

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-96504; File No. SR-NYSEARCA-2022-82)

December 15, 2022

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 6.40P-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 December 14, 2022, 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, 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 6.40P-O (Pre-Trade and Activity-Based Risk Controls) pertaining to pre-trade risk controls to make additional pre-trade risk controls available to Entering Firms. 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

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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.

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 6.40P-O (Pre-Trade and Activity-Based Risk Controls) pertaining to pre-trade risk controls to make additional pre-trade risk controls available to entering Firms.<sup>4</sup>

*Background and Purpose*

In 2022, in connection with the Exchange’s migration to Pillar and to better assist OTP Holders and OTP Firms in managing their risk, the Exchange adopted Rule 6.40P-O, which included pre-trade risk controls, among other activity-based controls, wherein an Entering Firm had the option of establishing limits or restrictions on certain of its trading behavior on the Exchange and authorizing the Exchange to take action if those limits or restrictions were exceeded.<sup>5</sup> Specifically, the Exchange added a Single Order Maximum Notional Value Risk Limit, and a Single Order Maximum Quantity Risk Limit<sup>6</sup> (collectively, the “Initial Pre-Trade Risk Controls”).

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<sup>4</sup> The term “Entering Firm” refers to an OTP Holder or OTP Firm (including those acting as Market Makers). See Rule 6.40P-O(a)(1).

<sup>5</sup> See Securities Exchange Act Release No. 94072 (January 26, 2022), 87 FR 5592 (February 1, 2022) (Notice of filing Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4) (SR-NYSEArca-2021-47).

<sup>6</sup> The terms “Single Order Maximum Notional Value Risk Limit, and “Single Order Maximum Quantity Risk Limit” are defined in Rule 6.40P-O(a)(2).

The Exchange now proposes to expand the list of the optional pre-trade risk controls available to Entering Firms by adding several additional pre-trade risk controls that would provide Entering Firms with enhanced abilities to manage their risk with respect to orders on the Exchange. Like the Initial Pre-Trade Risk Controls, use of the pre-trade risk controls proposed herein is optional, but all orders on the Exchange would pass through these risk checks. As such, an Entering Firm that does not choose to set limits pursuant to the new proposed pre-trade risk controls would not achieve any latency advantage with respect to its trading activity on the Exchange. In addition, the Exchange expects that any latency added by the pre-trade risk controls would be *de minimis*.

*Proposed Amendment to Rule 6.40P-O*

To accomplish this rule change, the Exchange proposes to amend the definition of the term “Pre-Trade Risk Controls” set forth in Rule 6.40P-O(a)(2) to adopt the definition of “Single-Order Risk Controls,” which controls would be listed in proposed paragraph (A) to Rule 6.40P-O(a)(2). As proposed, the “Single-Order Risk Controls” would include the already-defined risk controls of the Single Order Maximum Notional Value Risk Limit and Single Order Maximum Quantity Risk Limit (collectively referred to herein as the “existing Single-Order Risk Checks”), with non-substantive changes to streamline the descriptions of these controls into new paragraph (i) of proposed Rule 6.40P-O(a)(2)(A).<sup>7</sup> However, because of a lack of demand for the option to apply the existing Single-Order Risk Checks to Market Maker quotes, the Exchange

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<sup>7</sup> See proposed Rule 6.40P-O(a)(2)(A)(i) (setting forth “controls related to the maximum dollar amount for a single order to be applied one time (‘Single Order Maximum Notional Value Risk Limit’) and the maximum number of contracts that may be included in a single order before it can be traded (‘Single Order Maximum Quantity Risk Limit’). Orders designated GTC will be subject to these checks only once.”) Consistent with the foregoing changes, the Exchange proposes to delete current paragraph (B) to Rule 6.40P-O(a)(2)(B). See *id.*

proposes to discontinue functionality supporting this optional feature.

In the addition, the Exchange proposes to add paragraphs (a)(2)(A)(ii) through (v) to enumerate the proposed new Single-Order Risk Controls, as follows:

- (ii) controls related to the price of an order or quote (including percentage-based and dollar-based controls);
- (iii) controls related to the order types or modifiers that can be utilized;
- (iv) controls to restrict the options class transacted; and
- (v) controls to prohibit duplicative orders.

Each of the new Single-Order Risk Controls in proposed paragraph (a)(2)(A)(ii)-(v) is substantively identical to risk settings already in place on the Exchange's affiliate equities exchange NYSE American LLC ("NYSE American"),<sup>8</sup> as well as those on the Cboe and MEMX equities exchanges,<sup>9</sup> except that the proposed controls account for options trading, such as including reference to "an order or quote" versus "an order" and reference to restrictions on trading in an "options class" versus on "the types of securities transacted (including but not limited to restricted securities)."<sup>10</sup> As such, the proposed new optional Pre-Trade Risk Controls are familiar to market participants and are not novel.

