

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-95501; File No. SR-NYSEARCA-2022-52)

August 15, 2022

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

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 9, 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 rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 (Auction Process) regarding the handling of certain Market Maker quotations and order instructions related thereto as set forth below.

Overview

On July 11, 2022, the Exchange began migrating symbols from its existing trading platform to the Pillar trading platform,<sup>4</sup> As of July 28, 2022, all symbols have been migrated to the Pillar platform.<sup>5</sup> Since migrating to Pillar, the Exchange has encountered unexpected processing of certain Market Maker quotations and related (subsequent) “order instructions” to update such quotations during the abbreviated time period of the Auction Processing Period and transition to continuous trading (i.e., generally measured in fractions of a second) when the Exchange conducts its opening (or reopening) Auction and transitions a series from pre-open state to continuous trading.<sup>6</sup> The Exchange believes that, as a result of this unexpected processing during this very brief period, Market Makers may be unable to determine their

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<sup>4</sup> The Exchange announced the July 11<sup>th</sup> launch date, as well as the schedule for symbol migration in five tranches, via Trader Update, available here: <https://www.nyse.com/trader-update/history#110000436694>.

<sup>5</sup> The Exchange announced the migration of the fifth and final tranche of symbols to the Pillar trading platform, via Trader Update, available here: <https://www.nyse.com/trader-update/history#110000440092>.

<sup>6</sup> Because the opening and reopening process is identical, the Exchange will refer to both processes, collectively, as the “opening.”

potential exposure (and thus be at risk for unexpected executions). To prevent this risk to Market Makers, the Exchange updated the treatment of this quoting interest during these discrete periods, which was announced by a Trader Update (the “Trader Update”).<sup>7</sup>

The Exchange proposes to modify Rule 6.64P-O to codify the updated treatment of this quoting interest (as announced in the Trader Update) to ensure efficient and consistent handling of Market Maker quotations (and related order instructions).<sup>8</sup> The Exchange believes the proposed rule change would provide more certainty as to the handling of certain quoting interest during the brief Auction Processing Period and transition to continuous trading.

#### Current Rule

Rule 6.64P-O (the “Rule”) covers the entire Auction Process for opening option series, which Process begins when the Exchange receives an Auction Trigger for a series and ends when the Auction is conducted.<sup>9</sup> The Auction Processing Period is the time during which the Auction is being processed and concludes when the Exchange transitions to continuous trading.<sup>10</sup>

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<sup>7</sup> The Exchange announced via Trader Update that, effective July 29, 2022, “[d]uring Auction Processing Period or during the transition to continuous trading, any new quotes will be rejected and, if the Exchange receives order instructions for an existing quote, the Exchange will cancel any same-side quotes sent from the same order/quote entry port of that Market Maker,” available here: <https://www.nyse.com/trader-update/history#110000441036>. The aforementioned change was made in the interest of maintaining a fair and orderly market consistent with Rule 6.64P-O(d)(5). See *id.*

<sup>8</sup> For the avoidance of doubt, this proposal does not modify the Exchange’s handling or processing of orders (or order instructions related thereto) pursuant to Rule 6.64P-O.

<sup>9</sup> See Rule 6.64P-O(a)(5). An Auction Trigger refers to information disseminated by the Primary Market in the underlying security that triggers the Auction Process for a series to begin. See also Rule 6.64P-O(a)(7).

<sup>10</sup> See Rule 6.64P-O(a)(6). See also Rule 6.64P-O(a)(12) (A) and (B), respectively (defining pre-open state, including that for a Core Open Auction and a Trading Halt Auction, the pre-open state ends when the Auction Processing Period begins).

Paragraphs (e) and (f) to the Rule describe how the Exchange handles interest during this brief period (as described below), which is typically measured in fractions of a second.

Rule 6.64P-O(e) describes the Exchange’s handling of interest that arrives during the Auction Processing Period, i.e., new quote and order messages, as well as “order instructions,” such as requests to cancel, cancel/ replace, or otherwise modify, an existing order or quote. By Rule, the Exchange will accept new order and quote messages during the Auction Processing Period, but such messages will not be processed until after this Period.<sup>11</sup> In addition, an order instruction that arrives during the Auction Processing Period will not be processed until after this Period if the order instruction relates to an order or quote that was received before the Auction Processing Period; further, any subsequent order instructions relating to such order will be rejected.<sup>12</sup> As noted above, the Auction Processing Period concludes when the Auction is conducted and the Exchange transitions to continuous trading.

