

nearly universal among exchanges. The difference in value between internal and external distribution is also reflected in the current fee schedule, which has previously been shown to be consistent with the Exchange Act.

* * * * *

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because: (i) customers have a choice in trading venue, and will exercise that choice and trade at another venue if exchange fees are not set competitively; (ii) the top of book data sent in the TOPO feed are also sent to OPRA, and customers have the option of relying on OPRA data; (iii) the purchase of PHLX Orders is entirely optional as it is a low-cost alternative to the PHLX Depth of Market product; (iv) the proposed fees are comparable to those of other exchanges; (v) exchange fees have fallen in real terms while the amount of liquidity available on the exchange has increased, and (vi) external vendors receive additional value from distributing data to their own customers and typically charging for the service, and therefore charging higher fees for external distribution is fair and reasonable.

No Unfair Discrimination

The Proposal is not unfairly discriminatory. The three market data feeds at issue here—TOPO, PHLX Orders, and TOPO Plus Orders—are used by a variety of market participants for a variety of purposes. Users include regulators, market makers, competing exchanges, media, retail, academics, portfolio managers. Market data feeds will be available to members of all of these groups on a non-discriminatory basis.

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.

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the Proposal does not impose any burden on the ability of other options exchanges to compete. PHLX fees are comparable to, and in some cases less than, those of other exchanges, as discussed above.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because PHLX market data is available to any customer under the same fee schedule as any other customer, and any market participant

that wishes to purchase PHLX market data can do so on a non-discriminatory basis.

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

No written comments were either solicited or received.

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)(ii) of the Act.⁴⁹

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2023-57 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-Phlx-2023-57. 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

⁴⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-Phlx-2023-57 and should be submitted on or before January 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁰

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99170; File No. SR-NYSEARCA-2023-85]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.62P-0

December 14, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 8, 2023, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁵⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

The Exchange proposes to amend Rule 6.62P-O to provide for the use of ALO Reserve Orders. The proposed rule change is available on the Exchange's website at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend Rule 6.62P-O (Orders and Modifiers) (the "Rule") to provide for the use of ALO Reserve Orders.

ALO Orders

Rule 6.62P-O(e)(2) defines an ALO Order as a Non-Routable Limit Order that will not remove liquidity from the Consolidated Book. As described below, an ALO Order can be designated to be cancelled if it would be displayed at a price other than its limit price for any reason.

As described in Rule 6.62P-O(e)(2)(A)(ii), an ALO Order to buy (sell) will be displayed at its limit price if it locks non-displayed orders or quotes to sell (buy) on the Consolidated Book. However, per Rule 6.62P-O(e)(2)(A), an ALO Order will not be displayed at a price that would: lock or cross the ABBO, would lock or cross displayed interest in the Consolidated Book, or would cross non-displayed interest in the Consolidated Book.

Rule 6.62P-O(e)(2)(A)(i) provides that an ALO Order may be designated to cancel if it would be displayed at a price other than its limit price. If an ALO Order is not so designated, it will be repriced as follows (per Rules 6.62P-O(e)(2)(B)(i)-(iii)):

- If the limit price of an ALO Order to buy (sell) would lock or cross displayed orders or quotes to sell (buy) on the Consolidated Book, it will be repriced to have a working price and display price one MPV below (above) the lowest (highest) priced displayed order or quote to sell (buy) on the Consolidated Book;

- If the limit price of an ALO Order to buy (sell) would lock or cross the ABO (ABB), it will be repriced to have a working price equal to the ABO (ABB) and a display price one MPV below (above) that ABO (ABB);

- If the limit price of an ALO Order to buy (sell) would cross non-displayed orders or quotes on the Consolidated Book, it will be repriced to have a working price and display price equal to the lowest (highest) priced non-displayed order or quote to sell (buy) on the Consolidated Book.

