March 27, 2024.[5] The Commission has received comments regarding the substance of the changes proposed in the Proposed Rule Change.[6]

Section 19(b)(2)(i) of the Exchange Act[7] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved unless the Commission extends the period within which it must act as provided in Section 19(b)(2)(ii) of the Exchange Act.[8] Section 19(b)(2)(ii) of the Exchange Act allows the Commission to designate a longer period for review (up to 90 days from the publication of notice of the filing of a proposed rule change) if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents.[9]

The 45th day after publication of the Notice of Filing is May 11, 2024. In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change and therefore is extending this 45-day time period.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[10] designates June 25, 2024, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–FICC–2024–005.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–09327 Filed 4–30–24; 8:45 am]

BILLING CODE 8011–01–P

[5] Securities Exchange Act Release No. 99817 (March 21, 2024), 89 FR 21362 (March 27, 2024) (File No. SR–FICC–2024–005) (''Notice of Filing'').

[6] Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-ficc-2024-005/srficc2024005.htm.*

[7] 15 U.S.C. 78s(b)(2)(i).

[8] 15 U.S.C. 78 s(b)(2)(ii).

[9] *Id.*

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100033; File No. SR–NYSEAMER–2024–24]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Adopt Rule 971.2NYP Regarding the Operation of the Customer Best Execution Auction for Complex Orders on the NYSE American Pillar Trading Platform

April 25, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 10, 2024, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt new Rule 971.2NYP regarding the operation of its Customer Best Execution (''CUBE'') Auction for Complex Orders on the Exchange's Pillar trading technology platform and to modify and make conforming changes to Rules 900.2NY, 971.2NY, 980NYP, and 935NY. 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] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to adopt Rule 971.2NYP (the ''proposed Rule'') to reflect the operation of its Complex CUBE Auction (the ''Complex CUBE Auction''; ''Complex CUBE''; or the ''Auction'') on the Exchange's Pillar trading technology platform and to modify and make conforming changes to Rules 900.2NY, 971.2NY, 980NYP, and 935NY.

Background

In October 2023, the Exchange completed its transition to its Pillar trading technology platform (''Pillar'').[4] Co-incident with this transition, the Exchange implemented new rules applicable to options trading on Pillar, each of which—like the proposed Rule—includes the modifier ''P'' appended to the rule number.[5] For example, the Exchange has adopted Pillar rules that govern options trading regarding: the priority, ranking, and allocation of single-leg interest, including Rule 964NYP (''Pillar Rule 964NYP'');[6] the operation of order types, Market Maker quotations, opening auctions, and risk controls;[7]

[4] *See* Trader Update, NYSE American Options: NYSE Pillar Final Migration Tranche, dated October 30, 2023, *available here: https://www.nyse.com/trader-update/history#110000748137* (announcing the last phase of the Pillar migration). Now that the Exchange has completed its migration to Pillar, it plans to file a rule proposal to delete rules that are no longer operative because they applied only to pre-Pillar trading on the Exchange (including pre-Pillar Rule 971.2NY). In the meantime, for the sake of clarity, the Exchange proposes to add a preamble to pre-Pillar Rule 971.2NY specifying that it is no longer applicable to Complex CUBE Auctions on Pillar, which would add clarity, transparency, and internal consistency to Exchange rules.

[5] *See, e.g.,* proposed Rule 971.2NYP. Upon migration, the Pillar rules replaced and superseded the corollary pre-Pillar rules—most of which have the same rule number without the ''P'' modifier. *See, e.g., infra* note 5 [sic], Pillar Priority Filing (adopting, among other rules, Pillar Rule 964NYP, which replaced and superseded pre-Pillar Rule 964NY when the Exchange migrated to Pillar).

[6] *See* Rules 964NYP (Order Ranking, Display, and Allocation), 964.1NYP (Directed Orders and DOMM Quoting Obligations) and 964.2NYP (Participation Entitlement of Specialist Pool and Designation of Primary Specialist) (collectively, the ''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 Pillar Priority Rules on an immediately effective basis, which rules utilize Pillar concepts and incorporate the Exchange's pre-Pillar Customer priority and pro rata allocation model) (the ''Pillar Priority Filing'').

[7] *See* Securities Exchange Act Release No. 97869 (July 10, 2023), 88 FR 45730 (July 17, 2023) (SR–NYSEAMER–2023–34) (adopting, on an immediately effective basis new Rules 900.3NYP

and the trading of Electronic Complex Orders (''ECOs'') (''Pillar Rule 980NYP'').[8]

In addition, as discussed herein, the Exchange adopted a new rule to describe the operation of single-leg CUBE Auctions on Pillar (''Pillar Rule 971.1NYP''). The CUBE Auction is the Exchange's electronic crossing mechanism with a price improvement auction for single-leg and complex trading interest.[9] Since the migration, Pillar Rule 971.1NYP governs single-leg CUBE Auctions.[10] The purpose of this filing is to adopt a Pillar rule that governs the operation of Complex CUBE Auctions on Pillar—*i.e.,* proposed Rule 971.2NYP.[11]

As detailed below, the proposed Rule would maintain the core aspects of pre-Pillar Complex CUBE Auction functionality, but would incorporate applicable Pillar rules (*e.g.,* regarding priority and allocation of Auction interest) and would include modifications and functionality enhancements that are available on Pillar.[12] One such modification is a competitive change to the pricing requirements to initiate (and participate in) Complex CUBE Auctions on Pillar, which is designed to enable the Exchange to better compete for complex auction order flow.[13] Similarly, to the extent that the proposed Rule differs from pre-Pillar Complex CUBE functionality, the Exchange believes that such changes are consistent with existing Pillar functionality for single-leg CUBE Auctions or with functionality offered on a competing options exchange and are therefore not new or novel.[14]

Summary of Proposed Modifications to Complex CUBE Auction Functionality

In addition to retaining the fundamental aspects of pre-Pillar Complex CUBE functionality, the proposed Rule would: incorporate existing Pillar functionality that would determine the pricing, priority, and allocation of interest in Complex CUBE Auctions; include competitive changes to pricing requirements to initiate an Auction; and adopt enhancements to Auction functionality that are identical (or substantively identical) to existing Pillar functionality for single-leg CUBE Auctions, which functionality is also available on another options exchange as noted herein. Specifically, and as described in detail below, the Exchange proposes to modify the Complex CUBE Auction on Pillar as follows:

• *CUBE BBO, Initiating Price, and Range of Permissible Executions.* Adopt a revised definition of CUBE BBO, which incorporates Pillar priority rules regarding displayed Customer interest[15] as well as the Pillar concept of a Derived BBO (or ''DBBO'').[16] Consistent with the proposed CUBE BBO, the Exchange also proposes to update the requirements for the initiating price and range of permissible executions. Further, to the extent that the proposed requirements to initiate and participate in a Complex CUBE Auction differ from pre-Pillar Complex CUBE functionality, the Exchange believes that such changes are consistent (and competitive) with another options exchange that offers a complex price improvement auction.[17]

• *Response Time Interval.* Modify the Response Time Interval for a Complex CUBE Auction to be for a set duration as opposed to the random duration that currently applies to Auctions, which would align the proposed Rule with Pillar Rule 971.1NYP for single-leg CUBE Auctions on Pillar.[18]

• *Complex GTX Order Handling.* Update Complex 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 orders will cancel (rather than continue to trade) after executing with the Complex CUBE Order, if at all, which order handling would align the proposed Rule with Pillar Rule 971.1NYP for single-leg CUBE Auctions on Pillar.[19]

• *Early End Scenarios based on market updates.* Reduce and streamline the number of circumstances that would cause an Auction to end early, which remaining early end scenarios are consistent with the early end scenarios set forth in its pre-Pillar Rule 971.2NY(c)(3)(C)–(D) and (c)(3)(F).[20] This proposed change does not impact nor alter the requirement that a Complex CUBE Auction end early if there is a trading halt in any of the component series, which early termination reason is distinct from

(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)).

[8] *See* Securities Exchange Act Release No. 97739 (June 15, 2023), 88 FR 40893 (June 22, 2023) (SR–NYSEAMER–2023–17) (order approving Pillar Rule 980NYP (Electronic Complex Order Trading) (the ''Pillar Complex Approval Order''). Pillar Rule 980NYP(a)(7) defines an ''Electronic Complex Order'' or ''ECO'' to mean any Complex Order, as defined in Pillar Rule 900.3NYP(f).

[9] In 2014, the Exchange introduced its CUBE Auction functionality for single-leg trading interest pursuant to Rule 971.1NY and, in 2018, the Exchange introduced Complex CUBE Auction functionality pursuant to Rule 971.2NY. *See, e.g.,* Securities Exchange Act Release Nos. 72025 (April 25, 2014), 79 FR 24779 (May 1, 2014) (SR–NYSEMKT–2014–17) (order approving single-leg CUBE Auctions per Rule 971.1NY); and 83384 (June 5, 2018), 83 FR 27061 (June 11, 2018) (SR–NYSEAMER–2018–05) (order approving Complex CUBE Auctions per Rule 971.2NY).

[10] *See* Securities Exchange Act Release No. 97938 (July 18, 2023), 88 FR 47536 (July 24, 2023) (NYSEAMER–2023–35) (adopting, on an immediately effective basis, Pillar Rule 971.1NYP (the ''Pillar Single-Leg CUBE Filing''). Pillar Rule 971.1NYP replaced and superseded pre-Pillar Rule 971.1NY, which does not apply to trading on Pillar.

[11] As discussed *infra,* prior to the Exchange's migration to Pillar, Rule 971.2NY governed Complex CUBE Auctions (referred to herein as the ''pre-Pillar Rule' ''pre-Pillar Rule 971.2NY''; or ''pre-Pillar Complex CUBE functionality''). On Pillar, however, Rule 971.2NY is no longer applicable. As such, since completing the Pillar migration, the Exchange has not conducted Complex CUBE Auctions.

[12] Although the Exchange describes CUBE Auction functionality for single-leg and complex interest in two separate rules (*i.e.,* Pillar Rule 971.1NYP and proposed Rule 971.2NYP, respectively), the Exchange utilizes the same mechanism to process all CUBE Auctions.

[13] *See* Cboe Exchange, Inc. (''Cboe'') Rule 5.38(b)(1) and (c)(5)(B) (describing Cboe's Complex Automated Improvement Mechanism (''C–AIM''), which includes pricing requirements to both initiate and participate in a C–AIM that are substantially similar those proposed herein, as discussed, *infra.*).

[14] *See generally* Pillar Rule 971.1NYP and the Single-Leg Pillar Filing (as discussed, *infra,* includes the same functionality enhancements as proposed herein). *See generally* Cboe Exchange, Inc. (''Cboe'') Rule 5.38 (describing Cboe's C–AIM, which, as discussed, *infra,* includes substantially the same functionality as certain of the modifications and enhancements in the proposed Rule as noted herein).

[15] *See, e.g.,* Pillar Rule 964NYP(e) (providing that, at each price, displayed Customers have first priority followed by displayed non-Customers, and followed (last) by non-displayed interest (with non-displayed Customers having priority over non-displayed, non-Customers). *See generally* Rule 980NYP (requiring that when an ECO trades with another ECO (*i.e.,* cannot trade with the leg markets—like a Complex CUBE Order—the ECO must, in certain circumstances, trade at a price that improves (is better than) the displayed Customer interest to yield priority to such interest, including for: ECO Auction Collars (*see* Rule 980NYP(d)(3)), ECOs designated as Complex Only Orders (*see* Rule 980NYP(e)(1)(C)); and ECOs initiating or participating in a Complex Order Auction (*see* Rule 980NYP(f)(1) and (f)(2)(A)).

