

SECURITIES AND EXCHANGE COMMISSION
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May 23, 2022

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend Rule 6.64P-O

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 May 20, 2022, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 6.64P-O (Auction Process). The proposed 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to modify Rule 6.64P-O regarding the automated process for both opening and reopening trading in a series on the Exchange on Pillar as set forth below.⁴

Current Pillar Auction Process

Rule 6.64P-O(d) sets forth the Auction Process.⁵ Per Rule 6.64P-O(d)(1), once the Exchange receives the Auction Trigger for a series,⁶ the Auction Process begins and the Exchange sends a Rotational Quote⁷ to both OPRA and proprietary data feeds indicating that the Exchange is in the process of transitioning from a pre-open state to continuous trading for that series.

⁴ Rule 6.64P-O (the “Pillar Rule”) covers the opening and reopening of option series, which process is identical on the Pillar trading platform. As such, the Exchange will simply refer to the “opening” of a series herein. The Exchange notes that because it has not yet migrated to the Pillar platform, Rule 6.64-O continues to apply to the opening process, which rule is not being modified by this filing. The Exchange has announced July 11, 2022 as the planned migration date for Pillar, as announced here: <https://www.nyse.com/trader-update/history#110000421498>.

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

⁶ “Auction Trigger” refers to the information disseminated by the Primary Market in the underlying security that triggers the Auction Process for a series to begin. See Rule 6.64P-O(a)(7).

⁷ “Rotational Quote” refers to the highest Market Maker bid and lowest Market Maker offer on the Exchange when the Auction Process begins and such a Rotational Quote will be updated (for price and size) during the Auction Process. See Rule 6.64P-O(a)(13).

Per Rule 6.64P-O(d)(2), once a Rotational Quote has been sent, the Exchange conducts an Auction,⁸ provided “there is both a Legal Width Quote and, if applicable, Market Maker quotes with a non-zero offer in the series” within the Opening Timer(s), per Rule 6.64P-O(d)(3).⁹ The Exchange deems the Legal Width Quote requirement satisfied if the Calculated NBBO (described below) for the series is uncrossed, contains a non-zero offer, and has a spread that does not exceed a maximum differential that is determined by the Exchange on a class basis and announced by Trader Update.¹⁰ The Calculated NBBO is comprised of the highest bid and lowest offer among all Market Maker quotes and the ABBO during the Auction Process.¹¹ A Calculated NBBO does not require both Market Maker quotes and ABBO to be present, and may be composed of Market Maker quotes only, of the ABBO only, or a combination thereof.

If the foregoing requirements are met (i.e., per Rule 6.64P-O(d)(2)), the Exchange will conduct an Auction that will either result in a trade or in a quote depending on whether there is (or is not) Matched Volume¹² that can trade at or within the Auction Collars.¹³ If there is

⁸ “Auction” refers to the opening or reopening of a series for trading either with or without a trade. See Rule 6.64P-O(a)(1).

⁹ See Rule 6.64P-O(d)(2). Rule 6.64P-O(d)(3) specifies the parameters of the Opening MMQ Timers, which are designed to encourage (but not require) any Market Maker(s) assigned to an option series to submit Legal Width Quotes in connection with the Auction Process. The Exchange proposes a non-substantive change of “30” to “thirty” regarding the Opening MMQ Timer(s), which would add clarity and internal consistency to the rule. See proposed Rule 6.64P-O(d)(3).

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

¹¹ See Rule 6.64P-O(a)(8) (defining Calculated NBBO).

¹² “Matched Volume” refers to the number of buy and sell contracts that can be matched at the Indicative Match Price, excluding IO Orders. See Rule 6.64P-O(a)(11). An Imbalance Offset Order (“IO Order”) is a Limit Order that is to be traded only in an Auction. See Rule 6.62P-O(c)(3).