Rule 6.62P-O(e)(2)(C) provides that, once resting on the Consolidated Book, the display price of an ALO Order to buy (sell) that has been repriced will be repriced higher (lower) only one additional time. If, after that repricing, the display price could be repriced higher (lower) again, the order can be designated to either remain at its last working price and display price or be cancelled, provided that a resting ALO Order that is a quote cannot be designated to be cancelled.

- Per Rule 6.62P-O(e)(2)(C)(i), if the limit price of an ALO Order to buy (sell) that has been repriced no longer locks or crosses displayed orders or quotes in the Consolidated Book, locks or crosses the ABBO, or crosses non-displayed orders or quotes in the Consolidated Book, it will be assigned a working price and display price equal to its limit price.

Rule 6.62P-O(e)(2)(D) provides that the working price of a resting ALO Order to buy (sell) that has been repriced will be adjusted to be equal to its display price, if:

- the ABO (ABB) re-prices to be equal to or lower (higher) than the display price of the resting ALO Order to buy (sell) (per Rule 6.62P-O(e)(2)(D)(i)); or

- an ALO Order or Day ISO ALO to sell (buy) is displayed on the Consolidated Book at a price equal to the working price of the resting ALO Order to buy (sell) (per Rule 6.62P-O(e)(2)(D)(ii)).

Rule 6.62P-O(e)(2)(E) provides that when the working price and display price of an ALO Order to buy (sell) are the same, the working price will be adjusted higher (lower) only if the display price of the order is adjusted.

Finally, per Rule 6.62P-O(e)(2)(F), the ALO designation will be ignored for

ALO Orders that participate in an Auction.

Reserve Orders

Rule 6.62P-O(d)(1) provides for Reserve Orders, which are Limit Orders with a quantity of the size displayed and with a reserve quantity of the size ("reserve interest") that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2—Display Orders, and the reserve interest is ranked Priority 3—Non-Display Orders. Both the display quantity and the reserve interest of an arriving marketable Reserve Order are eligible to trade with resting interest in the Consolidated Book or to route to Away Markets, unless they are designated as a Non-Routable Limit Order. The working price of the reserve interest of a resting Reserve Order to buy (sell) will be adjusted in the same manner as a Non-Displayed Limit Order, as provided for in paragraph (d)(2)(A) of this Rule, provided that it will never be priced higher (lower) than the working price of the display quantity of the Reserve Order.⁴

- Rule 6.62P-O(d)(1)(A) provides that the displayed portion of a Reserve Order will be replenished when the display quantity is decremented to zero. The replenish quantity will be the minimum display size of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity.

- Rule 6.62P-O(d)(1)(B) provides that each time the display quantity of a Reserve Order is replenished from reserve interest, a new working time will be assigned to the replenished quantity.

- Rule 6.62P-O(d)(1)(C) provides that a Reserve Order may be designated as a Non-Routable Limit Order. If so designated, the reserve interest that replenishes the display quantity will be assigned a display price and working price consistent with the instructions for the order.

- Rule 6.62P-O(d)(1)(D) provides that a routable Reserve Order will be evaluated for routing both on arrival and each time the display quantity is replenished.⁵

⁴ See *infra* regarding the proposed non-substantive change to Rule 6.62P-O(d)(1) to remove the cross-reference to paragraph (d)(2)(A) of Rule 6.62P-O and replace it with the specific text from that paragraph regarding how the working price for resting interest is adjusted. See proposed Rule 6.62P-O(d)(1).

⁵ See Rule 6.62P-O(d)(1)(D)(i)-(ii) (providing that for a routable Reserve Order, "[i]f routing is required, the Exchange will route from reserve interest before publishing the display quantity" and that "[a]ny quantity of a Reserve Order that is returned unexecuted will join the working time of

• Rule 6.62P–O(d)(1)(E) provides that a request to reduce the size of a Reserve Order will cancel the reserve interest before cancelling the display quantity.