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<sup>8</sup> See NYSE American Rule 7.19E; see also Securities Exchange Act Release No. 96403 (November 29, 2022) (SR-NYSEAMER-2022-53).

<sup>9</sup> See Cboe BZX Exchange, Inc. ("Cboe BZX") Rule 11.13, Interpretations and Policies .01; Cboe BYX Exchange, Inc. ("Cboe BYX") Rule 11.13, Interpretations and Policies .01; Cboe EDGA Exchange, Inc. ("Cboe EDGA") Rule 11.10, Interpretations and Policies .01; Cboe EDGX Exchange, Inc. ("Cboe EDGX") Rule 11.10, Interpretations and Policies .01; and MEMX LLC ("MEMX") Rule 11.10, Interpretations and Policies .01.

<sup>10</sup> See proposed Rule 6.40P(a)(2)(A)(ii) and (a)(2)(A)(iv) as compared to NYSE American Rule 7.19E(b)(2)(B) and (b)(2)(F), respectively.

The Exchange proposes to modify current paragraph (b)(2) regarding the setting and adjusting of the Pre-Trade Risk Controls to state that, in addition to Pre-Trade Risk Controls being available to be set at the MPID level or at one or more sub-IDs associated with that MPID, or both, that Pre-Trade Risk Controls to restrict the options class(es) transacted must be set per option class.<sup>11</sup>

The Exchange proposes to modify paragraph (c)(1) regarding “Breach Action for Pre-Trade Risk Controls.” First, the Exchange proposes to specify that “[a] Limit Order that breaches any Single-Order Risk Control will be rejected.”<sup>12</sup> The proposed functionality is consistent with the treatment of Limit Orders that breach the existing Single Order Risk Checks and simply extends the application of the breach action to the newly proposed Single-Order Risk Controls. Next, proposed Rule 6.40P-O(c)(1)(A)(ii) specifies that “[a] Market Order that arrives during a pre-open state will be cancelled if the quantity remaining to trade after an Auction breaches the Single Order Maximum Notional Value Risk Limit,” which functionality is identical to treatment of such interest under the current Rule.<sup>13</sup> Proposed Rule 6.40P-O(c)(1)(A)(ii) further specifies that “[a]t all other times, a Market Order that triggers or breaches any Single-Order Risk Control will be rejected.”<sup>14</sup> The proposed functionality is consistent with the treatment of Market Orders (that arrive other than during a pre-open state) that breach the existing Single Order Risk Checks and simply extends the application of the breach action to the newly proposed Single-Order Risk

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<sup>11</sup> See, e.g., Rule 7.19E(d)(2) (specifying that pre-trade risk controls related to transacting in restricted securities must be set per symbol).

<sup>12</sup> See proposed Rule 6.40P(c)(1)(A)(i).

<sup>13</sup> See Rule 6.40P(c)(1)(A)(i) (providing, in relevant part, that “[a] Market Order that breaches the designated limit of a Single Order Maximum Quantity Risk Limit” will be “canceled if the order was received during a pre-open state and the quantity remaining to trade after an Auction concludes breaches the designated limit.”).

<sup>14</sup> See proposed Rule 6.40P(c)(1)(A)(ii).

Controls. Further, proposed Rule 6.40P-O(c)(1)(A)(iii) addresses the breach action relevant to the new Single-Order Risk Control set forth in proposed Rule 6.40P-O(a)(2)(A)(ii) (i.e., a breach of controls related to the price of an order or quote including percentage-based and dollar-based controls). As proposed, a Limit Order or quote that would breach a price control under paragraph (a)(2)(A)(ii) would be rejected or cancelled as specified in Rule 6.62P-O (a)(3)(A) (Limit Order Price Protection).<sup>15</sup>

Finally, the Exchange proposes to add new Commentary .02 to specify the interplay between the Exchange's Limit Order Price Protection ("LOPP") functionality and the price controls that may be set by an Entering Firm pursuant to proposed paragraph (a)(2)(A)(ii). Proposed Commentary .02 specifies that an Entering Firm may set price controls under paragraph (a)(2)(A)(ii) that are equal to or more restrictive than levels set by the Exchange LOPP functionality.

*Continuing Obligations of OTP Holders Under Rule 15c3-5*

The proposed Pre-Trade Risk Controls described here are meant to supplement, and not replace, the OTP Holders' own internal systems, monitoring, and procedures related to risk management. The Exchange does not guarantee that these controls will be sufficiently comprehensive to meet all of an OTP Holder's needs, the controls are not designed to be the sole means of risk management, and using these controls will not necessarily meet an OTP Holder's obligations required by Exchange or federal rules (including, without limitation, the Rule 15c3-5 under the Act<sup>16</sup> ("Rule 15c3-5")). Use of the Exchange's Pre-Trade Risk Controls will not automatically constitute compliance with Exchange or federal rules and responsibility for

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<sup>15</sup> See proposed Rule 6.40P(c)(1)(A)(iii).