¹³ “Auction Collar” refers to the price collar thresholds for the Indicative Match Price for an Auction, with the upper Auction Collar being the offer of the Legal Width Quote and the

Matched Volume that can trade at or within the Auction Collars, the Auction will result in a trade at the Indicative Match Price.¹⁴ However, if there is no Matched Volume that can trade at or within the Auction Collars, the Auction will instead result in a quote and the Exchange transitions to continuous trading as set forth in Rule 6.64P-O(f).¹⁵

Finally, per Rule 6.64P-O(d)(4), unless otherwise specified by Trader Update, for the first ninety seconds of the Auction Process (inclusive of the thirty-second Opening MMQ Timer(s)), if there is no Legal Width Quote, the Exchange will not conduct an Auction, even if there is Matched Volume, i.e., the series will not open. After the first ninety seconds of the Auction Process, if there is no Matched Volume and the Calculated NBBO is wider than the Legal Width Quote, is not crossed, and does not contain a zero offer, the Exchange will first cancel any Market Orders and MOO Orders and then transition the option series to continuous trading per Rule 6.64P-O(f).¹⁶ Thus, per Rule 6.64P-O(d)(4)(A), if after the first ninety seconds of the Auction Process there is Matched Volume but the other elements of this provision are satisfied, the series will not open and will remain unopened and the Exchange will not transition to continuous trading until the earlier of (i) a Legal Width Quote is established and an Auction can be conducted; (ii) the series can be opened as provided for in paragraph (d)(4)(A); (iii) the series

lower Auction Collar being the bid of the Legal Width Quote, provided that if the bid of the Legal Width Quote is zero, the lower Auction Collar will be one MPV above zero for the series. And, if there is no Legal Width Quote, the Auction Collars will be published in the Auction Imbalance Information as zero. See Rule 6.64P-O(a)(2).

¹⁴ See Rule 6.64P-O(d)(2)(A). “Indicative Match Price” refers to the price at which the maximum number of contracts can be traded in an Auction, including the non-displayed quantity of Reserve Orders and excluding IO Orders, subject to the Auction Collars. If there is no Legal Width Quote, the Indicative Match Price included in the Auction Imbalance Information will be calculated without Auction Collars. See Rule 6.64P-O(a)(9).

¹⁵ See Rule 6.64P-O(d)(2)(B).

¹⁶ See Rule 6.64P-O(d)(4)(A).

is halted; or (iv) the end of Core Trading Hours.¹⁷ In other words, a series that does not meet the requirements of Rule 6.64P-O(d)(4)(A) may be delayed in opening until one of the conditions set forth in Rule 6.64P-O(d)(4)(B) occur.

Proposed Change to Auction Process

The Exchange notes that waiting for market conditions to change before transitioning to continuous trading per the current Pillar Rule may result in missed execution opportunities for eligible interest submitted to the Exchange during the pre-open state. Moreover, this potential (indefinite) delay is inconsistent with the Exchange's intention of providing a timely and efficient Auction Process. As such, the Exchange proposes to modify Rule 6.64P-O. In short, the Exchange proposes that after the first ninety seconds of the Auction Process, the Exchange would conduct an Auction of marketable interest based on the spread of the then-current market conditions (i.e., a Calculated NBBO that is uncrossed with a non-zero offer), provided that if the Calculated NBBO exceeds the Legal Width Quote differential established per Rule 6.64P-O(a)(10)(C) the Exchange would cancel any Market Orders or MOO Orders before conducting the Auction. As further proposed, marketable Limit Orders would trade in the Auction bound by the Calculated NBBO (i.e., the highest bid and lowest offer among all Market Maker quotes and the ABBO), which executions may be earlier and more efficient than afforded under the current Pillar Rule. If there is no marketable interest after such cancelation, the Exchange would open on a quote.¹⁸

¹⁷ See Rule 6.64P-O(d)(4)(B).

¹⁸ As described further below, consistent with Rule 6.64P-O(d)(2)(B), an Auction conducted per proposed Rule 6.64P-O(d)(4)(A) would open on a quote if there is no Matched Volume).

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

First, the Exchange proposes to codify existing rule text into the defined phrase the “initial Auction Process time period” in proposed Rule 6.64P-O(a)(5)(i). As proposed, the initial Auction Process time period would mean, “unless otherwise specified by Trader Update, the first ninety seconds after the commencement of the Auction Process,” which definition simply codifies (and relocates) identical text that appears in the preamble of both sentences in Rule 6.64P-O(d)(4).¹⁹ The Exchange believes this proposed change is non-substantive and would streamline and add clarity to the existing rule.²⁰

Next, the Exchange proposes to modify the definition of Legal Width Quote, including by leveraging the newly defined “initial Auction Process time period.” Rule 6.64P-O(a)(10)(C) provides that, to be deemed a Legal Width Quote, the spread of the Calculated NBBO may not exceed a maximum differential that is determined by the Exchange on a class basis and announced by Trader Update.²¹

¹⁹ See proposed Rule 6.64P-O(a)(5)(i). See Rule 6.64P-O(d)(4) (providing that “[u]nless otherwise specified by Trader Update, for the first ninety seconds of the Auction Process ...” and “[n]inety seconds after the Auction Process begins:”).

