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*. Please include File Number SR–NASDAQ–2023–020 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–NASDAQ–2023–020. 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 a.m. and 3 p.m. Copies of such 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–NASDAQ–2023–020 and should be submitted on or before August 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15578 Filed 7–21–23; 8:45 am]

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[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97938; File No. SR–NYSEAMER–2023–35]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change for New Rule 971.1NYP

July 18, 2023.

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 July 5, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III 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 new Rule 971.1NYP regarding its Customer Best Execution (''CUBE'') Auction to reflect the implementation of the Exchange's Pillar trading technology on its options market and to modify Rule 971.1NY. 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 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.

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

[2] 17 CFR 240.19b–4.

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

1. Purpose

Background

The Exchange plans to transition its options trading platform to its Pillar technology platform. The Exchange's affiliated options exchange, NYSE Arca, Inc. (''NYSE Arca'' or ''Arca Options'') is currently operating on Pillar, as are the Exchange's cash equity markets and those of its national securities exchange affiliates' cash equity markets.[3] For this transition, the Exchange proposes to use the same Pillar technology already in operation on Arca Options.[4] In doing so, the Exchange will be able to offer not only common specifications for connecting to both of its equity and options markets, but also common trading functions across the Exchange and its affiliated options exchange, NYSE Arca Options.

The Exchange plans to roll out the new technology platform over a period of time based on a range of underlying symbols beginning on October 23, 2023.[5] As was the case for Arca Options when it transitioned to Pillar, the Exchange will announce by Trader Update when underlying symbols will be transitioning to the Pillar trading platform. With this transition, certain rules would continue to be applicable to options symbols trading on the current trading platform but would not be applicable to options symbols that have transitioned to trading on Pillar.

In this regard, the Exchange recently adopted new rules to reflect the priority, ranking, and allocation of single-leg interest on Pillar, including Rule 964NYP (''Pillar Rule 964NYP'') [6] and

[3] Together with NYSE American LLC, the Exchange's national securities exchange affiliates' cash equity markets include: the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc.

[4] *See* Securities Exchange Act Release No. 94072 (January 26, 2022), 87 FR 5592 (February 1, 2022) (SR–NYSEArca–2021–47) (the ''Arca Options Approval Order'').

[5] *See* Trader Update, January 30, 2023 (announcing Pillar Migration Launch date of October 23, 2023, for the Exchange), *available here: https://www.nyse.com/trader-update/history#110000530919.* The Exchange would not begin to migrate underlying symbols to the Pillar platform until all Pillar-related rule filings (*i.e.,* with a ''P'' modifier) are either approved or operative, as applicable.

[6] *See* Rules 964NYP (Order Ranking, Display, and Allocation), 964.1NYP (Directed Orders and DOMM Quoting Obligations) and 964.2NYP (Participation Entitlement of Specialists and e-Specialists) (collectively, the ''American Pillar Priority Rules''). *See also* Securities Exchange Act Release No. 97297 (April 13, 2023), 88 FR 24225 (April 19, 2023) (SR–NYSEAmer–2023–16) (adopting the American Pillar

has adopted a new rule regarding the trading of Complex Orders on Pillar.[7] In addition, the Exchange has submitted a filing to adopt new rules for the operation of order types, Market Maker quotations, opening auctions, and risk controls on the Pillar platform.[8]

On Pillar, and as discussed in detail herein, the Exchange will continue to conduct CUBE Auctions consistent with current functionality. However, proposed Rule 971.1NYP (the ''Rule'') regarding its CUBE Auction (the ''CUBE Auction''; ''CUBE''; or the ''Auction'') would incorporate the Exchange's priority and allocation scheme per Pillar Rule 964NYP, which includes Pillar concepts and terminology, and would also include enhancements to CUBE that will be available on the Pillar trading platform. The proposed enhancements would align the operation of the CUBE Auction with similar price-improvement mechanisms already available on other options exchanges.[9] As such, this proposal is competitive insofar as the proposed Pillar-related enhancements to CUBE are currently available on other options exchanges.

The Exchange believes the proposed Rule for CUBE Auctions on Pillar would continue to encourage ATP Holders to compete vigorously to provide the opportunity for price improvement for CUBE Orders of all sizes in a competitive auction process, which may lead to enhanced liquidity and tighter markets.[10]

Proposed Use of ''P'' Modifier

As proposed, and consistent with the American Pillar Priority Filing, the proposed Rule would have the same number as the current CUBE rule, but with the modifier ''P'' appended to the rule number.[11] As such, except Rule 971.1NY (Single-Leg Electronic Cross Transactions) would continue to apply to CUBE Auctions in symbols traded on the Exchange's current system.[12]

Proposed Rule 971.1NYP, however, would govern CUBE Auctions for symbols that have migrated to the Pillar trading platform.[13] To make clear this distinction, the Exchange proposes to add a preamble to current Rule 971.1NY (Single-Leg Electronic Cross Transactions) specifying that it would not be applicable to trading on Pillar, *i.e.,* once the migration to Pillar is complete, the current CUBE rule will not apply to CUBE Auctions.[14]

As with the Pillar Priority Rules, the Exchange will not implement proposed Rule 971.1NYP until all other Pillar-related rule filings (*i.e.,* with a ''P'' modifier) are either approved or operative, as applicable, and the Exchange announces the rollout of underlying symbols to Pillar by Trader Update.

Overview of the CUBE Auctions

Rule 971.1NY describes the CUBE Auction, which is an electronic crossing mechanism for single-leg orders with a price improvement auction on the Exchange.[15] The CUBE Auction is designed to provide price improvement for ''CUBE Orders'' (described below) of any size.

To commence an Auction, an ATP Holder (''Initiating Participant'') may electronically submit for execution a limit order it represents as agent on behalf of a public customer, broker dealer, or any other entity (''CUBE Order'').[16] The Initiating Participant must agree to guarantee the execution of the CUBE Order by submitting a contra-side order representing principal interest or interest it has solicited to trade with the CUBE Order (the ''Contra Order'') at a specified stop price or by utilizing auto-match or auto-match limit.[17]

Subject to specified exceptions, a CUBE Order to buy (sell) may execute at prices equal to or between the ''initiating price'' as the upper (lower) bound and the NBB (NBO) as the lower (upper) bound of permissible executions.[18] The current CUBE rule provides that the range of permissible executions depends on whether a CUBE Order is for fewer than 50 contracts[19] or for 50 or more contracts.[20] Further, to initiate an Auction, a CUBE Order must meet requirements related to its minimum size, price, and time of submission and acceptance of a CUBE Order is also dependent upon market conditions when submitted.[21]

When the Exchange receives a valid CUBE Order for auction processing, a Request for Responses (''RFR'') detailing the series, the side of the market, the size of the CUBE Order, and the initiating price of the CUBE Order is sent to all ATP Holders that subscribe to receive RFR messages.[22] RFR Responses marked as GTX Orders may be submitted to trade with a CUBE Order, provided that such orders specify their price, size and side of the market.[23] Only one Auction in a given series may be conducted at a time.[24] The Response Time Interval for a CUBE Auction is a random period of time within parameters designated by the Exchange, which time period shall be no less than 100 milliseconds and no more than 1 second, unless the Auction

Priority Rules on an immediately effective basis, which rules utilize Pillar concepts and incorporate the Exchange's current Customer priority and pro rata allocation model) (the ''American Pillar Priority Filing''). The American Pillar Priority Rules (like proposed Rule 971.1NYP) will not be implemented until all other Pillar-related rule filings are either effective or approved, as applicable. *See id.*

[7] *See* Securities Exchange Act Release No. 97739 (June 15, 2023), 88 FR 40893 (June 22, 2023) (SR–NYSEAMER–2023–17) (order approving new Rule 980NYP (Complex Order Trading)).

[8] *See* SR–NYSEAmer–2023–34 (proposing, on an immediately effective basis, new Rules 900.3NYP (Orders and Modifiers), 925.1NYP (Market Maker Quotations), 928NYP (Pre-Trade and Activity-Based Risk Controls), 928.1NYP (Price Reasonability Checks—Orders and Quotes), and 952NYP (Auction Process)).

[9] *See, e.g.,* Cboe Exchange, Inc. (''Cboe'') Rule 5.37 (describing Automated Improvement Mechanism (''AIM''), which is an electronic price improvement auction for paired orders); Cboe EDGX Exchange, Inc. (''Cboe EDGX'') Rule 21.19 (same); Nasdaq ISE, LLC (''Nasdaq ISE''), Options 3, Section 13 (describing Price Improvement Mechanism for Crossing Transactions, which is an electronic price improvement auction for paired orders).

[10] An ATP Holder is a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP. *See* Rule 900.2NY. An ATP is an American Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities. *See id.*

[11] *See* American Pillar Priority Filing (adopting, among other rules, Pillar Rule 964NYP, which will replace and supersede current Rule 964NY when the Exchange migrates to Pillar and describing that any Exchange rule with a ''P'' modifier will be applicable to options trading in symbols that have migrated to Pillar).

[12] The Exchange notes that it proposes one clarifying change to current Rule 971.1NY (regarding rejection of certain CUBE Orders submitted near the end of the trading day). *See supra* note 61.

[13] The Exchange believes that using the ''P'' modifier to demarcate rules that apply solely to trading on the Pillar platform adds clarity, transparency, and internal consistency to Exchange rules. *See id. See also* Arca Pillar Approval Order.

[14] *See* proposed Rule 971.1NYP (with new preamble specifying that it would not be applicable to trading on Pillar). Following the completed migration to Pillar, the Exchange will file a rule proposal to delete rules that are no longer operative because they apply only to trading on the Exchange's current system (including current Rule 971.1NY).

[15] *See generally* Rule 971.1NY (Single-Leg Electronic Cross Transactions).

[16] *See* Rule 971.1NY(a).

[17] *See* Rule 971.1NY(c)(1)(A)–(C).

[18] *See* Rule 971.1NY(b), (b)(1).

[19] *See* Rule 971.1NY(b)(1)(B) (providing that if a CUBE Order to buy (sell) is for fewer than 50 contracts, the initiating price shall be the lower (higher) of the CUBE Order's limit price, the NBO (NBB), or the BO minus one cent (BB plus one cent) and the lower (upper) bound of executions shall be the higher (lower) of the NBB (NBO) or the BB plus one cent (BO minus one cent)).

[20] *See* Rule 971.1NY(b)(1)(A) (providing that if a CUBE Order to buy (sell) is for 50 contracts or more and there is Customer interest in the Consolidated Book at the BB (BO), the lower (upper) bound of executions is the higher (lower) of the BB plus one cent (BO minus one cent) or the NBB (NBO)).

[21] *See* Rule 971.1NY(b)(2)–(10).

[22] *See* Rule 971.1NY(c)(2)(A).

[23] *See* Rule 971.1NY(c)(2)(C)(i).

[24] *See* Rule 971.1NY(c).

is concluded early.[25] A CUBE Auction may end early if, during the Auction, the Exchange receives interest that would otherwise disrupt the priority of interest in the Consolidated Book.[26]

At the conclusion of the Auction, including if the Auction ends early, the Exchange evaluates the interest received during the auction and allocates the CUBE Order (in whole or in part) with price improving interest, and/or, absent sufficient improving interest, with the Contra Order.[27] The Contra Order may be entitled to a participation guarantee of up to 40% (or 50% if there is only one RFR Response) depending on the CUBE Order contracts remaining after executing with price improving interest.[28] CUBE Order allocations are applied in accordance with the Exchange's Customer priority scheme and size pro rata allocation algorithm.[29]

Summary of Proposed Enhancements to CUBE

The Exchange is not proposing fundamentally different functionality for CUBE Auctions on Pillar. Instead, the Exchange proposes discrete enhancements to the CUBE Auction that are designed to both improve the operation of the CUBE and as noted herein to bring CUBE functionality in alignment with price-improving mechanisms available on other marketplaces. Specifically, and as described in detail below, the Exchange proposes to enhance the CUBE Auction on Pillar as follows:

• *Uniform Pricing Standard.* Adopt one uniform range of permissible executions for CUBE Orders by applying the current pricing requirements set forth in Rule 971.1NY(b)(1)(A) to CUBE Orders of any size. The Exchange, however, would continue to require price improvement to CUBE Orders for fewer than 50 contracts that are submitted when the market is one cent wide ($0.01). As proposed, the Exchange would also continue to reject (as it does today) smaller-sized CUBE Orders in penny-wide markets if there is same-side (as CUBE Order) displayed Customer interest in the Consolidated Book at the NBBO.[30]

• *Response Time Interval.* Modify the Response Time Interval for a CUBE Auction to be for a set duration as opposed to the random duration that currently applies to Auctions.

• *GTX Order Handling.* Update GTX Order functionality to reflect handling on Pillar, including how such orders will be prioritized per Pillar Rule 964NYP(e), that such orders may include a specific CUBE ''AuctionID'', and that such order will cancel (rather than continue to trade) after executing with the CUBE Order to the extent possible.

• *Single Early End Scenario.* Reduce the number of ''early conclusion events'' based on trading interest that arrives during the Auction to the single scenario set forth in current Rule 971.1NY(c)(4)(D) and described herein.[31] This proposed change does not impact nor alter the (existing and proposed) requirement that a CUBE Auction end early if there is a trading halt in the affected series, which early termination reason is distinct from ending an Auction early based on incoming options trading interest.[32]

• *Surrender Quantity.* Enable Contra Orders that guarantee CUBE Orders with a stop price the option of requesting to receive a lesser participation guarantee than the standard 40% (*i.e.,* the Surrender Quantity).

