

Trail (“CAT NMS Plan”).⁵ The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁶ The proposed rule changes were published for comment in the **Federal Register** on May 10, 2021.⁷ On June 17, 2021, the Commission temporarily suspended the proposed rule changes and instituted proceedings to determine whether to approve or disapprove the proposed rule changes.⁸ On October 27, 2021, the Commission designated a longer period within which to conclude proceedings regarding the proposed rule changes.⁹ The Commission has received no comments on the proposed rule changes.

On December 10, 2021, Nasdaq, BX, ISE, GEMX, MRX and Phlx withdrew their proposed rule changes (SR–BX–2021–018, SR–NASDAQ–2021–029, SR–ISE–2021–08, SR–GEMX–2021–03, SR–MRX–2021–05, SR–PHLX–2021–25). On December 16, 2021, Cboe BYX, Cboe BZX, C2, Cboe, Cboe EDGA and Cboe EDGX withdrew their proposed rule changes (SR–CboeBYX–2021–011, SR–CboeBZX–2021–034, SR–C2–2021–008, SR–CBOE–2021–030, SR–CboeEDGA–2021–010, SR–Cboe–EDGX–2021–024).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93818; File No. SR–NYSEArca–2021–91]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To Amend Rule 6.87–O

December 17, 2021.

I. Introduction

On October 20, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder,² a proposed rule change to amend Rule 6.87–O (“Nullification and Adjustment of Options Transactions Including Obvious Errors”). The proposed rule change was published for comment in the **Federal Register** on November 4, 2021.³ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

Pursuant to Rule 6.87–O, when reviewing an options transaction as potentially erroneous, the Exchange needs to determine the “Theoretical Price” of the option, *i.e.*, the Exchange’s estimate of the correct market price for the option. If the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is generally the last national best bid (“NBB”) just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (“NBO”) just prior to the trade in question with respect to an erroneous buy transaction.⁴ However, there may be situations where the NBB or NBO is not available or may not be reliable. Specifically, under Rule 6.87–O(b)(1)–(3), these situations occur when there are no quotes or no valid quotes for comparison purposes, when the NBBO is determined to be too wide to be reliable, and at the open of each trading day. In each of these circumstances, because the NBB or NBO is not available or is deemed to be

unreliable, the Exchange determines Theoretical Price.⁵

Under Rule 6.87–O(c), the Exchange determines whether an obvious error has occurred by comparing the execution price of the transaction with the Theoretical Price.⁶ If the execution price is determined to be higher or lower than the Theoretical Price by a minimum amount, as described in Rule 6.87–O(c)(1), the Exchange will either adjust or bust the transaction as provided for by Rule 6.87–O(b)(4).

Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (“LOMSWG”) (collectively, the “Industry Working Group”), the Exchange proposes: (1) To amend Rule 6.87–O(b)(3) to permit the Exchange to determine the Theoretical Price of a customer option transaction in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or re-opening; and (2) to amend Rule 6.87–O(c)(4)(B) to adjust, rather than nullify, customer transactions in obvious error situations, provided the adjustment does not violate the limit price. According to the Exchange, other options exchanges will also submit substantively identical proposals to the Commission following approval of this proposal.⁷

B. Rule 6.87–O(b)(3)

Pursuant to Rule 6.87–O(b)(3), the Exchange will determine the Theoretical Price if the NBBO for the subject series is wide immediately before execution and a narrow market (as set forth in the rule) existed during the ten seconds prior to the transaction. Rule 6.87–O(b)(3) further specifies that, should there be no narrow quotes during the ten seconds prior to the transaction, the Theoretical Price for the affected series will be the NBBO that existed at the time of execution (regardless of its width).⁸ The Exchange observes, however, that in the first seconds of trading, there is no 10-second period “prior to the transaction.”⁹ According to the Exchange, the Industry Working Group has further observed that prices in certain series can be disjointed at the start of trading.¹⁰ Accordingly, the

⁵ The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and the rules and regulations thereunder. See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016). The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT (“Company”). On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC, which became the Company. See Securities Exchange Act Release No. 87149 (September 27, 2019), 84 FR 52905. The latest version of the CAT NMS Plan is available at <https://catnmsplan.com/about-cat/cat-nms-plan>.

⁶ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ See *supra* note 3.

⁸ Securities Exchange Act Release No. 92207, 86 FR 33448 (June 24, 2021).

⁹ Securities Exchange Act Release No. 93437, 86 FR 60524 (November 2, 2021).

¹⁰ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 93472 (October 29, 2021), 86 FR 60926 (“Notice”). Comments received on the proposal are available on the Commission’s website at: <https://www.sec.gov/comments/sr-nysearca-2021-91/srnysearca202191.htm>.

⁴ See Rule 6.87–O(b).

⁵ This includes at times the use of a singular third-party vendor, known as a TP Provider (currently CBOE Livevol, LLC). See Notice, *supra* note 3, at 60926.