Under the current Rule 6.64P-O(f), regarding the transition to continuous trading, the Exchange processes order instructions related to each order and quote, in time sequence (per paragraphs (f)(3)(A) or (B) of this Rule), if such order instruction relates to an order or quote that was received before the Auction Processing Period; or relates to a series that has already transitioned to continuous trading and the order instruction arrives during either the transition to continuous trading or the Auction Processing Period (per paragraph (e)(1)).<sup>13</sup> And, any

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<sup>11</sup> See Rule 6.64P-O(e).

<sup>12</sup> See Rule 6.64P-O(e)(1). Rule 6.64P-O(e)(2), which is not being modified by this rule change, provides that “[a]n order instruction that arrives during the Auction Processing Period will be processed on arrival if it relates to an order that was received during the Auction Processing Period.”

<sup>13</sup> See Rule 6.64P-O(f)(2)(A).

subsequent order instructions relating to such order or quote is rejected.<sup>14</sup> Finally, Rule 6.64P-O(f)(2)(B) provides that an order instruction that arrives during the transition to continuous trading will be processed on arrival if it relates to an order or quote that was entered during either the Auction Processing Period or the transition to continuous trading and such order or quote has not yet transitioned to continuous trading.<sup>15</sup>

#### Proposed Rule Change

As noted above, since the migration to Pillar, the Exchange has encountered unexpected processing of certain Market Maker quotations and related (subsequent) “order instructions” to update such quotations during the Auction Processing Period and as the Exchange transitions to continuous trading. To address this issue, the Exchange proposes to modify its handling of such quoting interest during these discrete time periods as set forth in paragraphs (e) (Order Processing during an Auction Processing Period) and (f) (Transition to Continuous Trading) of Rule 6.64P-O.

First, the Exchange proposes to revise Rule 6.64P-O(e) to specify that “[d]uring the Auction Processing Period, the Exchange will reject new quotes and, if the Exchange receives order instructions for existing quotes, the Exchange will cancel any same-side quotes sent from the same order/quote entry port of that Market Maker.”<sup>16</sup> The Exchange believes that this proposed change in the treatment of this interest would allow for more deterministic handling of order instructions for quotes. In addition, by cancelling any same-side quotes of that Market

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<sup>14</sup> See Rule 6.64P-O(f)(2)(A).

<sup>15</sup> See Rule 6.64P-O(f)(2)(B).

<sup>16</sup> See proposed Rule 6.64P-O(e).

Maker, the Exchange would eliminate potentially unexpected exposure (or executions) for that Market Maker.

Next, the Exchange proposes to reorganize the text of Rule 6.64P-O(e) to make clear that “[d]uring the Auction Processing Period, new orders will be accepted but will not be processed until after the Auction Processing Period and order instructions for existing orders will be processed as follows:”<sup>17</sup> Consistent with the foregoing, the Exchange proposes to modify Rule 6.64P-O(e)(1) to remove reference to quotes (as this handling is covered in proposed paragraph (e) to the Rule), and to clarify the rule text (consistent with current functionality) that subsequent order instructions related to an existing order would be rejected “when a prior order instruction is pending.”<sup>18</sup>

Further, and consistent with the foregoing, the Exchange proposes to modify Rule 6.64P-O(f)(2) to specify that during the transition to continuous trading, “the Exchange will reject new quotes and, if the Exchange receives order instructions for existing quotes, the Exchange will cancel any same-side quotes sent from the same order/quote entry port of that Market Maker.”<sup>19</sup>

As noted above, the Exchange believes that this proposed treatment would allow for more deterministic handling of order instructions for quotes. Further, by cancelling any same-side quotes of that Market Maker, the Exchange would eliminate potentially unexpected exposure (or executions) for that Market Maker.

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<sup>17</sup> See proposed Rule 6.64P-O(e). The Exchange notes that the textual change proposed is substantively identical to the first sentence to Rule 6.64P-O(e), except that the proposed sentence omits reference to quotes and clarifies that the order instructions relate to “existing orders.” See *id.*

<sup>18</sup> See proposed Rule 6.64P-O(e)(1).

<sup>19</sup> See proposed Rule 6.64P-O(f)(2).

