

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99606; File No. SR-NYSEARCA-2024-16)

February 26, 2024

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NYSE Arca Rule 1.1

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 February 14, 2024, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“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 1.1 (Definitions) to adopt a category of Market Makers called Floor Market Makers and to make other 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 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 purpose of this filing is to amend Exchange Rule 1.1 (Definitions) to adopt a category of Market Makers called Floor Market Makers and to make other conforming changes. The Exchange notes that the proposed category of Floor Market Makers is substantively identical to the category of Floor Market Makers on at least one other options exchange, including on the Exchange’s affiliated SRO, NYSE American LLC (“NYSE American”).⁴

The Exchange proposes to adopt a category of Market Maker called a Floor Market Maker, which would be substantively identical to the category of Floor Market Maker on NYSE American. In this regard, the Exchange proposes to add a definition of Floor Market Maker that would provide that a Floor Market Maker is “a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange.” Consistent with this proposal, the Exchange also proposes to amend Rules 6.32-O (Market Maker Defined) to make clear that Floor Market Makers are included in the definition of Market Maker, unless otherwise specified or unless context requires otherwise.⁵ As such, Floor Market Makers are required to satisfy the myriad of obligations imposed on Market Makers including registration requirements per Rule

⁴ See NYSE American Rules 900.2NY (Definitions) (defining a “Floor Market Maker” as “a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange”).

⁵ Compare proposed Rule 6.32-O (providing, in relevant part, that “[a] Market Maker on the Exchange will be a Market Maker, *Floor Market Maker*, or a Lead Market Maker” and that “[u]nless specified, or unless the context requires otherwise, the term Market Maker refers to Market Makers, *Floor Market Makers*, and Lead Market Makers”) (emphasis added) with NYSE American Rule 920NY (providing, in relevant part, that “[a] Market Maker on the Exchange will be either a Remote Market Maker, a Floor Market Maker, a Specialist or an e-Specialist” and that “[u]nless specified, or unless the context requires otherwise, the term Market Maker refers to Remote Market Makers, Floor Market Makers, Specialists and e-Specialists”).

6.33-O (Registration of Market Makers), minimum trading requirements for option issues in appointment per Rule 6.35-O (Appointment of Market Makers), minimum continuous quoting requirements per Rules 6.37-O (Obligations of Market Maker) and 6.37AP-O (Market Maker Quotations), among others.⁶ In particular, at least 75% of the trading activity of each Market Maker, including Floor Market Makers, must be in option issues in its appointed issues (the “minimum 75% trading requirement”).⁷ However, relevant to the proposed category of Floor Market Maker, trades executed on the Trading Floor are counted toward the minimum 75% trading requirement, regardless of whether the trades are in option issues in the Market Maker’s appointment.⁸

The primary role of Market Makers is to provide liquidity. The Exchange does not limit the number of participants who may act as Market Makers and would likewise not limit the number of Market Makers acting as Floor Market Makers. The proposed category of Floor Market Makers would have a specific focus on providing liquidity for orders submitted for execution on the Floor of the Exchange through open outcry. The Exchange believes that the nature of open outcry transactions lends itself better to larger-sized transactions than the liquidity that is typically available electronically and the proposed installation of Floor Market Makers would encourage greater participation in, and increased liquidity for, such large trades. The Exchange therefore believes that all market participants stand to benefit from any increased

⁶ Floor Market Makers likewise must comply with the other requirements specific to Market Makers, including Rules 6.34-O (Trading by OTP Holders and OTP Firms on the Floor), 6.34A-O (Market Maker Authorized Traders — OX), 6.35-O (Appointment of Market Makers), 6.36-O (Letters of Guarantee), 6.37B-O (Market Maker Orders), and 6.39-O (Securities Accounts and Orders of Market Makers).

⁷ See Rule 6.35-O(i) (Appointment of Market Makers), Trading Requirements).

⁸ See Commentary .01 to Rule 6.35-O (providing that trades effected on the Trading Floor to accommodate cross trades executed pursuant to Rule 6.47-O (i.e., taking the other side of a “crossing” order) will “count toward the Market Maker’s 75% requirement, regardless of whether the trades are in issues within or without the Market Maker’s appointment”).

opportunities for order execution resulting from the infusion of liquidity on the Trading Floor.

The Exchange has submitted a separate fee filing that will make Market Makers acting as Floor Market Makers eligible for beneficial fee treatment, provided the Floor Market Maker satisfies certain criteria, as is the case on NYSE American.⁹

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ 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 the proposal to adopt a new category of Market Makers called Floor Market Maker and to subject Floor Market Makers to the same requirements as non-Floor Market Makers will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, by creating a subset of Market Makers that will have a presence on the Trading Floor with a focus on providing liquidity for the execution of open outcry orders. The Exchange notes that Floor

⁹ See SR-NYSEArca-2024-12 (providing for discounted rates on monthly OTP fees to Floor Market Makers that satisfy certain criteria). The Exchange notes that the description of Floor Market Makers set forth SR-NYSEArca-2024-12 is identical to the description proposed herein and the proposed minimum 75% Manual trading requirement aligns with Commentary .01 to Rule 6.35-O, as described herein. See NYSE American Fee Schedule, Section III.A. (Monthly ATP Fees) and Section III.A., n. 1 (describing discounted rates available to Floor Market Makers that meet specific criteria, which rates/criteria are identical to those proposed herein).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

Market Makers would have an incentive to execute orders in all options issues in open outcry because all such trades would count towards the 75% minimum trading requirement (per Commentary .01 to Rule 6.35-O). As noted herein, the Exchange would not limit the number of Market Makers acting as Floor Market Makers. The Exchange believes that the nature of open outcry transactions lends itself better to larger-sized transactions than the liquidity that is generally available electronically and the proposed installation of Floor Market Makers would encourage greater participation in such large trades. Therefore, the proposal will benefit all market participants trading on the Exchange, especially those seeking liquidity for large-sized and complex orders. Moreover, the Exchange believes that the proposal would benefit investors, the national market system, and the Exchange by increasing competition for order flow and executions, which would improve price discovery.

The Exchange notes that, as proposed, Floor Market Makers would be subject to the same requirements and obligations as non-Floor Market Makers. That said, Floor Market Makers, by virtue of their presence on the Trading Floor, would be better positioned to execute trading interest in open outcry, which would increase liquidity on the Trading Floor to the benefit of all market participants. Because the proposed category of Floor Market Makers are subject to the same obligations as non-Floor Market Makers, the Exchange notes that it would not need to undertake any additional procedures or create additional surveillances to regulate its Floor Market Makers together with non-Floor Market Makers.

As noted herein, the proposal to have Floor Market Makers is not new or novel as Floor Market Makers exist pursuant to the rules of Exchange's affiliated options SRO, NYSE American.¹² As such, this proposal does not raise any issues not previously considered by the

¹² See NYSE American Rule 900.2NY (Definitions) (defining a "Floor Market Maker" as "a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange"). See also

Exchange.

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. Instead, the Exchange believes that the proposed change would continue to encourage competition because it would apply to all similarly-situated Market Makers. The Exchange believes the proposed change would not unduly burden market participants trading on the Exchange but would instead allow (and encourage) market making firms that do not already have a presence on the Trading Floor to install a Floor Market Maker. The Exchange believes that all market participants stand to benefit from this proposal because Floor Market Makers focused on open outcry transactions would encourage increased liquidity and quote competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its rules to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

BOX Options LLC (“BOX”) Rule 8510 (defining a “Floor Market Maker” as “an Options Participant of the Exchange located on the Trading Floor who has received permission from the Exchange to trade in options for his own account”).

the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ 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.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ 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 Exchange states that waiver of the operative would be consistent with the protection of investors and the public interest because it would enable the Exchange to allow a subset of Market Makers to have a presence on the Trading Floor with a specific focus on providing liquidity for the execution of open outcry orders without delay. The Exchange further states that it believes the presence of Floor Market Makers may result in increased liquidity for open outcry interest, which would benefit investors and the public interest and should therefore be implemented without delay. Finally, the Exchange notes that its affiliate Exchange (NYSE

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ Id. 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 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.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

American) has a substantially identical rule and therefore the proposed rule change does not raise any new novel regulatory issues. For the foregoing reasons, the Commission does not believe that the proposal raises any new or novel regulatory issues, and may provide market participants with an additional opportunities to interact with liquidity on the Trading Floor. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁸

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)¹⁹ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-16 on the subject line.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-2024-16. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-16 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12), (59).