

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93586; File No. SR-NYSEArca-2021-98)

November 16, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 6.64-O to Provide an Option for OTP Holders and OTP Firms to Instruct the Exchange to Cancel Marketable Orders If a Series Is Not Opened Within a Specified Time Period

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on November 12, 2021, 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.

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

The Exchange proposes to amend Rule 6.64-O (OX Opening Process) to provide an option for OTP Holders and OTP Firms to instruct the Exchange to cancel Marketable orders if a series is not opened within a specified time period. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 6.64-O (OX Opening Process) to provide an option for OTP Holders and OTP Firms to instruct the Exchange to cancel Marketable⁴ orders if a series is not opened within a specified time period. The Exchange notes that this proposal is substantively identical to a recent rule change on NYSE American, LLC.⁵

Rule 6.64-O sets forth the Exchange’s process for opening and reopening a series for trading. Rule 6.64-O(b) provides that the Exchange will accept market and limit orders for inclusion in the opening auction process (“Auction Process”) until such time as the Auction Process is initiated in that option series. As further provided for in Rule 6.64-O (b), once the primary market for the underlying security disseminates a quote and a trade that is at or within

⁴ The term “Marketable” is defined in Rule 6.1A-O(a)(7) to mean, for a Limit Order, the price matches or crosses the NBBO on the other side of the market. Market orders are always considered marketable.

⁵ See Securities Exchange Act Release No. 92668 (August 13, 2021), 86 FR 46746 (August 19, 2021) (SR-NYSEAMER-2021-36) (Notice of filing and immediate effectiveness of proposed rule change to amend Rule 952NY to provide an option for ATP Holders to instruct the Exchange to cancel marketable orders if a series is not opened within a specified time period) (“NYSE American Filing”).

the quote, the Exchange will open the related option series automatically based on the principles and procedures set forth in paragraphs (A) - (F) of Rule 6.64-O(b). However, as described in Rule 6.64-O(b)(D), the Exchange will not conduct an Auction Process if the bid-ask differential for that series is not within an acceptable range, i.e., is not within the bid-ask differential guidelines established in Rule 6.37-O (b)(4). Because Rule 6.64-O(b)(D) cross-references the bid-ask differential requirement of Rule 6.37-O (b)(4), which relates to the obligations of Market Makers in appointed classes, the Exchange will not open a series for trading if Market Makers have not entered quotations in a series that are within such bid-ask differentials. If a series does not open for trading, market and limit orders entered in advance of the Auction Process will remain in the Consolidated Book and will not be routed, even if another exchange opens that series for trading and such orders become Marketable against an away market NBBO.

The Exchange proposes to amend Rule 6.64-O to provide OTP Holders and OTP Firms with an option to instruct the Exchange to cancel their Marketable orders if an option series has not been opened within a specified time period. As proposed, new subparagraph (d) to Rule 6.64-O⁶ would provide that an OTP Holder or OTP Firm may instruct the Exchange to cancel all Marketable orders in a series, including GTC Orders, if that series has not opened within a designated time period after the Exchange receives notification that the primary market for the underlying security has disseminated a quote and a trade that is at or within the quote. This proposed change is designed to provide OTP Holders and OTP Firms that electronically enter orders before Core Trading Hours⁷ begin in a multitude of option series with an optional risk

⁶ The Exchange proposes a non-substantive amendment to Rule 6.64-O to renumber current subparagraph (d) to that Rule as subparagraph (e).

⁷ The term “Core Trading Hours” is defined in Rule 6.1A-O(a)(3) to mean the regular trading hours for business set forth in the rules of the primary markets underlying those option classes listed on the Exchange.

protection mechanism for the Exchange to automatically cancel Marketable orders on their behalf. OTP Holders and OTP Firms could submit requests to cancel such orders themselves, but would have to monitor which series have been opened on the Exchange. The proposed optional functionality would reduce operational risk for OTP Holders and OTP Firms that sent orders in multiple series by providing them with a bulk cancel feature that would instruct the Exchange to cancel orders on their behalf if a series has not been opened by a specified time. Specifically, rather than have Marketable orders remain unexecuted on the Consolidated Book if the option series has not opened on the Exchange within a specified time period, OTP Holders and OTP Firms would have the option to instruct the Exchange to cancel such orders back to the OTP Holder/OTP Firm. Once cancelled back, the OTP Holder/OTP Firm could choose to re-enter such orders on an exchange that has opened that series for trading.