• Finally, Rule 6.62P–O(d)(1)(F) provides that a Reserve Order may be designated Day or GTC; this provision also currently provides that a Reserve Order may not be designated as an ALO Order.

Proposed ALO Reserve Orders

The Exchange proposes to amend Rule 6.62P–O to provide for the use of ALO Reserve Orders. The proposed change is not intended to introduce any new functionality or modify any current functionality, but rather to facilitate the combination of two order types currently offered by the Exchange. As proposed, ALO Reserve Orders would operate consistent with current Rule 6.62P–O (d)(1) regarding Reserve Orders and current Rule 6.62P–O(e)(2) regarding ALO Orders. To allow for the use of ALO Reserve Orders, the Exchange first proposes to amend Rule 6.62P–O(d)(1)(F) to delete the clause in the latter half of the sentence of such rule, which currently provides that a Reserve Order may not be designated as an ALO Order.

The proposed change is intended to allow ALO Orders, as described in Rule 6.62P–O(e)(2) and the paragraphs thereunder, to have a displayed quantity, along with non-displayed reserve interest, as described in Rule 6.62P–O(d)(1). The display quantity of an ALO Reserve Order would be replenished as provided in Rule 6.62P–O(d)(1)(A) and (B). For an ALO Reserve Order that is designated as a Non-Routable-Limit Order, per Rule 6.62P–O(d)(1)(C), the replenish quantity of such non-routable ALO Reserve Order would be assigned a display price and working price consistent with the behavior of ALO Orders as described in current Exchange rules. The Exchange proposes to modify Rule 6.62P–O(d)(1)(C) to add a cross reference to the paragraphs (*i.e.*, to paragraphs (e)(1)(A) and (e)(2)(A)–(B) of the Rule) that describe how the working price and display price of Non-Routable Limit Orders and ALO Orders—which are a subset of Non-Routable Limit Orders are assigned, which would benefit investors by making the rule easier to navigate and comprehend.⁶

the reserve interest. If there is no reserve interest to join, the returned quantity will be assigned a new working time”, respectively.)”

⁶ See proposed Rule 6.62P–O(d)(1)(C) (providing that for Reserve Orders designated as Non-Routable Limit Orders (inclusive of ALO Orders), “the reserve interest that replenishes the display quantity will be assigned a display price and

The proposed change is intended to facilitate the combined use of two existing order types available on the Exchange, thereby providing OTP Holders and OTP Firms with enhanced flexibility and optionality when trading on the Exchange. The proposed change could also promote increased liquidity and trading opportunities on the Exchange, to the benefit of all market participants. The Exchange also believes the proposed change would permit the Exchange to offer functionality already available on the Exchange’s affiliated (five) equities exchanges and at least one other (non-NYSE) equities exchange, thereby promoting uniformity in order types/functionality across our equity and options markets.⁷

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be in the fourth quarter of 2023.

Proposed Non-Substantive Change To Reserve Orders

The Exchange proposes to modify Rule 6.62P–O(d)(1) to add rule text specifying how the reserve interest of a resting Reserve Order to buy (sell) will be adjusted, which text would replace the existing text that directs the reader to another rule provision. Specifically, Rule 6.62P–O(d)(1) states that “[t]he working price of the reserve interest of a resting Reserve Order to buy (sell) will be adjusted in the same manner as a Non-Displayed Limit Order, as provided for in paragraph (d)(2)(A) of this Rule, provided that it will never be priced higher (lower) than the working price of the display quantity of the Reserve Order.” The Exchange proposes to replace the cross reference to “paragraph (d)(2)(A) of the Rule” with

working price consistent with the instructions for the order, as provided for in paragraphs (e)(1)(A) and (e)(2)(A)–(B) of this Rule.” (emphasis added).