• *Concurrent Auctions.* Permit multiple CUBE Auctions in the same series to occur at the same time and specify how such Auctions are processed and, to correspond with this functionality change, add ''AuctionID'' functionality to allow auction responses (*i.e.,* GTX Orders) to specify the CUBE Order with which it would like to trade.

• *CUBE Order Allocation.* Update Auction functionality to reflect the allocation of CUBE Orders against RFR Responses in alignment with Pillar Rule 964NYP (Order Ranking, Display, and Allocation).

In addition to the foregoing enhancements, the proposed Rule includes descriptions of existing CUBE functionality that will persist on Pillar. However, the Exchange proposes to streamline, clarify, or relocate certain of these descriptions (as indicated herein) to make the proposed Rule more succinct and easier to understand. The Exchange also proposes to replace all instances of ''shall'' with ''will,'' which is a stylistic preference that has no substantive impact on the proposed Auction functionality.[33]

Proposed Rule 971.1NYP: CUBE Auctions on Pillar

As discussed herein, the Exchange is not proposing to change the core functionality of CUBE Auctions. Thus, unless otherwise stated herein, CUBE Auctions on Pillar will function in a manner identical with current CUBE functionality per current Rule 971.1NY.

Initiating and Pricing of CUBE Auctions

The proposed Rule would begin by describing the general requirements for initiating a CUBE Auction, which requirements mirror current functionality unless otherwise specified.

Proposed Rule 971.1NYP(a) and (a)(1) describe functionality identical to Rule 971.1NY(a).

• Proposed Rule 971.1NYP(a) is identical to Rule 971.1NY(a) insofar as it would provide that a ''CUBE Order'' is a Limit Order submitted electronically by an ATP Holder (the ''Initiating Participant'') into the CUBE Auction, which CUBE Order the Initiating Participant represents as agent on behalf of a public customer, broker dealer, or any other entity. The last sentence of proposed Rule 971.1NYP(a) is identical to Rule 971.1NY(b)(8) and would provide that the minimum size requirement for a CUBE Order is one contract.[34]

• Proposed Rule 971.1NYP(a)(1) is identical to Rule 971.1NY(a) insofar as it would provide that a the Initiating Participant would guarantee the execution of the CUBE Order by submitting a contra-side order (''Contra Order'') representing principal interest or non-Customer interest it has solicited to trade solely with the CUBE Order at a specified price (''stop price'') or by utilizing auto-match or auto-match limit features (as described in proposed paragraph (b)(1) of the Rule), which interest would not be displayed.[35]

[25] *See* Rule 971.1NY(c)(2)(B).

[26] *See* Rule 971.1NY(c)(4)(A)–(F) (providing the scenarios that would result in the early end of a CUBE Auction).

[27] *See generally* Rule 971.1NY(c)(5).

[28] *See* Rules 971.1NY(c)(5)(B)(i)(b), (ii)(b), (iii)(b) (specifically regarding guaranteed participation of the Contra Order).

[29] *See, e.g.,* Rules 971.1NY(c)(5)(B)(i)(b), (ii)(b), (iii)(b) (citing the size pro rata algorithm set forth in Rule 964NY(b)(3)).

[30] *See* proposed Rule 971.1NYP(b)(5). *See also* Securities Exchange Act Release No. 79830 (January 18, 2017), 82 FR 8465, at 8466 (January 25, 2017) (SR–NYSEMKT–2016–12) (order approving proposal to make permanent the aspects of the CUBE Auction that were subject to a pilot, provided the Exchange continued to guarantee price improvement to CUBE Orders for fewer than 50 contracts in a penny-wide NBBO market) (order approving CUBE pilot on permanent basis for smaller-sized orders) (''SEC Approval of CUBE Pilot'').

[31] Rule 971.1NY(c)(4)(A)–(F) sets forth the current early end scenarios.

[32] *See* proposed Rule 971.1NYP(c)(2). *See also* Rule 971.1NY(c)(3).

[33] *Compare* Rules 971.1NY(a) and (b) (which use ''shall'') *with* proposed Rules 971.1NYP(a)(1) and (2), respectively (which use ''will'').

[34] The Exchange has relocated this text to the beginning of the Rule (as opposed to where this provision resides (in current Rule 971.1NY(b)(8)) because the Exchange believes that the minimum size of a CUBE Order is fundamental and thus is logically included at the outset of the Rule.

[35] The Exchange notes that the internal cross-reference in the proposed Rule has been updated and expanded to include descriptions of each of the stop price, auto-match, and auto-match limit price, which difference from the current CUBE rule is not material because it does not impact functionality.

○ Proposed Rule 971.1NYP(a)(1)(A) is identical to Rule 971.1NY(b)(7) and would provide that CUBE Orders may be entered in one cent ($0.01) increments regardless of the MPV of the series involved and that Contra Orders likewise may be priced in one cent increments when specifying the stop price or the auto-match limit price as described in proposed paragraphs (b)(1)(A) and (b)(1)(C) of this Rule (discussed below).[36]

Proposed Rule 971.1NYP(a)(2) describes functionality identical to Rule 971.1NY(b).

• Proposed Rule 971.1NYP(a)(2) is identical to Rule 971.1NY(b) insofar as it would provide that for purposes of determining whether a CUBE Order is eligible to initiate an Auction, references to the NBBO or Exchange BBO refer to the quoted market at the time the Auction is initiated and that the time at which the CUBE Auction is initiated is considered the time of the CUBE Order execution and that orders executed in the Auction qualify as exceptions to Trade-Through Liability, pursuant to Rule 991NY(b)(5) and (9). However, unlike the current rule, the proposed Rule would use shorthand to refer to the NBBO and Exchange BBO, which terms are defined in Rule 900.2NY.[37]

Consistent with current functionality, a CUBE Auction on Pillar would begin with an ''initiating price'' and, at the conclusion of the Auction, the CUBE Order would be eligible to execute at multiple prices within a permissible ''range of executions.'' [38] On Pillar, however, the Exchange proposes to adopt a uniform pricing standard for all CUBE Orders rather than have two separate standards based on the size of a CUBE Order.[39] As proposed, the Exchange would streamline CUBE functionality by applying the pricing parameter set forth in Rule 971.1NY(b)(1)(A) to establish the initiating price and ''permissible range of executions'' for a CUBE Order, but would eliminate the CUBE Order's size requirement.[40]

• Proposed Rule 971.1NYP(a)(3) would provide that—subject to proposed Rule 971.1NYP(b)(5) (as described below), the initiating price for any-sized CUBE Order to buy (sell) would be the lower (higher) of the CUBE Order's limit price or the NBO (NBB), which parameters are identical to the current initiating price requirements for CUBE Orders of 50 or more contracts per Rule 971.1NY(a).[41]

• Proposed Rule 971.1NYP(a)(4) would provide that the range of permissible executions for any-sized CUBE Order would be as set forth below and would note that this range of permissible executions may be adjusted based on certain updates to the Exchange BBO during an Auction per proposed Rule 971.1NYP(a)(4)(A) (described below).

The ''range of permissible executions'' of a CUBE Order to buy (sell) includes prices equal to or between the initiating price as the upper (lower) bound and the NBB (NBO) as the lower (upper) bound, provided that if there is Customer interest in the Consolidated Book at the Exchange BB (BO), the lower (upper) bound of executions will be the higher (lower) of the BB plus one cent (BO minus one cent) or the NBB (NBO).[42]

○ Proposed Rule 971.1NYP(a)(4)(A) would provide that the Exchange would adjust the range of permissible executions of a CUBE Order to buy (sell) in accordance with updates to the Exchange BB (BO) during the Auction, provided that such Exchange BB (BO) updates do not cross the upper (lower) bound of permissible executions.[43] This proposed feature is consistent with current functionality but differs in that the proposed Rule states definitively when updates to the BBO during an Auction would impact the range of executions (rather than refer to BBO updates that might result in the early end of an Auction).[44] The Exchange believes this distinction is immaterial as it has no impact on functionality. In fact, the Exchange believes this proposed change would remove superfluous (potentially confusing) language and, as such, would add clarity and transparency to Exchange rules making them easier to navigate and understand.

○ Proposed Rule 971.1NYP(a)(4)(B) is identical to current Rule 971.1NY(b)(3) and would require that CUBE Orders, once accepted, would never execute outside the range of permissible executions, and would never trade through their own limit price; further, the proposed Rule would provide that unrelated quotes and orders that participate in the Auction will never trade through their own limit price.[45] In the current rule, the foregoing provision is included with circumstances under which CUBE Orders are rejected. Because this proposed text relates to the range of permissible executions for accepted CUBE Orders (*i.e.,* not rejected), the Exchange believes the proposed placement of this provision would add clarity to the proposed Rule and would make it easier to navigate and understand. Other than the location of the proposed text, proposed Rule

[36] The Exchange notes that the internal cross-reference in the proposed Rule has been updated and expanded to include descriptions of each of the stop price, auto-match, and auto-match limit price, which difference from the current CUBE rule is not material because it does not impact functionality. The Exchange has relocated this text to the beginning of the Rule (as opposed to where this provision resides (in current Rule 971.1NY(b)(7)) because the Exchange believes that the permissible MPV for CUBE Orders and certain Contra Orders is fundamental and thus is logically included at the outset of the Rule.

[37] *Compare* proposed Rule 971.1NYP(a)(2) (referring to the ''NBBO'' and ''Exchange BBO'') *with* Rules 971.1NY(b) (providing that ''[f]or purposes of determining whether a CUBE Order is eligible to initiate an Auction, references to the National Best Bid or Offer ('NBBO') or Exchange Best Bid or Offer (''BBO'') refer to the quoted market at the time the Auction is initiated''); 971.1NY(a) (referring to ''the National Best Offer ('NBO') (National Best Bid ('NBB')'').

[38] *See, e.g.,* Rule 971.1NY(a) (providing, in relevant part, that the ''Auction begins with an 'initiating price','' and that, ''[a]t the conclusion of the Auction, the CUBE Order may execute at multiple prices within a permissible range . . . .'').

[39] *See* Rules 971.1NY(b)(1)(A) and (B) (providing pricing requirements for a CUBE Order for 50 contracts or more and for a CUBE Order for fewer than 50 contracts, respectively).

[40] The Exchange notes that current Rule 971.1NY(b)(1)(B), which will not apply to CUBE Auctions on Pillar, requires that a CUBE Order for fewer than 50 contracts must be priced at least one cent ($0.01) better than any displayed interest on the Exchange's Consolidated Book. As discussed, *supra,* the Exchange would continue to protect displayed Customer interest at the BBO for smaller-sized CUBE Orders. *See* proposed Rules 971.1NYP(a)(3) (carving out the exception to the initiating price parameters for CUBE Orders submitted in a penny-wide market) and (b)(5) (describing the handling of CUBE Orders submitted in a penny-wide market).

[41] *Compare* proposed Rule 971.1NYP(a)(3) *with* Rule 971.1NY(a) (providing that, for CUBE Orders for 50 or more contracts, the ''initiating price'' for a CUBE Order to buy (sell) will be the lower (higher) of the CUBE Order's limit price or the NBO (NBB), except as provided in (proposed) paragraph (b)(5) of this Rule).

[42] *Compare* proposed Rule 971.1NYP(a)(4) *with* Rule 971.1NY(b)(1) and (b)(1)(A) (providing that a CUBE Order to buy (sell) for 50 contracts or more may execute at prices equal to or between the initiating price as the upper (lower) bound and the NBB (NBO) as the lower (upper) bound, provided that if there is Customer interest in the Consolidated Book at the BB (BO), the lower (upper) bound of executions is the higher (lower) of the BB plus one cent (BO minus one cent) or the NBB (NBO)).

[43] *See* proposed Rule 971.1NYP(a)(4)(A).

[44] *See* Rule 971.1NY(b)(1)(C) (providing that ''[i]f the BBO on the same side as the CUBE Order updates during the Auction, the range of permissible executions will adjust in accordance with the updated BBO, unless the incoming same-side interest that would update the BBO would cause the Auction to conclude early pursuant to paragraph (c)(4)(D) of this Rule.'').

[45] *See* proposed Rule 971.1NYP(a)(4)(B). *See* Rule 971.1NY(b)(3) (''CUBE Orders, once accepted, will never execute outside the range of permissible executions and will never trade through their own limit price. Unrelated quotes and orders that participate in the Auction will never trade through their own limit price.'').

971.1NYP(a)(4)(B) is identical to current Rule 971.1NY(b)(3).