⁶ See Rule 6.87–O(c)(1).

⁷ See Notice, *supra* note 3, at 60926.

⁸ See also *id.* at 60927.

⁹ See *id.*

¹⁰ See *id.*

Exchange proposes to amend Rule 6.87–O(b)(3) to address trading in certain circumstances immediately after the opening before liquidity has had a chance to enter the market by allowing the Exchange to determine the Theoretical Price in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or re-opening.

The proposed rule change would also better harmonize section (b)(3) with section (b)(1) of the Rule. Under section (b)(1), the Exchange is permitted to determine the Theoretical Price for transactions occurring as part of the opening auction process (as defined in Rule 6.64–O) if there is no NBB or NBO for the affected series just prior to the erroneous transaction. In contrast, under the current version of section (b)(3), the Exchange would not be able to determine the Theoretical Price for the trade occurring during core trading. Thus, if an erroneous trade occurs on the Exchange during the 10-second period immediately following an opening or reopening, and an erroneous trade occurs on another exchange as a part of its opening auction during the first 10 seconds of trading, the trade on the other exchange could be submitted for review under (b)(1) and only that exchange would be able to determine the Theoretical Price. Under the current version of section (b)(3), the Exchange would not be able to determine the Theoretical Price because the erroneous transaction occurred during the first 10 seconds of core trading and not as a part of the opening process. Under the proposed rule change, however, both trades would be entitled to the same review regarding the same Theoretical Price based upon the same time.¹¹

Pursuant to the proposed rule change, the Exchange would determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the minimum amount set forth in proposed Rule 6.87–O(b)(3)(A)¹² and there was a bid/ask differential less than the minimum amount during the 10 seconds prior to the transaction.¹³ If there was no bid/ask differential less than the minimum amount during the 10 seconds prior to the transaction, then the Exchange would determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to

the Customer's erroneous transaction was equal to or greater than the minimum amount set forth in proposed Rule 6.87–O(b)(3)(A) and there was a bid/ask differential less than the minimum amount anytime during the 10 seconds after an opening or re-opening.¹⁴ If there was no bid/ask differential less than the minimum amount during the 10 seconds following an opening or re-opening, then the Theoretical Price of an option series would be the last NBB or NBO just prior to the customer transaction in question, as set forth in Rule 6.87–O(b).¹⁵ Customer transactions occurring more than 10 seconds after an opening or re-opening would continue to be subject to proposed Rule 6.87–O(b)(3)(A).¹⁶

C. Rule 6.87–O(c)(4)(B)

Current Rule 6.87–O(c)(4) provides that obvious error transactions involving non-customers would be adjusted, while transactions involving customers are nullified, unless a certain specified condition applies.¹⁷ Under this proposed rule change, Rule 6.87–O(c)(4)(B) would be amended to provide that even obvious error transactions involving a customer will be adjusted, instead of nullified, as long as the adjustment does not violate the customer's limit price. Specifically, pursuant to proposed Rule 6.87–O(c)(4)(B), where at least one party to an erroneous transaction is a customer, the execution price of the transaction would be adjusted pursuant to the adjustment criteria in Rule 6.87–O(c)(4)(A), which provides for the adjustment of prices a specified amount away from the Theoretical Price. Any customer obvious error exceeding 50 contracts would be subject to the size adjustment modifier defined in Rule 6.87–O(a)(4).¹⁸ However, if such adjustment(s) would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the customer's limit price, the trade would be nullified.¹⁹

D. Implementation Date

The Exchange represents that it will announce the effective date of the

proposed rule change in a Trader Update distributed to all OTP Holders and OTP Firms, which will be no sooner than six months from the approval of this proposal.²⁰

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²¹ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act²² and with Section 6(b)(5) of the Act,²³ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. Further, the Commission believes that proposed modifications to Rule 6.87–O will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

One commenter, a LOMSWG member, expressed broad support for the proposal, stating that the proposal is designed to protect retail customers.²⁴ Specifically, the commenter argues that the proposed change to Rule 6.87–O(b)(3) would provide a more uniform treatment of customer erroneous transactions occurring during the 10-second period immediately following an opening or re-opening.²⁵ The commenter also argues that the proposed change to Rule 6.87–O(c)(4)(B) would provide for uniform treatment of customer and non-customer erroneous transactions, stating that the proposal reflects changes in the dynamics of options market customers by extending hedging protections previously available to non-customers.²⁶

The Commission believes that the proposal to amend Rule 6.87–O(b)(3)(B)

¹⁴ See proposed Rule 6.87–O(b)(3)(B)(iii).

¹⁵ See proposed Rule 6.87–O(b)(3)(B)(iii).

¹⁶ See *supra* note 12. See also Notice, *supra* note 3, for additional description and examples of the proposed rule change.