²⁰ See *id.* See proposed Rule 6.64P-O(d)(4)(A) (replacing reference to the first ninety-seconds after the Auction Process with the proposed definition of the “initial Auction Process time period,” which would add clarity and internal consistency to the Rule, making it easier to navigate and comprehend).

²¹ See Rule 6.64P-O(a)(10)(C) (which also provides a Trading Official may establish maximum differentials for one or more series or classes of options, which differ from those established by the Exchange).

As such, by rule, the Exchange has discretion to establish for each option class the maximum allowable spread of the Calculated NBBO within which the Exchange will conduct an Auction, provided that the other elements of a Legal Width Quote are met.²² Nothing in Rule 6.64P-O(a)(10)(C) precludes the Exchange from establishing one set of Calculated NBBO spreads for the first ninety seconds of the Auction Process and a second (wider) set of Calculated NBBO spreads for any time after the first ninety seconds. However, in the interest of clarity and for the avoidance of potential confusion, the Exchange proposes to expand the definition of Legal Width Quote (rather than modify by Trader Update) in the Pillar Rule to provide that “after the initial Auction Process time period, the Exchange will not impose limits for the maximum differential for the spread between the Calculated NBBO.”²³

The Exchange believes adopting Rule 6.64P-O(a)(10)(D) is consistent with its authority under the Pillar Rule to determine the maximum allowable Calculated NBBO spread to qualify a series as having a Legal Width Quote. However, this rule change would make clear that the Exchange would no longer impose these established spread limits (as announced by Trader Notice per Rule 6.64P-O(a)(10)(C)) after the initial Auction Process time period. The Exchange believes this rule change would add clarity and transparency to the Auction Process to the benefit of all market participants.²⁴ Because the Auction Process, including the Auction Collars, the

²² To qualify as a Legal Width Quote, the Calculated NBBO must also be uncrossed and must contain a non-zero offer, which requirements are not being modified by this rule change. See Rule 6.64P-O(a)(10)(A)-(B).

²³ See proposed Rule 6.64P-O(a)(10)(D).

²⁴ Similar to the Exchange, other options exchanges have rules granting them broad discretion to modify the opening parameters for each option series, which modifications are disseminated or announced to market participants over data feeds or trader notice. See, e.g., Cboe Options Exchange, Inc. (“Cboe”) Rule 5.31(a) (definitions of Maximum Composite Width and Opening Collar, each of which the exchange “may modify during the opening auction process (which modifications the Exchange disseminates to all subscribers to the Exchange’s data feeds that deliver opening auction updates)”); Cboe

presence of Matched Volume, and the determination of the Indicative Match Price, are dependent upon a Calculated NBBO that qualifies as a Legal Width Quote, the Exchange proposes that any Auction conducted consistent with proposed 6.64P-O(a)(10)(D) would follow the current Auction Process except as described below.²⁵

The Exchange proposes to amend Rule 6.64P-O(d)(4) regarding the conduct of an Auction after the conclusion of the initial Auction Process time period (i.e., after the first ninety seconds).²⁶ As noted herein, the Pillar functionality (per Rule 6.64P-O(d)(4)(A)) permits a series to open based on a “wide” Calculated NBBO (that is uncrossed with a non-zero offer), but only if there is no Matched Volume, which requirement may delay openings and result in missed execution opportunities.²⁷ To address this unintended potential delay, the Exchange proposes that after the initial Auction Process time period and consistent with proposed paragraph (a)(10)(D) of this Rule (which removes the limit on the maximum allowable Calculated NBBO spread), the Exchange would conduct an Auction regardless of Matched Volume as long as the Calculated

EDGX Options Exchange, Inc. (“EDGX”) Rule 21.7(a) (same); Cboe BZX Options Exchange, Inc. (“BZX”) Rule 21.7(a) (definitions of Maximum Composite Width and Opening Collar); Cboe C2 Exchange Inc. (“C2”) Rule 6.11(a) (same); see also Miami Securities Exchange, Inc. (“MIAX”) Rule 503(f)(2) (which permits MIAX to determine by circular an acceptable range in which openings are permissible if there is no valid width national best bid or offer (“NBBO”)).

²⁵ See, e.g., Rule 6.64P-O(d)(2)(A)-(B) (describing the process of opening a series with a trade or a quote depending on whether there is Matched Volume).