The Exchange notes that, on Pillar, current Rule 971.1NY(b)(1)(D), which provides that if there is a Marketable Order to sell (buy) that is being collared, the displayed price of the collared order minus (plus) one Trading Collar shall be considered the BO (BB) when determining the range of permissible executions,'' would no longer apply.[46] The Exchange is modifying how it handles Market Orders on Pillar as well as the operation of the Trading Collar. As a result, neither current Rule 967NY (Price Protection—Orders) nor the Trading Collar functionality described therein will apply on Pillar and will instead be replaced by a modified Trading Collar.[47]

Although all CUBE Orders would be subject to the above-described single pricing parameter, the Exchange would continue to require price improvement for CUBE Orders for fewer than 50 contracts in tight (*i.e.,* penny-wide) markets.[48]

• Proposed Rule 971.1NYP(b)(5) would provide that CUBE Orders for fewer than 50 contracts would be rejected when the NBBO is one cent ($0.01) wide, unless the Initiating Participant guarantees the execution of the CUBE Order to buy (sell) at a price that is equal to the NBO minus one cent (NBB plus one cent) and there is no displayed Customer interest in the Consolidated Book at the NBB (NBO).[49]

The proposed change is identical to current Rule 971.1NY(b)(6)(A) insofar as it would require price improvement for CUBE Orders of fewer than 50 contracts when the NBBO has a bid/offer spread of one cent ($0.01). However, unlike the current rule, rather than reject CUBE Orders for fewer than 50 contracts when the BBO has a bid/offer spread of one cent ($0.01),[50] the Exchange would only reject such orders when the Exchange is setting the NBBO (*i.e.,* BBO = NBBO) and there is same-side (CUBE side) displayed Customer interest on the NBBO. The Exchange proposes to reject such smaller-sized CUBE Orders to avoid non-Customer interest trading ahead of displayed Customer interest.[51]

This proposed change is substantially the same as current Rule 971.1NY(b)(6)(B), except that rather than reject all smaller-sized CUBE Orders when the BBO is one cent ($0.01) wide, the Exchange would only reject such orders to protect displayed Customer interest.[52] This proposed functionality is not new and is consistent with the Exchange's current handling for such smaller-sized CUBE Orders in penny-wide NBBO markets as well as with the handling of smaller-sized paired agency orders on other options exchanges.[53]

CUBE Eligibility Requirements

On Pillar, the Exchange would continue to allow all options traded on the Exchange to be eligible to participate in a CUBE Auction.[54] Further, as proposed, the Exchange would continue to reject CUBE Orders (together with Contra Orders) under the following circumstances, each of which are identical to the reasons for rejection of such orders per current Rule 971.1NY(b)(2), (b)(4), and (b)(10), respectively, as described below.[55]

• Proposed Rule 971.1NYP(b)(2) is identical to Rule 971.1NY(b)(2) and would provide that CUBE Orders to buy (sell) with a limit price below (above) the lower (upper) bound of executions specified in proposed Rule 971.1NYP(a)(4) (described above) would not be eligible to initiate an Auction and would be rejected, along with the Contra Order.[56]

• Proposed Rule 971.1NYP(b)(3) is identical to Rule 971.1NY(b)(4) and would provide that CUBE Orders submitted before the opening of trading would not be eligible to initiate an Auction and would be rejected, along with the Contra Order.

• Proposed Rule 971.1NYP(b)(7) is identical to Rule 971.1NY(b)(10) and would provide that CUBE Orders submitted during a trading halt are not eligible to initiate an Auction and would be rejected, along with the Contra Order.

In addition, the proposed Rule would continue to reject CUBE Orders (together with Contra Orders) under the following circumstances, which differ slightly the from the current rule as follows.[57]

• Proposed Rule 971.1NYP(b)(4) would reject CUBE Orders submitted when there is insufficient time in the trading session to conduct an Auction. However, whereas the current rule provides that CUBE Orders are rejected if submitted during ''the final second of the trading session,'' the proposed Rule would provide that CUBE Orders would be rejected if submitted ''when there is insufficient time for an Auction to run the full duration of the Response Time Interval.'' [58] The Exchange believes that the proposed change would better account for the fact that a CUBE Auction may last for as little as 100 milliseconds—well below the permitted maximum of one second as stated in the

[46] *See* Rule 971.1NY(b)(1)(D) (providing that ''[i]f there is a Marketable Order to sell (buy) that has been displayed pursuant to Rule 967NY(a)(4)(A), the displayed price of the collared order minus (plus) one Trading Collar shall be considered the BO (BB) when determining the range of permissible executions'').

[47] The Exchange has submitted a separate rule filing to adopt Trading Collar functionality for trading on Pillar, which functionality is described in proposed Rule 900.3NYP(a)(4) (the ''Pillar Trading Collar Filing''). *See* NYSEAmer–2023–11P. The functionality described in the Pillar Trading Collar Filing is identical to the functionality described in Arca Options Rule 6.62P–O(a)(4).

[48] The Exchange notes that current Rule 971.1NY(b)(1)(B), which will not apply to CUBE Auctions on Pillar, requires that CUBE Order is for fewer than 50 contracts must be priced at least one cent ($0.01) better than any displayed interest on the Exchange's Consolidated Book. As discussed herein, the Exchange would continue to protect displayed Customer interest at the BBO for smaller-sized CUBE Orders in penny-wide markets. *See* proposed Rule 971.1NYP(b)(5).

[49] *See* Rule 971.1NY(b)(6)(B) (providing, in relevant part, that CUBE Orders for fewer than 50 contracts will be rejected, among other reasons, when the NBBO is $0.01 wide, unless the Initiating Participant guarantees the execution of the CUBE Order to buy (sell) at a price that is equal to the NBO minus one cent (NBB plus one cent)).

[50] *See* Rule 971.1NY(b)(6)(A) (providing, in relevant part, that CUBE Orders for fewer than 50 contracts will be rejected when the BBO is $0.01 wide).

[51] *See* proposed Rule 971.1NYP(b)(5).

[52] *See* proposed Rule 971.1NYP(b)(5) (''CUBE Orders for fewer than 50 contracts will be rejected when the NBBO is one cent ($0.01) wide, unless the Initiating Participant guarantees the execution of the CUBE Order to buy (sell) at a price that is equal to the NBO minus one cent (NBB plus one cent) and there is no Customer interest in the Consolidated Book at the NBB (NBO)).''.

[53] *See, e.g.,* Cboe Rule 5.37(b)(1)(A) (providing that, *when the NBBO width is one penny ($0.01),* and the agency order is for less than 50 contracts, the stop price must be ''at least one minimum increment better than the then-current NBO (NBB) or the Agency Order's limit price (if the order is a limit order), whichever is better''; Cboe EDGX Rule 21.19 (b)(1)(A) (same); Nasdaq ISE, Options 3 Section 13(b)(1) (providing that, *when the NBBO width is one penny ($0.01),* and the agency order is for less than 50 contracts, ''the Crossing Transaction must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order and better than the limit order or quote on the Nasdaq ISE order book on the same side of the Agency Order).

[54] *See* proposed Rule 971.1NYP(b) (CUBE Auction Eligibility Requirements), which is identical to the first sentence of current Rule 971.1NY(b).

[55] *See infra* regarding for discussion of the proposed Rules 971.1NYP(a), (a)(1)(A) and (a)(4)(B) as compared to their identical counterparts in current Rules 971.1NY(b)(3), (b)(7), and (b)(8) which proposed provisions have been relocated to earlier in the Rule.

[56] The Exchange notes that the proposed Rule differs from the current rule in that it includes an updated cross-reference to the permissible range of executions, which difference is immaterial because it does not impact functionality. *See* proposed Rule 971.1NYP(b)(2).

[57] *See infra* for discussion of proposed Rule 971.1NYP(b)(5) as compared with current Rule 971.1NY(b)(6) (regarding requiring price improvement for CUBE Orders for fewer than 50 contracts under certain circumstances in a penny-wide market).

[58] *Compare* proposed Rule 971.1NYP(b)(4) *with* Rule 971.1NY(b)(5).

current rule.[59] The Exchange also proposes to remove the superfluous reference to ''in the affected series,'' which would streamline the proposed Rule text.[60] The Exchange proposes to make the same change to current Rule 971.1NY(b)(5).[61] The Exchange believes that this proposed change (to the current rule and proposed Rule) would add clarity, transparency, and internal consistency to Exchange rules regarding when CUBE Orders may be rejected—particularly to market participants submitting CUBE Orders late in the trading day.[62]

• Proposed Rule 971.1NYP(b)(6) would provide that the Exchange would reject CUBE Orders submitted when the NBBO is crossed.[63]

• However, unlike the current rule, the Exchange would no longer reject CUBE Orders when the NBBO is locked.[64] The Exchange believes this more permissive standard, which is the same on other options exchanges, would allow more CUBE Auctions to occur on Pillar, thus increasing trading opportunities.[65]

Finally, on Pillar, the Exchange proposes to allow CUBE Orders in the same series as orders exposed pursuant to Rule 994NY (Broadcast Order Liquidity Delivery Mechanism) (or ''BOLD'') to occur simultaneously. This would be new on Pillar as current functionality limitations dictate that CUBE Orders in the same series as orders exposed by BOLD are rejected.[66] As such, the proposed Rule would not include information contained in current Commentary .04 to Rule 971.1NY. The Exchange believes this proposed enhancement to CUBE Auction functionality—that the Pillar platform will accommodate both such orders in the same series at the same time—would allow more CUBE Orders to be accepted, which improved opportunities for price improvement benefits all market participants.[67]

On Pillar, the Exchange proposes to continue to allow Initiating Participants to guarantee the CUBE Order with a specified stop price or by utilizing auto match or auto-match limit.[68]

Proposed Rule 971.1NYP(b)(1)(A), like current Rule 971.1NY(c)(1)(A), would describe the requirements for a ''stop price,'' which are identical to current Rule 971.1NY(c)(1)(A), except as noted below.

• Proposed Rule 971.1NYP(b)(1)(A) would describe the ''stop price,'' except that unlike the current rule but consistent with current functionality, the proposed Rule would explicitly state that the stop price is ''the price at which the Initiating Participant guarantees the CUBE Order'', which stop price ''must be executable against the initiating price of the Auction.'' [69] The Exchange believes that specifying that the stop price must be ''executable'' against the initiating price is a more succinct way of stating the (current rule) requirement that such stop price must be ''equal to or below (above) the initiating price of the Auction'' for a CUBE Order to buy (sell).[70] The Exchange believes that this proposed distinction is immaterial because the functional requirement set forth in the proposed Rule is the same the current requirement albeit stated differently.

• Proposed Rule 971.1NYP(b)(1)(A) would also provide that (identical to current Rule 971.1NY(c)(1)(A)):

○ The stop price for a CUBE Order to buy (sell) that is below (above) the lower (upper) bound of the range of permissible executions would be repriced to the lower (upper) bound; and

○ If the stop price specified for a CUBE Order to buy (sell) is above (below) the initiating price, such stop price would render such CUBE Order ineligible to initiate an Auction and both the CUBE Order and the Contra Order would be rejected.

Proposed Rule 971.1NYP(b)(1)(B) is identical to Rule 971.1NY(c)(1)(B) and would provide that when an Initiating Participant utilizes ''auto match'' for a CUBE Order to buy (sell) the Contra Order would automatically match the price and size of all RFR Responses that are lower (higher) than the initiating price and within the range of permissible executions.

Proposed Rule 971.1NYP(b)(1)(C), like current Rule 971.1NY(c)(1)(C), would describe the requirements for an ''auto-match limit price,'' which are identical to current Rule 971.1NY(c)(1)(C), except as noted below.

• Proposed Rule 971.1NYP(b)(1)(C) would describe the ''auto-match limit price,'' except that unlike the current rule but consistent with current functionality, the proposed Rule would explicitly state that the auto-match limit price is ''the best price at which the Initiating Participant is willing to trade with the CUBE Order,'' which auto-match limit price ''must be executable against the initiating price of the Auction.'' [71]

• Proposed Rule 971.1NYP(b)(1)(C), like the current rule, would provide:

○ That the Contra Order for a CUBE Order to buy (sell) would automatically match the price and size of all RFR Responses that are priced lower (higher) than the initiating price down (up) to the auto-match limit price; [72] and

[59] *See, e.g.,* Rule 971.1NY(c)(2)(B) (providing in relevant part, that ''[t]he minimum/maximum parameters for the Response Time Interval will be no less than 100 milliseconds and no more than one (1) second.''). *See also* proposed Rule 971.1NYP(c)(1)(B) (which provides identical parameters), as discussed *supra.*

[60] *See* proposed Rule 971.1NY(b)(4). The Exchange notes that this proposed change is applicable to all CUBE Auctions—whether conducted on Pillar or not. *Compare* proposed Rule 971.1NYP(b)(4) (''CUBE Orders submitted when there is insufficient time for an Auction to run the full duration of the Response Time Interval are not eligible to initiate an Auction and shall be rejected, along with the Contra Order'') *with* current Rule 971.1NY(b)(5) (''CUBE Orders submitted during the final second of the trading session in the affected series are not eligible to initiate an Auction and shall be rejected, along with the Contra Order.'').

[61] *See* proposed Rule 971.1NY(b)(5).

[62] *See supra* for discussion of proposed Rule 971.1NYP(b)(5) as compared with current Rule 971.1NY(b)(6) (regarding requiring price improvement for CUBE Orders for fewer than 50 contracts under certain circumstances in a penny-wide market).

[63] *See* proposed Rule 971.1NYP(b)(6).

[64] *Compare* proposed Rule 971.1NYP(b)(6) (''[i]f CUBE Order is submitted when the NBBO is crossed, it will be rejected'') *with* Rule 971.1NY(b)(9) (''[i]f the NBBO is locked or crossed when a CUBE Order is submitted, it will be rejected.''). The Exchange notes that proposed Rule reorganizes this proposed provision to more clearly convey the concept that, on Pillar, CUBE Orders submitted when the NBBO is crossed would be rejected.

