

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98060; File No. SR-C2-2023-017]

### Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Enhance Its Drill-Through Protection Processes for Simple Orders and Make Other Clarifying Changes

August 4, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 24, 2023, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “C2”) proposes to enhance its drill-through protection processes for simple orders and make other clarifying changes. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/ctwo/](http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The purpose of this rule filing is to amend Rule 5.34(a), Order and Quote Price Protection Mechanisms and Risk Controls (Simple Orders), to enhance the drill-through protection process for simple orders and make other clarifying changes.

Drill-through price protection is currently described in Exchange Rule 5.34(a)(4)(A). Under Rule 5.34(a)(4)(A), if a buy (sell) order enters the Book<sup>3</sup> at the conclusion of the opening auction process or would execute or post to the Book at the time of order entry, the System<sup>4</sup> executes the order up to a buffer amount (the Exchange determines the buffer amount on a class and premium basis) above (below) the offer (bid) limit of the Opening Collar<sup>5</sup> or the National Best Offer (“NBO”) (National Best Bid (“NBB”)) that existed at the time of order entry, respectively (the “drill-through price”).<sup>6</sup>

Rule 5.34(a)(4)(C) establishes an iterative drill-through process, whereby the Exchange permits orders to rest in the Book for multiple time periods and at more aggressive displayed prices during each time period.<sup>7</sup> Specifically, for a limit order (or unexecuted portion) with a Time-in-Force of Day, Good-til-Cancelled (“GTC”), or Good-til-Date (“GTD”), the System enters the order in the Book with a displayed price equal to the drill-through price. The order (or unexecuted portion) will rest in the Book at the drill-through price for the duration of consecutive time periods (the Exchange determines on a class-by-class basis the length of the time period in milliseconds, which may not exceed three seconds).<sup>8</sup> Following the end of

<sup>3</sup> “Book” means the electronic book of simple orders and quotes maintained by the System, which single book is used during both the regular trading hours and global trading hours trading sessions. See Rule 1.1 (definition of, “Book”).

<sup>4</sup> “System” means the Exchange’s hybrid trading platform that integrates electronic and open outcry trading of option contracts on the Exchange and includes any connectivity to the foregoing trading platform that is administered by or on behalf of the Exchange, such as a communications hub. See Rule 1.1 (definition of, “System”).

<sup>5</sup> See Rule 5.31(a) for the definition of Opening Collar.

<sup>6</sup> See Rule 5.34(a)(4)(A).

<sup>7</sup> The Exchange will announce to Trading Permit Holders the buffer amount and the length of the time periods in accordance with Rule 1.5. The Exchange notes that each time period will be the same length (as designated by the Exchange), and the buffer amount applied for each time period will be the same.

<sup>8</sup> See Rule 5.34(a)(4)(C). The proposed rule change defines this time period as an “iteration.”

each period, the System adds (if a buy order) or subtracts (if a sell order) one buffer amount (the Exchange determines the buffer amount on a class-by-class basis) to the drill-through price displayed during the immediately preceding period (each new price becomes the “drill-through price”).<sup>9</sup> The order (or unexecuted portion) rests in the Book at that new drill-through price for the duration of the subsequent period. The System applies a timestamp to the order (or unexecuted portion) based on the time it enters or is re-priced in the Book for priority reasons. The order continues through this iterative process until the earliest of the following to occur: (a) the order fully executes; (b) the User<sup>10</sup> cancels the order; and (c) the buy (sell) order’s limit price equals or is less (greater) than the drill-through price at any time during application of the drill-through mechanism, in which case the order rests in the Book at its limit price, subject to a User’s instructions.

Currently, the above-described iterative drill-through process does not apply to market orders.<sup>11</sup> Specifically, if a buy (sell) market order would execute at the time of order entry, the System executes the order up to the Exchange-determined buffer amount above (below) the NBO (NBB) at the time of order entry and then rejects any remaining amount.<sup>12</sup> For example, suppose a market order to buy two contracts enters the System; assume that the drill-through price buffer for a certain option series is \$0.90 and that the following quotes are in the Book: Quote 1 (NBBO): 1 @5.00 × 1 @7.00; Quote 2: 2 @4.00 × 1 @8.00. One contract in the market order will execute against the 7.00 offer quote. The remaining one contract of the market order is cancelled, because the next best offer of 8.00 is 1.00 above the NBO, which is more than the 0.90 buffer amount.

The Exchange proposes for market orders with a Time-in-Force of Day to go through the iterative drill-through process described above.<sup>13</sup> In the above example, rather than cancel the remaining one contract, the System would rest the one contract in the Book

<sup>9</sup> See Rule 5.34(a)(4)(C).

<sup>10</sup> The term “User” shall mean any Trading Privilege Holder (TPH) or Sponsored User who is authorized to obtain access to the System pursuant to Rule 5.5.

<sup>11</sup> Rule 5.34(a)(4)(A) and (B).

<sup>12</sup> *Id.*

<sup>13</sup> See proposed Rule 5.34(a)(4)(C). The proposed rule change also adds “a” prior to the term “Time-in-Force” in that provision, which was inadvertently omitted; this is a nonsubstantive grammatical change that conforms the language to that in subparagraph (B).

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

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

at the drill-through price of 7.90 (*i.e.* the NBO plus the buffer amount) for the Exchange-determined time period. At the end of that time period, assuming the market has not changed, the remaining one contract would execute against the 8.00 offer, which is within a buffer amount of the subsequent drill-through price of 8.80. As a result, like super-aggressive limit orders (except for those with Time-in-Force of Immediate-or-Cancel (“IOC”) or Fill-or-Kill (“FOK”)) do today, market orders (except for those with Time-in-Force of IOC) will have additional execution opportunities pursuant to the drill-through process. As the proposed rule change only applies to market orders with a Time-in-Force of Day, the Exchange also proposes to amend Rule 5.34(a)(4)(B) to specify that the System will reject any market order with a Time-in-Force of IOC (or unexecuted portion) not executed pursuant to Rule 5.34(a)(4)(A).<sup>14</sup> The Exchange believes it is appropriate to not have a market order with a Time-in-Force of IOC to go through the iteration process, because the iteration process would be inconsistent with the IOC instruction (and thus the user’s intent). Further, the Exchange proposes to amend Rule 5.34(a)(4)(A) to more generally describe when applicable order types may become subject to drill-through protection. Specifically, the Exchange proposes to specify that the protections described in Rule 5.34(a)(4)(A) become applicable if a buy (sell) order, to which Rule 5.34(a)(4) would apply, (i) enters the Book at the conclusion of opening auction process, or (ii) would execute or post to the Book when it enters the Book.<sup>15</sup>

The Exchange also proposes to amend Rule 5.34(a)(1)(A)(ii) to exclude from the current protections for market orders in no-bid series certain orders that would be otherwise subject to the drill-through protection under the proposed rule changes. Currently, under Rule 5.34(a)(1)(A)(ii), if the System receives a sell market order in a series after it is open for trading with an NBB of zero, and the NBO in the series is greater than \$0.50, the System cancels or rejects the market order. The Exchange proposes amending this protection in the event a drill-through process is in progress. Specifically, the Exchange proposes to amend Rule 5.34(a)(1)(A)(ii) to note that in the event the System receives a sell market order in a series after it is open

for trading with an NBB of zero and the NBO in the series is greater than \$0.50, if the drill-through process is in progress for sell orders and the sell market order would be subject to drill-through protection, then the order would join the on-going drill-through process in the then-current iteration and at the then-current drill-through price, regardless of NBBO. The Exchange believes it is not optimal for these orders to be immediately booked at the minimum tick increment, as under the proposed rule change, such orders would instead, be subject to the drill-through protection mechanism described under Rule 5.34(a)(4), which may allow opportunity for execution at a more beneficial price level than the minimum tick increment.

Further, the Exchange proposes to amend Rule 5.34(a)(2) to specifically exclude orders that would be subject to drill-through protection from the market order NBBO width protections described therein. Currently, under Rule 5.34(a)(2), if a User submits a market order to the System when the NBBO width is greater than x% of the midpoint of the NBBO, subject to a minimum and maximum dollar amount (as determined by the Exchange on a class-by-class basis), the System cancels or rejects the market order. The Exchange proposes amending Rule 5.34(a)(2) to exclude Stop (Stop-Loss)<sup>16</sup> and Market-on-Close orders from this protection. Such orders may intentionally be further away from the NBBO at the time the order is entered, and the protection may cause the orders to be inadvertently rejected pursuant to this check. The Exchange believes it is not optimal for these orders to be subject to the market order NBBO width protection, as the check may inadvertently cause rejections for orders that may otherwise not have an opportunity to execute if they are immediately cancelled due to market width. Under the proposed rule change, such orders would instead, upon entry into the Book (when elected in accordance with their definitions), be subject to the drill-through protection mechanism described under Rule 5.34(a)(4). The Exchange also proposes a clarification to Rule 5.34(a)(4)(E). Currently, under Rule 5.34(a)(4)(E), if

multiple Stop (Stop-Loss) or Stop-Limit<sup>17</sup> orders to buy (sell) have the same stop price and are thus triggered by the same trade price or NBBO, and would execute or post to the Book, the System uses the contra-side NBBO that existed at the time the first order in sequence was entered into the Book as the drill-through price for all orders. The Exchange proposes to remove the conditional language noting that such Stop (Stop-Loss) or Stop-Limit orders to buy (sell) must have the same stop price, as it is possible that orders with different stop prices may be triggered by the same trade price or NBBO. Further, the Exchange proposes to add language stating that, where multiple orders are simultaneously re-priced, the orders will be prioritized under subparagraph (C)(v) of Rule 5.34(a)(4) and will be sequenced based on the original time each order was entered into the Book.

For example, assume that the drill-through price buffer for a certain option series is \$0.90, and that the following quotes are in the Book: Quote 1 (NBBO): 1 @5.00 × 1 @7.00; Quote 2: 2 @4.00 × 1 @8.00. Additionally, the following Stop orders are being held in the System when Quote 2 is updated to 2 @4.00 × 1 @6.50 (the System received these stop orders in the below sequence):

Order 1: Sell 1 @Market, Stop Price = \$6.50  
 Order 2: Sell 1 @Market, Stop Price = \$6.55  
 Order 3: Sell 1 @\$3.95, Stop Price = \$6.60

Each of orders 1, 2 and 3 have a stop price less than the NBO, and will therefore be triggered by the 6.50 quote and enter the Book for execution or posting. A drill-through price for all three orders is set at the contra-side NBB of 5.00. Per proposed Rule 5.34(a)(4)(C), the orders will go through the drill-through process as follows:

1. Order 1 will execute against Quote 1 @\$5.00.
2. Orders 2 and 3 are posted to sell at \$4.10 for the Exchange-determined time period.
3. Drill-through process continues for orders 2 and 3 until they are canceled or executed.

As amended, under Rule 5.34(a)(4)(E), all Stop (Stop-Loss) and Stop-Limit

<sup>17</sup> A “Stop-Limit” order is an order to buy (sell) that becomes a limit order when the consolidated last sale price (excluding prices from complex order trades if outside the NBBO) or NBB (NBO) for a particular option contract is equal to or above (below) the stop price specified by the User. A User may not designate a Stop-Limit Order as All Sessions. Users may not designate bulk messages as Stop-Limit Orders. A User may not designate a bulk orders as Stop Limit orders. See Rule 5.6(c) (definition of “Stop-Limit” order).

<sup>14</sup> There is no change to the handling of market orders with a Time-in-Force of GTC or GTD as a result of this rule change; such orders will continue to be rejected by the Exchange.

<sup>15</sup> This includes, for example, when a Stop (Stop-Loss) or Stop-Limit order is elected.

<sup>16</sup> A “Stop (Stop-Loss)” order is an order to buy (sell) that becomes a market order when the consolidated last sale price (excluding prices from complex order trades if outside of the NBBO) or NBB (NBO) for a particular option contract is equal to or above (below) the stop price specified by the User. Users may not designate a Stop Order as All Sessions. Users may not designate bulk messages as Stop Orders. See Rule 5.6(c) (definition of “Stop (Stop-Loss)” order).

orders elected as a result of the same election trigger (NBBO update or last sale price) will continue to use the same reference price for drill-through (even though they may have different stop prices).

The Exchange proposes to amend Rule 5.34(a)(4)(c)(ii), to specify that if at any time during the drill-through process, the NBO (NBB) changes to be below (above) the current drill-through price, such NBO (NBB) will become the new drill-through price and a new drill-through will immediately begin. As a result, any improvements to the market that occur while the drill-through is in process will be incorporated, thereby providing Users with further opportunity to be priced within the market while still being protected. Under the proposed rule change, any limit order with a price that is less aggressive than the new drill-through price would be entered in the Book at its limit price.

The Exchange also proposes to add Rule 5.34(a)(4)(C)(iv)<sup>18</sup> to provide that if the System receives a market or limit order that would be subject to the drill-through process while a drill-through is in progress in the same series, the order joins the ongoing drill-through process in the then-current iteration and at the then-current drill-through price. Under the proposed rule, orders that come in while a drill-through is in process receive the benefit of joining the drill-through at the NBBO at the time of entry, as opposed to immediately executing or being displayed at a more aggressive price than the drill-through price. By way of illustration, consider the following example:

Assume that the drill-through price buffer for a certain option series is \$0.90, and that the following quotes are in the Book: Quote 1 (NBBO): 1 @5.00 × 1 @7.00; Quote 2: 2 @4.00 × 1 @8.00. The System receives the following orders in the below sequence:

Order 1: Sell 1 @Market, Stop Price = \$6.50

Order 2: Sell 1 @Market, Stop Price = \$6.55

Order 3: Sell 1 @\$3.95, Stop Price \$6.60

Order 4: Sell 2 @Market, Stop Price = \$4.50

During this time, Quote 2 is updated to: 2 @4.00 × 1 @6.50. Orders 1, 2, and 3 are elected, and the drill-through reference price for all three orders is set to contra-side NBB of 5.00.

1. Order 1 executes Quote 1 @\$5.00.

2. Orders 2 and 3 are posted to sell @ \$4.10 (drill-through price) for the Exchange-determined time period.

3. Order 4 is elected due to updated best offer of \$4.10, and joins Orders 2 and 3 at the iterative drill-through price of \$4.10. The offer is updated to 4 @ \$4.10.

4. Order 5 (Sell 10 @Market (Day)) and Order 6 (Sell 1 @\$4.05 Limit (Day)) enter the Book. Per proposed Rule 5.34(a)(4)(C)(iv), Orders 5 and 6 join the drill-through iteration at the drill-through reference price of \$4.10, and the best offer is updated to 15 @\$4.10.

5. The drill-through process continues for orders 2, 3, 4, 5, and 6 until the contracts are canceled or executed.

Because the proposed rule change may result in multiple orders going through the drill-through process at the same price and at the same time, the proposed rule change also describes how these orders will be prioritized and allocated when executing against resting interest or incoming interest.

Specifically, proposed Rule 5.34(a)(4)(C)(v) states the System prioritizes orders that are part of the same drill-through iteration (A) based on the time the System enters or reprices them in the Book (*i.e.*, in time priority) when, after an iteration, the new drill-through price makes the order(s) marketable against resting orders and (B) in accordance with the applicable base allocation algorithm when executing against any incoming interest. The Exchange believes this is appropriate because incoming marketable orders would ultimately execute in time priority today. Additionally, having multiple orders execute in accordance with the applicable base allocation algorithm when executing against incoming interest is consistent with how resting orders execute against incoming interest.

Continuing from the above example, assume the drill-through process iterates to the next drill-through price, which would be \$3.20. In doing so, Order 6 posts at its limit price of \$4.05, and the rest of the orders are eligible to execute in time sequence against the resting \$4.00 bid. Per proposed Rule 5.34(a)(4)(C)(v), the orders will go through the drill-through process as follows:

1. Order 2 (Sell 1 @Market) will execute against Quote 2 @\$4.00
2. Order 3 (Sell 1 @\$3.95) will execute against Quote 2 @\$4.00
3. The Quote 2 is exhausted, and the next best bid is Quote 1 for 5 @\$3.00
4. Remaining drill-through is Order 4 (Sell 2 @Market) and Order 5 (Sell 10

@Market). Market is now 5 @\$3.00 × 12 @\$3.20, and the drill-through process continues until these contracts are executed or cancelled.

If, prior to the next drill-through iteration, Order 7 (buy 5 @\$3.25) is entered and executes against Orders 4 and 5 at \$3.20, the allocation will depend on the allocation algorithm for the relevant class, under the amended Rule.

1. If pro-rata, Order 7 trades 1 contract against Order 4 and 4 contracts against Order 5.
2. If price-time, Order 7 trades 2 contracts against Order 4 and 3 contracts against Order 5.
3. Remaining size on Order 4 (if applicable) and Order 5 will continue to drill-through as described in previous examples.

The Exchange also proposes to amend Rule 5.34(a)(4)(C)(vi).<sup>19</sup> Currently, the rule states that an order will continue through the drill-through process until the earliest of the following to occur: (a) the order fully executes; (b) the User cancels the order; and (c) the buy (sell) order's limit price equals or is less (greater) than the drill-through price at any time during application of the drill-through mechanism, in which case the orders rests in the Book at its limit price, subject to a User's instruction. The Exchange proposes to amend part (c) to remove reference to when the order's limit price equals the drill-through price, since under the drill-through process, if a buy (sell) order's limit price equals the drill-through price during the application of the drill-through mechanism it will remain part of the drill-through process, until the order's limit price is less (greater) than the drill-through price, at which point it will rest in the Book at its limit price. The Exchange also proposes to remove reference to a User's instruction, as there is no additional instruction that would allow a User to choose a different order handling option once the buy (sell) order limit price is less (greater) than the drill-through price.

Finally, the Exchange proposes to add Rule 5.34(a)(4)(C)(vii) to specify that the drill-through protection mechanism applies during all trading sessions and to provide clarity as to what happens to orders that are undergoing the drill-through process at the end of a trading session. Under the proposed rule change, if an order(s) (or unexecuted portion(s)) is undergoing the drill-through process at the end of a Global Trading Hours ("GTH")<sup>20</sup> session, then

<sup>19</sup> *Id.*

<sup>20</sup> The Exchange does not currently operate a GTH session. In the event the Exchange were to operate

<sup>18</sup> As a result of the additional provisions described herein, the proposed rule change renumbers current subparagraph (iv) to be proposed subparagraph (vi).

the drill-through process concludes and the order(s) (or unexecuted portions(s)) enters the Regular Trading Hours (“RTH”)<sup>21</sup> Queuing Book<sup>22</sup> as a market order or limit order (at its limit price) on that same trading day, subject to a User’s instructions. If an order(s) (or unexecuted portion(s)) is undergoing the drill-through process at the end of its last eligible trading session for that trading day (*i.e.*, RTH), the drill-through process concludes. Any order (or unexecuted portion) with a Time-in-Force of (i) Day is canceled, and (ii) GTC or GTD enters the Queuing Book for the next eligible trading session (*i.e.*, GTH or RTH) as a market order or limit order (at its limit price).

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>23</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>24</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>25</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to enhance drill-through protections for simple

orders and to make certain market orders eligible for drill-through protection will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors, because it will provide these orders with additional and consistent execution opportunities and protections. The primary purpose of the drill-through price protection is to prevent orders from executing at prices “too far away” from the market when they enter the Book for potential execution. The Exchange believes the proposed rule change is consistent with this purpose, because Users who submit market orders with a Time-in-Force of Day will receive the same level of drill-through price protection against execution at potentially erroneous prices that is currently afforded to supermarketable limit orders while receiving the same additional execution opportunities. Supermarketable limit orders currently go through the drill-through process, and market orders with a Time-in-Force of Day are functionally similar to supermarketable limit orders. Therefore, the Exchange believes it is appropriate to provide both types of orders with the same price protection.

Further, the proposed rule change to provide that any new market and limit orders that would be subject to drill-through protection will join any in-progress drill-through iterations and display at the then-current drill-through price (and the corresponding changes regarding allocation and prioritization) allows new orders to receive the same level of price protection as other orders undergoing the drill-through process. The proposed rule change will allow all orders additional execution opportunities while continuing to protect them against execution at potentially erroneous prices. Similarly, the Exchange believes the proposed change to consider changes to the NBO (NBB) during drill-through and to update the drill-through price to such NBO (NBB) should it be lower (higher) than the drill-through price will further provide opportunity for execution at reasonable prices by capturing any market moves that may result in more aggressive prices.

The Exchange believes the proposal will enhance risk protections, the individual firm benefits of which flow downstream to counterparties both at the Exchange and at other options exchanges, which increases systemic protections as well. The Exchange believes enhancing risk protections will allow Users to enter orders and quotes with further reduced fear of inadvertent exposure to excessive risk, which will

benefit investors through increased exposure to liquidity for the execution of their orders.

Additionally, the Exchange believes changes to specifically exclude from market order NBBO width and market order in no-bid series protections certain orders that would be subject to drill-through protection will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors. Specifically, the Exchange believes the changes to exclude certain orders that would be subject to drill-through protection from market order NBBO width protections may reduce inadvertent rejection of such orders which may be purposely priced far away from the NBBO at the time of entry and may otherwise miss an opportunity for execution if immediately cancelled. The Exchange also believes the changes to exclude certain orders that would be subject to drill-through protection from market order in no-bid series protections may allow opportunity for execution at a more beneficial price level than if they were immediately booked at the minimum tick increment. This proposed rule change may increase execution opportunities for Users that submit such Stop (Stop-Loss) and Market-on-Close orders (in the case of market order NBBO width protections) and sell market orders with an NBB of zero when the NBO in the series is greater than \$0.50 (in the case of market orders in no-bid series protections).

The Exchange believes the proposed change to Rule 5.34(a)(4)(E) will protect investors because it clarifies that if multiple Stop (Stop-Loss) and Stop-Limit orders are triggered by the same trade price or NBBO (even if the orders have different stop prices), and would execute or post to the Book, the System uses the contra-side NBBO that existed at the time the first order in sequence was entered into the Book as the drill-through price for all orders. The Exchange believes that the proposed rule change will bring greater transparency and clarity to the rulebook, thus benefitting investors.

Finally, the Exchange believes the proposed changes to clarify when an order ceases to remain a part of the drill-through process and to specify what happens to orders undergoing drill-through at the end of a trading session will protect investors by adding transparency to the rules regarding the drill-through functionality and provide greater certainty as to the application of the drill-through process.

a GTH session, it would begin at 8:30 a.m. and go until 9:15 a.m. ET on Monday through Friday.

<sup>21</sup> RTH for transactions in equity options (including options on individual stocks, ETFs, ETNs, and other securities) are the normal business days and hours set forth in the rules of the primary market currently trading the securities underlying the options, except for options on ETFs, ETNs, Index Portfolio Shares, Index Portfolio Receipts, and Trust Issued Receipts the Exchange designates to remain open for trading beyond 4:00 p.m. Eastern Time (ET) but in no case later than 4:15 p.m. ET. RTH for transactions in index options are from 9:30 a.m. to 4:15 p.m. ET, subject to certain exceptions.

<sup>22</sup> See Rule 5.31 for the definition of Queuing Book.

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> *Id.*

### *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 does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the enhanced drill-through protection will apply to all marketable orders in the same manner. Additionally, it will provide the same price protection and execution opportunities to relevant market orders that are currently provided to supermarketable limit orders, which function in a similar manner.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed enhancement to the drill-through protection is consistent with the current protection and provides relevant market orders with improved protection against execution at potentially erroneous prices through drill-through price protection in accordance with User instructions. Additionally, the proposed rule change relates specifically to a price protection offered on the Exchange and how the System handles orders as part of this price protection mechanism.

The Exchange believes the proposed rule change would ultimately provide all market participants with additional execution opportunities when appropriate while providing protection from erroneous execution. The Exchange believes the proposal will enhance risk protections, the individual firm benefits of which flow downstream to counterparties both at the Exchange and at other options exchanges, which increases systemic protections as well. The Exchange believes enhancing risk protections will allow Users to enter orders and quotes with further reduced fear of inadvertent exposure to excessive risk, which will benefit investors through increased exposure to liquidity for the execution of their orders. Without adequate risk management tools, Trading Permit Holders could reduce the amount of order flow and liquidity they provide. Such actions may undermine the quality of the markets available to customers and other market participants. Accordingly, the proposed rule change is designed to encourage Trading Permit Holders to submit additional order flow and

liquidity to the Exchange. Accordingly, the proposed rule change is designed to encourage Trading Permit Holders to submit additional order flow and liquidity to the Exchange. The proposed flexibility may similarly provide additional execution opportunities, which further benefits liquidity in potentially volatile markets. In addition, providing Trading Permit Holders with more tools for managing risk will facilitate transactions in securities because, as noted above, Trading Permit Holders will have more confidence protections are in place that reduce the risks from potential system errors and market events.

Finally, the proposed clarifying changes are not intended to have any impact on competition, but rather codify current functionality to add transparency to the Rules.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>26</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>27</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

<sup>26</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>27</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-C2-2023-017 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-C2-2023-017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-C2-2023-017 and should be submitted on or before August 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-17107 Filed 8-9-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98056; File No. SR-GEMX-2023-09]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce GEMX's Options Regulatory Fee

August 4, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 25, 2023, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX's Pricing Schedule at Options 7, Section 5 to reduce the GEMX Options Regulatory Fee or "ORF."

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on August 1, 2023.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

GEMX proposes to lower its ORF from \$0.0013 to \$0.0012 per contract side on August 1, 2023. Previously, GEMX lowered or waived its ORF in 2019, 2021, 2022 and 2023.<sup>3</sup> After a review of its regulatory revenues and regulatory costs, the Exchange proposes to reduce the ORF to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

Volumes in the options industry went over 900,000,000 in 2023. GEMX has taken measures this year as well as in prior years to lower and waive its ORF to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. Despite those prior measures, GEMX will need to reduce its ORF again to account for trading volumes in the first half of 2023 that were higher than the Exchange forecast for ORF assessment purposes, which resulted in the collection of more ORF revenues than anticipated in the first half of 2023. At this time, GEMX believes that the options volume it experienced in the first half of 2023 is likely to persist. The anticipated options volume would continue to impact GEMX's ORF collection which, in turn, has caused GEMX to propose reducing the ORF to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, would not exceed the Exchange's total regulatory costs.

<sup>3</sup> See Securities Exchange Act Release No. 85140 (February 14, 2019), 84 FR 5511 (February 21, 2019) (SR-GEMX-2019-01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Options Regulatory Fee); 92698 (August 18, 2021), 86 FR 47355 (August 24, 2021) (SR-GEMX-2021-08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend GEMX's Options Regulatory Fee); 94069 (January 26, 2022), 87 FR 5545 (February 1, 2022) (SR-GEMX-2022-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce GEMX's Options Regulatory Fee); and 96598 (January 3, 2023), 88 FR 1308 (January 9, 2023) (SR-GEMX-2022-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce GEMX's Options Regulatory Fee).

#### Collection of ORF

GEMX will continue to assess its ORF for each customer option transaction that is either: (1) executed by a Member on GEMX; or (2) cleared by a GEMX Member at The Options Clearing Corporation ("OCC") in the customer range,<sup>4</sup> even if the transaction was executed by a non-Member of GEMX, regardless of the exchange on which the transaction occurs.<sup>5</sup> If the OCC clearing member is a GEMX Member, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA<sup>6</sup>); and (2) if the OCC clearing member is not a GEMX Member, ORF is collected only on the cleared customer contracts executed at GEMX, taking into account any CMTA instructions which may result in collecting the ORF from a non-Member.<sup>7</sup>

In the case where a Member both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that Member. In the case where a Member executes a transaction and a different Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction and not the Member who executes the transaction. In the case where a non-Member executes a transaction at an away market and a Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction. In the case where a Member executes a transaction on GEMX and a non-Member clears the transaction, the ORF will be assessed to the Member that executed the transaction on GEMX and collected from the non-Member who cleared the transaction. In the case where a Member executes a transaction at an away market and a non-Member clears the transaction, the ORF will not be

<sup>4</sup> Participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

<sup>5</sup> The Exchange uses reports from OCC when assessing and collecting the ORF.

<sup>6</sup> CMTA or Clearing Member Trade Assignment is a form of "give-up" whereby the position will be assigned to a specific clearing firm at OCC.

<sup>7</sup> By way of example, if Broker A, a GEMX Member, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by GEMX from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than GEMX, it was cleared by a GEMX Member in the member's OCC clearing account in the customer range, therefore there is a regulatory nexus between GEMX and the transaction. If Broker A was not a GEMX Member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on GEMX nor was it cleared by a GEMX Member.

<sup>28</sup> 17 CFR 200.30-3(a)(12).

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

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