²⁶ See proposed Rule 6.64P-O(d)(4) (which includes the aforementioned non-substantive change to refer to the newly defined “initial Auction Process time period” rather than the first ninety seconds after the Auction Process). The Exchange is not altering Auction functionality for the initial Auction Process time period. See id.

²⁷ See proposed Rule 6.64P-O(d)(4)(B) (setting forth the necessary market conditions to open a series that has not opened per paragraph (d)(4) of the Pillar Rule). If the Exchange opens a series per Rule 6.64P-O(d)(4)(A), it first cancels any Market Order or MOO Orders before conducting an Auction and transitioning to continuous trading. See proposed Rule 6.64P-O(d)(4).

NBBO is not crossed, and does not contain a zero offer.²⁸ This proposed functionality would allow marketable Limit Orders to execute in the Auction, which may result in certain option series opening earlier than are opened under the current rule and increase execution opportunities for Limit Orders at then-current market prices.²⁹

Although Limit Orders would be eligible to execute based on this proposed functionality, whether a Market Order or MOO Order may participate in the proposed Auction depends on the width of the market at the time of the Auction. Specifically, as further proposed, if the Calculated NBBO spread is wider than the differential established per paragraph (a)(10)(C) of this Rule, the Exchange would cancel Market Orders and MOO Orders before conducting the Auction, which proposed handling is consistent with the current Pillar Rule.³⁰ Conversely, as proposed, and consistent with the current Pillar Rule, Market Orders and MOO Orders are not canceled and will participate in an Auction that is based on a Calculated NBBO that is less than or equal to the Calculated NBBO spread limit established per Rule 6.64P-O(a)(10)(C).³¹ As further proposed,

²⁸ See proposed Rule 6.64P-O(d)(4)(A). See also proposed Rule 6.64P-O(a)(10)(D).

²⁹ See *id.* See also Rule 6.64P-O(a)(9)(A) (providing, in relevant part, that “the Indicative Match Price would not be lower (higher) than the highest (lowest) price of a Limit Order to buy (sell) ranked Priority 2 - Display Orders that is eligible to participate in the Auction”). In addition, consistent with the proposal, the Exchange proposes to remove as inapplicable the text in current Rule 6.64P-O(d)(4)(A) indicating that the “Auction is not intended to end with a trade, but it may result in a trade even if there is no Legal Width Quote if orders or quotes arrive during the period when the Exchange is evaluating the status of orders and quotes” as well as text indicating that the Exchange would “transition to continuous trading as described in paragraph (f) of this Rule.” See proposed Rule 6.64P-O(d)(4)(A).

³⁰ See Rule 6.64P-O(d)(4)(A)(i) (providing that Market Orders and MOO Orders are cancelled “[a]ny time a series is opened or reopened when there is no Legal Width Quote,” i.e., when the Calculated NBBO exceeds the maximum allowable spread limit set forth in Rule 6.64P-O(a)(10)(C)).

³¹ See *id.* To avoid potential confusion regarding the distinct handling of Market Orders and MOO Orders under proposed Rule 6.64P-O(d)(4)(A) depending upon whether an Auction is conducted based on a Calculated NBBO spread that is in compliance with

after the cancelation of any Market Orders or MOO Orders as applicable, the Auction Process will proceed consistent with paragraph (d)(2)(A)-(B) of this Rule and the Exchange will execute Matched Volume (if any) to the extent possible before transitioning to continuous trading.³²

Taken together, the proposed changes to Rule 6.64P-O(a)(10)(D) and (d)(4) would allow any series that has not opened by the end of the initial Auction Process time period the ability to open based on a Legal Width Quote derived from then-market conditions. As such, the Exchange proposes to modify Rule 6.64P-O(d)(4)(B) to update the cross-reference from paragraph (d)(4)(A) to paragraph (d)(4) and to eliminate as superfluous paragraph (d)(4)(B)(ii), which refers to waiting until “the series can be opened as provided for in paragraph (d)(4)(A).”³³ The Exchange believes these proposed conforming changes are necessary given that the proposed changes to Rule 6.64P-O(a)(10)(D) (removing the limit on the Calculated NBBO spread to qualify as Legal Width Quote) and (d)(4)(A) (addressing the conduct of an Auction after the initial Auction Process time period under the expanded definition of Legal Width Quote) render paragraph (d)(4)(B)(ii) of the Rule unnecessary.