[65] *See, e.g.,* Cboe Rule 5.37(a)(7) (providing that, ''[t]he Initiating TPH may not submit an Agency Order [to Cboe's AIM] if the NBBO is crossed''); Cboe EDGX Rule 21.19(a)(7) (providing that, ''[a]n Initiating Member may not submit an Agency Order [to Cboe EDGX's AIM] if the NBBO is crossed'').

[66] *See* Rule 971.1NY, Commentary .04 (providing that ''[a] CUBE Order will be rejected if it is in the same series as an order exposed pursuant to Rule 994NY (Broadcast Order Liquidity Delivery Mechanism).'').

[67] Consistent with the proposed functionality, the Exchange would no longer end a CUBE Auction early upon receipt of an order exposed in the BOLD mechanism that is in the same series as the CUBE Order per Rule 971.1NY(c)(4)(F). *See* discussion, *infra,* regarding proposed Rule 971.1NYP(c)(3) (Early Conclusion of Auction).

[68] *See* proposed Rule 971.1NYP(b)(1), which is identical to the first sentence of Rule 971.1NY(c)(1).

[69] *See* proposed Rule 971.1NYP(b)(1)(A). The proposed description would align with the description of a stop price for a Complex CUBE Auction. *See, e.g.,* Rule 971.2NY(b)(1)(A) (describing the stop price as ''the price at which the Initiating Participant guarantees the Complex CUBE Order'', which stop price ''must be executable against the initiating price of the Auction'').

[70] *See* Rule 971.1NY(c)(1)(A).

[71] *See* proposed Rule 971.1NYP(b)(1)(C). The proposed description would align with the description of an auto-match limit price for a Complex CUBE Auction. *See, e.g.,* Rule 971.2NY(b)(1)(B) (describing the auto-match limit price as the most aggressive price (*i.e.,* best price) at which the Initiating Participant guarantees is willing to trade with the CUBE Order, which auto-match limit price ''must be executable against the initiating price of the Auction.'').

[72] The Exchange notes that the proposed Rule explains the same concept but uses slightly different wording than is used in the current rule. *See* Rule 971.1NY(c)(1)(C) (''For a CUBE Order to

Continued

◦ That an auto-match limit price specified for a CUBE Order to buy (sell) that is below (above) the lower (upper) bound of the range of permissible executions would be repriced to the lower (upper) bound.

• Further, the last sentence of proposed Rule 971.1NYP(b)(1)(C) is new and would provide that an auto-match limit price specified for a CUBE Order to buy (sell) that is above (below) the initiating price would not be eligible to initiate an Auction and both the CUBE Order and the Contra Order would be rejected. The Exchange notes that this proposed functionality (to reject the CUBE) based on the auto-match limit price would align with how the Exchange currently rejects and proposes to reject a CUBE based on the stop price—per Rule 971.1NY(c)(1)(A)) and proposed Rule 971.1NYP(b)(1)(A)), respectively. As such, the Exchange believes that this proposed change would add clarity, transparency, and internal consistency to Exchange rules.

CUBE Auction Process: Request for Responses and Response Time Interval

On Pillar, the Exchange proposes to utilize the same process for announcing a CUBE Auction and soliciting trading interest to potentially interact with the CUBE Order.

• Proposed Rule 971.1NYP(c) is identical to the latter portion of the first sentence of Rule 971.1NY(c) and would provide that once an Auction has commenced, the CUBE Order (as well as the Contra Order) may not be cancelled or modified.

• Proposed Rule 971.1NYP(c)(1)(A) is identical to Rule 971.1NY(c)(2)(A) and would provide that upon receipt of a CUBE Order, the Exchange would send a ''Request for Responses'' or ''RFR'' to all ATP Holders who subscribe to receive RFR messages, which RFR would identify the series, the side and size of the CUBE Order, as well as the initiating price. On Pillar, however, the RFR would also include an AuctionID that would identify each CUBE Auction, which would be a new feature.[73] The Exchange notes that other options exchanges likewise include an AuctionID on the request for response to the price improvement auction and this proposed change is therefore not new or novel.[74]

• Proposed Rule 971.1NYP(c)(1)(B) is identical to Rule 971.1NY(c)(2)(B) insofar as it provides that the ''Response Time Interval'' would refer to the time period during which responses to the RFR may be entered, which period would be no less than 100 milliseconds and no more than one (1) second. Currently, the RTI lasts for ''a random period of time within parameters determined by the Exchange and announced by Trader Update.'' [75] Rather than a random period of time, the Exchange proposes that on Pillar, the Response Time Interval would instead be a set duration of time.[76] This proposed functionality of a fixed duration for a price improvement auction is identical to functionality available on other options exchanges.[77]

Proposed Rule 971.1NYP(c)(1)(C) is identical to Rule 971.1NY(c)(2)(C) insofar as it would provide that any ATP Holder may respond to the RFR, provided such response is properly marked specifying the price, size and side of the market (''RFR Response'').[78] The proposed Rule would also provide that, consistent with current functionality (although not explicitly stated), any RFR Response to a CUBE Order to buy (sell) priced below (above) the lower (upper) bound of executions would be repriced to the lower (upper) bound of executions and is eligible to trade in the Auction at such price.[79]

RFR Responses: GTX Orders

On Pillar, the Exchange would continue to accept GTX Orders as RFR Responses and would continue to impose the following identical requirements for such orders to be eligible to trade in the CUBE Auction.

• Proposed Rule 971.1NYP(c)(1)(C)(i), like the current rule, would provide that ATP Holders may respond to RFRs with GTX Orders, which are non-routable orders that have a time-in-force contingency for the Response Time Interval and which orders must specify price, size and side of the market.[80]

• Proposed Rule 971.1NYP(c)(1)(C)(i)(a), like the current rule, would provide that GTX Orders would not be displayed on the Consolidated Book and would not be disseminated to any participants.[81]

• Proposed Rule 971.1NYP(c)(1)(C)(i)(b), like the current rule, would provide that the minimum price increment for GTX Orders would be one cent ($0.01), regardless of the MPV for the series involved in the Auction.[82]

• Proposed Rule 971.1NYP(c)(1)(C)(i)(d), like the current rule, would provide that GTX Orders may be cancelled or modified.[83]

• Proposed Rule 971.1NYP(c)(1)(C)(i)(f), like the current rule, would provide that GTX Orders priced below (above) the lower (upper) bound of executions for a CUBE Order to buy (sell) would be repriced to the lower (upper) bound of permissible executions per proposed Rule 971.1NYP(a)(4) (described above).[84]

In addition to continuing the foregoing requirements for GTX Orders, the Exchange proposes to modify or clarify the operation of GTX Orders on Pillar as follows.[85]

• The Exchange proposes new functionality on Pillar that would permit senders of GTX Orders the option to include an AuctionID to signify the CUBE Order with which

buy (sell), the Initiating Participant may specify an ''auto-match limit price'' that is equal to or below (above) the initiating price of the Auction, and the Contra Order may trade with the CUBE Order at prices that are lower (higher) than the initiating price down (up) to the auto-match limit price.'').

[73] *See* proposed Rule 971.1NYP(c)(1)(A).

[74] *See, e.g.,* Cboe Rule 5.37(c)(2) (providing that each ''AIM Auction Notification Message'' will include an ''AuctionID'').

[75] *See* Rule 971.1NY(c)(2)(B). *See* Trader Update, January 27, 2022 (announcing that, beginning February 28, 2022, the randomized timer would have a minimum of 100 milliseconds and a maximum of 105 milliseconds), available at, *https://www.nyse.com/trader-update/history#110000409951.*

[76] *See* Rule 971.1NYP(c)(1)(B).

[77] *See, e.g.,* Nasdaq ISE, Options 3 Section 13(c)(1) (providing that, Nasdaq ISE will designate via an Options Trader Alert an ''Exposure Period'' of no less than 100 milliseconds and no more than 1 second). *See also* Cboe Rule 5.37(c)(3) (providing that the ''AIM Auction period'' is a period of time determined by the Exchange, which may be no less than 100 milliseconds and no more than 3 seconds).

[78] The Exchange notes that the proposed Rule includes the non-substantive change to add ''the'' before the word ''price,'' which would add clarity and transparency to Exchange rules.

[79] *See* proposed Rule 971.1NYP(c)(1)(C). The proposed Rule would align the Exchange's treatment of RFR Responses to Complex CUBE Orders. *See, e.g.,* Rule 971.2NY(c)(1)(C) (providing, in relevant part, that any RFR Response that that crosses the same-side CUBE BBO will be eligible to trade in the Complex CUBE Auction at a price that locks the same-side CUBE BBO).

[80] *Compare* proposed Rule 971.1NYP(c)(1)(C)(i) *with* Rule 971.1NY(c)(2)(C)(i).

[81] *Compare* proposed Rule 971.1NYP(c)(1)(C)(i)(a) *with* Rule 971.1NY(c)(2)(C)(i)(a).

[82] *Compare* proposed Rule 971.1NYP(c)(1)(C)(i)(b) *with* Rule 971.1NY(c)(2)(C)(i)(b).

[83] *Compare* proposed Rule 971.1NYP(c)(1)(C)(i)(d) *with* Rule 971.1NY(c)(2)(C)(i)(d).

[84] *Compare* proposed Rule 971.1NYP(c)(1)(C)(i)(f) *with* Rule 971.1NY(c)(2)(C)(i)(f). The Exchange notes that the proposed Rule differs from the current rule in that it includes an updated cross-reference to the permissible range of executions, which difference is immaterial because it does not impact functionality

[85] The Exchange does not propose to specify in the proposed Rule that ''GTX Orders with a size greater than the size of the CUBE Order will be capped at the size of the CUBE Order,'' as set forth in current Rule 971.1NY(c)(2)(C)(i)(c). Instead, consistent with Pillar Rule 964NYP and as discussed below, the only non-Customer GTX Orders would be capped for purposes of pro rata allocation, whereas Customer GTX Orders would trade with the CUBE Order based on time. *See* proposed Rule 971.1NYP(c)(4)(B), as discussed *infra.*

such GTX Order would like to trade.[86] The Exchange believes that this proposed functionality, which is also available on other options exchanges, would allow market participants to have more control over their trading interest and may result in improved competition for price improvement in each Auction.[87]

• The Exchange proposes to describe how GTX Orders will be treated on Pillar consistent with new Pillar Rule 964NYP (described in detail below).[88] In short, on Pillar, options trading interest is prioritized and allocated in one of three categories: Priority 1—Market Orders; Priority 2—Display Orders; and Priority 3—Non-Display Orders.[89] The proposed Rule would provide that, although such orders are not disseminated or displayed (as described above), for purposes of trading and allocation with the CUBE Order, GTX Orders would be ranked and prioritized as Priority 2—Display Orders per Pillar Rule 964NYP(e).[90] The Exchange believes that this proposed change would add clarity, transparency and internal consistency to Exchange rules and would make clear to market participants responding to CUBE Auctions with GTX Orders how such interest will be prioritized on Pillar.

• The Exchange also proposes to modify the operation of GTX Orders on Pillar by restricting the interest with which such orders may trade. Currently, the second sentence of Rule 971.1NY(c)(2)(C)(i)(a) provides that a GTX Order that is not fully executed as provided for in current Rule 971.1NY(c)(4) and (c)(5)—which paragraphs permit GTX Orders to execute with other interest available at the conclusion of the Auction once such orders have executed with the CUBE Order to the extent possible—before cancelling.[91] On Pillar, the Exchange proposes that GTX Orders, which are submitted for the purpose of participating in a CUBE Auction, would execute solely with the CUBE Order to the extent possible and then cancel.[92] On Pillar, and contrary to existing functionality, a GTX Order would not execute with any non-CUBE Order Auction interest before cancelling.

• The Exchange also proposes to modify the circumstances under which a GTX Orders would be rejected. Currently, Rule 971.1NY(c)(2)(C)(i)(e) provides that GTX Orders on the same side as the CUBE Order would be rejected. On Pillar, the Exchange proposes that GTX Orders would be rejected if such GTX Order is priced higher (lower) than the initiating price of a CUBE Order to buy (sell) or if such GTX Order is submitted when there is no contra-side CUBE Auction being conducted.[93] Because, as discussed infra, on Pillar, the Exchange would allow more than one Auction in a given series to occur at once—which simultaneous Auctions could be on both sides of the market, the Exchange does not propose to reject GTX Orders submitted on the same side of a CUBE Order (as it does today) but would instead expand this rejection reason to any time there is no contra-side CUBE Auction occurring when the GTX Order is submitted.[94] The Exchange believes this proposed change would provide increased opportunities to solicit price-improving auction interest.

RFR Responses: Unrelated Quotes and Orders

Consistent with current functionality, the Exchange proposes to treat as RFR Responses certain quotes or orders that are eligible to trade in a CUBE Auction, which treatment is identical to current Rule 971.1NY(c)(2)(C)(ii)(a)–(c).

• Proposed Rule 971.1NYP(c)(1)(C)(ii) would provide that the Exchange will treat as RFR Responses quotes and orders that are on the opposite side of the market in the same series as the CUBE Order that are not marked GTX, that are received during the Response Time Interval or resting in the Consolidated Book when the Auction commences, and that are eligible to participate within the range of permissible executions specified for the Auction pursuant to proposed paragraph (a)(4) of this Rule.[95]

• Proposed Rule 971.1NYP(c)(1)(C)(ii)(a) would provide that quotes and orders received during the Response Time Interval that are not marketable against the NBBO and are not marked GTX would be posted to the Consolidated Book.[96] The Exchange proposes to qualify this provision by noting that an order that included instructions to cancel (*i.e.,* an IOC), for example, would be processed accordingly and would not post to the Consolidated Book.[97] The Exchange believes that this proposed clarification would add clarity, transparency, and internal consistency to Exchange rules.

