SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99993; File No. SR-NYSEARCA-2024-33)

April 19, 2024

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness
of a Proposed Rule Change to Modify Rule 6.91P-O

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 April 5, 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 modify Rule 6.91P-O (Electronic Complex Order Trading) to

specify that a Complex Customer Cross Order received during a Complex Order Auction

("COA") would result in the early end of the COA. 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

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1   15 U.S.C. 78s(b)(1).

2   15 U.S.C. 78a.

3   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.   <u>Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change</u>

         1.   <u>Purpose</u>

The Exchange proposes to modify Rule 6.91P-O (Electronic Complex Order Trading) to specify that a Complex Customer Cross ("Complex C2C") Order received during a COA would result in the early end of the COA. This proposed functionality is not new or novel and mirrors a recently adopted rule requiring that a COA in progress ends early upon the receipt of a Complex QCC Order in the same complex strategy as the COA.[4] As discussed below, the reasons justifying the early end of a COA upon the receipt of a Complex QCC Order apply equally to the required early end of a COA upon receipt of a Complex C2C Order in the same complex strategy.[5]

Rule 6.91P-O reflects how Electronic Complex Orders ("ECOs") will trade on the Exchange[6] and paragraph (f) to this rule describes the handling of ECOs submitted to the Complex Order Auction (COA) process.[7] When a COA Order initiates a COA, the Exchange

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[4]   <u>See</u> Rule 6.91-O(f)(3)(E). <u>See</u> Securities Exchange Act Release No. 99597 (February 23, 2024), 89 FR 14906 (February 29, 2024 (SR-NYSEARCA-2024-17) (adopting, on an immediately effective basis, Rule 6.91P-O (f)(3)(E) which specifies that a COA in progress ends early upon receipt of a Complex QCC Order in the same complex strategy). The Exchange notes that the same rule change has been adopted on its affiliated options exchange, NYSE American LLC. <u>See</u> NYSE American Rule 980NYP(f)(3)(E). <u>See</u> Securities Exchange Act Release No. 99354 (January 17, 2024), 89 FR 4358 (January 17 [sic], 2024) (SR-NYSEAMER-2024-03) (adopting, on an immediately effective basis, NYSE American Rule 980NYP(f)(3)(E) which specifies that a COA in progress ends early upon receipt of a Complex QCC Order in the same complex strategy).

[5]   <u>See</u>, <u>e.g.</u>, <u>id.</u>, 89 FR, at 14906.

[6]   <u>See</u> <u>generally</u> Rule 6.91P-O (Electronic Complex Order Trading). Unless otherwise specified, all capitalized terms used herein have the same meaning as is set forth in Rule 6.91P-O.

[7]   <u>See</u> Rules 6.91P-O(f) (Execution of ECOs During a COA), (f)(1) (Initiation of a COA), (f)(2) (Pricing of a

disseminates a Request for Response ("RFR") to solicit potentially price-improving ECO interest -- which solicited interest includes interest designated to respond to the COA (i.e., ECO GTX Orders) and unrelated price-improving ECO interest (resting and newly arriving) that arrives during the Response Time Interval (each an "RFR Response") (collectively, the "auction interest").[8] The COA lasts for the duration of the Response Time Interval unless, during the COA, the Exchange receives certain options trading interest that requires the COA to conclude early.[9] When the COA concludes, the COA Order executes first with price-improving ECO interest, next with any contra-side interest, including the leg markets (if permissible),[10] and any remaining balance (that is not cancelled) is ranked in the Consolidated Book (the "Consolidated Book" or "Book").[11] Once the COA Order executes to the extent possible -- whether with the best-priced Complex Orders or the best-priced interest in the leg markets -- and is placed in the

COA). See also Rule 6.91P-O(a)(3)(A) (defining a "COA Order" as an ECO designated as eligible to initiate a COA).

[8]   See Rules 6.91P-O(a)(3)(B) (defining, and detailing the information included in, each RFR); (a)(3)(C) (defining each "RFR Response" as, among other things, "any ECO" received during the Response Time Interval that is in the same complex strategy as, and is marketable against, the COA Order); and (a)(3)(D) (defining the Response Time Interval as the period during which RFR Responses may be entered, which period "will not be less than 100 milliseconds and will not exceed one (1) second," as determined by the Exchange and announced by Trader Update). See Rule 6.91P-O(b)(2)(C) (defining a "ECO GTX Order," including that such order is submitted in response to an RFR announcing a COA and will trade with the COA Order to the extent possible and then cancel).

[9]   See Rule 6.91P-O(f)(3)(A)-(E) (setting forth the circumstances under which a COA will conclude before the end of the Response Time Interval, including, as discussed infra, upon receipt of a Complex QCC Order in the same complex strategy as the COA).

[10]   The Exchange notes that there are certain limitations to how an ECO, including a COA Order post-COA, may interact with the leg markets. See, e.g., Rule 6.91P-O(e)(1)(A) (providing, in relevant part, that the leg markets will trade first with an ECO, but only if the legs can execute with the ECO "in full or in a permissible ratio," and, once the leg markets trade with the ECO to the extent possible, such ECO will trade with same-priced ECOs resting in the Book). See also Rule 6.91P-O(e)(1)(C)-(D) (describing ECOs that are not permitted to trade with the leg markets).

[11]   See Rule 6.91P-O(f)(4)(A)-(C) (Allocation of COA Orders) (providing, in relevant part, that when a COA ends early or at the end of the Response Time Interval, a COA Order trades first with price-improving interest, next "with any contra-side interest, including the leg markets, unless the COA is designated as a Complex Only Order" and any remaining portion is ranked in the Consolidated Book and the COA Order is processed as an ECO pursuant to Rule 6.91P-O(e) (Execution of ECOs During Core Trading Hours). See Rule 1,1 (defining Consolidated Book as "the Exchange's electronic book of orders and quotes.").

Book, the Exchange will update its complex order book and, if applicable, the Exchange BBO (as a result of any executions of the COA Order with the leg markets).

The Exchange proposes to modify Rule 6.91P-O(f)(3)(E) to add an additional early end scenario to specify that a COA in progress will end early any time there is a Complex C2C Order submitted in the same complex strategy as the COA Order.[12] By its terms, a Complex C2C Order "that is not rejected" by the Exchange, "will immediately trade in full at its limit price."[13]

To avoid rejection, a Complex C2C Order must satisfy certain price validations, including that each option leg may not be priced worse than the Exchange BBO; and, that the transaction price must be equal to or better than the best-priced Complex Orders, unless the best-priced Complex Orders contains displayed Customer interest, in which case the transaction price must improve such interest.[14] In addition, the price of a Complex C2C Order must be priced at or between the DBBO;[15] provided, however, that the Complex C2C Order may not equal the DBBO if the DBBO is calculated using the Exchange BBO and the Exchange BBO for any component of the complex strategy on either side of the market includes displayed Customer interest.[16] Specifically, if the DBB (DBO) includes displayed Customer interest on the

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[12]   See proposed Rule 6.91P-O(f)(3)(E).

[13]   See Rule 6.62P-O (g)(2)(A) (providing that a Customer Cross ("C2C") Order, including a Complex C2C Order, "that is not rejected per paragraph (g)(2)(B) [Execution of C2C Orders] or (C) [Execution of Complex C2C Orders] below will immediately trade in full at its limit price").

[14]   See Rule 6.62P-O(g)(2)(C) & (g)(2)(C)(ii).

[15]   The DBBO establishes a derived (theoretical) bid or offer for a particular complex strategy. See Rule 6.91P-O(a)(5) (defining the DBBO and providing that the bid (offer) price used to calculate the DBBO on each leg will be the Exchange BB (BO) (if available), bound by the maximum allowable Away Market Deviation). The Away Market Deviation, as defined in Rule 6.91P-O(a)(1), ensures that an ECO does not execute too far away from the prevailing market. Rule 6.91P-O(a)(5) also provides for the establishment of the DBBO in the absence of an Exchange BB (BO), or ABB (ABO), or both. A Complex C2C Order will not be processed if there is no DBBO for any leg of the strategy either because there is no Exchange BBO or Away BBO for a leg of the complex strategy, or the best bid and offer prices for a leg are locked or crossed, per Rule 6.91P-O(a)(5)(B) or (a)(5)(C). See Rule 6.62P-O(g)(2)(C).

[16]   See Rule 6.62P-O(g)(2)(C) & (g)(2)(C)(i).

Exchange, the transaction price must improve the DBB (DBO) by at least one cent ($0.01).[17]

As noted above, until a COA concludes, the Book is not updated to reflect any COA Order executions (with price-improving auction interest or with resting ECO or leg market interest) or any balance of the COA Order ranking in the Book. Thus, to allow the later-arriving Complex C2C Order to be evaluated based on the most up-to-date Book, the Exchange proposes to end a COA upon the arrival of a Complex QCC [sic] Order in the same complex strategy. This proposed early termination would allow the Exchange to incorporate executions from the COA, or any remaining balance of the COA Order, to conduct the requisite price validations per Rule 6.62P-O(g)(2)(C) for the Complex C2C Order -- including based on the Exchange BBO, the DBBO, and best-priced Complex Orders on the Exchange following the COA Order executions and ranking.

Like current Rule 6.91P-O(3)(f)(E), the proposed rule change would be consistent with current Rule 6.91P-O(f)(3)(A)-(D), which describes four circumstances that cause the early end of a COA to ensure that later-arriving interest does not trade ahead of a COA Order and to ensure that the Book is updated to reflect executions resulting from the COA. The Exchange believes that the proposed rule change achieves this same objective. As with the existing early end scenarios, the proposed early end of a COA does not prevent the COA Order from trading with any interest, including price-improving interest, that arrived prior to the early termination (i.e., because of a Complex C2C Order in the same complex strategy as the COA). In addition, any portion of the COA Order that does not trade in the COA is placed on the Consolidated Book where it continues to have opportunities to trade.[18]

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17   See id.

18   See note 11, supra (describing that any remaining portion of a COA Order following the COA will be placed on the Consolidated Book and will be processed as an ECO).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[19] in general, and furthers the objectives of Section 6(b)(5),[20] 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 amendment to Rule 6.91P-O(f)(3)(E) regarding the additional circumstance that would cause a COA to end early would promote just and equitable principles of trade because it would ensure that the COA Order is executed to the extent possible and, if applicable, is ranked in the Consolidated Book before the Exchange evaluates the later-arriving Complex C2C Order. As noted above, until the COA concludes, the Book is not updated to reflect any COA Order executions (with price-improving auction interest or with resting ECO or leg market interest) or any balance of the COA Order ranking in the Book. This proposed early termination would then allow the Exchange to incorporate executions from the COA, or any remaining balance of the COA Order, to conduct the requisite price validations for the Complex C2C Order (per Rule 6.62P-O(g)(2)(C)) based on the most up-to-date Book (i.e., based on the DBBO, Exchange BBO, and best-priced Complex Orders on the Exchange following the COA).

As noted herein, the proposed change is being made for the same reasons that a COA in

[19]   15 U.S.C. 78f(b).

[20]   15 U.S.C. 78f(b)(5).

progress would end early upon the receipt of another Cross Order -- a Complex QCC Order, per Rule 6.91P-O(f)(3)(E) -- and therefore raises no new or novel issues and would ensure internal consistency of Exchange rules. In addition, Rule 908NYP(f)(A)-(D) describes the other four circumstances under which a COA must end early to ensure that later-arriving interest does not trade ahead of a COA Order and to ensure that the Book is updated to reflect executions resulting from the COA. The Exchange believes that the proposed rule change achieves this same objective. As with each of the early end scenarios, the proposed early end of a COA does not prevent the COA Order from trading with any interest, including price-improving interest, that arrived prior to the early termination (i.e., because of a Complex C2C Order in the same complex strategy as the COA). As such, the proposed change would benefit investors because it would ensure the timely executions of COA Orders (at potentially improved prices) and would also allow a timely execution of the Complex C2C Orders in the same complex strategy as the COA Order. In addition, the proposal would ensure that the prices used to validate a Complex C2C Order would incorporate executions from the COA, or any remaining balance of the COA Order.[21]

For the same reasons articulated when the Exchange adopted Rule 6.91P-O(f)(3)(E) (early end of a COA upon receipt of a Complex QCC Order), the Exchange believes that its proposed approach would provide the best protection to investors because ending a COA upon receipt of a C2C Order would ensure that the COA Order executes to the extent possible and that the Exchange relies on the most-up-to-date Book (following executions in the COA) to validate the price of the Complex QCC [sic] Order. Thus, the Exchange believes the proposed rule

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[21]   As noted herein, any portion of the COA Order that does not trade in the COA is placed in the Consolidated Book where it continues to have opportunities to trade. See, e.g., note 11, supra.

change would promote just and equitable principles of trade because it would help preserve --

and maintain investor's confidence in -- the integrity of the Exchange's local market.

Finally, the Exchange believes that modifying the rule as proposed would add clarity and

transparency to Rule 6.91P-O regarding the handling of COA Orders.

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

intra-market competition that is not necessary or appropriate in furtherance of the purposes of the

Act. The proposed rule change would apply in the same manner to all similarly-situated market

participants that opt to utilize the COA process, the use of which is voluntary and, as such,

market participants are not required to avail themselves of this process.

The Exchange does not believe that its proposed rule change will impose any burden on

inter-market competition that is not necessary or appropriate in furtherance of the purposes of the

Act because the proposed change is designed to ensure that both a COA Order and a C2C Order

receive timely executions based on current market conditions. To the extent that other options

exchanges offer complex order auctions and Complex C2C Orders, such exchanges are free to

adopt (if they have not already done so) the early termination provision proposed herein.

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[22] and Rule 19b-4(f)(6) thereunder.[23] Because the proposed rule change does not: (i)

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[22]   15 U.S.C. 78s(b)(3)(A)(iii).

[23]   17 CFR 240.19b-4.

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.[24]

A proposed rule change filed under Rule 19b-4(f)(6)[25] normally does not become

operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-

4(f)(6)(iii),[26] 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. The Exchange states that waiver of the operative delay would

allow the Exchange to immediately implement the Complex C2C functionality, including the

associated early end scenarios in proposed Exchange Rule 6.91P-O(f)(3)(E). The Commission

finds that waiving the operative delay is consistent with the protection of investors and the public

interest because it will allow a COA Order in a complex strategy to execute to the extent possible

after the Exchange receives a Complex C2C Order in the same strategy while allowing the

Exchange to conduct the required price validations for the Complex C2C Order[27] based on a

Book that has been updated to reflect any executions of the COA Order, thereby ensuring that

the required price validations for the Complex C2C Order have accounted for all trading interest

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[24] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange 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.

[25] 17 CFR 240.19b-4(f)(6).

[26] 17 CFR 240.19b-4(f)(6)(iii).

[27] See Exchange Rule 6.62P-O(g)(2)(C).

on the Exchange.[28] In addition, any portion of the COA Order that does not execute during the

COA may be placed in the Consolidated Book, where it will continue to have opportunities to

trade. For these reasons, the Commission designates the proposal operative upon filing.[29]

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

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 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

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[28]   The Exchange's proposal to end a COA early when it receives a Complex C2C Order for the same strategy as the COA Order is consistent with current Exchange Rule 6.91P-O(f)(3)(E). Specifically, as discussed above, Exchange Rule 6.91P-O(f)(3)(E) currently states that a COA will end early if the Exchange receives a Complex QCC Order in the same complex strategy as the COA order. The Exchange proposes to amend Exchange Rule 6.91P-O(f)(3)(E) to provide that a COA also will end early if the Exchange receives a Complex C2C Order in the same complex strategy as the COA Order. The Exchange states that the purpose of the early termination is the same for both Complex QCC and Complex C2C Orders—to allow the Exchange to conduct the required price validations for a Complex QCC Order or Complex C2C Order based on a Book that has been updated to include any executions from the COA for the same complex strategy. The Exchange states that ending the COA upon receipt of a Complex C2C Order in the same strategy as the COA Order protects investors by ensuring that the COA Order executes to the extent possible and that the Exchange relies on the most-up-to-date Book (following executions in the COA) to validate the price of the Complex C2C Order, which the Exchange believes will help to preserve the integrity of the Exchange's local market.

[29]   For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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(https://www.sec.gov/rules/sro.shtml); or

- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-33 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-2024-33. 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-2024-33 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.[30]

Sherry R. Haywood,

Assistant Secretary.

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[30]   17 CFR 200.30-3(a)(12), (59).