, provided that: (i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities; and (ii) such transaction is effected in compliance with rules of the Commission which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange. *See also* 17 CFR 240.11a1–1(T) (setting forth requirements for relying on the G Exemption).

[235] Section 11(a) of the Act and the rules thereunder provide other exemptions to the Section 11(a)(1) prohibition, including, for example, the ''effect versus execute'' exemption (as discussed below), the exemption for transactions by a dealer acting in the capacity of a market maker, and the exemption for transactions to offset a transaction made in error.

[236] 17 CFR 240.11a2–2(T).

[237] This prohibition also applies to associated persons of the initiating Participant. The Participant may, however, participate in clearing and settling the transaction.

[238] The Commission has previously found that the all-electronic transactions effected through the Trading Host are consistent with the requirements of Section 11(a) of the Act and Rule 11a2–2(T) thereunder. *See, e.g.,* Securities Exchange Act Release Nos. 72848 (August 14, 2014), 79 FR 49361 (August 20, 2014) (SR–BOX–2014–16) (order approving the Exchange's proposal to adopt new trade allocation algorithms for matching trades at the conclusion of the PIP and the COPIP); and 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (order granting the Exchange's application for registration as a national securities exchange). The Commission has also found that transactions effected by Participants through the Trading Floor are consistent with the requirements of Section 11(a) of the Act and Rule 11a2–2(T) thereunder. *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017) (SR–BOX–2016–48) (order approving the Exchange's proposal to adopt rules for an open-outcry Trading Floor).

[239] *See, e.g.,* Securities Exchange Act Release Nos. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (''1978 Release'').

Participant or any associated person of such Participant acquire control or influence over the result or timing of the order's execution.[240] In addition, once a Floor Broker submits a FOO order to the BOG for execution, neither the Floor Broker nor anyone else may alter the terms of the order.[241] Moreover, when a Floor Broker submits a FOO Order for execution, the order will be executed in accordance with Exchange rules and based on market conditions of when the order is received by the Trading Host.[242] Accordingly, a Participant and its associated persons would not participate in the execution of a FOO Order submitted for execution utilizing the Trading Floor.

Third, Rule 11a2–2(T) requires that the order be executed by a Participant that is not associated with the Participant initiating the order. To rely on the exemption in Rule 11a2–2(T), a Participant could submit a FOO Order for a covered account from off the Trading Floor to an unaffiliated Floor Broker. A Participant relying on Rule 11a2–2(T) could not submit a FOO Order for a covered account to its ''house'' Floor Broker on the Trading Floor for execution. If a Participant sends its FOO Order from off the floor to an affiliated Participant that is on the floor, who then directs the order into the Trading Host for execution, the off-floor Participant may not rely on the exemption in Rule 11a2–2(T).

Fourth, in the case of a transaction effected for an account with respect to which the initiating Participant or an associated person thereof exercises investment discretion, neither the initiating Participant nor any associated person may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[243] Participants and their associated persons trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.

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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that other exchanges currently offer FLEX option trading on their respective trading floors. The Exchange believes that the proposed rules will allow BOX to compete with these other exchanges and provide an additional execution venue for these transactions for market participants. Thus, the proposed rules will promote intermarket competition by increasing the number of exchanges where FLEX Equity Options can be traded. The proposal also promotes intermarket competition by providing another alternative, exchange markets, to bilateral OTC trading of options with flexible terms. Exchange markets, in contrast with bilateral OTC trading, are centralized, transparent, and have the guarantee of the OCC for options traded.