⁷ See Securities Exchange Act Release Nos.: 98892 (November 8, 2023), 88 FR 78398 (November 15, 2023) (SR–NYSEAmer–2023–56) (adopting ALO Reserve Orders on immediately effective basis); 98899 (November 9, 2023), 88 FR 78413 (November 15, 2023) (SR–NYSEArca–2023–77) (same); and 98891 (November 8, 2023), 88 FR 78407 (November 15, 2023) (SR–NYSE–2023–40) (same); 98893 (November 9, 2023), 88 FR 78401 (November 15, 2023) (SR–NYSENAT–2023–25) (same); 98901 (November 9, 2023), 88 FR 78422 (November 15, 2023) (SR–NYSECHX–2023–21) (same). See, *e.g.*, MEMX Rules 11.8(b)(4) and (7) (providing that a Limit Order may include a reserve quantity and may be designated with a Post Only instruction); see also MEMX User Manual, available at <https://info.memxtrading.com/wp-content/uploads/2023/03/MEMX-User-Manual-03.10.23.pdf>, at p. 9 (providing that a Limit Order designated Day may have both reserve quantity and Post Only instructions).

the relevant text from that paragraph (*i.e.*, that the working price for the reserve interest of a resting Reserve Order to buy (sell) will be adjusted “to be the lower (higher) of the limit price, or the NBO (NBB)”⁸ The Exchange deems this proposed change as non-substantive because it merely copies the text that is being cross-referenced in the approved rule without any changes.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5),¹⁰ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market because it would allow for the combined use of two existing order types available on the Exchange and permit the Exchange to offer functionality similar to that already available on the Exchange’s (five) affiliated equities exchanges and at least one other (non-NYSE) equities exchange.¹¹ The Exchange believes that offering ALO Reserve Orders on the Exchange would promote uniformity in order types and functionality across the NYSE equity and options markets. OTP Holders and OTP Firms would be free to choose to use the proposed ALO Reserve Order type or not, and the proposed change would not otherwise impact the operation of the Reserve Order or ALO Order as described in current Exchange rules. The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market, as well as protect investors and the public interest, by expanding the options available to OTP Holders

⁸ See proposed Rule 6.62P–O(d)(1) (providing, in relevant part, that “[t]he working price of the reserve interest of a resting Reserve Order to buy (sell) will be adjusted to be the lower (higher) of the limit price, or the NBO (NBB), provided that it will never be priced higher (lower) than the working price of the display quantity of the Reserve Order.”) (emphasis added).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See note 7, *supra* (citing to equities markets that offer this functionality).

and OTP Firms when trading on the Exchange and promoting increased liquidity and additional trading opportunities for all market participants.

The proposed non-substantive change to Rule 6.62P–O(d)(1) to specify how the working price of the reserve interest of a resting Reserve Order is adjusted would add clarity and transparency to Exchange rules to the benefit of investors.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange's proposal to adopt Reserve ALO Orders—which combine two existing orders available on the Exchange—would not impose a burden on intramarket competition because the proposed ALO Reserve Order is available to all market participants that trade on the Exchange.

The Exchange believes that the proposed change would enhance inter-market competition as other options exchanges that do not currently offer this functionality are free to do so. The Exchange also believes that, to the extent the proposed change increases opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

The Exchange believes the proposed non-substantive change to Rule 6.62P–O(d)(1) to specify how the working price of the reserve interest of a resting Reserve Order is adjusted, would not impose an undue burden on competition. This proposed change is not meant to be competitive but is instead designed to add clarity, transparency, and internal consistency to Exchange rules.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become

operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b–4(f)(6) thereunder.¹³

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that it may implement the ALO Reserve order type without delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal raises no novel or controversial issues in permitting the proposed combination of two order types already in use on the Exchange, as well as replacing a cross-reference to improve clarity in the Exchange's rules. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b–4(f)(6)(iii).

¹⁵ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

- Send an email to rule-comments@sec.gov. Please include file number SR–NYSEARCA–2023–85 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–NYSEARCA–2023–85. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–85 and should be submitted on or before January 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

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¹⁶ 17 CFR 200.30–3(a)(12).