

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96448; File No. SR-NYSECHX-2022-29)

December 5, 2022

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Article 17, Rule 5

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 1, 2022, the NYSE Chicago, Inc. (“NYSE Chicago” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Article 17, Rule 5 to (1) change how Qualified Contingent Trade (“QCT”) Cross Orders are handled in the Exchange’s Brokerplex® order management system, and (2) make certain non-substantive conforming changes. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Article 17, Rule 5 (Brokerplex) in order to (1) change how QCT Cross Orders are handled in the Exchange’s Brokerplex® order management system, and (2) make certain non-substantive conforming changes.

Background and Proposed Rule Change

The Exchange provides the Brokerplex order management system for use by Institutional Broker Representatives (“IBRs”),⁴ to receive, transmit and hold orders from their customers while seeking execution within the NYSE Chicago Marketplace⁵ or elsewhere in the National Market System. Brokerplex also can be used to record trade executions and send transaction reports to a Trade Reporting Facility (“TRF”), as defined in FINRA Rules 6300 *et seq.*, as

⁴ IBRs are also known as Institutional Brokers or “IBs”. The term “Institutional Broker” is defined in Article 1, Rule 1(n) to mean a member of the Exchange who is registered as an Institutional Broker pursuant to the provisions of Article 17 and has satisfied all Exchange requirements to operate as an Institutional Broker on the Exchange.

⁵ During the transition to Pillar, the Exchange added the phrase “NYSE Chicago Marketplace, as applicable” in Article 17, Rule 5 as an alternative to the term “Matching System” then used in the Exchange’s rules. See Securities Exchange Act Release No. 86709 (August 20, 2019), 84 FR 44654, 44663 (August 26, 2019) (SR-NYSECHX-2019-08) (Notice of Filing of Proposed Rule Change for Trading Rules To Support the Transition of Trading to the Pillar Trading Platform). “Matching System” is defined in Article 1, Rule 1(z) as one of the electronic or automated order routing, execution and reporting systems provided by the Exchange. As discussed below, the term became obsolete following the transition to Pillar and the Exchange now proposes to delete it from Article 17, Rule 5.

amended from time-to-time. Brokerplex can also be used to initiate clearing submissions to a Qualified Clearing Agency via the Exchange's reporting systems.

Orders may be entered into Brokerplex manually by an IBR or submitted by an Exchange-approved electronic connection. With certain enumerated exceptions,⁶ Brokerplex accepts and handles all of the order types, conditions and instructions accepted by the NYSE Chicago Marketplace pursuant to Rule 7.31. In addition to the order types accepted by the NYSE Chicago Marketplace, Brokerplex permits entry and processing of certain additional order types, conditions and instructions accepted by other market centers. Finally, Brokerplex accepts and processes certain specified order types, conditions and instructions set forth in Article 17, Rule 5(c)(3).

As set forth in Rule 7.31(g), a QCT Cross Order is a Cross Order that is part of a transaction consisting of two or more component orders that qualifies for a Contingent Order Exemption to the Order Protection Rule pursuant to Rule 7.37(f)(5).⁷ QCT Cross Orders may thus trade through both manual and protected quotes but may not trade through the Exchange BBO.⁸

QCT Cross Orders are only available to IBRs. While IBRs are not required to use Brokerplex to manage their orders, including QCT Cross Orders, Brokerplex facilitates the execution of QCT Cross Orders by retaining the QCT Cross Order information submitted by the

⁶ Brokerplex does not accept the following orders specified in Rule 7.31: Inside Limit Orders, Auction-Only Orders, MPL Orders, Tracking Orders, ISOs, Primary Only Orders, Primary Until 9:45 Orders, Primary After 3:55 Orders, Directed Orders, Pegged Orders, Non-Display Remove Modifier, Proactive if Crossed Modifier, Self-Trade Prevention Modifier, and Minimum Trade Size Modifier. See Article 17, Rule 5(c)(1).

⁷ See Rule 7.31(g).

⁸ See Rule 7.37(f)(5).

IBRs and providing such information to IBRs in a format that assists IBRs in processing orders and transactions, responding to request for information from customers and regulatory bodies and for other legitimate business purposes.⁹

As noted, many of the order types specified in Rule 7.31 that would be sent directly to the matching engine cannot be entered into Brokerplex. As a practical matter, IBR business on the Exchange consists of facilitating crosses, the majority of which are QCT Cross Orders entered into Brokerplex via an Exchange-approved electronic connection or manually by an IBR. Because QCT Cross Orders are exempt from the Order Protection Rule, QCT Cross Orders entered into Brokerplex can be and usually are executed at venues away from the Exchange, which is permissible as long as the order does not trade through the Exchange BBO. The proposed rule change would require that QCT Cross Orders entered into Brokerplex be initially sent to execute on the Exchange.

Amendment of Article 17, Rule 5(e)

Article 17, Rule 5(e) sets forth the Brokerplex order handling and transmission requirements. Currently, QCT Cross Orders entered into Brokerplex electronically or manually by an IBR can either be submitted (1) to the Exchange's Matching System or the NYSE Chicago Marketplace, as applicable, to execute and then, if they cannot be executed in the Exchange's Matching System or NYSE Chicago Marketplace, as applicable, to another destination according to the IBR's instructions,¹⁰ or (2) directly to another trading center.¹¹

⁹ See Article 17, Rule 5(b).

¹⁰ See Article 17, Rule 5(e)(1)(A).

¹¹ See Article 17, Rule 5(e)(1)(B).