Additionally, the Exchange believes that this proposal does not impose an undue burden on intramarket competition because Participants are not required to trade FLEX Equity Options and those that choose to trade FLEX Equity Options may do so on the same terms and pursuant to the same rules. To the extent that the proposed rules differ for FLEX Market Makers and Floor Brokers, these differences are based on the unique roles and obligations of Floor Brokers (*e.g.,* systemization, announcement, and allocation of orders) and FLEX Market Makers (*e.g.,* quoting in response to orders). Additionally, any burden on intramarket competition imposed by providing Floor Brokers with a guaranteed trade allocation on certain trades is mitigated by the facts that FLEX Market Maker quotes at better prices are allocated first and FLEX Market Makers may still participate after the Floor Broker's guarantee at the same price. Further, the Exchange notes that Floor Brokers source liquidity for the contra side of a two-sided order that may otherwise be unavailable on the Trading Floor due to the size and complexity of the order. The proposed guarantee provides greater opportunity for the contra-side to participate in the trade which facilitates Floor Brokers in their generation of contra-side interest and increases the likelihood of securing sufficient contra-side interest. FLEX Market Makers do not construct two-sided orders and thus are not provided a guarantee. However, FLEX Market Makers may benefit from the Floor Broker guarantee as the guarantee is designed to incentivize Floor Brokers to bring their FLEX orders to the BOX Trading Floor where FLEX Market Makers have the ability to interact with these orders. The Exchange also does not believe the proposed rule change imposes any undue burden on intramarket competition between Participants that trade FLEX Equity Options and those that trade Non-FLEX Equity Options. As described above, the Exchange has proposed to use substantially similar procedures for the trading of QOO Orders and FOO Orders, with any modifications designed to reflect the unique nature of customizable FLEX Equity Options. The Exchange notes further that proposed Rule 5055(f) would prevent any FLEX Equity Options and Non-FLEX Equity Options with the same terms from trading concurrently on the Exchange, with a narrow exception for closing only orders.[244]

Lastly, the proposed MRVP changes are not intended to address competitive issues but rather are concerned solely with updating the Exchange's MRVP in connection with the proposed rules eligible for a minor rule fine disposition. Further, the proposal relates to the Exchange's role and responsibilities as a self-regulatory organization and the manner in which it disciplines its Participants and associated persons for violations of its rules. The Exchange believes the proposed MRVP changes, overall, will strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

Based on the foregoing, the Exchange believes that the proposed rule changes discussed herein do not impose any burden on competition not necessary or

[240] A Participant may cancel or modify the FOO Order, or modify the instructions for executing the FOO Order. The Commission has stated that the nonparticipation requirement is satisfied under such circumstances so long as the modifications or cancellations are also transmitted from off the floor. *See* 1978 Release, *supra* note 239, at 11547 (stating that the ''non-participation requirement does not prevent initiating members from canceling of modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[241] *See* proposed Rule 7600(c).

[242] *See* proposed Rule 7600(a).

[243] In addition, Rule 11a2–2(T)(d) requires that, if a Participant or associated person is authorized by written contract to retain compensation in connection with effecting transactions for covered accounts over which the Participant or associated person thereof exercises investment discretion, the Participant or associated person must furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the Participant or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 239, at 11548 (stating that ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[244] *See supra* note 48.

appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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–BOX–2023–20 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–BOX–2023–20. 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–BOX–2023–20 and should be submitted on or before October 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[245]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–20171 Filed 9–18–23; 8:45 am]

BILLING CODE 8011–01–P

[245] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98377; File No. SR–Phlx–2023–43]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rules 3301A and 3301B

September 13, 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 September 5, 2023, Nasdaq PHLX LLC (''Phlx'' or ''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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Equity 4, Rules 3301A and 3301B.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* 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 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 amendments to its Rules to address inconsistencies between the Rule Text and observed System behavior as well as behavior unaccounted for in the existing Rule text, as follows. This proposal is similar to a rule change filed by the Exchange's sister exchange, the Nasdaq Stock Market, LLC, on August 16, 2023.[4]

First Rule Change

The first proposed rule change addresses an edge case of inconsistency between the Rule text and System behavior, this time regarding Market Maker Peg Orders.[5] Rule 3301A states that, if after entry of a Market Maker Peg

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

[2] 17 CFR 240.19b–4.

[3] References herein to Phlx Rules in the 3000 Series shall mean Rules in Phlx Equity 4.

[4] *See* Securities Exchange Act Release No. 34–98225 (August 16, 2023), 88 FR 60255 (August 31, 2023) (SR–NASDAQ–2023–030). The Exchange's proposal differs from that of Nasdaq in that it excludes changes to Order Types and Attributes that are inapplicable to the Exchange due to its absence of opening and closing crosses.

[5] Pursuant to Rule 3301B(b)(5)(A), a ''Market Maker Peg Order'' is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Equity 2, Section 5(a)(2). The displayed price of the Market Maker Peg Order is set with reference to a ''Reference Price'' in order to keep the displayed price of the Market Maker Peg Order within a bounded price range. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer), or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (*e.g.,* dividends or stock splits) in the security.