The Exchange further proposes to provide that the Exchange would not cancel any Marketable orders received after the designated time period ends, even if the series has not yet opened. The Exchange believes that if an OTP Holder or OTP Firm sends an order in an option series to the Exchange after Core Trading Hours begin, and more than the designated time period after the primary market for the underlying security has opened (i.e., the series open trigger), such OTP Holder/OTP Firm should be aware that the Exchange has not opened that series for trading when it sends the order to the Exchange, and therefore intends for such order to be sent to the Exchange even though it has not yet opened that series for trading.

Proposed Rule 6.64-O(d) would also provide that the designated time period would be two minutes, unless determined otherwise by the Exchange and announced to OTP Holders and OTP Firms via Trader Update, in which case the designated time period would not be greater than five minutes. The Exchange believes that a two-minute period would provide time for

Market Makers to update their quotes after the Exchange receives the series open trigger so that the bid-ask differential in an option series can be within an acceptable range and therefore the series can open for trading on the Exchange. Specifically, the Exchange has observed that on a typical trading day, nearly 98% of all series are opened by 9:32 a.m. Eastern Time, and nearly 99% of all series are opened by 9:35 a.m. Eastern Time. By waiting two minutes before cancelling orders, the Exchange believes that the majority of series would be opened, thereby minimizing the number of series where there would be a bulk cancel of Marketable orders. In addition, OTP Holders and OTP Firms that want to cancel orders less than two minutes after the series open trigger would still be able to submit requests to cancel individual orders. The Exchange further believes that it is appropriate to provide the Exchange with the ability to adjust the designated time period via Trader Update to no more than five minutes because it would provide additional flexibility for the Exchange to respond to the needs of OTP Holders and OTP Firms to implement the instruction to cancel Marketable orders on a different time basis. The Exchange believes that a cap of five minutes would be reasonable because very few series remain unopened five minutes after the series open trigger. The Exchange notes that this is an optional instruction, and therefore no OTP Holder nor OTP Firm is required to use this proposed new risk feature. The Exchange further notes that Exchange flexibility in connection with designating time periods for risk limitation measures is consistent with current Exchange rules.⁸

⁸ See, e.g., Commentary .03 to Rule 6.40-O (Risk Limitation Mechanism) (providing that the Exchange will “specify via Trader Update any applicable time period(s) for the Risk Limitation Mechanisms; provided, however, that the Exchange will not specify a time period of less than 100 milliseconds, inclusive of the duration of any trading halt occurring within that time”). The Exchange also provides for flexibility in its rules for other risk mechanism parameters. See, e.g., Rule 6.60-O(b) (“Unless determined otherwise by the Exchange and announced to OTP Holders and OTP Firms via Trader Update, the specified percentage shall be as follows: 100% for the contra-side NBB or NBO priced at or below \$1.00; and 50% for the contra-side NBB or NBO priced above

Finally, proposed Rule 6.64-O(d) would provide that this instruction would not be available for orders entered by Floor Brokers via the Electronic Order Capture System.⁹ The current EOC provider could not systemically apply the proposed optional instruction on a firm-by firm basis and therefore it would not be available to individual Floor Brokers. The Exchange believes that because of the unique role of Floor Brokers on the Exchange to provide manual, high-touch services on behalf of customers, Floor Brokers should not need this optional feature. Specifically, unlike an off-Floor OTP Holder/OTP Firm that may be relying on an algorithm to send orders in a multitude of series, a Floor Broker that provides high-touch services would be present on the Trading floor and in a position to monitor whether the Exchange has opened a series, and if not, whether to cancel an order that becomes Marketable.

The Exchange will announce via Trader Update when this proposed optional feature will be available, which, subject to effectiveness of this proposed rule change, the Exchange anticipates will be in the fourth quarter of 2021.

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹¹ in that it is designed to promote just and equitable principles of

\$1.00.”)

⁹ As defined in Rule 6.1-O(b)(39), the term “Electronic Order Capture System” or “EOC”) means the Exchange’s electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions on the Exchange. As further defined, the EOC includes the electronic communications interface between EOC booth terminals and the Floor Broker Hand Held applications and also contains an electronic order entry screen.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

trade, 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 would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to provide OTP Holders and OTP Firms with an optional risk protection mechanism to instruct the Exchange to cancel Marketable orders in an option series on their behalf if that series has not opened on the Exchange within a specified time period. The Exchange does not open a series if Market Makers have not quoted within the acceptable range of bid-ask differentials as specified in Rule 6.37-O(b)(4). However, it is possible that another exchange, with different opening process rules, could have opened that series for trading even if the Exchange does not. If an order that an OTP Holder or OTP Firm sent to the Exchange before Core Trading Hours begins becomes Marketable on another exchange before the Exchange opens that series for trading, such OTP Holder/OTP Firm could choose to cancel the order and then send it to the other exchange. By providing OTP Holders and OTP Firms with an option to instruct the Exchange to cancel their Marketable orders in a series under the specified circumstances, the Exchange would perform this monitoring function on behalf of OTP Holders and OTP Firms, thereby reducing their operational risk.

The Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to provide that such instructions would not be applicable to Marketable orders received after the designated time period ends because the Exchange believes that OTP Holders and OTP Firms that send orders to the Exchange more than a specified period after series open trigger should be aware that the Exchange has not yet opened that series for trading. Therefore, any orders sent after that designated time period ends were likely

purposefully directed to the Exchange even though the Exchange has not yet opened that series for trading.

The Exchange believes that the proposed designated time period of two minutes would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to provide time for Market Makers to update their quotes so that the bid-ask differential in an option series is within an acceptable range and therefore the series can open for trading on the Exchange. The Exchange believes that the proposed two-minute period is reasonable because on a typical trading day, approximately 98% of all series that trade on the Exchange are open. OTP Holders and OTP Firms that want to cancel orders less than two minutes after the series open trigger would still be able to submit requests to cancel individual orders. The Exchange further believes that providing the Exchange with flexibility to change the designated time period via Trader Update, provided that it would never be longer than five minutes, would enable the Exchange to respond to the needs of OTP Holders and OTP Firms to implement the instruction to cancel Marketable orders on a different time basis. The Exchange believes that the proposed cap of five minutes would remove impediments to and perfect the mechanism of a free and open market and a national market system because on a typical day, approximately 99% of all series are opened by 9:35 a.m. Eastern Time. The Exchange further notes that this proposed risk mechanism would be optional, and therefore OTP Holders and OTP Firms would not be required to request that the Exchange cancel unexecuted Marketable orders on their behalf if a series has not opened within the designated time period. In addition, Exchange flexibility in connection with designating time periods for risk limitation measures is consistent with current Exchange rules.¹²

¹² See supra note 8.

Finally, the Exchange believes that the proposal that the optional instruction would not be available for orders entered by Floor Brokers via the EOC would remove impediments to and perfect the mechanism of a free and open market and a national market system because the current EOC provider could not systemically apply the proposed optional instruction on a firm-by firm basis. The instruction could therefore not be segregated by individual Floor Brokers that each use the EOC. The Exchange believes that because of the unique role of Floor Brokers on the Exchange to provide manual, high-touch services on behalf of customers, Floor Brokers should not need this optional bulk-cancel feature. Specifically, unlike an off-Floor OTP Holder/OTP Firm that may be relying on an algorithm to send orders in a multitude of series, a Floor Broker that provides high-touch services would be present on the Trading floor and in a position to monitor whether the Exchange has opened a series, and if not, whether to cancel an order that becomes Marketable.

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 does not believe the proposed rule change would impose any burden on intermarket competition, as the proposed rule change is designed to provide an option for OTP Holders and OTP Firms to instruct the Exchange to cancel Marketable orders if an option series does not open on the Exchange within a designated time period. The Exchange believes that the proposed rule change would promote intermarket competition because if the Exchange cancels such orders on the instruction of an OTP Holder/OTP Firm, such OTP Holder/OTP Firm could then choose to route such orders to another exchange that has opened the option series for trading.

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 purposes of the Act because the proposed rule change provides for optional functionality. OTP Holders and OTP Firms would not be required to use this functionality. In addition, the Exchange believes that because of the unique role of Floor Brokers on the Exchange to provide manual, high-touch services on behalf of customers, Floor Brokers should not need this optional bulk-cancel feature and it would not impose any undue burden on intramarket competition not to provide this optional feature to Floor Brokers. Specifically, unlike an off-Floor OTP Holder/OTP Firm that may be relying on an algorithm to send orders in a multitude of series, a Floor Broker that provides high-touch services would be present on the Trading floor and in a position to monitor whether the Exchange has opened a series, and if not, whether to cancel an order that becomes Marketable.

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 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

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may 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 the proposed rule change may become operative prior to 30 days after the date of the filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because the proposed rule change, as described above, would offer OTP Holders and OTP Firms an additional, and optional, risk limitation feature to instruct the Exchange to cancel their Marketable orders if the Exchange does not open an option series within a designated time frame. The Exchange further states that the technology supporting the proposed rule change will be available prior to 30 days after the date of the filing, and the Exchange seeks to implement the proposed rule change without delay. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁷

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

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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-98 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-2021-98. 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-2021-98, 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).