In addition, proposed Rule 6.64P-O(f)(2)(A) and (B) would remove reference to quotes (as this handling is covered in proposed paragraph (f)(2) of the Rule), and proposed Rule 6.64P-O(f)(2)(A) would clarify the rule text (consistent with current functionality) that subsequent order instructions related to an existing order would be rejected “when a prior order instruction is pending.”<sup>20</sup> The Exchange also proposes to remove as superfluous the unnecessary reference in paragraph (f)(2)(A) of the Rule to “under paragraph (e)(1),” which immediately follows “the Auction Processing Period.”<sup>21</sup> Finally, in paragraph (f)(3)(C) of the Rule, which specifies the treatment of quotes that were received during the Auction Processing Period, the Exchange proposes to remove such references to quotes as unnecessary to conform with the foregoing proposed changes (i.e., which state that any such quotes would be rejected).<sup>22</sup> The Exchange believes these proposed non-substantive changes would add clarity, transparency and internal consistency 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”),<sup>23</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>24</sup> 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

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<sup>20</sup> See proposed Rule 6.64P-O(f)(2)(A) and (B).

<sup>21</sup> See Rule 6.64P-O(f)(2)(B). The Exchange does not believe the extraneous reference paragraph (e)(1) of the Rule adds substance to this provision and is therefore distracting and potentially confusing to market participants.

<sup>22</sup> See proposed Rule 6.64P-O(f)(3)(C). See also proposed Rule 6.64P-O(e).

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

free and open market and a national market system and, in general, to protect investors and the public interest.

Overall, the Exchange believes the proposed change would promote a fair and orderly market because it would address, in a timely manner, the unexpected issue regarding the processing of certain Market Maker quotations and (subsequent) order instructions to update such quotations, which issue came to light as the Exchange began migrating symbols to Pillar for options trading.<sup>25</sup> The Exchange believes the proposed rule change would promote just and equitable principles of trade because the proposal would provide Market Makers greater determinism and certainty about how quotes (and order instructions related thereto) are handled during the abbreviated period that the Exchange conducts the opening Auction and transitions to continuous trading. Further, the proposed rule change would allow for the efficient and consistent handling of such quotes and would reduce the potential unexpected exposure (or executions) for Market Makers, which would 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.

Finally, the Exchange believes that the proposed clarifying changes, including non-substantive conforming changes, would promote transparency and internal consistency within Exchange rules making them easier to comprehend and navigate.<sup>26</sup>

**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

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<sup>25</sup> See supra note 7, Trader Update.

<sup>26</sup> See, e.g., supra notes 17, 18, 20-23.



proposed change is not designed to be competitive but is instead designed to address an unexpected issue regarding the processing of Market Maker quotations (and subsequent order instructions related thereto) that arose in connection with the Exchange's migration to its Pillar trading platform. The Exchange does not believe that the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act because the proposed change would apply equally to all similarly-situated Market Makers. Rather, the Exchange believes that by adding certainty to a Market Maker's exposure for quoting interest received during the Auction Processing Period and transition to continuous trading, the proposed change may incent Market Makers to more readily participate in the opening process, which may in turn improve liquidity and price discovery to the benefit of all market participants.

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 efficiently handle certain Market Maker quotations and certain order instructions related thereto and to promote the opening (or reopening) of option series on the Exchange in a fair and orderly manner.

Additionally, the clarifying changes, including non-substantive conforming 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>27</sup> and Rule 19b-4(f)(6) thereunder.<sup>28</sup> 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.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>29</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>30</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed rule change would address an unexpected issue regarding the processing of certain Market Maker quotations and subsequent order instructions to update such quotations, which issue the Exchange states came to light as the Exchange began migrating symbols to Pillar for options trading. The Exchange represents that implementing the proposed rule change without delay would address that unexpected issue by aligning the Exchange's rule with the technology change deployed as of July 29, 2022 regarding how new quote messages and order instructions related to such quotations would be processed once the Auction Processing Period for an option

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>28</sup> 17 CFR 240.19b-4(f)(6).

<sup>29</sup> 17 CFR 240.19b-4(f)(6).

<sup>30</sup> 17 CFR 240.19b-4(f)(6)(iii).

series commences. Moreover, the Exchange represents that implementing this change without delay would allow the Rule to reflect the more deterministic handling and processing of quotes (and subsequent instructions related thereto), which would, in turn, eliminate potentially unexpected exposure (or executions) for Market Makers. For these reasons, and based on the representations of the Exchange, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>31</sup>

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)<sup>32</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

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<sup>31</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>32</sup> 15 U.S.C. 78s(b)(2)(B).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2022-52 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-2022-52. 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-2022-52 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.<sup>33</sup>

Jill M. Peterson

Assistant Secretary

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<sup>33</sup> 17 CFR 200.30-3(a)(12).