• Proposed Rule 971.1NYP(c)(1)(C)(ii)(b) would provide that quotes and orders received during the Response Time Interval that are on the same side as the CUBE Order to buy (sell) and are priced higher (lower) than the initiating price that would post to the Consolidated Book will result in an early conclusion of the Auction pursuant to proposed paragraph (c)(3) of this Rule as discussed below.[98]

• Proposed Rule 971.1NYP(c)(1)(C)(ii)(c) would provide that quotes and orders that are not marked GTX must be priced in the MPV for the series in the Auction and any such quotes or non-GTX orders submitted with a one cent MPV when the series has either $0.05 or $0.10 MPV would be rejected as invalid.[99]

[86] *See* proposed Rule 971.1NYP(c)(1)(C)(i) (providing in relevant part that ''GTX Orders may include an AuctionID to respond to a specific CUBE Auction.''). Should the GTX Order include an apparently erroneous AuctionID (*e.g.,* a GTX Order to buy includes an AuctionID for a CUBE Order to buy), the Exchange would reject such GTX Order even if there are other CUBE Auctions (*e.g.,* on the contra-side with a different AuctionID) with which that GTX Order could have traded.

[87] *See, e.g.,* Cboe Rule 5.37(c)(5) (providing that the ''AIM Auction Responses'' may include, among other things, ''the AuctionID'').

[88] *See* discussion of Pillar Rule 964NYP, *infra. See also* American Pillar Priority Filing (describing the Pillar Priority Rules, which govern priority and allocation rule for options trading on Pillar).

[89] *See* Pillar Rule 964NYP(e) (providing that ''[a]t each price, all orders and quotes are assigned a priority category and, within each priority category, Customer orders are ranked ahead of non-Customer'' and that ''[i]f, at a price, there are no remaining orders or quotes in a priority category, then same-priced interest in the next priority category has priority.'').

[90] *See* proposed Rule 971.1NY(c)(1)(C)(i)(a) (''GTX Orders will not be displayed or disseminated to any participants. For purposes of trading and allocation with the CUBE Order, GTX Orders will be ranked and prioritized with same-priced Limit Orders as Priority 2—Display Orders, per [Pillar] Rule 964NYP(e).'').

[91] *See* also Rule 971.1NY(c)(3), (c)(4), and (c)(5) (providing that GTX Orders may be eligible to trade with Auction interest (other than the CUBE Order) before cancelling).

[92] *See* proposed Rule 971.1NYP(c)(1)(C)(i)(c).

[93] *See* proposed Rule 971.1NYP(c)(1)(C)(i)(e).

[94] *See id.* See also Rule 971.1NY(c)(2)(C)(i)(e) (''GTX Orders on the same side of the market as the CUBE Order shall be rejected.''). The Exchange notes that it will reject a GTX Order that includes an AuctionID for a CUBE Order that is on the same side of the market as such GTX Order even if there are contra-side CUBE Auctions (with a different AuctionID) with which that GTX Order could have traded.

[95] *Compare* proposed Rule 971.1NYP(c)(1)(C)(ii) *with* Rule 971.1NYP(c)(2)(C)(ii). The Exchange notes that the proposed Rule differs from the current rule in that it includes an updated cross-reference to the permissible range of executions, which difference is immaterial because it does not impact functionality.

[96] *Compare* proposed Rule 971.1NYP(c)(1)(C)(ii)(a) *with* Rule 971.1NYP(c)(2)(C)(ii)(a).

[97] *See* Rule 971.1NYP(c)(2)(C)(ii)(a).

[98] *Compare* proposed Rule 971.1NYP(c)(1)(C)(ii)(b) *with* Rule 971.1NY(c)(2)(C)(ii)(b). The Exchange notes that the proposed Rule differs from the current rule in that it includes an updated cross-reference to the permissible range of executions, which difference is immaterial because it does not impact functionality.

[99] *Compare* proposed Rule 971.1NYP(c)(1)(C)(ii)(c) *with* Rule 971.1NYP(c)(2)(C)(ii)(c). The Exchange notes that the proposed Rule differs from the current rule in that it includes reference to ''five cents'' and ''ten

Continued

Concurrent CUBE Auctions [100]

The Exchange proposes to enhance functionality on Pillar by allowing more than one CUBE Auction in the same series to run concurrently.[101] The Exchange proposes that if there are multiple CUBE Auctions in a series that are running concurrently, such Auctions would conclude sequentially, based on the time each CUBE Auction was initiated, unless an Auction concludes early, per proposed paragraph (c)(3) of this Rule (discussed below).[102] As further proposed, at the time each CUBE Auction concludes, the CUBE Order would be allocated against all eligible RFR Responses available at the time of conclusion.[103] In the event there are multiple Auctions underway that are each terminated early, such Auctions would be processed sequentially based on the time each CUBE Auction was initiated.[104] The Exchange believes that this proposed functionality would allow more CUBE Auctions in the same series to be conducted, thereby increasing opportunities for price improvement on the Exchange to the benefit of all market participants.

In addition, as discussed below, the proposal to add concurrent auctions would also prevent the early end of a CUBE Auction in progress when the Exchange receives a new CUBE Order in the same series.[105] By eliminating this early end scenario, the Exchange would increase the likelihood that an Auction may run for the full Response Time Interval thus affording more time and opportunity for the arrival of price-improving interest to the benefit of investors. The Exchange notes that allowing more than one price improvement auction at a time in the same series for paired agency orders of 50 or more contracts is not new or novel and is current functionality on other options exchanges.[106]

The proposal to allow simultaneous Auctions in the same series for CUBE Orders of fewer than 50 contracts would benefit investors because it would afford smaller-sized CUBE Orders increased opportunity to solicit price-improving auction interest—including because receipt of a new CUBE Order would no longer cause the Auction in progress to end early.[107] The Exchange further believes that this proposed change would provide additional benefits to Customers, as smaller-sized CUBE Orders tend to represent retail interest, and could improve the Customer experience on the Exchange by increased trading opportunities in the CUBE Auction. As discussed above, the Exchange would continue to protect smaller-sized CUBE Orders in penny-wide markets by requiring the maximum available price improvement for such orders (*i.e.,* one cent) and rejecting such orders in penny-wide markets when price improvement is not possible. These protections would remain when the proposed concurrent Auctions are occurring.[108] Thus, the Exchange believes this proposed change should allow the Exchange to better compete for auction-related order flow that may lead to an increase in Exchange volume, while continuing to ensure that displayed Customer interest on the Consolidated Book is protected, to the benefit of all market participants.

The Exchange believes that the Pillar trading platform has sufficient capacity to process a large volume of concurrent Auctions for CUBE Orders of any size, including for CUBE Orders of fewer than 50 contracts.

Conclusion of Auction

As is the case today, on Pillar, a CUBE Auction would conclude at the end of the Response Time Interval, unless there is a trading halt in the affected series or if the CUBE Auction ends pursuant to proposed paragraph (c)(3) of this Rule (discussed below).[109] As further proposed, at the conclusion of the Auction, including if there is a trading halt in the affected series, the CUBE Order would execute pursuant to proposed paragraph (c)(4) of this Rule (discussed below).[110] The Exchange also proposes that, after the conclusion of the Auction, the residual RFR Responses (excluding GTX Orders) would be processed in accordance with Pillar Rule 964NYP (Order Ranking, Display, and Allocation).[111] This proposed rule is consistent with current CUBE functionality, except that current Rule 964NY would no longer govern priority and allocation of any portion of RFR Responses (not marked GTX) that remain after any execution with the CUBE Order.[112]

Early Conclusion of Auction

On Pillar, the Exchange proposes to reduce the number of scenarios that would cause a CUBE to end early (*i.e.,* before the end of the Response Time Interval) based on trading interest that arrives during the Auction. Currently, there are six scenarios that would cause an Auction to end early.[113] On Pillar, the Exchange proposes that only one such ''early end'' scenario would apply. As proposed, and consistent with Rule 971.1NY (c)(4)(D), a CUBE Auction would conclude early if, during the Auction, the Exchange receives an unrelated non-marketable order or quote on the same-side of the market as the CUBE Order to buy (sell) that would adjust the lower (upper) bound of the range of permissible executions to be higher (lower) than the initiating

cents'' immediately before each numerical indication of the applicable MPV, which modification the Exchange believes is immaterial as it would not alter functionality but would instead add clarity, transparency, and internal consistency to Exchange rules.

[100] The Exchange notes that the proposal to allow multiple single-leg CUBE Auctions to run concurrently on Pillar is distinct from the current (and proposed) functionality that permits a single-leg Auction in an option series to run concurrent with a Complex CUBE Auction in the same series. *See* Commentary .01 to Rule 971.1NY and proposed Commentary .01 to Rule 971.1NYP (discussed below).

[101] *See* proposed Rule 971.1NYP(c). *See* Rule 971.1NY(c) (providing that ''[o]nly one Auction may be conducted at a time in any given series.'').

[102] As discussed *infra,* a CUBE Auction may conclude early (*i.e.,* before the end of the Response Time Interval) because of certain trading interest that arrives during the Auction or in the event of a trading halt in the underlying security while the Auction is in progress. *See* proposed Rule 971.1NYP(c)(2).

[103] *See* proposed Rule 971.1NYP(c)(2).

[104] *See id.*

[105] *See* Rule 971.1NY(c)(4)(A).

[106] *See, e.g.,* Cboe Rule 5.37(c)(1) (providing that multiple price-improvement auctions in the same series for agency orders of 50 contracts or more can run concurrently and will be processed sequentially, including if all such auctions are ended early and providing that if only one such auction ends early it will be allocated when it ends); EDGX Rule 21.19(c)(1) (same). The Exchange does not propose to limit the concurrent auction functionality to CUBE Orders of 50 or more and would allow concurrent auctions for CUBE Orders of any size (*i.e.,* including for CUBE Orders for fewer than 50 contracts). The Exchange believes this extension of this concurrent auction functionality to smaller-sized CUBE Orders is non-controversial because it should not raise any issues that differ from those previously considered when other options exchanges adopted this functionality for larger-sized agency orders submitted to price improvement auctions.

[107] *See, e.g.,* proposed Rule 971.1NYP(c)(3) (setting forth the sole early end scenario on Pillar).

[108] *See, e.g.,* proposed Rule 971.1NYP(b)(5). *See also* SEC Approval of CUBE Pilot (focusing solely on guaranteeing price improvement to CUBE Orders for fewer than 50 contracts and making no mention of restriction on concurrent auctions for such smaller-sized CUBE Orders).

[109] *See* proposed Rule 971.1NYP(c)(2), which is identical to current Rule 971.1NYP(c)(3), except for the updated cross-reference to the early conclusion section of the proposed Rule.

[110] *See* proposed Rule 971.1NYP(c)(2), which is identical to current Rule 971.1NYP(c)(3), except for the updated cross-reference to the order allocation section of the proposed Rule.

[111] *See* proposed Rule 971.1NYP(c)(2).

[112] *See* Rule 971.1NY(c)(5)(C) (''After the CUBE Order has been executed, any remaining RFR Responses not marked GTX will be processed in accordance with Rule 964NY Order Display and Priority.'').

[113] *See* Rule 971.1NY(c)(4)(A)-(F). *See* proposed Rule 971.1NYP(c)(3) (which early end scenario is the same as set forth in current Rule 971.1NY(c)(4)(D), as discussed *infra).*

price.'' [114] In addition to being consistent with current functionality, this early end scenario is consistent with functionality available on other options exchanges.[115]

On Pillar, unlike per the current rule, the following scenarios would not cause the early end of a CUBE Auction.

• First, because the Exchange proposes to allow concurrent auctions (as previously discussed), the Exchange would no longer end a CUBE Auction early based on the arrival of a new CUBE Order.[116]

• Second, because the Exchange proposes to allow CUBE Auctions in the same series as orders exposed in the BOLD mechanism (as discussed, *supra*), there is no reason to end an Auction early based on the arrival of such exposed order.[117]

• In addition, the Exchange would not end an Auction early based upon interest that arrives during the Auction (on either side of the market) that is marketable against the RFR Responses, the NBBO or BBO (if not routable).[118] The Exchange believes that such interest should trade against interest in the Consolidated Book to the extent possible and, if any size of the incoming interest remains at the conclusion of the Auction, such contra-side interest may be eligible to trade with the CUBE Order. This proposed handling is consistent with functionality available on other options exchanges.[119]

• The Exchange likewise will no longer end a CUBE Auction based on the arrival of AON Orders because the Exchange believes that AON Orders should trade against interest in the Consolidated Book to the extent possible and, if the AON Order is still on the Consolidated Book at the conclusion of the Auction, such contra-side AON Order may be eligible to trade with the CUBE Order.[120]

The Exchange believes that, on Pillar, allowing an Auction to continue uninterrupted in the above-referenced circumstances would result in fewer CUBE Auctions ending early and, as such, would provide more opportunities for price improvement to the benefit of all market participants.