¹⁷ Specifically, current Rule 6.87–O(c)(4)(C) provides that if an OTP Holder has 200 or more customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of two minutes or less, where at least one party to the obvious error is a non-customer, then the Exchange will apply the non-customer adjustment criteria found in Rule 6.87–O(c)(4)(A).

¹⁸ See proposed Rule 6.87–O(c)(4)(B).

¹⁹ See *id.*

²⁰ See Notice, *supra* note 3, at 60928.

²¹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

²⁴ See Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission, dated November 23, 2021, at 2 ("SIFMA Letter").

²⁵ See *id.* See also text accompanying note 11.

²⁶ See SIFMA Letter, *supra* note 25, at 2.

¹¹ See Notice, *supra* note 3, at 60928.

¹² The Exchange proposes to move the existing text of Rule 6.87–O(b)(3) into a new subparagraph (A).

¹³ See proposed Rule 6.87–O(b)(3)(B)(i).

is designed to achieve more consistent results for participants across U.S. options exchanges than under the current harmonized rules, while maintaining a fair and orderly market, protecting investors, and protecting the public interest. Specifically, the proposed change to Rule 6.87–O(b)(3) is designed to increase the consistency and transparency in the handling of erroneous options transactions in situations immediately after an opening or re-opening where there is no 10-second period prior to the transaction by allowing for the calculation of a Theoretical Price during the 10-second period immediately following an opening and reopening.²⁷

The Commission also believes that the Exchange's proposed change to Rule 6.87–O(c)(4) is consistent with the Act and would further the goal of providing increased transparency and uniformity in the handling of erroneous options transactions involving customers and non-customers. As the Exchange observes, the proposed rule change would better harmonize the treatment of non-customer transactions and customer transactions under the Rule and provide greater certainty of execution for all participants to options transactions, while still respecting a customer's limit price.²⁸

The proposed rule change will become operative no sooner than six months following its approval, on a date to be announced in a Trader Update made available by the Exchange to its OTP Holders and OTP Firms. This delayed implementation is designed to allow other options exchanges time to adopt rules consistent with this proposal and for all options exchanges to coordinate the date of implementation of such harmonized rules.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR–NYSEArca–2021–91) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93808; File No. SR–MIAX–2021–62]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for the cToM Market Data Product

December 17, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on December 10, 2021, Miami International Securities Exchange, LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 is filing a proposal to amend the MIAX Options Fee Schedule (the “Fee Schedule”) to establish fees for the market data product known as MIAX Complex Top of Market (“cToM”).

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings>, at MIAX's principal office, 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 Exchange 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 these 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section (6)(a) of the Fee Schedule to establish fees for the cToM data product. The Exchange initially filed this proposal on June 30, 2021 with the proposed fees to be effective beginning July 1, 2021 (“First Proposed Rule Change”).³ The First Proposed Rule Change was published for comment in the **Federal Register** on July 15, 2021.⁴ Although the Commission did not receive any comment letters on the First Proposed Rule Change, on August 27, 2021, the Commission issued its Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Establish Fees for the Exchanges' cToM Market Data Products (relating to the First Proposed Rule Change and a similar filing by the Exchange's affiliate, MIAX Emerald, LLC (“MIAX Emerald”), to also adopt cToM fees).⁵ The Exchange withdrew the First Proposed Rule Change on September 30, 2021⁶ and re-submitted the proposal, with the proposed fee changes being immediately effective (“Second Proposed Rule Change”).⁷ The Second Proposed Rule Change provided additional justification for the proposed fee changes and addressed comments provided by the Commission Staff. On October 14, 2021, the Exchange withdrew the Second Proposed Rule Change and submitted its proposal to adopt cToM fees to again provide additional justification for the proposed fee changes and address comments provided by the Commission Staff (“Third Proposed Rule Change”).⁸ The Third Proposed Rule Change was published for comment in the **Federal Register** on November 1, 2021.⁹ Although the Commission did not again receive any comment letters on the Third Proposed Rule Change, the Exchange withdrew the Third Proposed

³ See Securities Exchange Act Release No. 92359 (July 9, 2021), 86 FR 37393 (July 15, 2021) (SR–MIAX–2021–28).

⁴ *Id.*

⁵ See Securities Exchange Act Release No. 92789 (August 27, 2021), 86 FR 49364 (September 2, 2021) (SR–MIAX–2021–28, SR–EMERALD–2021–21) (the “Suspension Order”).

⁶ See Securities Exchange Act Release No. 93471 (October 29, 2021), 86 FR 60947 (November 4, 2021).

⁷ See SR–MIAX–2021–44.

⁸ Securities Exchange Act Release No. 93426 (October 26, 2021), 86 FR 60314 (November 1, 2021) (SR–MIAX–2021–50).

⁹ *Id.*

²⁷ See Notice, *supra* note 3, at 60928.

²⁸ See *id.* at 60928–29.

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.