[16] For a more detailed discussion of the DBBO, *see* the Pillar Complex Approval Order, 88 FR, at 40896–98. *See also* Pillar Rule 980NYP(a)(5) (defining the DBBO).

[17] *See* Cboe Rule 5.38(b)(1) and (e)(5)(B) (regarding pricing requirements for participation in C–AIM, as discussed *infra*).

[18] *See* Pillar Rule 971.1NYP(c)(1)(B). As described herein, on Pillar, the proposed Response Time Interval would continue to be no less than 100 milliseconds and no more than one (1) second. *Compare* proposed Rule 971.2NYP(c)(1)(B) *with* pre-Pillar Rule 971.2NY(c)(1)(B).

[19] *See* Pillar Rule 971.1NYP(c)(1)(C)(i) (describing the same GTX Order functionality for single-leg CUBE Auctions on Pillar).

[20] *See* pre-Pillar Rule 971.2NY(c)(3)(A)–(F) (which sets forth the pre-Pillar early end scenarios).

ending an Auction early based on incoming options trading interest.[21]

• *Surrender Quantity.* Provide Complex Contra Orders that guarantee Complex CUBE Orders with a stop price the option of requesting to receive a lesser participant guarantee than the standard 40% (*i.e.,* the Surrender Quantity), which would align the proposed Rule with Pillar Rule 971.1NYP for single-leg CUBE Auctions on Pillar.[22]

• *Concurrent Auctions.* Permit multiple Complex CUBE Auctions in the same complex strategy [23] 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.,* Complex GTX Orders) to specify the Complex CUBE Order with which they would like to trade, which would align the proposed Rule with Pillar Rule 971.1NYP for single-leg CUBE Auctions on Pillar.[24]

• *Complex CUBE Order Allocation.* Update Auction functionality to reflect the allocation of Complex CUBE Orders against RFR Responses in alignment with Pillar Rule 964NYP (Order Ranking, Display, and Allocation), which would align the proposed Rule with Pillar Rule 971.1NYP for single-leg CUBE Auctions on Pillar.[25]

In addition to the foregoing modifications and enhancements, the proposed Rule includes descriptions of pre-Pillar Complex 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.[26]

Proposed Rule 971.2NYP: Complex CUBE Auctions on Pillar [27]

Complex CUBE Auctions on Pillar will function in a manner that is substantively identical to pre-Pillar Complex CUBE Auctions, with proposed modifications and enhancements specified herein.[28]

Initiating and Pricing of Complex CUBE Auctions Based on the CUBE BBO

Proposed Rule 971.2NYP would begin by describing the general requirements for initiating a Complex CUBE Auction.

• Proposed Rule 971.2NYP(a) is substantively identical to Rule 971.2NY(a) and would provide that a ''Complex CUBE Order'' is a Complex Order, as defined in Pillar Rule 900.3NYP(f), submitted electronically by an ATP Holder (''Initiating Participant'') into the Complex CUBE Auction, that the Initiating Participant represents as agent on behalf of a public customer, broker dealer, or any other entity. The Exchange notes that this provision includes the updated reference to the definition of Complex Orders set forth in Rule 900.3NYP(f) (rather than pre-Pillar Rule 900.3NY(e)), which difference is immaterial because the definition in both rules is substantively identical.[29]

○ Proposed Rule 971.2NYP(a)(1) is substantively identical to Rule 971.2NY(a)(1)(A)–(B) insofar as it would provide that the Initiating Participant would guarantee the execution of the Complex CUBE Order by submitting a contra-side order (''Complex Contra Order'') representing principal interest or non-Customer interest it has solicited to trade solely with the Complex CUBE Order at a specified price (''stop price'') or by utilizing auto-match limit features (as described in proposed paragraph (b)(1) of the Rule).[30] The proposed Rule also specifies that neither the stop price nor the auto-match limit price would be displayed, which detail is consistent with (although not specified in) the pre-Pillar Rule and would therefore add clarity, transparency and internal consistency to Exchange rules.[31]

Next, the Exchange proposes to add a ''Definitions'' section to describe concepts applicable to the proposed Rule. As described below, the proposed terms are the same in name as those used to describe pre-Pillar Complex CUBE functionality but are not necessarily the same in substance.[32] As such, the requirements for starting a Complex CUBE Auction on Pillar are not identical to the requirements set forth in the pre-Pillar Rule. Because most of the proposed definitions cross-reference other defined concepts, the Exchange has organized its discussion of these terms not alphabetically (as is done in the proposed Rule) but instead in a manner that is designed to make the proposed functionality easier to comprehend.

• *DBBO.* The Exchange proposes that DBBO would have the meaning set forth in Pillar Rule 980NYP(a)(5).[33] The Pillar concept of the DBBO refers to the derived best net bid (''DBB'') and derived best net offer (''DBO'') [34] for a complex strategy. As described in the Pillar Complex Approval Order, the concept of the DBBO was based on the

[21] *Compare* proposed Rule 971.2NYP(c)(2) with pre-Pillar Rule 971.2NY(c)(2) (both providing that an Auction will end early if there is a trading halt in any of the component series).

[22] *See* Pillar Rule 971.1NYP(c)(4)(C) (describing the same optional Surrender Quantity functionality for single-leg CUBE Auctions on Pillar).

[23] The Exchange notes that ''complex strategy'' means a particular combination of leg components and their ratios to one another. Pillar Rule 980NYP(a)(4). New complex strategies can be created when the Exchange receives either a request to create a new complex strategy or an ECO with a new complex strategy. *See id.*

[24] *See* Pillar Rule 971.1NYP(c), (c)(1)(A) (describing the same concurrent auction functionality for single-leg CUBE Auctions on Pillar).

[25] *See* Pillar Rule 971.1NYP(c)(4) (describing the same order allocation functionality for single-leg CUBE Auctions on Pillar—*i.e.,* the rule likewise incorporates the priority scheme set forth in Pillar Rule 964NYP).

[26] For example, the Exchange proposes to replace reference to ''$0.01'' with ''one cent ($0.01),'' which the Exchange believes would add clarity and transparency to the proposed Rule. *See* proposed Rule 971.2NYP(a)(1) (A)(ii) and (iv).

[27] As noted herein, pre-Pillar Rule 971.2NY is not applicable on Pillar and the Exchange is not currently conducting Complex CUBE Auctions on Pillar. *See supra* note 11.

[28] *Compare* proposed Rule 971.2NYP *with* pre-Pillar Rule 971.2NY. The proposed Rule updates certain internal (and external) cross-references to reflect the (re)organization of the proposed Rule and to reflect the applicable Pillar rule(s), which differences are not material because they do not impact functionality. The Exchange has also made the stylistic choice to reorganize certain provisions in the proposed Rule to better align with corollary provisions in Pillar Rule 971.1NYP.

[29] *See also* Pillar Rule 900.3NYP(f) (providing a Complex Order is any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy). As discussed *infra,* the Exchange proposes to modify Pillar Rule 980NYP, which governs Electronic Order Trading, to include ''Complex CUBE Orders'' as a type of ECO available for trading on the Exchange. *See* proposed Rule 980NYP(b)(1).

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

[31] *See* proposed Rule 971.2NYP(a)(1). The Exchange notes that including the proposed rule text would also align with the Pillar rule for single-leg CUBE Auctions. *See* Pillar Rule 971.1NYP(a)(1) (specifying that in a single-leg CUBE Auction neither the stop price nor auto-match limit price are displayed).

[32] *See* proposed Rule 971.2NYP(a)(1)(A) (setting forth ''Definitions'' for purposes of the proposed Rule). The Exchange notes that this proposed section obviates the need for pre-Pillar Commentary .02 (setting forth ''Definitions'' for purposes of the pre-Pillar Rule). As discussed *infra,* the omission of this Commentary does not alter the functionality of the proposed Rule and is therefore immaterial.

[33] *See* proposed Rule 971.2NYP(a)(1)(A)(iii) (defining DBBO).

[34] The DBBO provides for the establishment of a derived (theoretical) bid or offer for a particular complex strategy. *See* Pillar Rule 980NYP(a)(5) (defining the DBBO and providing that the bid (offer) price used to calculate the DBBO on each leg will be the Exchange BB (BO) (if available), bound by the maximum allowable Away Market Deviation). The Away Market Deviation, as defined in Pillar Rule 980NYP(a)(1), ensures that an ECO does not execute too far away from the prevailing market. Pillar Rule 980NYP(a)(5) also provides for the establishment of the DBBO in the absence of an Exchange BB (BO), or ABB (ABO), or both.

definition of Derived BBO set forth in Rule 900.2NY [35] but is more expansive in that it ensures that Electronic Complex Orders (ECOs) do not execute too far away from the prevailing market (*i.e.,* is bound by the Away Market Deviation) and provides alternative means of calculating the DBBO (*e.g.,* by looking to the contra-side best bid (offer) in the absence of same-side interest).[36]

• *Complex BBO.* The Exchange proposes to define the Complex BBO as ''the best-priced complex order(s) in the same complex strategy to buy (sell)'' and would provide that ''[t]he Complex BB cannot exceed the DBO and the Complex BO cannot exceed the (DBB).'' [37] The proposed definition is substantively the same as the definition of Complex BBO set forth in Rule 900.2NY,[38] except that the proposed definition incorporates the Pillar concept of DBBO (described above). Specifically, if the best-priced complex order to buy (sell) crosses the best-priced leg market interest to sell (buy) (*i.e.,* the DBBO), the Exchange would ensure that the Complex BBO honors the leg market prices.[39]

• *CUBE BBO.* The CUBE BBO would refer to the CUBE BB and the CUBE BO.[40] Specifically, as proposed:

○ The CUBE BB for a Complex CUBE Order to buy would be comprised of the higher of: the Complex BB or the Complex BB plus one cent ($0.01) if there is a Customer Complex Order on the Complex BB; or the DBB or the DBB plus one cent ($0.01) if there is displayed Customer interest on the Exchange BBO and the DBB is calculated using the Exchange BBO; and

○ The CUBE BO for a Complex CUBE Order to sell would be comprised of the lower of: the Complex BO or the Complex BO minus one cent ($0.01) if there is a Customer Complex Order on the Complex BO; or the DBO or the DBO minus one cent ($0.01) if there is displayed Customer interest on the Exchange BBO and the DBO is calculated using the Exchange BBO.[41]

Pre-Pillar Rule 971.2NY(a)(2) provided that the CUBE BBO was ''the more aggressive of (i) the Complex BBO improved by $0.01, or (ii) the Derived BBO improved by: $0.01 multiplied by the smallest leg of the complex order strategy.'' [42] Like the pre-Pillar CUBE BBO, the proposed CUBE BBO relies on the best-priced interest on the complex order book or in the leg markets—though, as noted herein, the CUBE BBO incorporates the Pillar concept of DBBO. Unlike pre-Pillar Complex CUBE functionality, the proposed CUBE BBO does not automatically improve the Complex BBO or DBBO, as applicable, nor does it account for the smallest leg ratio if the leg markets make up the CUBE BBO.[43] Instead, as proposed, the CUBE BBO would price improve the best-priced interest on the Exchange only if such interest represents displayed Customer interest, which incorporates the Exchange's Customer-centric priority scheme.