<sup>16</sup> See 17 CFR 240.15c3-5.

compliance with all Exchange and SEC rules remains with the OTP Holder.<sup>17</sup>

### *Timing and Implementation*

The Exchange anticipates completing the technological changes necessary to implement the proposed rule change in the second quarter of 2023, but in any event no later than June 30, 2023. The Exchange anticipates announcing the availability of the Pre-Trade Risk Controls introduced in this filing by Trader Update in the first quarter of 2023.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>19</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 regulating, clearing, settling, processing information with respect to, and 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, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market

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<sup>17</sup> See also Commentary .01 to Rule 6.40P-O, which provides that the Pre-Trade Risk Controls set forth in Rule 6.40P-O “are meant to supplement, and not replace, the OTP Holder’s or OTP Firm’s own internal systems, monitoring, and procedures related to risk management and are not designed for compliance with Rule 15c3-5 under the Exchange Act. Responsibility for compliance with all Exchange and SEC rules remains with the OTP Holder or OTP Firm.”).

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

system because the proposed optional additional Pre-Trade Risk Controls would provide Entering Firms enhanced abilities to manage their risk with respect to orders or quotes on the Exchange. The proposed additional Pre-Trade Risk Controls are not novel; they are based on existing risk settings already in place on NYSE American,<sup>20</sup> as well as those on the Cboe and MEMX equities exchanges,<sup>21</sup> and market participants are already familiar with the types of protections that the proposed risk controls afford. Moreover, the proposed new Single-Order Risk Controls (like the existing Single-Order Risk Checks) are options and, as such, Entering Firms are free to utilize or not at their discretion. Thus, the Exchange believes that the proposed additional Pre-Trade Risk Controls would provide a means to address potentially market-impacting events, helping to ensure the proper functioning of the market.

In addition, the Exchange believes that the proposed rule change will protect investors and the public interest because the proposed additional Pre-Trade Risk Controls are a form of impact mitigation that will aid Entering Firms in minimizing their risk exposure and reduce the potential for disruptive, market-wide events. The Exchange understands that OTP Holders implement a number of different risk-based controls, including those required by Rule 15c3-5. The controls proposed here will serve as an additional tool for Entering Firms to assist them in identifying any risk exposure. The Exchange believes the proposed additional Pre-Trade Risk Controls will assist Entering Firms in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

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<sup>20</sup> See supra note 8.

<sup>21</sup> See supra note 9.



The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system by permitting Entering Firms to set price controls under paragraph (a)(2)(A)(ii) that are equal to or more restrictive than the levels established in the Exchange's LOPP functionality, which protects from aberrant trades, thus improving continuous trading and price discovery. To the extent that Entering Firms would like to further manage their exposure to aberrant trades, this proposed functionality affords such Firms the ability to set price controls at levels that are more restrictive than the LOPP levels. Additionally, because price controls set by an Entering Firm under paragraph (a)(2)(A)(ii) would function as a form of limit order price protection, the Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system for an order that would breach such a price control to be rejected or cancelled as specified per Rule 6.62P-O(a)(3)(A) regarding the LOPP.

Finally, the Exchange believes that the proposed rule change does not unfairly discriminate among the Exchange's OTP Holders because use of the proposed additional Pre-Trade Risk Controls is optional and is not a prerequisite for participation on the Exchange. In addition, because all orders on the Exchange would pass through the risk checks, there would be no difference in the latency experienced by OTP Holders who have opted to use the proposed additional Pre-Trade Risk Controls versus those who have not opted to use them.

**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. In fact, the Exchange believes that the proposal will have a positive effect on competition because, by providing Entering Firms additional means to monitor and control risk, the proposed rule will

increase confidence in the proper functioning of the markets. The Exchange believes the proposed additional Pre-Trade Risk Controls will assist Entering Firms in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system. As a result, the level of competition should increase as public confidence in the markets is solidified.

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>22</sup> and Rule 19b-4(f)(6) thereunder.<sup>23</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.<sup>24</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

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<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>23</sup> 17 CFR 240.19b-4(f)(6).

<sup>24</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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>25</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:

##### 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-2022-82 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-2022-82. 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

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<sup>25</sup> 15 U.S.C. 78s(b)(2)(B).

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-2022-82 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>26</sup>

Sherry R. Haywood,  
Assistant Secretary.

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<sup>26</sup> 17 CFR 200.30-3(a)(12).