CUBE Order Allocation on Pillar

The Exchange proposes to modify how a CUBE Order is allocated at the end of the Auction to conform with new Pillar Rule 964NYP (described below).

Current Rule 971.1NY(c)(5) describes CUBE Order allocation. Specifically, at the conclusion of the Auction, any RFR Responses (including GTX Orders) [121] that are larger than the CUBE Order will be capped at the CUBE Order size for purposes of size pro rata allocation of the CUBE Order per Rule 964NY(b)(3)'' [122] and that, at each price level, displayed Customer orders have first priority to trade with the CUBE Order per pursuant to Rule 964NY(c)(2)(A).[123] Further, Rule 971.1NY(c)(5)(B) provides that, after executing against displayed Customer orders at a price, the CUBE Order will be allocated among the RFR Responses and the Contra Order, which allocation may vary depending on whether the Contra Order guaranteed the CUBE Order using a single-stop price, auto-match, or auto-match limit.[124]

As noted above, CUBE Orders currently trade in accordance with Rule 964NY—the Exchange's pre-Pillar priority and allocation rule. Specifically, on the Exchange, at a price, displayed interest is ranked ahead of non-displayed interest with priority afforded to Customer interest over displayed non-Customer interest; following all displayed interest at a price, followed by same-priced non-displayed interest, which interest is ranked solely in time priority with no preference given to non-displayed Customer interest.[125]

On Pillar, orders and quotes will be ranked, prioritized, and executed based on new Pillar Rule 964NYP, which aligns with the Exchange's current ranking and priority scheme. Pillar Rule 964NYP(e) provides that ''[a]t each price, all orders and quotes are assigned a priority category and, within each priority category, Customer orders are ranked ahead of non-Customer'' and that ''[i]f, at a price, there are no remaining orders or quotes in a priority category, then same-priced interest in the next priority category has priority.'' [126] The three categories are: Priority 1—Market Order, Priority 2—Display Orders and Priority 3—Non-Display Orders (the ''Pillar Priority categories'').[127] Thus, on Pillar, Customer orders in each priority category will have first priority to trade ahead of same-priced non-Customer interest in that priority category until all interest in that Pillar Priority category is exhausted—and, if there is more than one Customer in that category at the same price, the Customer first in time has priority.[128] Furthermore, as is the case today, the Exchange would allocate same-priced, non-Customer interest that is displayed in the Consolidated Book on a size pro rata basis.[129] Finally, on Pillar (and unlike current pre-Pillar Rule 964NY), at a price, non-displayed Customer orders will trade in time priority before same-priced non-displayed, non-Customer interest, which also trades in time.[130]

The Exchange proposes that CUBE Auctions on Pillar would follow the priority, ranking, and allocation model set forth in the above-described Pillar Rule 964NYP. As proposed, Rule 971.1NYP(c)(4) would provide that, at each price, CUBE Orders would be

[114] *See* proposed Rule 971.1NYP(c)(3). The Exchange notes that this early end scenario covers instances in which the entire size of the incoming interest is non-marketable on arrival as well as instances where a portion of the incoming interest is marketable, and trades on arrival, but the untraded balance is non-marketable. In both instances, the non-marketable interest would post to the Consolidated Book thereby adjusting the range of permissible executions.

[115] *See, e.g.,* Rule 971.1NY (c)(4)(D), Nasdaq ISE, Options 3 Section 13(c)(5)(i) (providing that an auction would end early ''any time the Exchange best bid or offer improves beyond the price of the Crossing Transaction on the same side of the market as the Agency Order'').

[116] *See* Rule 971.1NY(c)(4)(A). *See* proposed Rule 971.1NYP(c) (providing for concurrent CUBE Auctions at the same time in the same series).

[117] *See* Rule 971.1NY(c)(4)(F). As discussed, *supra,* on Pillar, the Exchange would no longer reject (as it does today) a CUBE Order in the same series as an order exposed by the BOLD Mechanism.

[118] *See* Rule 971.1NY(c)(4)(B)–(C).

[119] *See, e.g.,* Cboe 5.37(d)(2) and Nasdaq ISE, Options 3 Section 13(d)(4) (likewise providing that market or marketable interest on the opposite-side of the agency order would not cause the early end of an auction, would execute with interest outside of the auction and, if size remained, potentially could receive an allocation against auction interest).

[120] *See* Rule 971.1NY(c)(4)(E).

[121] *See* Rule 971.1NY(c)(2)(C)(i)(c) (''GTX Orders with a size greater than the size of the CUBE Order will be capped at the size of the CUBE Order.''). On, Pillar, however, only non-Customer GTX Orders would be capped at the CUBE Order size for purposes of size pro rata allocation whereas Customer GTX Orders would trade with the CUBE Order based on time. *See, e.g.,* proposed Rules 971.1NYP(c)(4)(B), as discussed, *infra.*

[122] Rule 964NY(b)(3) describes the Exchange's pro rata allocation formula, which same formula is described in Pillar Rule 964NYP(i).

[123] Rule 964NY(c)(2)(A) provides an ''inbound order will first be matched against all available displayed Customer interest in the Consolidated Book.''

[124] *See* Rule 971.1NY(c)(5)(B)(i)–(iii).

[125] *See* Rule 964NY(b), (c). *See also* American Pillar Priority Filing (describing priority and allocation per Rule 964NYP).

[126] *See* Pillar Rule 964NYP(e) (Priority Categories).

[127] *See* Pillar Rule 964NYP(e)(1)–(3) (setting forth Pillar Priority Categories).

[128] *See* Pillar Rule 964NYP(e), (j). For example, same-priced interest ranked Priority 1—Market Orders will afford Customer orders at a price first priority, followed by same-priced non-Customer interest. Customer interest ranked Priority 2 and Priority 3 are likewise afforded first priority at a price.

[129] *See* Pillar Rule 964NYP(i) (Size Pro Rata Allocation) (setting forth Pillar pro rata allocation formula). The Exchange notes that the Pillar pro rata allocation formula is identical to that set forth in current Rule 964NY(b)(3) (Size Pro Rata Allocation).

[130] *See* Pillar Rule 964NYP(j)(6)–(7).

allocated consistent with Pillar Rule 964NYP as follows.

• First priority to execute with the CUBE Order is given to Customer RFR Responses, followed by same-priced non-Customer RFR Responses ranked Priority 1—Market Orders (each, ''Priority 1 Interest'');

• Next priority to execute with the CUBE Order is given to Customer RFR Responses ranked Priority 2—Display Orders (''Priority 2 Customer Interest''), followed by same-priced non-Customer RFR Responses ranked Priority 2—Display Orders; and

• Third priority to execute with the CUBE Order is afforded to Customer RFR Responses followed by same-priced non-Customer RFR Responses ranked Priority 3—Non-Display.[131]

The Exchange believes the proposal to align CUBE Order allocation with Pillar Rule 964NYP(j) would add clarity, transparency, and internal consistency to Exchange rules. By following Pillar Rule 964NYP(j), the Exchange notes that, at a price, non-Customer Priority 1 interest would execute ahead of same-priced Customer Priority 2 Interest.[132] In addition, as discussed further below, before the Contra Order will receive its guaranteed allocation, the CUBE Order would first trade, at a price, with all Priority 1 Interest and with Priority 2 Customer Interest to ensure the priority of Customer interest is consistent with the Exchange's Customer priority model.

Proposed Rule 971.1NYP(c)(4)(B) (Allocation) would provide that RFR Responses would be allocated based on time or per pro rata allocation. Specifically, RFR Responses of Customers ranked Priority 1 and 2, as well as all RFR Responses ranked Priority 3, would trade with the CUBE Order based on time per Pillar Rule 964NYP(j).[133] And, RFR Responses of non-Customers ranked Priority 1 and Priority 2 would be capped at the CUBE Order size for purposes of size pro rata allocation per Pillar Rule 964NYP(i).[134] The Exchange notes that this proposed functionality is consistent with current Auction functionality, except that on Pillar, Customer RFR Responses would be allocated based on time (and no longer on a size pro rata basis), which handling would align the allocation of CUBE Orders with the Exchange's Customer priority model.[135]

Proposed Rule 971.1NYP(c)(4)(C) (Surrender Quantity) would be new functionality and would provide that an Initiating Participant that guarantees a CUBE Order with a stop price (per proposed Rule 971.1NYP(b)(1)(A))[136] has the option of designating a ''Surrender Quantity'' and receiving some percentage less than the 40% participation guarantee. As proposed, if the Initiating Participant elects a Surrender Quantity, and there is sufficient contra-side interest equal to or better than the stop price to satisfy the CUBE Order, the CUBE Order executes against the Contra Order up to the amount of its Surrender Quantity.[137] Absent sufficient size of contra-side interest equal to or better than the stop price, the Contra Order would trade with the balance of the CUBE Order at the stop price regardless of its Surrender Quantity, which functionality is consistent with current Contra Order behavior.[138] Finally, as proposed, Surrender Quantity information is not disseminated to other market participants and may not be modified after it is submitted. The Exchange notes that the concept of ''Surrender Quantity'' is available on other options exchanges and is therefore not new or novel.[139] The Exchange believes that providing Initiating Participants the option to designate a Surrender Quantity in CUBE Auctions on Pillar would enhance functionality by affording flexibility and discretion to the Contra Order while providing additional opportunities for RFR Responses to interact with the CUBE Order. In addition, the proposed enhancement to add the option of electing a Surrender Quantity would be a competitive change and would make the Exchange a more attractive venue to send (auction-related) order flow.

Proposed Rule 971.1NYP(c)(4)(D) (RFR Responses and Contra Order Allocation) would provide that, at a price, RFR Responses are allocated in accordance with proposed paragraphs (c)(4)(A) (Customer Priority) and (c)(4)(B) (Time or Size Pro Rata Allocation) and that any allocation to the Contra Order would depend upon the method by which the CUBE Order was guaranteed.[140]

• *Stop Price.*[141] Consistent with current functionality, a CUBE Order to buy (sell), that is guaranteed by a stop price would execute first with RFR Responses priced below (above) the stop price, beginning with the lowest (highest) price within the range of permissible executions.[142]

○ Next, any remaining contracts of the CUBE Order would execute at the stop price, first with all Priority 1 Interest, followed by Priority 2 Customer Interest, which as noted above is consistent with new Pillar Rule 964NYP(j).[143]

○ Then, at the stop price, the Contra Order would receive an allocation of the greater of 40% of the original CUBE Order size or one contract (or the greater of 50% of the original CUBE Order size

[131] *See* Rule 971.1NYP(c)(4)(A) (Customer Priority).

[132] As discussed in the American Pillar Priority Filing, non-Customer interest ranked Priority 1 would consist of Market Orders that are ranked and displayed at the Trading Collar price, which orders would be cancelled if held more than 500 milliseconds without trading, per proposed Rule 900.3NYP(a)(4)(D). *See* American Pillar Priority Filing. *See also* the Pillar Trading Collar Filing (NYSEAmer–2023–11P). The proposed Trading Collar functionality would operate in the same manner as per Arca Options Rule 6.62P–O(a)(4)(D) (Application of the Trading Collar, which provides that ''[i]f an order to buy (sell) would trade or route above (below) the Trading Collar or would have its working price repriced to a Trading Collar that is below (above) its limit price, the order will be added to the Consolidated Book at the Trading Collar for 500 milliseconds and if not traded within that period, will be cancelled'' even if repriced or routed and, if routed, any returned portion will likewise be cancelled). *See id.*

[133] *See* proposed Rule 971.1NYP(c)(4)(B)(i) (Time).

[134] *See* proposed Rule 971.1NYP(c)(4)(B)(ii) (Size Pro Rata). The size pro rata formula set forth in Pillar Rule 964NYP(i) is identical to the size pro rata formula set forth in Rule 964NY(b)(3). *See* American Pillar Priority Filing.

[135] *See, e.g.,* Pillar Rule 964NYP(j). Because the proposed Rule details at the outset of the order allocation section how both Customer and non-Customer RFR Responses would be processed (*i.e.,* in time or on a pro rata allocation basis), the Exchange believes it is not necessary to repeat this (now superfluous) information throughout proposed Rule 971.1NYP(c)(4) (Allocation of CUBE Orders). *See, e.g.,* Rules 971.1NY(c)(5)(C), (c)(5)(B)(i)(b), (c)(5)(B)(ii)(b), and (c)(5)(B)(iii)(b) (repeating in each rule provision how RFR Responses would be allocated).

[136] *See* proposed Rule 971.1NYP(b)(1)(A) (describing single stop price).

[137] *See* proposed Rule 971.1NYP(c)(4)(C).

[138] *See* Rule 971.1NY(c)(5)(B)(i) (allocation to Contra Order that guaranteed a CUBE Order by single stop price).

[139] *See, e.g.,* NASDAQ BX, Inc., Options 3, Section 13 (ii)(A)(1) (providing that an initiating participant utilizing a single stop price may opt to ''surrender'' a percentage of its 40% guaranteed participation, ranging from 0% to 39%); Nasdaq ISE (providing that the initiating participant may be entitled to its 40% participation guarantee ''or such lower percentage requested by the Member''); Cboe Rule 5.37(e)(5) (allowing initiating participants that guarantee a paired order with a single-price submission, to elect to have ''last priority'' to trade against the agency order and will only trade with the agency order after such order has traded with all other contra-side interest at prices equal to or better than the guaranteed stop price; and further providing that ''last priority'' information is not available to other market participants and, once submitted, may not be modified); Cboe EDGX Rule 21.19(e)(5) (same).