The Exchange's priority and allocation procedures are set forth in Pillar Rule 964NYP. Pillar Rule 964NYP(e) specifies that, at each price, and within each priority category, Customer interest has priority over non-Customer interest and (also at each price) displayed Customer interest has priority over non-displayed Customer interest.[44] Thus, the proposal to require that the CUBE BBO price improve only displayed Customer interest is consistent with the Pillar priority scheme. Moreover, the proposed Rule would align with Pillar Rule 980NYP, which requires that when an ECO trades with another ECO (*i.e.,* not with the leg markets) the transaction price must improve certain ''displayed Customer interest'' to yield priority to such interest.[45] Therefore, the proposed CUBE BBO would align the proposed Rule with existing Pillar rules.

In addition, the proposal to require the CUBE BBO to price improve by one penny the best-priced interest on the Exchange when it includes displayed Customer interest, while different from pre-Pillar functionality, is a competitive change designed to help the Exchange better compete for complex auction order flow. Specifically, Cboe offers a Complex Automated Improvement Mechanism (''C–AIM''), which is analogous to the Complex CUBE Auction. Like the proposed CUBE BBO, Cboe requires C–AIM participants to price improve interest resting on Cboe only when such interest represents a ''Priority Customer'' on the SBBO (which is analogous to the DBBO).[46] While the Cboe C–AIM Rule does not specify that the Priority Customer interest must be displayed interest, the Exchange believes this is a reasonable inference based on requirements set forth in other Cboe rules as well as the fact that Cboe, like the Exchange, must also comply with the Options Order Protection and Locked/Crossed Market Plan.[47] As such, the Exchange believes

[35] *See* Rule 900.2NY (defining Derived BBO as being ''calculated using the BBO from the Consolidated Book for each of the options series comprising a given complex order strategy'').

[36] *See* Pillar Complex Approval Order, 88 FR, at 40896–98.

[37] *See* proposed Rule 971.2NYP(a)(1)(A)(i) (defining Complex BBO).

[38] *See* Rule 900.2NY (defining the ''Complex BBO'' as ''the complex orders with the lowest-priced (*i.e.,* the most aggressive) net debit/credit price on each side of the Consolidated Book for the same complex order strategy'').

[39] The terms ''leg'' or ''leg market'' refers to each of the component option series that comprise an ECO and ''ratio'' refers to the quantity of each leg of an ECO broken down to the least common denominator such that the ''smallest leg ratio'' is the portion of the ratio represented by the leg with the fewest contracts. *See* Pillar Rule 980NYP(a)(8), (a)(9), respectively.

[40] *See* proposed Rule 971.2NYP(a)(1)(A)(ii) (defining CUBE BBO).

[41] *See* proposed Rule 971.2NYP(a)(1)(A)(ii)(a)–(b).

[42] *See* pre-Pillar Rule 971.2NY(a)(2).

[43] The Exchange notes that, pre-Pillar, if the CUBE BBO was based on the Derived BBO and the leg ratio of the complex strategy is 2x3 leg ratio, the CUBE BBO would improve the Derived BBO by two cents ($0.02)—regardless of the presence of Customer interest on the Derived BBO. As discussed herein, although the requisite price improvement to the CUBE BBO is never more than one penny, the Exchange believes this pricing change is competitive and would enable the Exchange to better compete for Complex CUBE Auction flow.

[44] *See* Rule 964NYP(e)(1)–(3) (setting forth three categories in order of first priority—Priority 1—Market Orders; Priority 2—Displayed Orders; and Priority 3—Non-Display Orders; providing that, within each priority category, at a price, Customers have priority over non-Customers; 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).

[45] *See, e.g.,* Pillar Rules 980NYP(d)(3) (providing that the ECO Auction Collars, within which ECOs trade in the ECO Opening Auction, account for (and price improve) ''displayed Customer interest'' on the Exchange BBO(s)); 980NYP(e)(1)(C) (requiring that ECOs designated as ''Complex Only Orders'' trade at a price that improves ''displayed Customer interest'' on the Exchange BBO(s)); and 980NYP(f)(2) (requiring that ECOs may only trade in a Complex Order Auction (COA) at a price that improves ''displayed Customer interest'' on the Exchange BBO(s)).

[46] *See* Cboe Rule 5.38(b)(1) (requiring that, to initiate a C–AIM, the ''Initiating Order'' (akin to Complex Contra Order) must be guaranteed by the ''Agency Order'' (akin to Complex CUBE Order) at a price that improves by at least one MPV the best-priced interest on the complex order book or in the leg markets when such interest represents a ''Priority Customer''). *See also* Cboe Rule (e)(5)(B) (providing that responses to a C–AIM must execute with the Agency Order at a price that is ''(i) the better of the SBO (SBB) [Synthetic Offer (Synthetic Bid] or the offer (bid) of a resting complex order at the top of the COB [Complex Order Book]; or (ii) one minimum increment lower (higher) than the better of the SBO (SBB) or the offer (bid) of a resting complex order at the top of the COB if the BBO of any component of the complex strategy or the resting complex order, respectively, is a Priority Customer order''). Cboe defines a Priority Customer as ''a person or entity that is a Public Customer and is not a Professional,'' which is analogous with the Exchange's definition of Customer. *Compare* Cboe Rule 1.1 *with* Rule 900.2NY (defining Customer and Professional Customer).

[47] The C–AIM pricing requirement that the Exchange proposes to copy is based on the presence of a Priority Customer on the SBBO. The definition of SBBO incorporates Cboe's definition of the BBO, is ''the best bid or offer *disseminated* on the Exchange'' (Cboe Rule 1.1 (emphasis added)). The SBBO represents ''the best net bid and net offer'' on Cboe as calculated using, for complex orders,

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that making price improvement for the CUBE BBO contingent on the presence of displayed Customer interest (as opposed to automatic) may increase Complex CUBE Orders directed to the Exchange (as a result of the more competitive requirements), while maintaining the Exchange's Customer-centric priority scheme.[48] In addition, the proposed CUBE BBO would continue to protect same-priced, displayed Customer interest and would ensure that Complex CUBE Orders do not trade ahead of such displayed Customer interest, whether in the leg markets or as Customer Complex Orders.

• *Initiating Price.* The ''initiating price'' for a Complex CUBE Order to buy (sell) would be the lower (higher) of the Complex CUBE Order's net price or the price that locks the DBO (DBB) or, if the DBO (DBB) includes displayed Customer interest on the Exchange, the DBO (DBB) minus (plus) one cent ($0.01).[49] The pre-Pillar Rule 971.2NY(a)(3) provides that the initiating price for a Complex CUBE Order is ''the less aggressive of the net debit/credit price of such order or the price that locks the contra-side CUBE BBO, which is consistent with the proposed Rule insofar as it relies on the limit price of the Complex CUBE Order as one boundary.'' [50] [sic] The proposed concept relies on the Pillar concept of the DBBO rather than the (pre-Pillar) CUBE BBO, which distinction ensures that the Complex CUBE Order can be priced equal to prices available in the leg markets but must improve such prices in the presence of displayed Customer interest.[51] The Exchange notes that this distinction was not necessary in the pre-Pillar Rule because, as noted herein, the CUBE BBO always price improved the best-priced interest on the Exchange (including on the leg markets) regardless of the presence of Customer interest. As such, the Exchange believes that the proposed ''initiating price'' would continue to respect leg market prices and improve leg market prices in the presence of displayed Customer interest. The Exchange notes that the proposed ''initiating price'' definition would align the Exchange with the price parameters in place on at least one competing options exchange.[52]

• *Range of Permissible Executions.* The ''range of permissible executions'' of a Complex CUBE Order to buy (sell) would include prices equal to or between the initiating price as the upper (lower) bound and the CUBE BB (BO) as the lower (upper) bound, which range is consistent with the pre-Pillar range except that it incorporates the Pillar definition of CUBE BBO.[53] Like the pre-Pillar Rule, the proposed Rule would specify when the Exchange would adjust the permissible range of executions based on interest that arrives during the Auction. Specifically, as proposed, the range of permissible executions for a Complex CUBE Order to buy (sell) would be adjusted based on updates to the CUBE BB (BO) during an Auction, providing that, if the CUBE BB (BO) updates to be higher (lower) than the initiating price, the Auction will end early pursuant to paragraph (c)(3) of this Rule.[54]

Initiating of Auction

Proposed Rule 971.2NYP would set forth the requirements for initiating a Complex CUBE Auction, which are substantively identical to pre-Pillar functionality as noted herein. Specifically, to initiate an Auction, the net price of a Complex CUBE Order to buy (sell) must be equal to or higher (lower) than the CUBE BB (BO) and a Complex CUBE Order that fails to meet these requirements would be rejected along with the Complex Contra Order.[55] As further proposed, the time at which the Auction is initiated would also be considered the time of execution for the Complex CUBE Order, which is identical to pre-Pillar functionality.[56]

Complex CUBE Auction Eligibility Requirements

On Pillar, as is the case today, all options traded on the Exchange would be eligible to be part of a Complex CUBE Auction.[57] Proposed Rule 971.2NYP(b), like the pre-Pillar Rule, would set forth the requisite conditions for initiating a Complex CUBE Auction.

• Proposed Rule 971.2NYP(b)(1) is substantively identical to Rule 971.2NY(b)(1) and would provide that the Initiating Participant marks the Complex CUBE Order for Auction processing and submits a Complex Contra Order with a ''stop price'' or an ''auto-match limit price'' (described below) as the means of guaranteeing the execution of the Complex CUBE Order.

○ Proposed Rule 971.2NYP(b)(1)(A), like Rule 971.2NY(b)(1)(A), would describe the ''stop price'' as the price at which the Initiating Participant guarantees the Complex CUBE Order.[58] The pre-Pillar Rule provides that that the stop price, ''must be executable against the initiating price'', that a stop price must not cross the same-side

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''the BBO for each component,'' of a complex strategy from the Simple Book [*i.e.,* leg markets] (Cboe Rule 5.33(a)). Because the SBBO for each component leg is based on the best bid and offer *disseminated* by Cboe, the Exchange believes it is reasonable to infer that only displayed Priority Customer is considered for purposes of C–AIM pricing. As such, the Exchange believes that the proposed Rule is consistent with (a reasonable interpretation of) Cboe's requirements and is therefore not new or novel.

[48] As noted, *supra,* the proposed CUBE BBO, if based on the DBBO, ignores the leg ratio of the complex strategy and would require price improvement of only one penny, which is consistent (and competitive) with Cboe as discussed herein.

[49] *See* proposed Rule 971.2NYP(a)(1)(A)(iv) (defining the initiating price).

[50] *See* pre-Pillar Rule 971.2NY(a)(3). As noted above, per pre-Pillar Rule 971.2NY(a)(2), the CUBE BBO must improve the Complex BBO or Derived BBO, as applicable, by at least one cent ($0.01) regardless of Customer interest.

[51] As noted herein, Complex CUBE Orders may not trade with interest in the leg markets; however, such orders may not trade at prices that disadvantage interest in the leg markets, including displayed Customer interest. *See, e.g.,* Pillar Rule 980NYP(c)(2) (providing that when an ECO is trading with another ECO, ''each component leg of the ECO must trade at a price at or within the Exchange BBO for that series'') and 980NYP(e)(1)(A) (providing that, at a price, interest in the leg markets have first priority to trade with an ECO provided it can trade in full or in a permissible ratio).

[52] *See* Cboe Rule 5.38(e)(5)(B) (regarding permissible range of executions at the conclusion of a C–AIM auction).