The Exchange proposes to amend Article 17, Rule 5(e)(1) to change how QCT Cross Orders are handled in Brokerplex. As proposed, QCT Cross Orders entered into Brokerplex either electronically or manually would be sent to the NYSE Chicago Marketplace to execute in the first instance and then to other trading centers if the order cannot be executed in the NYSE Chicago Marketplace. In other words, IBRs would no longer have the ability to send QCT Cross Orders entered into Brokerplex directly to another trading center in the first instance as provided for in Article 17, Rule 5(e)(1)(B).¹²

All other aspects of the Brokerplex functionality would continue to operate as described in Article 17, Rule 5.

Non-Substantive Conforming Changes

The Exchange proposes to amend Article 17, Rule 5 to eliminate obsolete references to the Exchange's Matching System. During its transition to the Pillar trading system, the Exchange defined "NYSE Chicago Marketplace" in Rule 1.1(p) to mean the electronic securities communications and trading facility of the Exchange through which orders are processed or are consolidated for execution and/or display. The definition was intended to replace references to the term "Matching System" following the transition to Pillar.¹³ Having transitioned to Pillar, "Matching System" is obsolete and the Exchange proposes to delete the phrase "Exchange's Matching System or the" before "NYSE Chicago Marketplace" in each place that it appears in

¹² As noted, the QCT Cross Order is a type of Cross Order that is only available to IBRs. Cross Orders are two-sided orders with instructions to match the identified buy-side with the identified sell-side at a specified price known as the "cross price." The Exchange will reject a QCT Cross Order if the cross price is not between the BBO, unless it meets Cross with Size requirements, in which case the cross price can be equal to the BB (BO). See Rule 7.31(g)(2). Other equities markets do not have a comparable QCT Cross Order type.

¹³ See note 5, supra.

Article 17, Rule 5. The Exchange also proposes a non-substantive change in Article 17, Rule 5(e)(2) by replacing the word “Institutional Broker” with “IBR”.

Implementation

The Exchange anticipates the technology changes associated with the proposed change to Article 17, Rule 5 relating to QCT Cross Orders to be implemented in the first quarter of 2023. The Exchange will announce the implementation date of this proposal via a Brokerplex Release Note.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5),¹⁵ 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 change would promote just and equitable principles of trade and protect investors and the public interest by requiring that QCT Cross Orders entered into Brokerplex be sent to the Exchange for execution in the first instance. Currently, IBRs can send QCT Cross Orders entered into the Exchange-provided Brokerplex order management system either to the Exchange or to an away trading center. As proposed, QCT Cross Orders entered into Brokerplex could only be sent to the Exchange in the first instance for execution. If there is no opportunity to execute on the Exchange, such orders would

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

then be sent to another trading center, at the direction of the IBR. By requiring QCT Cross Orders entered into Brokerplex to be sent to the Exchange first rather than allowing IBRs to execute such QCT Cross Orders in away venues as long as they do not trade through the Exchange BBO,¹⁶ the Exchange believes that the proposal would enhance the likelihood of QCT Cross Orders executing on the Exchange, thereby enabling the Exchange to better compete with other trading centers for the execution of such orders when those orders are entered into Exchange systems.

As noted, although IBRs are not required to use Brokerplex to manage their orders, Brokerplex facilitates entry and execution of QCT Cross Orders by providing IBRs with a comprehensive recordkeeping solution for such orders, which contain both equities and options legs.¹⁷ To the extent that IBRs utilize Brokerplex in order to facilitate their QCT Cross Order business, the Exchange believes that such orders should be required to be executed on the Exchange. The current functionality permits IBRs that utilize Brokerplex to immediately send those orders to away venues. The Exchange believes that if IBRs utilize Brokerplex to facilitate QCT Cross Orders, it would be fair and consistent with just and equitable principles of trade for those orders to be executed on the Exchange. As noted above, a number of order types enumerated in Rule 7.31 currently interact with the Exchange's order book first. Unlike those order types, which as noted are not eligible to be entered into Brokerplex, QCT Cross Orders entered into Brokerplex, do not automatically interact with the NYSE Chicago Marketplace. QCT Cross Orders, for the most part, are routed away for execution because they can trade through a protected quote, which is permissible as long as the order does not trade through the

¹⁶ See Rule 7.37(f)(5).

¹⁷ See Article 17, Rule 5(b).

Exchange BBO. The Exchange therefore believes that it is just and equitable to require QCT Cross Orders entered into Brokerplex to be treated similarly to these other order types and sent to the Exchange for execution in the first instance.

In addition, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁸ in general, and with Section 6(b)(1)¹⁹ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. In particular, the Exchange believes that the proposed non-substantive conforming changes to delete the words “Matching System” throughout Article 17, Rule 5 and replacing the word “Institutional Broker” with “IBR” in Article 17, Rule 5(e)(2) would add clarity, consistency and transparency to the Exchange’s rules. The Exchange believes that adding such clarity, consistency and transparency would also be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion.

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 believes that by requiring QCT Cross Orders entered into Brokerplex to be sent to the Exchange before other trading centers, the proposed rule change would increase opportunities for

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(1).

these orders to be executed on the Exchange, thereby improving the Exchange's ability to compete with other trading centers for the execution of QCT Cross Orders.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²² of the Act to determine whether the proposed rule change should be approved or disapproved.

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 17 CFR 240.19b-4(f)(6).

²² 15 U.S.C. 78s(b)(2)(B).

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-NYSECHX-2022-29 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-NYSECHX-2022-29. 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-NYSECHX-2022-29 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.²³

Sherry R. Haywood
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).