Rule 6.64P-O(a)(10)(C) or with proposed Rule 6.64P-O(a)(10)(D), the Exchange has intentionally avoided reference to the presence of a Legal Width Quote in the proposed Rule. See proposed Rule 6.64P-O(d)(4)(A).

³² See, e.g., Rule 6.64P-O(d)(2)(A)-(B) (providing that “[i]f there is Matched Volume that can trade at or within the Auction Collars, the Auction will result in a trade at the Indicative Match Price” or, “[i]f there is no Matched Volume that can trade at or within the Auction Collars,” the Auction will not result in a trade and the Exchange will transition to continuous trading as described in paragraph (f) of this Rule and the Auction will result in a quote”).

³³ See proposed Rule 6.64P-O(d)(4)(A). See proposed Rule 6.64P-O(d)(4)(B). The Exchange also proposes conforming changes to re-number the remaining paragraphs in light of the proposed deletion, which would add clarity and internal consistency to the Rule. See id.

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

The Exchange believes the proposed modification to the Auction Process would continue to protect Market Orders and MOO Orders from being executed (by cancelling such orders before conducting the proposed Auction) when the Calculated NBBO spread exceeds the spread differential established per current Rule 6.64P-O(a)(10)(C) before conducting the proposed Auction. In addition, the proposed modification would allow any eligible Limit Orders to be executed in the proposed Auction, bound by the Calculated NBBO. The Calculated NBBO (even if wide) represents the best-priced quotes by Market Makers (which participants generally are

responsible for pricing the market) and/or the ABBO, the presence of which indicates that another market has opened.³⁴

Consistent with current functionality (and with the approved Pillar Rule), the Exchange would not permit any opening transactions to trade through any better-priced interest on any Away Market, even it is permitted to do so.³⁵ Rather, because interest in the Auction would not trade outside of the Calculated NBBO (which defines the then-current market for the series), any Limit Orders executed in the proposed Auction would, bound by Auction Collars, would trade at a price that is equal to or better than the price(s) available at other exchanges.³⁶ Per Rule 6.64P-O(f)(3)(A), any interest remaining after such Action is then evaluated for potential routing prior to being posted to the Consolidated Book. Further, the Exchange notes that there are other price protections available to limit the risk of executions at a wider market price.³⁷ Thus, the Exchange

³⁴ Options exchanges have varying opening processes and have made separate determinations on what constitutes individual, reasonable opening market widths. Thus, if other options exchanges opened a series with a market width, it is reasonable to open the series for trading on the Exchange as well (as orders submitted to other exchanges may be trading at those widths).

³⁵ Although the intermarket linkage rules exempt from trade-through liability trades occurring during the opening process, the Exchange would continue to restrict transactions occurring at the open to the NBBO. See Rule 6.94-O(b)(2) (exempting from trade-through liability those transactions that “traded through a Protected Quotation being disseminated by an Eligible Exchange during a trading rotation”). A “Protected Quotation” is the Best Bid or Best Offer disseminated by OPRA and displayed by an Eligible Exchange. See Rule 6.92-O(15)-(16).

³⁶ See Rule 6.64P-O(b)(2)(A) (A) (providing that, “[i]f there is Matched Volume that can trade at or within the Auction Collars, the Auction will result in a trade at the Indicative Match Price). See also Rule 6.64-O(a)(3),(9), and (11) (defining Auction Collars, Indicative Match Price, and Matched Volume, respectively).

³⁷ See Rule 6.41P-O(a)(1), (b) (regarding the Arbitrage Check, which is applied pre-open). The Exchange notes that the price protection mechanisms it employs during continuous trading are based on the NBBO, or Auction Prices as applicable. See, e.g., Rules 6.41P-O(c)(4)(B) (regarding the Intrinsic Value Check); Rule 6.62P-O(a)(4)(A) (regarding Limit Order Price Protection); and Rule 6.62P-O(a)(4)(B) (regarding Trading Collars).

believes that the risk of an extreme execution based on the Calculated NBBO available after the initial Auction Process time period may be mitigated for the aforementioned reasons. The Exchange believes that, on balance, the benefits to market participants of having the series open earlier outweighs this mitigated risk.