[140] Consistent with proposed Rule 971.1NYP(c)(1)(C)(i)(c), and in contrast to current Rule 971.1NY(c)(5)(B)(i)–(iii), the proposed CUBE Order allocation section would not reference GTX Orders, as such orders would execute solely with the CUBE Order or cancel.

[141] *See* proposed Rule 971.1NYP(b)(1)(A) (describing stop price requirements).

[142] *See* proposed Rule 971.1NYP(c)(4)(D)(i)(a). *See also* Rule 971.1NY(c)(5)(B)(i)(a).

[143] *See* proposed Rule 971.1NYP(c)(4)(D)(i)(b). *See also* Rule 971.1NY(c)(5)(B)(i)(b).

or one contract if there is only one RFR Response), or the Surrender Quantity, if one has been specified. Then, any remaining CUBE Order contracts would be allocated first among remaining RFR Responses at the stop price. If all RFR Responses are filled, any remaining CUBE Order contracts would be allocated to the Contra Order. This proposed handling is consistent with current functionality except that it includes reference to the new option of designating a ''Surrender Quantity.'' [144]

○ Finally, if there are no RFR Responses, the CUBE Order would execute against the Contra Order at the stop price.[145]

• *Auto-Match.*[146] Consistent with current functionality, if a CUBE Order to buy (sell) is guaranteed by auto-match, the Contra Order would be allocated contracts equal to the aggregate size of all other RFR Responses at each price level starting with the lowest (highest) price at which an execution against an RFR Response occurs within the range of permissible executions, until a price point is reached where the balance of the CUBE Order can be fully executed. (the ''clean-up price'').[147] Also consistent with current functionality, if the Contra Order meets its allocation guarantee at a price below (above) the clean-up price, it would cease matching RFR Responses.[148]

○ As proposed, at the clean-up price, any remaining contracts of the CUBE Order would execute against all Priority 1 Interest, followed by Priority 2 Customer Interest, which as noted above is consistent with proposed new Pillar Rule 964NYP(j).[149]

○ Next, consistent with current functionality, the Contra Order would receive additional contracts required to achieve an allocation equal to the greater of 40% of the original CUBE Order size or one contract (or the greater of 50% of the original CUBE Order size or one contract if there is only one RFR Response); if there are other RFR Responses at the clean-up price, the remaining CUBE Order contracts would be allocated first among RFR Responses; and once all RFR Responses are filled at the clean-up price, any remaining CUBE Order contracts would be allocated to the Contra Order at the initiating price.[150]

○ Finally, if there are no RFR Responses, the CUBE Order would execute against the Contra Order at the initiating price, which is identical to current functionality.[151]

• *Auto-Match Limit.*[152] Consistent with current functionality, a CUBE Order to buy (sell), that is guaranteed by auto-match limit would execute first with RFR Responses at each price level priced below (above) the auto-match limit price within the range of permissible executions, beginning with the lowest (highest) price.[153]

○ Next, consistent with current functionality, the CUBE Order would be allocated to RFR Responses at a price equal to the price of the Contra Order's auto-match limit price, and if volume remains, to prices higher (lower) than the auto-match limit price; at each price level equal to or higher (lower) than the auto-match limit price, the Contra Order would be allocated contracts equal to the aggregate size of all other RFR Responses; and, if the Contra Order meets its allocation guarantee at a price below (above) the clean-up price, it would cease matching RFR Responses.[154]

○ As proposed, at the clean-up price, any remaining contracts of the CUBE Order will *execute against all Priority 1 Interest, followed by Priority 2 Customer Interest,* which as noted above is consistent with proposed new Rule 964NYP(j).[155]

○ Next, and consistent with current functionality, the Contra Order would receive additional contracts required to achieve an allocation of the greater of 40% of the original CUBE Order size or one contract (or the greater of 50% of the original CUBE Order size or one contract if there is only one RFR Response); if there are other RFR Responses at the clean-up price the remaining CUBE Order contracts would be allocated first to RFR Responses; and any remaining CUBE Order contracts would be allocated to the Contra Order at the initiating price.[156]

○ Finally, consistent with current functionality, if there are no RFR Responses, the CUBE Order would execute against the Contra Order at the initiating price.[157]

Commentary to Proposed Rule 971.1NYP for CUBE Auctions on Pillar

The Exchange proposes to adopt Commentaries .01 through .04 to the proposed Rule, which are identical to current Commentaries .01 through .03 and .05 to Rule 971.1NY, respectively, as discussed below (each a ''proposed Commentary'' or a ''current Commentary'').[158]

Proposed Commentary .01 is identical to current Commentary .01 and would describe ''Concurrent Single-Leg and Complex CUBE Auctions involving the same option series.'' As proposed, and identical to current functionality, the Exchange would allow the simultaneous conduct of a (single-leg) CUBE Auction for a given series at the same time as a Complex CUBE Auction for a Complex Order that includes the same option series.[159] Also, identical to current functionality, to the extent there are concurrent CUBE Auctions for a specific option series, each CUBE Auction will be processed sequentially based on the time each CUBE Auction commenced.[160] Finally, identical to current functionality, at the time each CUBE Auction concludes, including when it concludes early, it will be

[144] *See id.*

[145] *See* proposed Rule 971.1NYP(c)(4)(D)(i)(c). *See also* Rule 971.1NY(c)(5)(B)(i)(c) (providing that ''[i]f there are no RFR Responses, the CUBE Order shall execute against the Contra Order at the higher (lower) of the stop price or the lower (upper) bound of the range of permissible executions''). Unlike the current rule, the proposed Rule would not include language regarding the CUBE Order executing at a price other than the stop price because the proposed (and current) Rule provides that a stop price for a CUBE order to buy (sell) will be repriced to the lower (upper) bound of permissible executions if such stop price is below (above) the lower (upper) bound of the range of permissible executions. *See* proposed Rule 971.1NY(b)(1)(A); Rule 971.1NY(c)(1)(A).

[146] *See* proposed Rule 971.1NYP(b)(1)(B) (describing auto-match feature).

[147] *See* proposed Rule 971.1NYP(c)(4)(D)(ii)(a). *See also* Rule 971.1NY(c)(5)(B)(ii)(a).

[148] *See* proposed Rule 971.1NYP(c)(4)(D)(ii)(a). *See also* Rule 971.1NY(c)(5)(B)(ii)(b).

[149] *See* proposed Rule 971.1NYP(c)(4)(D)(ii)(b). *See also* Rule 971.1NY(c)(5)(B)(ii)(b).

[150] *See id.*

[151] *See* proposed Rule 971.1NYP(c)(4)(D)(ii)(c). *See also* Rule 971.1NY(c)(5)(B)(ii)(c).

[152] *See* proposed Rule 971.1NYP(b)(1)(C) (describing auto-match limit price requirements).

[153] *See* proposed Rule 971.1NYP(c)(4)(D)(iii)(a). *See also* Rule 971.1NY(c)(5)(B)(iii)(a).

[154] *See* proposed Rule 971.1NYP(c)(4)(D)(iii)(b). *See also* Rule 971.1NY(c)(5)(B)(iii)(b).

[155] *See* proposed Rule 971.1NYP(c)(4)(D)(iii)(c). *See also* Rule 971.1NY(c)(5)(B)(iii)(b).

1 *See id.*

[156] *See* proposed Rule 971.1NYP(c)(4)(D)(iii)(c). *See also* Rule 971.1NY(c)(5)(B)(iii)(b).

[157] *See* proposed Rule 971.1NYP(c)(4)(D)(iii)(d). *See also* Rule 971.1NY(c)(5)(B)(iii)(c). The proposed Rule would not specify that ''[a] single RFR Response will not be allocated a number of contracts that is greater than its size,'' as set forth in Rule 971.1NY(c)(5)(D), because such handling is consistent with standard processing and its inclusion in the proposed Rule would be unnecessary and may lead to potential confusion.

[158] As discussed, *infra,* the proposed Rule does not include the functionality set forth in current Commentary .04 to Rule 971.1NY because, on Pillar, the Exchange would allow both a CUBE Order and an order exposed via the BOLD mechanism in same series to occur simultaneously.

[159] *See* proposed Rule 971.1NYP, Commentary .01. *See also* Rule 971.2NYP, Commentary .01 (same). The Exchange plans to submit a separate rule filing to adopt proposed Rule 971.2NYP (Complex Electronic Cross Transactions), which proposed rule would include the proposed (and current) Commentary .01. As noted, supra, current (and proposed) Commentary .01 describes functionality that is distinct from the proposal to allow multiple single-leg CUBE Auctions to run concurrently on Pillar.

[160] *See id.*

processed pursuant to Rule 971.1NYP(c)(4) or Rule 971.2NYP(c)(4) as applicable.[161]

Proposed Commentary .02(a)–(d) is identical to current Commentary .02(a)–(d) and would provide that the following conduct will be considered conduct inconsistent with just and equitable principles of trade:

- An ATP Holder entering RFR Responses to a CUBE Auction for which the ATP Holder is the Initiating Participant;
- Engaging in a pattern and practice of trading or quoting activity for the purpose of causing a CUBE Auction to conclude before the end of the Response Time Interval;
- An Initiating Participant that breaks up an agency order into separate CUBE Orders for the purpose of gaining a higher allocation percentage than the Initiating Participant would have otherwise received in accordance with the allocation procedures contained in paragraph (c)(4) of this Rule; [162] and
- Engaging in a pattern and practice of sending multiple RFR Responses at the same price that in the aggregate exceed the size of the CUBE Order.

Proposed Commentary .03 is identical to current Commentary .03 and would provide that CUBE executions would always be reported to OPRA as ''stopped'' trades.

Proposed Commentary .04 describes functionality for AON CUBE Orders that is identical to current Commentary .05 and would provide that, except as provided in proposed Commentary .04, an AON CUBE auction will be subject to the provisions of proposed Rule 971.1NYP.[163]

- Proposed Commentary .04 (like current Commentary .05) would provide that a CUBE Order of at least 500 contracts can be designated as AON (an ''AON CUBE Order'') and unlike non-AON CUBE Orders, such AON CUBE Orders may only be guaranteed by a specified stop price.
  - ○ Proposed Commentary .04 would differ from current Commentary .05 to make clear that the (new) option for certain Initiating Participants to designate a Surrender Quantity would not be available for Contra Orders to an AON CUBE Order. This proposed text is not included in current Commentary .05 because the option to designate a Surrender Quantity is not available today and is an enhanced feature that would only be available for certain non-AON CUBE Auctions on Pillar.[164]

Proposed Commentary .04(a)–(d), is identical to current Commentary .05(a)–(d) and would provide the following.

- An AON CUBE Order to buy (sell) will execute in full with the Contra Order at the single stop price even if there is non-Customer interest priced higher (lower) than the stop price that, either on its own or when aggregated with other non-Customer RFR Responses at the stop price or better, is insufficient to satisfy the full quantity of the AON CUBE Order;
- The Contra Order will not receive any allocation and will be cancelled if (i) RFR Responses to sell (buy) at prices lower (higher) than the stop price can satisfy the full quantity of the AON CUBE Order or (ii) there is Customer interest to sell (buy) at the stop price or better that on its own, or when aggregated with RFR Responses to sell (buy) at the stop price or prices lower (higher) than the stop price, can satisfy the full quantity of the AON CUBE Order. In either such case, the RFR Responses will be allocated as provided for in paragraphs (c)(4)(A) and (c)(4)(B) of this Rule, as applicable; [165]
- The AON CUBE Order and Contra Order will both be cancelled if there is Customer interest to sell (buy) at the stop price or better and such interest, either on its own or when aggregated with RFR Responses to sell (buy) at the stop price or at prices lower (higher) than the stop price, is insufficient to satisfy the full quantity of the AON CUBE Order; and
- Prior to entering an agency order on behalf of a Customer into the CUBE Auction as an AON CUBE Order, Initiating Participants must deliver to the Customer a written notification informing the Customer that such order may be executed using the CUBE Auction. Such written notification must disclose the terms and conditions contained in this Commentary .04 and must be in a form approved by the Exchange.[166]

* * * * *

As discussed above, because of the technology changes associated with the migration to the Pillar trading platform, notwithstanding the timing of the effectiveness of this proposed rule change, the Exchange will announce by Trader Update when rules with a ''P'' modifier will become operative and for which symbols. The Exchange believes that keeping existing rules on the rulebook pending the full migration of Pillar will reduce confusion because it will ensure that the rules governing trading on the Exchange will continue to be available pending the full migration to Pillar.

Implementation

As noted immediately above, the Exchange will not implement proposed Rule 971.1NYP until all other Pillar-related rule filings (*i.e.,* proposed rules with a ''P'' modifier) are approved or operative, as applicable, and the Exchange announces the migration of underlying symbols to Pillar by Trader Update.

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade,remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

First, to the extent that the proposed Rule contains provisions that are identical (or substantively identical) to current Rule 971.1NY, the Exchange believes the Rule would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because the proposed Rule includes

[161] *See id.* The Exchange notes that the internal cross-reference in the proposed Commentary has been updated to reflect the allocation section in the proposed Rule (*i.e.,* change reference to paragraph (c)(5) of current Rule 971.1NY to paragraph (c)(4) of the proposed Rule), which change is not material because it does not impact functionality. As noted above, the Exchange plans to submit a separate rule filing to adopt Complex CUBE Auctions on Pillar, which current Rule 971.2NY and soon-to-be proposed Rule 971.2NYP, will set forth order allocation in proposed paragraph (c)(4).