[53] *Compare* proposed Rule 971.2NYP(a)(1)(A)(v) (defining the range of permissible executions) *with* pre-Pillar Rule 971.2NY(a)(4) (providing that ''[t]the 'range of permissible executions' of a Complex CUBE Order is all prices equal to or between the initiating price and the same-side CUBE BBO''). As noted *infra,* unlike pre-Pillar Rule 971.2NY, the proposed Rule does not refer to the ''same-side CUBE BBO,'' but instead specifies the CUBE BB or CUBE BO, as applicable.

[54] *Compare* proposed Rule 971.2NYP(a)(1)(A)(v) *with* pre-Pillar Rule 971.2NY(a)(4)(A) (providing relevant part, that the CUBE BBO would not update during the Auction if such ''updated CUBE BBO would cause the Auction to conclude earlier pursuant to paragraph (a)(3) of this Rule').

[55] *See* proposed Rule 971.2NYP(a)(2) (Initiating of Auction). *See also* pre-Pillar Rule 971.2NY(b)(2) (providing that ''[a] Complex CUBE Order that does not have a net debit/credit price that is equal to or better than the same-side CUBE BBO is not eligible to initiate an Auction and will be rejected, along with the Complex Contra Order''). The Exchange notes that pre-Pillar Rule 971.2NY(a)(2) refers to a ''net debit/credit price,'' the Exchange proposes to refer simply to the ''net price.'' *See, e.g.,* Pillar Rule 980NYP(c) (referring to the total ''net price'' of an ECO for ranking and priority purposes).

[56] *See* proposed Rule 971.2NYP(a)(2) (Initiating of Auction). *See also* pre-Pillar Rule 971.2NY(c) (providing that [t]he time at which the Auction is initiated will also be considered the time of execution for the Complex CUBE Order'').

[57] Unlike the pre-Pillar Rule, which states that all options traded on the Exchange are eligible to be ''part of a Complex CUBE Order,'' the proposed rule would state that all such options would be eligible to be ''part of a Complex CUBE Auction.'' *Compare* proposed Rule 971.2NYP(b) *with* pre-Pillar Rule 971.2NY(b). This proposed difference would align with Pillar Rule 971.1NYP(b), which provides that ''[a]ll options traded on the Exchange are eligible to be part of the CUBE Auction.''

[58] *Compare* proposed Rule 971.2NY(b)(1)(A) (providing that the single ''stop price'' is ''the price at which the Initiating Participant guarantees the Complex CUBE Order'') *with* pre-Pillar Rule 971.2NY(b)(1)(A) (same).

CUBE BBO; and that ''[t]he Complex Contra Order may trade with the Complex CUBE Order at the stop price''.[59] The Exchange proposes to streamline the implementation of the stop price requirements. Specifically, the proposed Rule would state definitively that ''[t]he stop price must be equal to the initiating price,'' otherwise both the Complex CUBE Order and the Complex Contra Order would be rejected and no Auction would be initiated.[60] The Exchange believes the proposed Rule, which relies solely on the initiating price as the benchmark for the stop price, would add clarity and transparency to, and would improve the accuracy of, the stop price requirements.[61]

○ Proposed Rule 971.2NYP(b)(1)(B) is substantively identical to Rule 971.2NY(b)(1)(B), with differences specified below. Like the pre-Pillar Rule, the proposed Rule would describe the ''auto-match limit price'' as the best (*i.e.,* most aggressive) price at which the Initiating Participant is willing to trade with the Complex CUBE Order, which price must be executable against the initiating price of the Auction.[62] Also consistent with the pre-Pillar Rule, the proposed Rule would specify that when the Initiating Participant guarantees a Complex CUBE Order with an auto-match limit price, the Complex Contra Order for a Complex 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.[63]

In addition, consistent with the pre-Pillar Complex CUBE rule (although worded differently), the proposed Rule would provide that an auto-match limit price specified for a Complex CUBE Order to buy (sell) that is below (above) the CUBE BB (BO) will be repriced to the CUBE BB (BO).[64] Finally, consistent with the pre-Pillar Rule (although not explicitly stated), the Exchange proposes to state that an auto-match limit price specified for a Complex CUBE Order to buy (sell) that is above (below) the initiating price is not eligible to initiate an Auction and both the Complex CUBE Order and the Complex Contra Order will be rejected.[65] The Exchange believes this proposed change would add clarity, transparency, and internal consistency to Exchange rules.[66]

On Pillar, the Exchange would continue to reject Complex CUBE Orders (together with Complex Contra Orders) under the following two circumstances, each of which is identical to the reasons for rejection of such orders per pre-Pillar Rule 971.2NY (b)(3) and (b)(5), respectively, as described below.

• Proposed Rule 971.2NYP(b)(2) is identical to Rule 971.2NY(b)(3) and would provide that Complex CUBE Orders submitted before the opening of trading would not be eligible to initiate an Auction and would be rejected, along with the Complex Contra Order.

• Proposed Rule 971.2NYP(b)(4) is identical to Rule 971.2NY(b)(5) and would provide that Complex CUBE Orders submitted during a trading halt are not eligible to initiate an Auction and would be rejected, along with the Complex Contra Order.

In addition, the proposed Rule would continue to reject Complex CUBE Orders (together with Complex Contra Orders) under the following circumstance, which differs slightly the from the pre-Pillar rule, but would align the proposed Rule with Pillar Rule 971.1NYP for single-leg CUBE Auctions on Pillar.[67]

• Proposed Rule 971.2NYP(b)(3) would provide that the Exchange would reject Complex CUBE Orders submitted when there is insufficient time in the trading session to conduct an Auction. However, whereas the pre-Pillar rule provides that Complex CUBE Orders are rejected if submitted during ''the final second of the trading session,'' the proposed Rule would provide that Complex 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.'' [68] 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 pre-Pillar Rule.[69]

The Exchange believes that this proposed change, which mirrors the operation of the Response Time Interval for single-leg CUBE Auctions, would add clarity, transparency, and internal consistency to Exchange rules regarding when CUBE Orders may be rejected—particularly to market participants

[59] *See* pre-Pillar Rule 971.2NY(b)(1)(A) (providing that, ''[i]f an Initiating Participant specifies a single stop price, the stop price must be executable against the initiating price of the Auction. The Complex Contra Order may trade with the Complex CUBE Order at the stop price, pursuant to paragraph (c)(4) of this Rule. If the stop price crosses the same-side CUBE BBO, the Complex CUBE Order is not eligible to initiate an Auction and will be rejected along with the Complex Contra Order'').

[60] *See* proposed Rule 971.2NYP(b)(1)(A) (providing that ''[t]he stop price must be equal to the initiating price,'' and that ''[a] stop price specified for a Complex CUBE Order that is not equal to the initiating price is not eligible to initiate an Auction and both the Complex CUBE Order and the Complex Contra Order will be rejected'').

[61] Compare proposed Rule 971.2NYP(b)(1)(A) (relying solely on the initiating price as the benchmark against which the stop price is evaluated) *with* '' Rule 971.2NY(b)(1)(A) (relying solely on the initiating price as the benchmark against which the stop price is evaluated) providing, in relevant part, that ''[t]he Complex Contra Order may trade with the Complex CUBE Order at the stop price'').

[62] *See* pre-Pillar Rule 971.2NY(b)(1)(B) (providing that the ''auto-match limit price'' is the most aggressive price at which the Initiating Participant is willing to trade with the Complex CUBE Order, which must be executable against the initiating price of the Auction). The proposed Rule differs in that it refers to ''best price,'' rather than ''most aggressive price,'' which is a stylistic preference that would add clarity and transparency to Exchange rules.

[63] *See* pre-Pillar Rule 971.2NY(b)(1)(B) (providing that ''[t]he Complex Contra Order may trade with the Complex CUBE Order at prices that are better than or equal to the initiating price until trading at the auto-match limit price, if applicable,'' pursuant to paragraph (c)(4) of the pre-Pillar Rule regarding Order Allocation).

[64] *Compare* proposed Rule 971.2NYP(b)(1)(B) *with* pre-Pillar Rule 971.2NY(b)(1)(B) (providing, in relevant part, that ''[i]f the auto-match limit price crosses the same-side CUBE BBO, the Complex Contra Order will be priced back to lock the same-side CUBE BBO.).The Exchange notes that the proposed Rule provision is substantively the same as the pre-Pillar Rule, however, rather than use the terms ''cross'' and ''lock,'' the proposed Rule specifies whether the Complex CUBE Order is to buy or sell and includes the relevant side of the CUBE BBO, which would add clarity and transparency to Exchange rules.

[65] *See* proposed Rule 971.2NYP(b)(1)(B).

[66] The Exchange notes that this functionality has been implemented for single-leg CUBE Auctions on Pillar. *See, e.g.,* Pillar Rule 971.1NYP(b)(1)(C) (providing that for a single-leg CUBE Auction, ''[a]n auto-match limit price specified for a CUBE Order to buy (sell) that is above (below) the initiating price is not eligible to initiate an Auction and both the CUBE Order and the Contra Order will be rejected'').

[67] The proposed Rule would also align with single-leg CUBE Auction functionality. *See, e.g.,* Pillar 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'').

[68] *Compare* proposed Rule 971.2NYP(b)(3) (''Complex 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 Complex Contra Order'') *with* pre-Pillar Rule 971.2NY(b)(4) (''Complex CUBE Orders submitted during the final second of the trading session in the component series are not eligible to initiate an Auction and shall be rejected, along with the Complex Contra Order''). The Exchange proposes to remove the superfluous reference to ''in the component series,'' which would streamline the proposed Rule text. *See* proposed Rule 971.2NYP(b)(3).

[69] *See, e.g.,* pre-Pillar Rule 971.2NY(c)(1)(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 971.2NYP(c)(1)(B) (which provides the same minimum/maximum parameters), as discussed *infra.*

submitting CUBE Orders late in the trading day.

Auction Process: Request for Responses and Response Time Interval

On Pillar, the Exchange proposes to utilize the (same) process set forth in pre-Pillar Rule 971.2NY(c) for announcing a Complex CUBE Auction and soliciting trading interest to potentially interact with the Complex CUBE Order, with modifications and enhancements specified below.

- Proposed Rule 971.2NYP(c) would provide that once an Auction has commenced, the Complex CUBE Order (as well as the Complex Contra Order) may not be cancelled or modified, which text is identical to the latter portion of the last sentence of pr pre-Pillar Rule 971.2NY(c).
- Proposed Rule 971.2NYP(c)(1)(A) is substantively identical to pre-Pillar Rule 971.2NY(c)(1)(A) and would provide that upon receipt of a Complex 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 Complex CUBE Order, as well as the initiating price. On Pillar, however, the RFR would also include an AuctionID that would identify each Complex CUBE Auction, which would be a new feature.[70] The Exchange notes that other options exchanges likewise include an AuctionID on the request for responses to the price improvement auction and this proposed change is therefore not new or novel.[71]
- Proposed Rule 971.2NYP(c)(1)(B) is substantively identical to pre-Pillar Rule 971.2NY(c)(1)(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. The proposed rule differs from the pre-Pillar rule, which provides for a Response Time Interval that lasts for ''a random period of time within parameters determined by the Exchange and announced by Trader Update.'' [72] Rather than a random period of time, the Exchange proposes that the Response Time Interval would instead be a set duration of time, which is more deterministic.[73] This proposal to rely on a fixed (rather than random) duration of time for a price improvement auction is identical to single-leg CUBE Auction functionality and consistent with functionality available on another options exchange.[74]

Proposed Rule 971.2NYP(c)(1)(C) is identical to pre-Pillar Rule 971.2NY(c)(1)(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'').[75] The proposed Rule would also provide that, consistent with the pre-Pillar Rule (although stated differently), any RFR Response to a Complex CUBE Order to buy (sell) priced below (above) the CUBE BB (BO) would be repriced to the CUBE BB (BO) and would be eligible to trade in the Auction at such price.[76]

RFR Responses: Complex GTX Orders

On Pillar and consistent with the pre-Pillar rule, the Exchange would accept Complex GTX Orders as RFR Responses and impose the following requirements for such orders to be eligible to trade in the CUBE Auction.