Finally, the Exchange also proposes to modify the requirements to open a series during the initial Auction Process time period for option series with two or more assigned Market Makers, per Rule 6.64P-O(d)(3)(C). Per Rule 6.64P-O(3)(C)(i), if there are two or more Market Makers assigned to a series, the Exchange will conduct the Auction, without waiting for the Opening MMQ Timer to end, as soon as there is both a Legal Width Quote and at least two assigned Market Makers have submitted a quote with a non-zero offer. Per Rule 6.64P-O(3)(C)(ii), if at least two Market Makers assigned to a series have not submitted a quote with a non-zero offer by the end of the Opening MMQ Timer, the Exchange will begin a second Opening MMQ Timer. The Exchange proposes to modify these provisions to provide that the Exchange would require that at least two quotes with non-zero offers be submitted during the Opening MMQ Timer, which quotes may be sent by one or more Market Makers.³⁸

The Exchange believes that the proposed change continues to encourage (but not require) Market Makers to participate at the open, which may increase the availability of Legal Width

³⁸ See proposed Rule 6.64P-O(d)(2) (providing that “[o]nce a Rotational Quote has been sent, the Exchange will conduct an Auction when there is both a Legal Width Quote and, if applicable, Market Maker quotes with a non-zero offer in the series (subject to the Opening MMQ Timer(s) requirements in paragraph (d)(3) of this Rule”) and Rule 6.64P-O(d)(3)(C)(i) (providing that “[t]he Exchange will conduct the Auction, without waiting for the Opening MMQ Timer to end, as soon as there is both a Legal Width Quote and at least two quotes with a non-zero offer submitted by assigned Market Maker(s)”) and (d)(3)(C)(ii) (providing that “[i]f the Exchange has not received at least two quotes with a non-zero offer from any Market Maker(s) assigned to a series by the end of the Opening MMQ Timer, the Exchange will begin a second Opening MMQ Timer”).

Quotes in more series, thereby allowing more series to open in a timely manner. The Exchange believes that expanding the opportunities for each Market Maker to enter the market -- whether by each Market Maker submitting one quote or a single Market Maker submitting two quotes -- could result in the depth of liquidity that market participants have come to expect in options with multiple assigned Market Makers, and a more stable trading environment. The Exchange believes the proposed rule change would provide more flexibility in terms of how market depth is achieved (i.e., based on quotes from a single Market Maker as opposed to two) and may result in a more timely and efficient opening process. Further, the proposed change may increase the availability of Legal Width Quotes in more series and would add clarity and transparency to Exchange rules.

Other Exchange Rules: Proposed Non-substantive or Clarifying Changes

The Exchange also proposes to make several clarifying or non-substantive changes to certain of its rules. First, the Exchange proposes to modify paragraph (c) of Rule 6.37-O (Obligations of Market Makers) regarding “Unusual Conditions - Auctions” to add an open parenthesis in the cross reference to Rule 6.64P-O(a)(10).³⁹ The Exchange believes this proposed change would correct an inadvertent omission and would add clarity and transparency to Exchange rules.

Next, the Exchange proposes to correct several cross-references in Rule 6.62P-O (Orders and Modifiers). The Exchange proposes to update the reference in Rule 6.62P-O(e)(3)(C)(ii) regarding Day ISO ALO Orders to correctly cross-reference paragraphs (e)(2)(C) - (F) (rather than to paragraphs (e)(2)(C)-(G)) to cover the processing of such ALO Orders once resting.⁴⁰

³⁹ See proposed Rule 6.37-O(c).

⁴⁰ See proposed Rule 6.62P-O(e)(3)(C)(ii).

The proposed change would correct an inadvertent error adding clarity and transparency to Exchange rules. Similarly, the Exchange proposes to update the reference in Rule 6.62P-O(h)(6)(B) to correctly cross-reference the defined term Complex Order, which is set forth in Rule 6.62P-O(f) (rather than paragraph (e)).⁴¹ The proposed change would correct an inadvertent error adding clarity and transparency to Exchange rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁴² in general, and furthers the objectives of Section 6(b)(5),⁴³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Proposed Change to Pillar Auction Process

Overall, the Exchange believes the proposed changes to its Auction Process would promote a fair and orderly market by improving the speed and efficiency of the Exchange’s opening process without impairing price discovery, which should result in better and more consistent prices on Auction executions and facilitate a fair and orderly transition to continuous trading. As noted herein, the Exchange believes that the (continued) requirement that interest

⁴¹ See proposed Rule 6.62P-O(h)(6)(B).

⁴² 15 U.S.C. 78f(b).

⁴³ 15 U.S.C. 78f(b)(5).

executed in an Auction must trade at or within the Calculated NBBO (which defines the then-current market for the series) would provide protection for such interest.

