

off if June 19 falls on a Saturday or Sunday. The Exchange also notes that a waiver would allow the Exchange to update the schedule on its website more quickly. Further, the Exchange states that the proposed rule change was based on recent proposals by other exchanges.<sup>17</sup> The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.<sup>18</sup>

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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-082 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-CboeBZX-2021-082. 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 (<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 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-CboeBZX-2021-082 and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93814; File Nos. SR-BX-2021-018; SR-C2-2021-008; SR-CBOE-2021-030; SR-CboeBYX-2021-011; SR-CboeBZX-2021-034; SR-CboeEDGA-2021-010; SR-CboeEDGX-2021-024; SR-GEMX-2021-03; SR-ISE-2021-08; SR-MRX-2021-05; SR-NASDAQ-2021-029; SR-PHLX-2021-25]

### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; NASDAQ BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; NASDAQ PHLX LLC and the NASDAQ Stock Market LLC; Notice of Withdrawal of Proposed Rule Changes To Adopt a Fee Schedule To Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

December 17, 2021.

On April 21, 2021, Cboe BYX Exchange, Inc. ("Cboe BYX"), Cboe BZX Exchange, Inc. ("Cboe BZX"), Cboe C2 Exchange, Inc. ("C2"), Cboe EDGA Exchange, Inc. ("Cboe EDGA"), Cboe EDGX Exchange, Inc. ("Cboe EDGX"), Cboe Exchange, Inc. ("Cboe"), NASDAQ BX, Inc. ("BX"), Nasdaq GEMX, LLC ("GEMX"), Nasdaq ISE, LLC ("ISE"), Nasdaq MRX, LLC ("MRX"), NASDAQ PHLX LLC ("Phlx"), The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposed rule changes<sup>3</sup> to adopt a fee schedule to establish fees for Industry Members<sup>4</sup> related to the National Market System Plan Governing the Consolidated Audit

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release Nos. 91750 (May 4, 2021), 86 FR 25045 (May 10, 2021) (SR-BX-2021-018); 91751 (May 4, 2021), 86 FR 24941 (May 10, 2021) (SR-PHLX-2021-25); 91752 (May 4, 2021), 86 FR 24921 (May 10, 2021) (SR-NASDAQ-2021-029); 91753 (May 4, 2021), 86 FR 24994 (May 10, 2021) (SR-MRX-2021-05); 91755 (May 4, 2021), 86 FR 25035 (May 10, 2021) (SR-ISE-2021-08); 91756 (May 4, 2021), 86 FR 24979 (May 10, 2021) (SR-GEMX-2021-03); 91757 (May 4, 2021), 86 FR 24911 (May 10, 2021) (SR-C2-2021-008); 91758 (May 4, 2021), 86 FR 25004 (May 10, 2021) (SR-CboeEDGX-2021-024); 91759 (May 4, 2021), 86 FR 24956 (May 10, 2021) (SR-CboeEDGA-2021-010); 91760 (May 4, 2021), 86 FR 24966 (May 10, 2021) (SR-CBOE-2021-030); 91761 (May 4, 2021), 86 FR 25016 (May 10, 2021) (SR-CboeBYX-2021-011); and 91762 (May 4, 2021), 86 FR 24931 (May 10, 2021) (SR-CboeBZX-2021-034).

<sup>4</sup> The CAT NMS Plan defines "Industry Member" as "a member of a national securities exchange or a member of a national securities association." See CAT NMS Plan, *infra* note 5, at Section 1.1.

<sup>17</sup> See *supra* note 10.

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

<sup>19</sup> 17 CFR 200.30-3(a)(12).

Trail (“CAT NMS Plan”).<sup>5</sup> The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>6</sup> The proposed rule changes were published for comment in the **Federal Register** on May 10, 2021.<sup>7</sup> 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.<sup>8</sup> On October 27, 2021, the Commission designated a longer period within which to conclude proceedings regarding the proposed rule changes.<sup>9</sup> 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.<sup>10</sup>

**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”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

##### 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).<sup>8</sup> The Exchange observes, however, that in the first seconds of trading, there is no 10-second period “prior to the transaction.”<sup>9</sup> According to the Exchange, the Industry Working Group has further observed that prices in certain series can be disjointed at the start of trading.<sup>10</sup> Accordingly, the

<sup>5</sup> 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>.

<sup>6</sup> 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).

<sup>7</sup> *See supra* note 3.

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

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

<sup>10</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> *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>.

<sup>4</sup> *See* Rule 6.87–O(b).

<sup>5</sup> 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.

<sup>6</sup> *See* Rule 6.87–O(c)(1).

<sup>7</sup> *See* Notice, *supra* note 3, at 60926.

<sup>8</sup> *See also id.* at 60927.

<sup>9</sup> *See id.*

<sup>10</sup> *See id.*