- Proposed Rule 971.2NYP(c)(1)(C)(i) is substantively identical to pre-Pillar Rule 971.2NY(c)(1)(C)(i) and would provide that ATP Holders may respond to RFRs with Complex GTX Orders, which are ECOs, as defined in Pillar Rule 980NYP, and have a time-in-force contingency for the Response Time Interval, and must specify price, size and side of the market.[77] The proposed Rule would also specify that Complex GTX Orders must be on the opposite side of the market as a Complex CUBE Order being auctioned when submitted, which would add clarity and transparency to Exchange rules.[78]
- Proposed Rule 971.2NYP(c)(1)(C)(i)(a) is identical to the first sentence of pre-Pillar Rule 971.2NY(c)(1)(C)(i)(a) and would provide that Complex GTX Orders would not be displayed on the Consolidated Book and would not be disseminated to any participants.
- Proposed Rule 971.2NYP(c)(1)(C)(i)(c) is identical to pre-Pillar Rule 971.2NY(c)(1)(C)(i)(c) and would provide that Complex GTX Orders may be cancelled or modified.

In addition to continuing the foregoing requirements, the Exchange proposes to modify or clarify the operation of Complex GTX Orders on Pillar (as compared to pre-Pillar) as follows.[79]

- The Exchange proposes new functionality on Pillar that would permit senders of Complex GTX Orders the option to include an AuctionID to signify the Complex CUBE Order with which such Complex GTX Order would like to trade.[80] The Exchange believes that this proposed functionality, which is also available for single-leg CUBE Auctions and on other options exchanges, would allow market participants to have more control over their trading interest.[81] For the sake of

[70] *See* proposed Rule 971.2NYP(c)(1)(A).

[71] *See* Cboe Rule 5.38(c)(2) (providing that each ''AIM Auction Notification Message'' will include an ''AuctionID''). *See also* Pillar Rule 971.1NYP(c)(1)(A) (providing for the inclusion of AuctionIDs on RFRs announcing single-leg CUBE Auctions).

[72] *See* pre-Pillar Rule 971.2NY(c)(1)(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*.

[73] *See* proposed Rule 971.2NYP(c)(1)(B).

[74] *See* Pillar Rule 971.1NYP(c)(1)(B) (providing the same requirement that ''[t]he Response Time Interval will last for a set duration within parameters determined by the Exchange and announced by Trader Update.''). *See* Cboe Rule 5.38(c)(3) (providing that the ''C–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).

[75] 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.

[76] *Compare* proposed Rule 971.2NYP(c)(1)(C) *with* pre-Pillar Rule 971.2NY(c)(1)(C) (providing, in relevant part, that any RFR Response 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). The Exchange notes that the proposed Rule provision is substantively the same as the pre-Pillar Rule, however, rather than use the terms ''cross'' and ''same-side CUBE BBO,'' the proposed Rule specifies whether the Complex CUBE Order is to buy or sell and includes the relevant side of the CUBE BBO, which would add clarity and transparency to Exchange rules.

[77] The Exchange notes that the proposed Rule updates the cross-reference to reflect Pillar Rule 980NYP (from the reference in pre-Pillar Rule 971.2NY(c)(1)(C)(i) to pre-Pillar Rule 980NY).

[78] *See* proposed Rule 971.2NYP(c)(1)(C)(i). As discussed, *infra,* the Exchange would reject a Complex GTX Order that is submitted when there is no contra-side Complex CUBE Order being auctioned. *See* proposed Rule 971.2NYP(c)(1)(C)(i)(d).

[79] Unlike pre-Pillar Rule 971.2NY(c)(1)(C)(i)(b), the proposed Rule will not state that ''Complex GTX Orders with a size greater than the size of the Complex CUBE Order will be capped at the size of the CUBE Order,'' because, consistent with Pillar Rule 964NYP and as discussed below, only non-Customer Complex GTX Orders would be capped for purposes of pro rata allocation, whereas Customer Complex GTX Orders would trade with the CUBE Order based on time. *See* proposed Rule 971.2NYP(c)(4)(B), as discussed *infra*.

[80] *See* proposed Rule 971.2NYP(c)(1)(C)(i) (providing in relevant part that ''Complex GTX Orders may include an AuctionID to respond to a specific Complex CUBE Auction''). Should the Complex GTX Order include an apparently erroneous AuctionID (*e.g.,* a Complex GTX Order to buy includes an AuctionID for a Complex CUBE Order to buy), the Exchange would reject such Complex GTX Order even if there are other Auctions (*e.g.,* on the contra-side with a different AuctionID) with which that Complex GTX Order could have traded.

[81] *See* Pillar Rule 971.1NYP(c)(1)(C)(i) (providing that GTX Orders responding to a single-leg CUBE

clarity and transparency, the proposed Rule would also state that a Complex GTX Order that does not include an AuctionID would respond to the Auction that began closest in time to the submission of the Complex GTX Order.[82]

• The Exchange proposes to describe how Complex GTX Orders will be treated on Pillar consistent with Pillar Rule 964NYP (described in detail below).[83] 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.[84] 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 Complex CUBE Order, Complex GTX Orders would be ranked and prioritized as Priority 2—Display Orders per Pillar Rule 964NYP(e).[85] The Exchange believes that this proposed change, which mirrors the handling of GTX Orders in single-leg CUBE Auctions, would add clarity, transparency, and internal consistency to Exchange rules and would make clear to market participants responding to Complex CUBE Auctions with Complex GTX Orders how such interest will be prioritized on Pillar.[86]

• The Exchange also proposes to modify the operation of Complex GTX Orders on Pillar by restricting the interest with which such orders may trade. Pursuant to the second sentence of pre-Pillar Rule 971.2NY(c)(2), any size of a Complex GTX Order that remains after it executes, if at all, with the Complex CUBE Order may then execute with other ECOs on the same side of the market as the CUBE Order before cancelling.[87] On Pillar, the Exchange proposes that Complex GTX Orders, which are submitted for the purpose of participating in an Auction, would execute solely with the Complex CUBE Order, if at all, and then cancel, which differs from the pre-Pillar Rule and is identical to how the Exchange handles GTX Orders submitted to the single-leg CUBE Auction.[88] Like GTX Orders submitted to the single-CUBE Auction, the Exchange believes that allowing the Complex GTX Order to execute solely with the Complex CUBE Order, if at all, would enable ATP Holders to send targeted, more deterministic, Auction responses (including to interact with specific Auctions by utilizing the optional AuctionID functionality, discussed above).[89] The Exchange notes that ATP Holders would continue to have the option to submit RFR Responses not designated as Complex GTX Orders, which Responses would be eligible to trade with any contra-side interest received during the Auction, with any remaining portion of such Responses being cancelled or processed pursuant to Pillar Rule 964NYP, as applicable.[90]

• The Exchange also proposes to modify the circumstances under which a Complex GTX Order would be rejected. First, the Exchange proposes to reject Complex GTX Orders that are priced higher (lower) than the initiating price of a CUBE Order to buy (sell) or that are submitted when there is no contra-side Complex CUBE Auction being conducted, which is consistent with the handling of GTX Orders submitted to single-leg CUBE Auctions.[91]

In addition, as discussed *infra,* on Pillar, the Exchange would allow more than one Auction in a given complex strategy to occur at once—which simultaneous Auctions could be on both sides of the market.[92] Thus, rather than reject Complex GTX Orders submitted on the same side of a Complex CUBE Order (*e.g.,* per pre-Pillar Rule 971.2NY(c)(1)(c)(i)(d)), the Exchange would instead reject Complex GTX Orders submitted when there is no contra-side Complex CUBE Auction occurring when the Complex GTX Order is submitted.[93] The Exchange believes this proposed change would provide increased opportunities to solicit price-improving auction interest.

Consistent with pre-Pillar Rule 971.2NY, the Exchange proposes to treat as RFR Responses certain unrelated Electronic Complex Orders (or ECOs), as defined in Pillar Rule 980NYP, including ECOs designated to be submitted to the Complex Order Auction (''COA'').[94] Further, like the pre-Pillar rule, the proposed Rule would provide that the Exchange will treat as an RFR Response any ECO that is on the opposite side of the market as a Complex CUBE Order; is not marked GTX; is received during the Response Time Interval or resting in the Consolidated Book when the Auction commences; and is eligible to

Auction may include an AuctionID). *See also* Cboe Rule 5.38(c)(5) (providing that AIM Auction responses may include ''the AuctionID for the AIM Auction to which the User is submitting the response'').

[82] *See* proposed Rule 971.2NYP(c)(1)(C)(i).

[83] *See* discussion of Complex CUBE Order allocation, per Pillar Rule 964NYP, *infra. See also* Pillar Priority Filing (describing the Pillar Priority Rules, which govern priority and allocation for options trading on Pillar).

[84] *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.'').

[85] *See* proposed Rule 971.2NYP(c)(1)(C)(i)(a) (''Complex 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)'').

[86] *See* Pillar Rule 971.1NYP(c)(1)(C)(i)(a) (describing same functionality for GTX Orders submitted in response to single-leg CUBE Auctions).

[87] *See* pre-Pillar Rule 971.2NY(c)(2) (providing, in relevant part, that ''any RFR Responses (*including Complex GTX Orders*) may trade with Complex Orders on the same side of the market as the Complex CUBE Order in accordance with Rule 980NY, Complex Order Trading'' and that ''any remaining balance of Complex GTX Orders will cancel.'' (emphasis added). *See also* pre-Pillar Rule 971.2NY (c)(3), and (c)(4) (providing that Complex GTX Orders may be eligible to trade with Auction interest (other than the Complex CUBE Order) before cancelling).

[88] *Compare* proposed Rule 971.2NYP(c)(1)(C)(i)(b) (''A Complex GTX Order will execute solely with the Complex CUBE Order, if at all, and then cancel'') *with* Pillar Rule 971.1NYP(c)(1)(C)(i)(c) (providing that, in a single-leg CUBE Auction, ''[a] GTX Order will cancel after trading with the CUBE Order to the extent possible''). *See also* Pillar Rule 980NYP(b)(C) (providing, in relevant part, that any remaining portion of a COA GTX Order that does not trade with the COA Order will be cancelled at the end of the COA).

[89] *See* proposed Rule 971.2NYP(c)(1)(C)(i)(b). *See also* proposed Rule 971.2NYP(c)(1)(C)(i) (which provides for optional AuctionID functionality).

[90] As discussed *infra,* proposed Pillar Rule 971.2NYP(c)(2) would provide, in relevant part, that ''[a]t the conclusion of the Auction, the Complex CUBE Order will execute pursuant to paragraph (c)(4) of this Rule'' and that ''[a]ny remaining quantity of RFR Responses (excluding Complex GTX Orders) after the Auction will be processed in accordance with Rule 964NYP (Order Ranking, Display, and Allocation).''

[91] *See* proposed Rule 971.2NYP(c)(1)(C)(i)(d). *See also* Pillar Rule 971.1NYP(c)(1)(C)(i)(e) (providing for the same handling of GTX Orders in a single-leg CUBE Auction).

[92] *See* proposed Rule 971.2NYP(c) (providing that ''[o]ne or more Complex CUBE Auctions in the same complex strategy may occur at the same time'').

[93] *See* proposed Rule 971.2NYP(c)(1)(C)(i)(d). The Exchange notes that it will reject a Complex GTX Order that includes an AuctionID for a Complex CUBE Order that is on the same side of the market as such Complex GTX Order even if there are contra-side Complex CUBE Auctions (with a different AuctionID) with which that Complex GTX Order could have traded.

[94] *Compare* proposed Rule 971.2NYP(c)(1)(C)(i) *with* pre-Pillar Rule 971.2NY(c)(1)(C)(ii). The Exchange notes that the proposed Rule updates the cross-reference for ECOs to Pillar Rule 980NYP and updates the reference to ''COA Orders'' (from the substantively identical ''COA-eligible orders''), which orders are designated to initiate a COA. *See* Pillar Rule 980NYP(a)(3) (defining COA process) and (a)(3)(A) (defining COA Orders). As discussed *infra,* the Exchange notes that COA Orders are eligible to execute in Complex CUBE Auctions. *See* proposed (Pillar) Rule 980NYP(f) (providing that a COA Order may only initiate a COA on arrival, otherwise it is processed as a (non-COA) ECO per Pillar Rule 980NYP(e).

participate within the range of permissible executions specified for the Auction pursuant to proposed paragraph (a)(1)(A)(v) of this Rule.[95] The proposed Rule would specify that the Electronic Complex Order would also have to be in the same complex strategy as the Complex CUBE Order, which difference does not impact functionality and would add clarity, transparency, and internal consistency to Exchange rules.[96]

Concurrent Complex CUBE Auctions [97]

The Exchange proposes to enhance functionality on Pillar by allowing more than one Complex CUBE Auction in the same complex strategy to run concurrently, which would align with single-leg CUBE Auction functionality per Pillar Rule 971.1NYP.[98] The Exchange proposes that if there are multiple Complex CUBE Auctions in a complex strategy that are running concurrently, such Auctions would conclude sequentially, based on the time each Complex CUBE Auction was initiated, unless an Auction concludes early, per proposed paragraph (c)(3) of this Rule (discussed below).[99] As further proposed, at the time each Complex CUBE Auction concludes, the Complex CUBE Order would be allocated against all eligible RFR Responses available at the time of conclusion.[100] In the event there are multiple Auctions underway that are each terminated early, such Auctions would be processed sequentially based on the time each Complex CUBE Auction was initiated, which processing mirrors handling of concurrent single-leg CUBE Auctions.[101] The Exchange believes that this proposed functionality would allow more Complex CUBE Auctions in the same complex strategy 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 an Auction in progress when the Exchange receives a new Complex CUBE Order in the same complex strategy.[102] 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 complex strategy is not new or novel and is functionality already available on another options exchange.[103]

Conclusion of Auction

As is the case today, on Pillar, a Complex CUBE Auction would conclude at the end of the Response Time Interval, unless there is a trading halt in any of the component series or if the Complex CUBE Auction ends early pursuant to proposed paragraph (c)(3) of this Rule (discussed below).[104] At the conclusion of the Auction, the Complex CUBE Order would execute pursuant to proposed paragraph (c)(4) of this Rule (discussed below).[105] After the conclusion of the Auction, the Exchange proposes that any RFR Responses (excluding Complex GTX Orders) that remain would be processed in accordance with Pillar Rule 964NYP (Order Ranking, Display, and Allocation).[106] The Exchange notes that, as discussed below, it would no longer end an Auction early if, during the Auction, interest arrives that crosses any RFR Response(s), which new functionality allows incoming interest to trade outside of the Auction or to trade with unexecuted RFR Responses (or portions thereof) after the Auction.[107] This proposed Rule would align Complex CUBE Auction functionality with single-leg CUBE Auctions on Pillar, including by relying on Pillar Rule 964NYP for any post-Auction executions.[108]

Early Conclusion of Complex CUBE Auction

On Pillar, the Exchange proposes to streamline and reduce the number of scenarios that would cause a Complex CUBE to end early (*i.e.,* before the end of the Response Time Interval) based on trading interest that arrives during the Auction. Pre-Pillar Rule 971.2NY sets forth six scenarios that would cause an Auction to end early.[109] As proposed, on Pillar, the following scenarios would no longer result in the early end of a CUBE Auction:

- First, because the Exchange proposes to allow concurrent auctions, the Exchange would no longer end a Complex CUBE Auction early based on the arrival of a new Complex CUBE Order.[110]
- Second, as noted above, the Exchange does not propose to end the Auction early upon the receipt of any interest that adjusts the same-side CUBE BBO to cross any RFR Response(s) because the Exchange would allow the

[95] *Compare* proposed Rule 971.2NYP(c)(1)(C)(ii) *with* pre-Pillar Rule 971.2NY(c)(2)(C)(ii). The Exchange notes that the proposed Rule differs from the pre-Pillar Rule in that it includes an updated cross-reference to the permissible range of executions as well as minor wording changes to account for concurrent auction functionality, which difference is immaterial because it does not impact functionality.

[96] *See* proposed Rule 971.2NYP(c)(1)(C)(ii) (Unrelated Electronic Complex Orders) (providing that ''Electronic Complex Orders, as defined in Rule 980NYP (including if designated as COA Orders), on the opposite side of the market in the same complex strategy as the Complex CUBE Order that are not marked GTX, that are received during the Response Time Interval or resting in the Consolidated Book when an Auction commences and that are eligible to participate within the range of permissible executions specified for the Auction pursuant to paragraph (a)(4) of this Rule will be also considered RFR Responses.'').

[97] The Exchange notes that the proposal to allow multiple Complex CUBE Auctions to run concurrently on Pillar is distinct from the functionality that permits a single-leg Auction in an option series to run concurrent with a Complex CUBE Auction for a complex strategy that includes the same series. *See* Commentary .03 to pre-Pillar Rule 971.2NY and proposed Commentary .01 to Rule 971.2NYP (which are substantively identical, as discussed below).

[98] *Compare* proposed Rule 971.2NYP(c) (providing that ''[o]ne or more Complex CUBE Auctions in the same series may occur at the same time.'') *with* pre-Pillar Rule 971.2NY(c) (providing that ''[o]nly one Auction may be conducted at a time in any given series''). *See also* Pillar Rule 971.1NYP(c) (allowing single-leg CUBE Auctions to run concurrently),

[99] *See* proposed Rule 971.2NYP(c). 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 971.2NYP(c)(2), (c)(3).

[100] *See* proposed Rule 971.2NYP(c).

[101] *See id. See* also Pillar Rule 971.1NYP(c) (describing substantively identical sequential processing of concurrent single-leg CUBE Auctions in the same series).

[102] *See* pre-Pillar Rule 971.2NY(c)(3)(A).

[103] *See* Cboe Rule 5.38(c)(1)(A)–(B) (providing that multiple price-improvement auctions in the same complex strategy 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).

[104] *See* proposed Rule 971.2NYP(c)(2).

[105] *See id.*

[106] *Compare* proposed Rule 971.2NYP(c)(2) *with* pre-Pillar Rule 971.2(c)(2) (providing, in relevant part, that ''[a]fter the Complex CUBE Order has been filled, any RFR Responses *(including Complex GTX Orders)* may trade with Complex Orders on the same side of the market as the Complex CUBE Order in accordance with Rule 980NYP, Complex Order Trading. Subsequently, any remaining balance of Complex GTX Orders will cancel.'') (emphasis added).

[107] *See* pre-Pillar Rule 971.2NY(c)(3)(C) (providing for the early end of a pre-Pillar Complex CUBE Auction if, during the Auction, the Exchange receives ''[a]ny interest that adjusts the same-side CUBE BBO to cross any RFR Response(s)'').

[108] *See, e.g.,* Pillar Rule 971.1NYP(c)(2) (providing, in relevant part (and substantively identical to the proposed Rule), that, at the conclusion of a Single-Leg CUBE Auction, ''[t]he residual of RFR Responses (excluding GTX Orders) after the CUBE Auction will be processed in accordance with Rule 964NYP (Order Ranking, Display, and Allocation)'').

[109] *See* pre-Pillar Rule 971.2NY(c)(3)(A)–(F).

[110] *Compare* Rule 971.2NY(c)(3)(A) *with* proposed Rule 971.2NYP(c)(3) (which does not include this scenario as causing the early end of an Auction).

Auction to continue uninterrupted.[111] With this proposal, the incoming interest would immediately trade with any non-GTX RFR Responses or route to an Away Market. This proposed handling would align the proposed Rule with the handling of incoming marketable interest that arrives during a single-leg CUBE Auction per Pillar Rule 971.1NYP.[112] The Exchange believes that, on Pillar, allowing an Auction to continue uninterrupted in the above-referenced circumstances would result in fewer Complex CUBE Auctions ending early and, as such, would provide more opportunities for price improvement on the Exchange to the benefit of all market participants.

In contrast, the following scenarios would continue to result in the early end of a Complex CUBE Auction on Pillar. As proposed, an Auction for a Complex CUBE Order to buy (sell) would (continue to) end early if, during the Response Time Interval, the Exchange receives updates to the CUBE BBO as follows:

- Any same-side interest that adjusts the CUBE BB (BO) to be higher (lower) than the initiating price,[113] which proposed provision is substantively identical to the scenario set forth in pre-Pillar Rule 971.2NY(c)(3)(B); [114] or
- Any opposite-side interest that adjusts the CUBE BO (BB) to be lower (higher) than the initiating price when the CUBE BO (BB) is based on the DBO (DBB) (*i.e.,* leg market interest on the Exchange).[115] This proposed provision is based on pre-Pillar Rule 971.2NY(c)(3)(F), which provides for the early end of an Auction based on updates to the leg markets, but differs in that it relies on the Pillar concept of the DBBO.[116] This early end scenario only applies when the CUBE BBO is based on the DBBO (*i.e.,* the leg markets) and the contra-side leg market updates to cross) [sic] the initiating price, which price sets the boundary for the Auction.[117]
- Because leg market interest has priority at a price, the Complex CUBE Auction must end to allow the (improved) leg market interest to trade. The Exchange notes that the pre-Pillar rule provides for the early end of an Auction if the leg markets update to be better than the stop price or auto-match limit price. On Pillar, the parameters for both the stop price and the auto-match limit price are made in relation to the initiating price (as discussed herein) and therefore the Exchange believes the initiating price is the more appropriate benchmark. In addition, proposed Rule 971.2NYP(c)(3)(A) (discussed above), also relies on the initiating price as the basis for determining if an Auction should end early based on same-side market updates. As such, this proposed update would add clarity, transparency, and internal consistency to Exchange rules.

In addition to being substantively the same as the analogous early end scenarios set forth in pre-Pillar Rule 971.2NY(c)(3)(B) and (F) (with the exception of reliance on the DBBO), the Exchange reiterates its belief that the elimination of the balance of the pre-Pillar early end scenario would result in fewer Complex CUBE Auctions ending early and, as such, would provide more opportunities for price improvement on the Exchange to the benefit of all market participants.

Complex CUBE Order Allocation

The Exchange proposes to modify how a Complex CUBE Order is allocated at the end of the Auction to conform with and incorporate Pillar Rule 964NYP (described below), which proposed handling mirrors the allocation of single-leg CUBE Orders as described in Pillar Rule 971.1NYP(c)(4).[118]

Pre-Pillar Rule 971.2NY(c)(4) describes Complex CUBE Order allocation. Specifically, at the conclusion of the Auction, any RFR Responses (including Complex GTX Orders) [119] that are larger than the Complex CUBE Order will be ''capped at the Complex CUBE Order size for purposes of size pro rata allocation of the Complex CUBE Order per [pre-Pillar] Rule 964NY(b)(3)'' [120] and that, at each price level, displayed Customer orders have first priority to trade with the Complex CUBE Order per pre-Pillar Rule 964NY(c)(2)(A).[121] Further, pre-Pillar Rule 971.2NY(c)(4)(B) provides that, after executing against displayed Customer orders at a price, the Complex CUBE Order will be allocated among the RFR Responses and the Complex Contra Order, which allocation may vary depending on whether the Complex Contra Order guaranteed the Complex CUBE Order using a specified stop price or auto-match limit price.[122]

As noted above, prior to the Exchange's migration to Pillar, Complex CUBE Orders traded in accordance with Rule 964NY—the Exchange's pre-Pillar priority and allocation rule.[123] On Pillar, orders and quotes will be ranked, prioritized, and executed based on Pillar Rule 964NYP, which aligns with the Exchange's pre-Pillar 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

[111] *Compare* Rule 971.2NY(c)(3)(C) *with* proposed Rule 971.2NYP(c)(3) (which does not include this scenario as causing the early end of an Auction).

[112] *See* Pillar Single-Leg CUBE Filing, 88 FR, at 467545.

[113] *See* proposed Rule 971.2NYP(c)(3)(A).

[114] *See* Rule 971.2NY(c)(3)(B) and (c)(3)(D) (providing for the early end of an Auction upon the receipt of any interest that adjusts the same-side CUBE BBO ''to be better than the initiating price'' or ''to cross the single stop price specified by the Initiating Participant,'' respectively). The Exchange notes that the proposed Rule provision is substantively the same as the pre-Pillar Rule, however, rather than use the terms ''same-side CUBE BBO'' and ''better than,'' the proposed Rule specifies whether the Complex CUBE Order is to buy or sell, whether the incoming interest is ''same-side interest,'' and includes the relevant side of the CUBE BBO updated, which would add clarity and transparency to Exchange rules.

[115] *See* proposed Rule 971.2NYP(c)(3)(B). The Exchange notes that as stated in paragraph (a)(1)(A)(ii) of the proposed Rule, when the CUBE BBO is based on the DBBO, such CUBE BBO may be adjusted to account for the presence of displayed Customer interest. *See* proposed Rule 971.2NYP(a)(1)(A)(ii). The Exchange notes that rather than use the terms ''same-side CUBE BBO'' and ''cross,'' the proposed Rule specifies whether the Complex CUBE Order is to buy or sell, whether the incoming interest is ''opposite-side interest'' and includes the relevant side of the CUBE BBO that was updated, which would add clarity and transparency to Exchange rules.

[116] *See* pre-Pillar Rule 971.2NY(c)(3)(F) (providing for the early end of an Auction upon the receipt of ''[i]nterest in the leg market that causes the contra-side CUBE BBO to be better than the stop price or auto-match limit price.'').

[117] For example, if there is an Auction in progress for a CUBE order to buy (sell), the Auction will end early if, during the Auction, the Exchange received contra-side interest to sell (buy) that updates the DBO (DBB) to be lower (higher) than the initiating price (*i.e.,* the incoming interest crosses the initiating price).

[118] As noted herein, Rule 964NY does not apply to trading on Pillar. *Compare* proposed Rule 971.2NYP(c)(4) *with* Pillar Rule 971.1NYP(c)(4) (setting forth priority and allocation rules, as dictated by Pillar Rule 964NYP).

[119] *See* pre-Pillar Rule 971.2NY(c)(1)(C)(i)(b) (''Complex 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 Complex GTX Orders would be capped at the Complex CUBE Order size for purposes of size pro rata allocation whereas Customer Complex GTX Orders would trade with the CUBE Order based on time. *See, e.g.,* proposed Rule 971.2NYP(c)(4)(B), as discussed, *infra.*

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

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

[122] *See* pre-Pillar Rule 971.2NY(c)(4)(B)(i)–(ii).

[123] *See* (pre-Pillar) Rule 964NY(b), (c) (providing that, at a price, displayed interest is ranked ahead of non-displayed interest with priority afforded to Customer interest over displayed non-Customer interest; followed by same-priced non-displayed interest, which non-displayed interest is ranked solely in time priority with no preference given to non-displayed Customer interest). *See also* Pillar Priority Filing (describing priority and allocation per Rule 964NYP).

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.'' [124] The three categories are: Priority 1—Market Orders, Priority 2—Display Orders and Priority 3—Non-Display Orders (the ''Pillar Priority categories'').[125] 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.[126] 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.[127] Finally, on Pillar (and unlike (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.[128]

The Exchange proposes that Complex CUBE Auctions on Pillar would follow the priority, ranking, and allocation model set forth in the above-described Pillar Rule 964NYP. As proposed, Rule 971.2NYP(c)(4)(A) would provide that, at each price, Complex CUBE Orders would be allocated consistent with Pillar Rule 964NYP as follows.

- First priority to execute with the Complex 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 Complex 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 Complex CUBE Order is afforded to Customer RFR Responses followed by same-priced non-Customer RFR Responses ranked Priority 3—Non-Display Orders.[129]

The proposal to align Complex CUBE Order allocation with Pillar Rule 964NYP(j) would mirror the allocation methodology for single-leg CUBE Orders on Pillar and would add clarity, transparency, and internal consistency to Exchange rules.[130] In addition, as discussed further below, before the Complex Contra Order receives its guaranteed allocation, the Complex 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 971.2NYP(c)(4)(B) (Allocation) would provide that RFR Responses would be allocated based on time or per size 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 Complex CUBE Order based on time per Pillar Rule 964NYP(j).[131] And, RFR Responses of non-Customers ranked Priority 1 and Priority 2 would be capped at the Complex CUBE Order size for purposes of size pro rata allocation per Pillar Rule 964NYP(i).[132] The Exchange notes that this proposed allocation methodology is consistent with the pre-Pillar Auction allocation methodology, 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 Complex CUBE Orders with the Exchange's Customer priority model.[133]

Proposed Rule 971.2NYP(c)(4)(C) (Surrender Quantity) would be new functionality and would provide that an Initiating Participant that guarantees a Complex CUBE Order with a stop price (as described in proposed Rule 971.2NYP(b)(1)(A)) has the option of designating a ''Surrender Quantity'' and receiving some percentage of the Complex CUBE Order less than the 40% participant guarantee (as described in proposed Rule 971.2NYP(c)(4)(D)(i)(b)). 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 Complex CUBE Order, the Complex CUBE Order executes against the Complex Contra Order up to the amount of its Surrender Quantity.[134] Absent sufficient size of contra-side interest equal to or better than the stop price, the Complex Contra Order would trade with the balance of the Complex CUBE Order at the stop price regardless of the Complex Contra Order's Surrender Quantity, which functionality is consistent with pre-Pillar Complex Contra Order behavior.[135] Finally, as proposed, Surrender Quantity information is not disseminated to other market participants and may not be modified after the Complex Contra Order is submitted. The Exchange notes that the concept of ''Surrender Quantity'' is available in single-leg CUBE Auctions and on other options exchanges and is therefore not new or novel.[136] The Exchange believes that providing Initiating Participants the option to designate a Surrender Quantity in Complex CUBE Auctions on Pillar would enhance functionality by affording flexibility and discretion to the Complex Contra Order while providing additional opportunities for RFR Responses to interact with the Complex 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 971.2NYP(c)(4)(D) (RFR Responses and Complex 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

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

[125] *See* Pillar Rule 964NYP(e)(1)–(3) (setting forth the Pillar Priority categories).

[126] *See* Pillar Rule 964NYP(e), (j).

[127] *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 substantively identical to that set forth in pre-Pillar Rule 964NY(b)(3) (Size Pro Rata Allocation).

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

[129] *See* proposed Rule 971.2NYP(c)(4)(A) (Customer Priority).

[130] *See* Pillar Rule 971.1NYP(c)(4) (describing the Allocation of CUBE Orders, which is the same as the allocation proposed for Complex CUBE Orders).

[131] *See* proposed Rule 971.2NYP(c)(4)(B)(i) (Time).

[132] *See* proposed Rule 971.2NYP(c)(4)(B)(ii) (Size Pro Rata). The size pro rata formula set forth in Pillar Rule 964NYP(i) is substantively identical to the size pro rata formula set forth in Rule 964NY(b)(3). *See* Pillar Priority Filing.

[133] *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 971.2NYP(c)(4) (Allocation of Complex CUBE Orders). *See, e.g.,* pre-Pillar Rule 971.2NY(c)(4)(B)(i)–(ii) (repeating in each rule provision how RFR Responses would be allocated).

[134] *See* proposed Rule 971.2NYP(c)(4)(C).

[135] *Compare* proposed Rule 971.2NYP(c)(4)(D)(i) *with* pre-Pillar Rule 971.2NY(c)(4)(B)(i) (allocation to Contra Order that guaranteed a CUBE Order by a single stop price).

[136] *See* Pillar Rule 971.1NYP(c)(4)(C) (Surrender Quantity option in single-leg CUBE Auctions). *See also* Cboe Rule 5.38(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).

the Complex Contra Order would depend upon the method by which the Complex CUBE Order was guaranteed.[137]

• *Stop Price.*[138] Consistent with the pre-Pillar Complex CUBE rule, a Complex CUBE Order to buy (sell), that is guaranteed by a stop price would execute first with RFR Responses at each price level priced below (above) the stop price within the range of permissible executions, beginning with the lowest (highest) price.[139]

○ Next, any remaining contracts of the Complex 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).[140]

○ Then, at the stop price, the Complex Contra Order would receive an allocation of the greater of 40% of the original Complex CUBE Order size or one contract (or the greater of 50% of the original Complex CUBE Order size or one contract if there is only one RFR Response), or the Surrender Quantity, if one has been specified. Then, any remaining Complex CUBE Order contracts would be allocated first among remaining RFR Responses at the stop price. If all RFR Responses are filled, any remaining Complex CUBE Order contracts would be allocated to the Contra Order. This proposed handling is consistent with the pre-Pillar Complex CUBE rule except that it includes reference to the new option of designating a ''Surrender Quantity.'' [141]

○ Finally, identical to pre-Pillar functionality, if there are no RFR Responses, the Complex CUBE Order would execute against the Complex Contra Order at the stop price.[142]

• *Auto-Match Limit.*[143] Consistent with the pre-Pillar Complex CUBE rule, a Complex 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.[144]

○ Next, consistent with pre-Pillar Complex CUBE functionality, the Complex CUBE Order would be allocated to RFR Responses at a price equal to the price of the Complex 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 Complex Contra Order would be allocated contracts equal to the aggregate size of all other RFR Responses 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''). Further, like pre-Pillar functionality, if the Complex Contra Order meets its allocation guarantee at a price below (above) the clean-up price, it would cease matching RFR Responses.[145]

○ As proposed, at the clean-up price, any remaining contracts of the Complex 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).[146]

○ Next, and consistent with the pre-Pillar Complex CUBE rule, the Complex Contra Order would receive additional contracts required to achieve an allocation of the greater of 40% of the original Complex CUBE Order size or one contract (or the greater of 50% of the original Complex 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 Complex CUBE Order contracts, would be allocated first to RFR Responses; and any remaining CUBE Order contracts would be allocated to the Complex Contra Order at the initiating price.[147]

○ Finally, consistent with the pre-Pillar Complex CUBE rule, if there are no RFR Responses, the Complex CUBE Order would execute against the Complex Contra Order at the initiating price.[148]

Commentary to Proposed Rule 971.2NYP for CUBE Auctions on Pillar

The Exchange proposes to adopt Commentaries to the proposed Rule, which are substantively identical to pre-Pillar Commentaries .01 through .03 and .04 to Rule 971.2NY, with differences discussed below (each a ''proposed Commentary'' or a ''pre-Pillar Commentary'').[149]

Proposed Commentary .01 is substantively identical to pre-Pillar Commentary .03 and would describe ''Concurrent Single-Leg and Complex CUBE Auctions involving the same option series.'' [150] As proposed, like the pre-Pillar Complex CUBE rule, the proposed Rule would allow the Exchange to conduct simultaneous single-leg CUBE Auctions for a given series at the same time as a Complex CUBE Auction for an ECO that includes the same option series.[151] Also, like the pre-Pillar Complex CUBE rule, 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

[137] *See* Pillar Rule 971.1NYP(c)(4)(D) (describing substantively identical allocation of RFR Responses and Contra Order in single-leg CUBE Auctions). Consistent with proposed Rule 971.2NYP(c)(1)(C)(i)(c), and in contrast to pre-Pillar Rule 971.2NY(c)(2), the proposed Complex CUBE Order allocation section would not reference Complex GTX Orders, as noted herein, Complex GTX Orders would execute solely with the Complex CUBE Order or cancel.