[162] The Exchange notes that the internal cross-reference in the proposed Commentary has been updated to reflect the allocation section in the proposed Rule (*i.e.,* change reference to paragraph (c)(5) of current Rule 971.1NY to paragraph (c)(4) of the proposed Rule), which change is not material because it does not impact functionality.

[163] The Exchange proposes the non-substantive change to re-number this provision (from current Commentary .05 to proposed Commentary .04) and also proposes to re-locate to the beginning of the proposed Rule text that appears at the bottom of the current rule.

[164] *See* proposed Rule 971.1NYP, Commentary .04 (providing, in relevant part that ''a Contra Order that guarantees an AON CUBE Order is not eligible to designate a Surrender Quantity of its guaranteed participation.''). *See, e.g.,* proposed Rule 971.1NYP(c)(4)(C) (describing the proposed option of designating a Surrender Quantity for non-AON CUBE Orders that are guaranteed by a stop price).

[165] The Exchange notes that the internal cross-reference in the proposed Commentary has been updated to reflect the allocation section in the proposed Rule (*i.e.,* change reference to paragraph (c)(5) of current Rule 971.1NY to paragraph (c)(4) of the proposed Rule, which difference from the current CUBE rule is not material because it does not impact functionality.

[166] *See* proposed Rule 971.1NYP, Commentary .04.

streamlined, and in some cases reorganized, descriptions of already-approved (pre-Pillar) Auction functionality in a manner that adds clarity, transparency, and internal consistency to Exchange rules.[167]

Next, to the extent that the proposed Rule includes enhancements to the CUBE, the Exchange believes that the proposed Rule change would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because the proposed enhancements to Auctions on Pillar would continue to encourage ATP Holders to compete vigorously to provide the opportunity for price improvement for CUBE Orders of all sizes in a competitive auction process, which may lead to enhanced liquidity and tighter markets.

In particular, the proposed rule change to adopt a single pricing parameter for CUBE Orders of any size (except when the NBBO width is one penny) would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because it would streamline and simplify current CUBE Auction functionality making it easier for market participants to navigate and comprehend.[168] In addition, the Exchange's rules regarding CUBE Auctions would continue to require price improvement for CUBE Orders for fewer than 50 contracts submitted in a penny-wide market and rejecting such orders when the Exchange is setting the NBBO (*i.e.,* BBO = NBBO) and there is displayed Customer interest at the BBO. The proposed pricing requirements providing whether a CUBE Auction is initiated (including when the NBBO is one cent wide or when the NBBO is crossed) are consistent with the Exchange's current requirements and with the requirements of other options exchanges that offer price improvement mechanisms.[169]

The Exchange believes that the proposal to reject CUBE Orders that are submitted when there is not enough time for a CUBE Auction to run the full duration of the Response Time Interval would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because it would make clear that CUBE Orders that cannot be exposed to solicit price-improving interest for the full Response Time Interval would not be accepted by the Exchange. Moreover, the proposal to modify the Response Time Interval to be a set duration as opposed to a random duration would be a competitive change and would align the Exchange's rules with other options exchanges that include this feature.[170]

The Exchange believes that the proposal to accept CUBE Orders in the same series as orders being exposed in the BOLD mechanism would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because it would allow more CUBE Orders to be accepted, which would in turn promote increased opportunities for price improvement. This proposed change is not currently available (because of system limitations) but would be available on Pillar to the benefit of all market participants because of increased trading opportunities through the BOLD mechanism as well as through the acceptance of more CUBE Orders (submitted when certain orders are being exposed via BOLD).

The proposed rule changes to enhance the Auction process on Pillar by allowing concurrent auctions, adding the associated ''AuctionID'' feature, and permitting Initiating Participants to designate a Surrender Quantity would remove impediments to and perfect the mechanisms of a free and open market and a national market system for several reasons. First, the proposed changes would not only allow more CUBE Auctions to occur on the Exchange but would also allow more targeted participation in CUBE Auctions with the new AuctionID feature available for GTX Orders. Market participants that respond to CUBE Auctions with GTX Orders would be able to direct their trading interest to a specific Auction (which functionality is also offered on other options exchanges) thus increasing determinism.[171] That said, the AuctionID functionality would be optional and a GTX Order sent without an AuctionID would respond to the Auction that began closest in time to the submission of the GTX Order.

The proposal to permit concurrent auctions in the same series for CUBE Orders of 50 or more contracts would benefit investors because it would allow more CUBE Auctions to run the full duration of the Response Time Interval, thus affording more time and opportunity for the arrival of price-improving interest. Moreover, permitting concurrent auctions for larger-sized agency orders (analogous to CUBE Orders of 50 or more contracts), which is not new or novel functionality and has been in place on other options exchanges for several years, would be a competitive change.[172]

The proposal to permit concurrent auctions in the same series for CUBE Orders of fewer than 50 contracts would remove impediments to and perfect the mechanisms of a free and open market because it would extend concurrent auction functionality to smaller-sized CUBE Orders. The Exchange also believes this proposed change is non-controversial because it should not raise any issues that differ from those previously considered when other options exchanges adopted this functionality for larger-sized agency orders submitted to price improvement auctions. The proposal would benefit investors because it would afford smaller-sized CUBE Orders increased opportunity to solicit price-improving auction interest—including because receipt of a new CUBE Order would no longer cause the Auction in progress to end early. The Exchange further believes that this proposed change would provide additional benefits to Customers, as smaller-sized CUBE Orders tend to represent retail interest and could improve the Customer experience on the Exchange by increasing trading opportunities in the CUBE Auction. Notwithstanding the proposal to allow concurrent auctions for smaller-sized CUBE Orders, the Exchange would continue to protect Customer interest on the Consolidated Book by requiring price improvement over the BBO to initiate an Auction for smaller-sized CUBE Orders and rejecting such orders in penny-wide markets when price improvement is not possible.

The Exchange believes this proposed new functionality to allow concurrent auctions for CUBE Orders of any size should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit all market participants. In addition, this

[167] *See, e.g.,* proposed Rules 971.1NYP(b)(1)(A)–(C) (describing stop price, auto match, and auto-match limit price); (b)(2), (3), (6), (7), and (9) (regarding eligibility of CUBE Orders submitted to the Auction); (c)(1) (regarding RFRs and RFR Responses) and (c)(2) (regarding conclusion of CUBE Auction).

[168] *See, e.g.,* proposed Rules 971.1NYP(a)(3), (a)(4) and (a)(1)(A).

[169] *See, e.g.,* Rule 971.1NY(b)(1)(A), proposed Rule 971.1NY(b)(5)–(b)(6), & note 54, *supra* (regarding pricing requirements utilized on Cboe, Cboe EDGX, and Nasdaq ISE to initiate an analogous price improvement auctions).

[170] *See, e.g.,* notes 61, 76–77, *supra.*

[171] *See, e.g.,* notes 74 & 87, *supra.*

[172] *See, e.g.,* note 106, *supra.*

proposed change may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that permit overlapping price improvement auctions, while continuing to ensure that displayed Customer interest on the Consolidated Book is protected. The proposed enhancement to allow concurrent auctions for CUBE Orders of any size would be a competitive change and would make the Exchange a more attractive venue for auction-related order flow.

As noted above, the Exchange believes that the Pillar trading platform has sufficient capacity to process a large volume of concurrent Auctions for CUBE Orders of any size, including for CUBE Orders of fewer than 50 contracts.

The proposed changes to streamline early end scenarios for CUBE Auctions would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because it would increase the opportunity for each CUBE Auction to run the full length of the (fixed duration) RTI, which should increase opportunities for price improvement. In addition, this proposed change should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit all market participants. The Exchange notes that the proposed functionality would simplify the operation of CUBE Auctions in a manner that is consistent with other options exchanges' price improvement mechanisms.[173]

The proposal to provide the option of designating a Surrender Quantity would remove impediments to and perfect the mechanisms of a free and open market because it would afford more discretion and flexibility to the Contra Order and may result in increased CUBE Auction volume on the Exchange. Moreover, this proposed enhancement is competitive as it would allow the Exchange to compete on more equal footing with other options exchanges that offer this feature in their price improvement auctions.[174]

The proposed rule changes to modify the handling and operation of GTX Orders on Pillar per proposed Rule 971.1NYP(c)(1)(C)(a), (c) (*i.e.,* that such orders will execute with the CUBE Order to the extent possible and then cancel) and to clarify that GTX Orders, although not displayed or disseminated, are ranked and prioritized with same-priced Limit Orders as Priority 2—Display Orders on Pillar (consistent with proposed new Rule 964NYP) would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because such changes would make clear to market participants responding to CUBE Auctions with GTX Orders how such interest would be prioritized and handled on Pillar, thus adding clarity, transparency, and internal consistency to Exchange rules.

The proposed rule change would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because the proposed CUBE Order allocation is consistent with current functionality, including that the Contra Order may be allocated a limited percentage of the CUBE Order ahead of certain other same-priced RFR Responses, except that the proposed rule would align with Pillar Rule 964NYP as described herein. Consistent with current functionality, the Exchange believes that the Contra Order, having guaranteed the execution of the CUBE Order, should be entitled to a certain level of participation in the Auction, assuming CUBE Order contracts remain after executing with contra-side interest prioritized ahead of the Contra Order. In addition, this alignment of CUBE Order functionality with Pillar Rule 964NYP would add clarity, transparency, and internal consistency to Exchange rules to the benefit of investors.

The proposed rule change to specify that the Surrender Quantity option is not available for Contra Orders to AON CUBE Orders would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because such rule text would not alter the functionality of AON CUBE Orders on Pillar but would instead add clarity, transparency, and internal consistency to Exchange rules.

Further, the proposed rule change would promote a fair and orderly market and national market system, because, as noted herein, the proposed enhancements to CUBE Auctions on Pillar are the same as those offered on other options exchanges that have price improvement mechanisms, except as noted herein.

The Exchange believes the proposed rule change is not unfairly discriminatory because the proposed handling of CUBE Auctions on Pillar would be the same for similarly-situated ATP Holders but (as is the case today) would vary for those ATP Holders submitting interest on behalf of Customers versus ATP Holders submitting interest on behalf of non-Customers. As is the case today, all ATP Holders would continue to have an equal opportunity to receive the broadcast and respond with their best prices during the auction. The proposal to continue to afford Customer interest first priority within each Pillar Priority category is consistent with the Exchange's Customer-centric trading model and would benefit investors by attracting more (Customer) order flow to the Exchange which would result in increased liquidity.

In sum, the Exchange believes this proposal may lead to an increase in Exchange volume and should allow the Exchange to better compete against other options markets that already offer the enhanced functionality proposed herein. In particular, the Exchange believes that its proposal would allow the Exchange to better compete for auction order flow, while providing an opportunity for price improvement on CUBE Orders of any size. In addition, the proposed functionality should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit market participants

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. The Exchange believes that the transition to Pillar would promote competition among options exchanges by offering a low-latency, deterministic trading platform. The proposed rule changes would support that inter-market competition by allowing the Exchange to offer additional functionality to its ATP Holders, thereby potentially attracting additional order flow to the Exchange. The Exchange does not believe that the proposed rule changes would impact intra-market competition as the proposed rule changes would be applicable to all similarly-situated ATP Holders and reflects the Exchange's existing priority model.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes this proposed rule change would promote fair competition among the options exchanges and establish more uniform functionality across the various price improvement

[173] *See, e.g.,* note 115, *supra.*

[174] *See, e.g.,* note 140, *supra.*

auctions offered by other options exchanges. As noted herein, several of the proposed enhancements to the Auction—*i.e.,* concurrent auctions for larger-sized agency orders, inclusion of an AuctionID on Request for Responses and the option to include an AuctionID on GTX Orders, a fixed duration during which auction responses are submitted, and the ability to designate an optional Surrender Quantity— are currently offered on other options exchanges and the addition of these features would make the Exchange a more competitive venue for price improvement auctions. The proposed functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other options markets that already offer similar price improvement mechanisms and for this reason the proposal does not create an undue burden on intermarket competition. By contrast, not having the proposed functionality places the Exchange at a competitive disadvantage vis-à-vis other exchanges that offer similar price improvement mechanisms.

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 [175] and Rule 19b–4(f)(6) thereunder.[176] 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.

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) [177] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2023–35 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–NYSEAMER–2023–35. 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 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–NYSEAMER–2023–35 and should be submitted on or before August 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[178]

Sherry R. Haywood,

Assistant Secretary.

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[175] 15 U.S.C. 78s(b)(3)(A)(iii).

[176] 17 CFR 240.19b–4(f)(6).

[177] 15 U.S.C. 78s(b)(2)(B).

[178] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–23]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of withdrawal; reissuance of information collection; request for comment.

SUMMARY: On July 5, 2023, FRA published a 30-day notice of information collection; request for comment in the **Federal Register**. FR Doc. 2023–08413. Due to technical issues as the result of which FRA did not receive two timely-filed comment letters until after the comment period closed, FRA is withdrawing the July 5, 2023, notice of information collection; request for comment and re-issuing the 30-day notice to address the two additional comments. Accordingly, this notice supersedes the July 5, 2023, notice.

DATES: Interested persons are invited to submit comments on or before August 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: