



**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-99597; File No. SR-NYSEARCA-2024-17]**

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

February 23, 2024.

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 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 modify Rule 6.91P-O (Electronic Complex Order Trading) to specify additional trading interest that would result in the early end of a Complex Order Auction (“COA”). 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 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.

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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.

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 6.91P-O (Electronic Complex Order Trading) to specify additional trading interest that would result in the early end of a Complex Order Auction (“COA”). This proposed amendment to the Exchange’s complex order trading rule would align with the recently modified complex order trading rule of the Exchange’s affiliated options exchange, NYSE American LLC (“NYSE American”).<sup>4</sup>

Rule 6.91P-O reflects how Electronic Complex Orders (“ECOs”) will trade on the Exchange<sup>5</sup> and paragraph (f) to this rule describes the handling of ECOs submitted to the Complex Order Auction (COA) process.<sup>6</sup> When a COA Order initiates a COA, the Exchange 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., COA 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”).<sup>7</sup> The COA lasts for the duration of the Response Time Interval unless, during the

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<sup>4</sup> Compare proposed Rule 6.91P-O(f)(3)(E) with NYSE American Rule 980NYP(f)(3)(E). See also SR-NYSEAMER-2024-03 (the “NYSE American COA/cQCC Filing”) See Securities Exchange Act Release No. 99354 (January 17, 2024), 89 FR 4358 (January 17 [sic], 2024) (SR-NYSEAMER-2024-03) (permitting NYSE American to adopt NYSE American Rule 980NYP(f)(3)(E) on an immediately effective basis and granting waiver of the 30-day operative delay). The Exchange notes that NYSE American Rule 980NYP is substantively identical to Rule 6.91P-O, except that the latter rule includes the rule update proposed herein.

<sup>5</sup> See generally 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.

<sup>6</sup> See Rules 6.91P-O(f) (Execution of ECOs During a COA), (f)(1) (Initiation of a COA), (f)(2) (Pricing of a COA). See also Rule 6.91P-O(a)(3)(A) (defining a “COA Order” as an ECO designated as eligible to initiate a COA).

<sup>7</sup> 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 “COA 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).

COA, the Exchange receives certain options trading interest that requires the COA to conclude early.<sup>8</sup> 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),<sup>9</sup> and any remaining balance (that is not cancelled) is ranked in the Consolidated Book (the “Consolidated Book” or “Book”).<sup>10</sup> 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 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) to add new paragraph (E), which would provide that a COA in progress will end early any time there is a Complex Qualified Contingent Cross (“QCC”) Order submitted in the same complex strategy as the COA Order.<sup>11</sup> By its terms, a Complex QCC Order “that is not rejected” by the Exchange, “will immediately trade in full at its price.”<sup>12</sup> To avoid rejection, a Complex QCC Order must satisfy certain price validations, including that each option leg must be priced at or between the NBBO and may not

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<sup>8</sup> See Rule 6.91P-O(f)(3)(A)-(D) (setting forth the circumstances under which a COA will conclude before the end of the Response Time Interval).

<sup>9</sup> 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).

<sup>10</sup> 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 RTI, 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.”).

<sup>11</sup> See proposed Rule 6.91P-O(f)(3)(E). See Rules 6.62P-O(g)(1)(A) (providing that a “Complex QCC Order” is a QCC with more than one option leg and specifying that “each option leg must have at least 1,000 contracts”) and (g)(1)(D) (setting forth the pricing requirements that a Complex QCC Order must meet, or else it will be rejected). The Exchange notes that Rule 6.62P-O(g)(1), regarding Complex QCC Orders, is identical to NYSE American Rules 900.3NYP(g)(1).

<sup>12</sup> See Rule 6.62P-O(g)(1)(A) (providing that a QCC Order, including a Complex QCC Order, “that is not rejected per paragraph (g)(1)(C) [Execution of QCC Orders] or (D) [Execution of Complex QCC Orders] below will immediately trade in full at its price”). As noted above, Rule 6.62P-O(g)(1), regarding Complex QCC Orders, is identical to NYSE American Rules 900.3NYP(g)(1).

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.<sup>13</sup> In addition, each component leg of the Complex QCC Order must trade at a price that is better than displayed Customer interest on the Consolidated Book.<sup>14</sup>

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 QCC 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 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)(1)(D) for the Complex QCC Order (i.e., based on the NBBO, Exchange BBO, and best-priced Complex Orders on the Exchange following the COA Order executions and ranking).<sup>15</sup>

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 QCC

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<sup>13</sup> See Rule 6.62P-O(g)(1)(D)(i)-(iii).

<sup>14</sup> See Rule 6.91P-O(g)(1)(D)(i).

<sup>15</sup> The Exchange notes that, to date, there have been zero instances of a Complex QCC Order arriving during (and resulting in the early end) of a COA in the same complex strategy, pursuant to Rule 6.91P-O, which was implemented in July 2022 coincident with the Exchange's migration to its Pillar trading platform.

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.<sup>16</sup> Finally, the Exchange notes that proposed Rule 6.91P-O(f)(3)(E) is identical to American Rule 980NYP(f)(3)(E).

In addition to NYSE American, the Exchange notes that at least two other (non-affiliated) options exchanges offer both Complex QCC Orders and COA functionality and each has opted for a different way to address the race condition posed by these two features. For example, per the technical specifications for complex orders executed on Cboe Exchange Inc. (“Cboe”), a Complex QCC Order is “immediately executed or canceled on entry” and is not “restricted by other auction types going on at the same time” and, as such, the price validations on the later-arriving Complex QCC are (apparently) done without consideration of the COA process and its potential impact on Cboe’s Complex Order Book.<sup>17</sup> Alternatively, on MIAX Options Exchange (“MIAX”), a later-arriving Complex QCC Order is rejected “if, at the time of receipt” the complex strategy is subject to, among other things, “a Complex Auction pursuant to Rule 518(d).”<sup>18</sup>

The Exchange believes that its proposal to codify by rule its distinct approach to resolving the same issue faced by Cboe and MIAX would provide the best protection to its market participants and would mirror the approach taken by NYSE American.<sup>19</sup> Specifically, by

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<sup>16</sup> See supra note 10 (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).

<sup>17</sup> See Cboe, US Options Complex Book Process, Section 10, Complex Qualified Contingent Cross (Complex QCC), available here: <https://cdn.cboe.com/resources/membership/US-Options-Complex-Book-Process.pdf> (providing that, on Cboe, “Complex QCCs will not be restricted by other auction types going on at the same time in the Complex or Simple Book”). The Exchange was unable to find a codification in Cboe’s rules of this technical specification (i.e., that Complex QCC Orders are executed without regard for any ongoing auctions). The Exchange notes that the complex auction process described in Cboe Rule 5.33(d) is substantially similar to the Exchange’s COA process. Compare Rule 6.91P-O (f) with Cboe Rule 5.33(d)(3) (describing Complex Order Auction process).

<sup>18</sup> See MIAX Rule 516(h)(4) (describing a Complex QCC Order or “cQCC Order” and providing that such order will be rejected “if, at the time of receipt of the cQCC Order: (i) the strategy is subject to . . . a Complex Auction pursuant to Rule 518(d)”). The Exchange notes that the complex auction process described in MIAX Rule 518(d) is substantially similar to the Exchange’s COA process.

<sup>19</sup> See supra note 4, NYSE American COA/cQCC Filing (setting forth the same arguments as set forth herein in support of the identical approach to end early a COA in progress upon receipt of a Complex QCC in the same strategy). See also NYSE American Rule 980NYP(f)(3)(E).

ending a COA upon the arrival of a Complex QCC Order in the same complex strategy, the Exchange ensures 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. This proposed approach prevents the Exchange from ignoring complex orders being auctioned when conducting price validations for later-arriving Complex QCC Orders or from rejecting potentially valid Complex QCC Orders that arrive during a COA. As such, the Exchange believes that its proposal would help preserve -- and maintain investor's confidence in -- the integrity of the Exchange's local market. As such, the Exchange believes that the proposed change would benefit investors and would not place an undue burden on competition because investors are free to direct their complex order flow to other options exchanges, including Cboe or MIAX. Likewise, once this proposed rule change is effective, other options exchanges, including Cboe and MIAX, are free to copy the order handling proposed herein.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>20</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>21</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 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) 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-

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<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

arriving Complex QCC 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 QCC Order (per Rule 6.62P-O(g)(1)(D)) based on the most up-to-date Book (i.e., based on the NBBO, Exchange BBO, and best-priced Complex Orders on the Exchange following the COA).<sup>22</sup> The proposed change is not new or novel as it is identical to the complex order trading rule on NYSE American to end early a COA in progress upon receipt of a Complex QCC in the same complex strategy.<sup>23</sup>

As noted herein, current Rule 6.91P-O(f)(A)-(D) describes 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 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 QCC 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 QCC Orders in the same complex strategy as the COA Order. In addition, the proposal would ensure that the prices used to validate a Complex QCC Order would incorporate executions from the COA, or any remaining balance of the COA Order.<sup>24</sup>

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<sup>22</sup> See supra note 15 (noting that, to date, there have been zero instances of a Complex QCC Order arriving during (and resulting in the early end) of a COA in the same complex strategy, pursuant to Rule 6.91P-O).

<sup>23</sup> See NYSE American Rule 980NYP(f)(3)(E).

<sup>24</sup> 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., supra note 10.

At least two other options exchanges have taken different approaches to address how to handle the arrival of a Complex QCC Order while a Complex Order Auction is in progress. As noted herein, the Exchange believes that its proposed approach would provide the best protection to investors because ending a COA upon receipt of a Complex QCC 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 Order. Thus, the Exchange believes the proposed rule 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 Complex QCC Order receive timely executions based on current market conditions, which change is identical to NYSE American Rule 980NYP(f)(3)(E). To the extent that other options exchanges, like Cboe or MIAX, offer complex order auctions and Complex QCC 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<sup>25</sup> and Rule 19b-4(f)(6) thereunder.<sup>26</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>27</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>28</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>29</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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>30</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>25</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>26</sup> 17 CFR 240.19b-4(f)(6).

<sup>27</sup> 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.

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

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

<sup>30</sup> 15 U.S.C. 78s(b)(2)(B).

#### 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](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2024-17 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-2024-17. 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-2024-17 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.<sup>31</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>31</sup> 17 CFR 200.30-3(a)(12), (59).