The Exchange believes modifying the definition of Legal Width Quote to make clear that after the initial Auction Process time period the Exchange would no longer impose its own established limits on the maximum allowable Calculated NBBO spread to qualify a series as having a Legal Width Quote would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors because it would add clarity and transparency to the Auction Process to the benefit of all market participants.⁴⁴ The Exchange notes that it currently has discretion to establish for each option class the maximum allowable spread of the Calculated NBBO within which the Exchange will conduct an Auction, provided that the other elements of a Legal Width Quote are met, which authority is consistent with other options exchanges. Although the Exchange has rule authority (per current Rule 6.64P-O(a)(10)(C)) to establish one set of Calculated NBBO spreads for the first ninety seconds of the Auction Process and a second (wider) set of Calculated NBBO spreads for any time after the first ninety seconds, it believes the proposed change to the definition of Legal Width Quote would help avoid potential investor confusion to the benefit of all market participants.

The Exchange believes the proposal to amend Rule 6.64P-O(d)(4) to allow the Exchange to conduct an Auction after the conclusion of the initial Auction Process time period and consistent with proposed paragraph (a)(10)(D) of this Rule (i.e., without imposing certain limits established on the Calculated NBBO spread) would promote just and equitable principles of

⁴⁴ See supra note 24 (citing the discretion of Cboe and its affiliates and MIAX to modify the opening auction parameters).

trade and remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors. First, the Exchange believes that the proposal to wait a ninety-second initial Auction Process time period before removing the limits on the permissible Calculated NBBO spread to open a series (i.e., proposed Rule 6.64P-O(a)(10)(D)) would continue to provide opportunities for price discovery based on then-current market conditions, including affording sufficient time to Market Makers (who are generally responsible for pricing the market) to absorb available pricing information and, if so inclined, to update their quotes potentially resulting in tighter spreads. The Exchange has observed that on a typical trading day, in the current system, nearly 98% of all series are opened by 9:32 a.m. Eastern Time. As such, the Exchange anticipates that the majority of series would be opened within ninety seconds of the Auction Process and would not be impacted by the proposed rule change. For the minority of option series that have not opened within the first ninety seconds because of a “wide” Calculated NBBO, the Exchange believes it is unlikely that such spread would tighten if the Exchange were to further delay the opening of a series. Thus, the Exchange believes it is necessary and appropriate to allow such series to open based on prices consistent with then-current market conditions, provided the Calculated NBBO for the series is not crossed, and does not contain a zero offer.

Further, the Exchange believes the proposed modification would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors because the proposed Auction Process would continue to protect Market Orders and MOO Orders from being executed (by cancelling such orders before conducting the proposed Auction) when the Calculated NBBO spread exceeds the spread differential established per (current) Rule 6.64P-O(a)(10)(C) before

conducting the proposed Auction. In addition, the proposed modification would allow any eligible Limit Orders to be executed in the proposed Auction, bound by the Calculated NBBO. The Calculated NBBO (even if wide) represents the best-priced quotes by Market Makers (which participants generally are responsible for pricing the market) and/or the ABBO, the presence of which indicates that another market has opened.⁴⁵

Consistent with current functionality (and with the approved Pillar Rule), the Exchange would not permit any opening transactions to trade through any better-priced interest on any Away Market, even it is permitted to do so.⁴⁶ Rather, because interest in the Auction would not trade outside of the Calculated NBBO (which defines the then-current market for the series), any Limit Orders executed in the proposed Auction would, bound by Auction Collars, would trade at a price that is equal to or better than the price(s) available at other exchanges.⁴⁷ Per Rule 6.64P-O(f)(3)(A), any interest remaining after such Action is then evaluated for potential routing prior to being posted to the Consolidated Book. Further, the Exchange notes that there are other price

⁴⁵ Options exchanges have varying opening processes and have made separate determinations on what constitutes individual, reasonable opening market widths. Thus, if other options exchanges opened a series with a market width, it is reasonable to open the series for trading on the Exchange as well (as orders submitted to other exchanges may be trading at those widths).

⁴⁶ Although the intermarket linkage rules exempt from trade-through liability trades occurring during the opening process, the Exchange would continue to restrict transactions occurring at the open to the NBBO. See Rule 6.94-O(b)(2) (exempting from trade-through liability those transactions that “traded through a Protected Quotation being disseminated by an Eligible Exchange during a trading rotation”). A “Protection Quotation” is the Best Bid or Best Offer disseminated by OPRA and displayed by an Eligible Exchange. See Rule 6.92-O(15)-(16).

⁴⁷ See Rule 6.64P-O(b)(2)(A) (A) (providing that, “[i]f there is Matched Volume that can trade at or within the Auction Collars, the Auction will result in a trade at the Indicative Match Price). See also Rule 6.64-O(a)(3),(9), and (11) (defining Auction Collars, Indicative Match Price, and Matched Volume, respectively).

protections available to limit the risk of executions at a wider market price.⁴⁸ Thus, the Exchange believes that the risk of an extreme execution based on the Calculated NBBO available after the initial Auction Process time period may be mitigated for the aforementioned reasons. The Exchange believes that, on balance, the benefits to market participants of having the series open earlier outweighs this mitigated risk.

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

⁴⁸ See Rule 6.41P-O(a)(1), (b) (regarding the Arbitrage Check, which is applied pre-open). The Exchange notes that the price protection mechanisms it employs during continuous trading are based on the NBBO, or Auction Prices as applicable. See, e.g., Rules 6.41P-O(c)(4)(B) (regarding the Intrinsic Value Check); Rule 6.62P-O(a)(4)(A) (regarding Limit Order Price Protection); and Rule 6.62P-O(a)(4)(B) (regarding Trading Collars).

opening sooner, which, in turn would increase the times during which investors may conduct trading in these options, this proposed change would benefit investors and the investing public.

The Exchange believes that the proposed non-substantive and conforming changes to Rule 6.64P-O (including to paragraph (d)(4)(B)) would promote just and equitable principles of trade because such changes would streamline Rule 6.64P-O, thus adding clarity to the Auction Process making it easier to comprehend and navigate to the benefit of market participants and would promote transparency and internal consistency within Exchange rules making them easier to comprehend and navigate.⁴⁹

Additional Proposed Non-substantive or Clarifying Changes to Exchange rules

The Exchange believes that the proposed non-substantive and clarifying changes that update/correct inaccurate references would promote transparency and internal consistency within Exchange rules making them easier to comprehend and navigate.⁵⁰

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a competitive market and regularly competes with other options exchanges for order flow. The Exchange does not believe that the proposed rule change would impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because all market participants may trade in any series that opens subject to the proposed (modified) opening process.

⁴⁹ See supra notes 20, 26, 29 and 33.

⁵⁰ See supra notes 39-41.

The Exchange does not believe that the proposed rule change would impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it is designed to open series on the Exchange in a fair and orderly manner. The Exchange believes the proposed opening process will continue to provide market participants with an opportunity for price discovery based on then-current market conditions when the Exchange opens series for trading. This will facilitate the presence of sufficient liquidity in a series when it opens, and increase the ability of series to open at prices consistent with then-current market conditions (at the Exchange and on other exchanges). As noted herein, several options exchanges likewise have discretion to modify their opening procedures to address then-current market conditions.⁵¹ Further, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as all market participants that participate in the opening process may benefit equally from the proposal, as the rules of the Exchange apply equally to all market participants.

The Exchange does not believe that the proposed change to open those series with more than one assigned Market Maker based on two quotes regardless of the source would result in an undue burden on competition. Market Makers are encouraged but not required to quote in their assigned series at the open regardless of whether a Market Maker is one of several assigned to a series or is the only one. As such, this proposal would not subject any Market Maker to additional obligations. Thus, the Exchange does not believe this proposed change would result in an undue burden on intra-market competition as it would apply equally to all similarly-situated

⁵¹ See, e.g., supra note 24 (citing the discretion of Cboe and its affiliates and MIAX to modify the opening auction parameters).

Market Makers regarding their assigned series. The Exchange believes that the proposal to allow a series with more than one assigned Market Maker to open based on two quotes regardless of the source would continue to encourage participation of Market Makers at the open, may increase the availability of Legal Width Quotes in more series, thereby allowing more series to open (sooner). Improving the validity of the opening price benefits all market participants and also benefits the reputation of the Exchange as being a venue that provides accurate price discovery. With respect to inter-market competition, the Exchange notes that most options exchanges do not require Market Makers to quote during the opening.⁵²

Additionally, the non-substantive changes proposed by the Exchange provide additional clarity and detail in the Exchange's rules and are not changes made for any competitive purpose.

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

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

III. 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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

⁵² See, e.g., Cboe and its affiliated exchanges.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2022-31 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2022-31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons

submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2022-31 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵³

J. Matthew DeLesDernier
Assistant Secretary

⁵³ 17 CFR 200.30-3(a)(12).