[138] *See* proposed Rule 971.2NYP(b)(1)(A) (describing stop price requirements).

[139] *Compare* proposed Rule 971.2NYP(c)(4)(D)(i)(a) *with* pre-Pillar Rule 971.2NY(c)(4)(B)(i)(a).

[140] *Compare* proposed Rule 971.2NYP(c)(4)(D)(i)(b) *with* pre-Pillar Rule 971.2NY(c)(4)(B)(i)(b).

[141] *See id.*

[142] *Compare* proposed Rule 971.2NYP(c)(4)(D)(i)(c) *with* pre-Pillar Rule 971.2NY(c)(4)(B)(i)(c).

[143] *See* proposed Rule 971.2NYP(b)(1)(B) (describing auto-match limit price requirements).

[144] *See* proposed Rule 971.2NYP(c)(4)(D)(ii)(a). *See also* pre-Pillar Rule 971.2NY(c)(4)(B)(ii)(a).

[145] *See* proposed Rule 971.2NYP(c)(4)(D)(ii)(b). *See also* pre-Pillar Rule 971.2NY(c)(4)(B)(ii)(b).

[146] *See* proposed Rule 971.2NYP(c)(4)(D)(ii)(c). *See also* pre-Pillar Rule 971.2NY(c)(4)(B)(ii)(b).

[147] *Compare* proposed Rule 971.2NYP(c)(4)(D)(ii)(c) *with* pre-Pillar Rule 971.2NY(c)(4)(B)(ii)(b).

[148] *Compare* proposed Rule 971.2NYP(c)(4)(D)(ii)(d) *with* pre-Pillar Rule 971.2NY(c)(4)(B)(ii)(c). The proposed Rule differs in that it would not specify that ''[a] single RFR Response will not be allocated a number of contracts that is greater than its size,'' as is set forth in (pre-Pillar) Rule 971.2NY(c)(4)(C), because this statement merely re-iterates standard processing on the Exchange. As such, the Exchange believes the inclusion of this statement in the proposed Rule is unnecessary and may lead to potential confusion.

[149] Because the beginning of the proposed Rule includes a ''Definitions'' section (*i.e.,* proposed Rule (a)(1)(D))) [sic] for terms applicable to Complex CUBE Auctions on Pillar, the terms described in pre-Pillar Commentary .02 to Rule 971.2NY are no longer applicable and, as discussed infra, the Exchange proposes to omit pre-Pillar Commentary .02 from the proposed Rule. The omission of this Commentary does not alter the functionality of the proposed Rule and the Exchange therefore believes its omission is immaterial.

[150] The Exchange proposes to relocate the text from pre-Pillar Commentary .03 to proposed Commentary .01, which re-numbering would align the proposed Rule with Commentary .01 to Pillar Rule 971.1NYP—single-leg CUBE Auctions on Pillar). As a result of this reorganization, the Exchange proposes to hold Commentary .03 to proposed Rule 971.2NYP as ''Reserved''.

[151] *See* proposed Rule 971.2NYP, Commentary .01. *See also* Pillar Rule 971.1NYP, Commentary .01 (same). As discussed, *supra,* proposed Commentary .01 (and pre-Pillar Commentary .03) describes functionality that is distinct from the proposal to allow multiple Complex CUBE Auctions to run concurrently on Pillar. *See, e.g.,* proposed Rule 971.2NYP(c). To emphasize this distinction, the proposed Rule states that ''[t]o the extent there are concurrent *single-leg and Complex* CUBE Auctions for a specific option series, each CUBE Auction will be processed sequentially based on the time each CUBE Auction commenced'' (emphasis added). *See* proposed Rule 971.2NYP, Commentary .01.

CUBE Auction commenced.[152] Finally, substantively identical to pre-Pillar Complex CUBE functionality, at the time each CUBE Auction concludes, including when it concludes early, it will be processed pursuant to Pillar Rule 971.1NYP(c)(4) (for Single-Leg CUBE) or proposed Rule 971.2NYP(c)(4) (for Complex CUBE) as applicable.[153]

Proposed Commentary .02(a)–(d) is substantively identical to pre-Pillar Commentary .01(a)–(d) [154] 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 an 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 an Auction to conclude before the end of the Response Time Interval;
- An Initiating Participant that breaks up an agency order into separate Complex 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; [155] 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 Complex CUBE Order.

Proposed Commentary .04 describes functionality for AON Complex CUBE Orders that is substantively identical to pre-Pillar Commentary .04 and would provide that, except as provided in proposed Commentary .04, an AON Complex CUBE auction will be subject to the provisions of proposed Rule 971.2NYP.[156]

- Proposed Commentary .04 (like pre-Pillar Commentary .04) would provide that an Initiating Participant may be designated a Complex CUBE Order of at least 500 contracts as AON (an ''AON Complex CUBE Order'') and unlike non-AON Complex CUBE Orders, such AON CUBE Orders may only be guaranteed by a specified stop price.[157]
  - Proposed Commentary .04 would differ from pre-Pillar Commentary .04 to make clear that the (new) option for certain Initiating Participants to designate a Surrender Quantity would not be available for Complex Contra Orders to an AON Complex CUBE Order. This proposed text is not included in pre-Pillar Commentary .04 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 Complex CUBE Auctions on Pillar.[158] The Exchange believes that allowing Initiating Participants to designate a Surrender Quantity to an AON Complex CUBE Order would undermine the purpose of the ''all or none'' aspect of this order type.

Proposed Commentary .04(a)–(d), is substantively identical to pre-Pillar Commentary .04(a)–(d), with differences noted herein, and would provide the following.[159]

- An AON Complex CUBE Order to buy (sell) will execute in full with the Complex Contra Order at the single stop price even if there is non-Customer interest priced lower (higher) than the stop price that, either on its own or when aggregated with non-Customer RFR Responses at the stop price or better, are insufficient to satisfy the full quantity of the AON Complex CUBE Order;
- The Complex 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 Complex 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 Complex CUBE Order. In either case, the RFR Responses will be allocated as provided for in paragraphs (c)(4)(A) and (c)(4)(B) of this proposed Rule, as applicable;
- The AON Complex CUBE Order to buy (sell) and Complex 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 Complex CUBE Order; and
- Prior to entering an agency order on behalf of a Customer into the Complex CUBE Auction as an AON Complex CUBE Order, Initiating Participants must deliver to the Customer a written notification informing the Customer that such order may be executed using the Complex 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.[160]

Rule 900.2NY: Definitions of Customer and Professional Customer

Rule 900.2NY defines a ''Customer'' as ''an individual or organization that is not a Broker/Dealer'' [161] and defines a ''Professional Customer'' as ''an individual or organization that (i) is not a Broker/Dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).'' [162] Included in the definition of Professional Customer is a list of Exchange rules for purposes of

[152] *See id.* The Exchange proposes to make a clarifying change that specifies that ''[t]o the extent there are concurrent *single-leg and Complex* CUBE Auctions for a specific option series, each CUBE Auction will be processed sequentially based on the time each CUBE Auction commenced,'' which change would improve transparency and internal consistency of Exchange rules. *See* proposed Rule 971.2NYP, Commentary .01 (emphasis added).

[153] *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 Rule 971.1NY to paragraph (c)(4) of Pillar Rule 971.1NYP and update cite to proposed Rule to include ''P'' modifier), which changes are not material because they do not impact functionality.

[154] The Exchange proposes to relocate pre-Pillar Commentary .01 to proposed Commentary .02 to align with Commentary .02 to Pillar Rule 971.1NYP—single-leg CUBE Auctions on Pillar. In this regard, the Exchange proposes to hold Commentary .03 of the proposed Rule as ''Reserved.''

[155] The Exchange notes that the internal cross-reference in the Commentary .02 has been updated to reflect the allocation section in the proposed Rule (*i.e.,* change reference to paragraph (c)(5) of pre-Pillar Rule 971.2NY to paragraph (c)(4) of the proposed Rule), which change is not material because it does not impact functionality.

[156] The Exchange proposes the non-substantive change to re-locate to the beginning of the proposed Rule text that appears at the bottom of the pre-Pillar Rule.

[157] The Exchange proposes the non-substantive change to use the active voice in proposed Commentary .04. *See* proposed Commentary .04 (providing, in relevant part, that ''[a]n Initiating Participant may designate a Complex CUBE Order that has at least 500 contracts on the smallest leg as AON . . . .'').

[158] *See* proposed Rule 971.2NYP, Commentary .04 (providing, in relevant part that ''a Complex 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 971.2NYP(c)(4)(C) (describing the proposed option of designating a Surrender Quantity for non-AON Complex CUBE Orders that are guaranteed by a stop price).

[159] The Exchange notes that it has made the non-substantive change to specify that the AON Complex CUBE Order is ''to buy (sell)'' and to replace certain references to ''better'' with ''lower (higher)'' and reference to ''contra-side'' with ''sell (buy)'' to more clearly reflect the handling of AON Complex CUBE Orders based on the side of the market to which such order is submitted, which would add clarity, transparency, and internal consistency to the Exchange rules.

[160] *See* proposed Rule 971.2NYP, Commentary .04.

[161] *See* Rule 900.2NY (defining a Customer, including that ''when not capitalized, 'customer' refers to any individual or organization whose order is being represented, including a Broker/Dealer.''),

[162] *See* Rule 900.2NY (defining a Professional Customer).

which Professional Customers are treated in the same manner as Broker/Dealers (or non-Customers) (referred to herein as the ''Professional Customer carve out''), including pre-Pillar Rule 971.2NY for pre-Pillar Complex CUBE Auctions.[163] Accordingly, Professional Customers are treated as Broker/Dealers (or non-Customers) for purposes of the pre-Pillar Complex CUBE Auction. The Exchange notes that at least one other options exchange likewise treats Professional Customer interest as Broker/Dealer (non-Customer) interest for purposes of their price improvement auction.[164]

As described herein the proposed Rule includes certain modifications and enhancements to the Complex CUBE Auction, but the core functionality is substantively identical to the pre-Pillar Complex CUBE functionality. Accordingly, the Exchange believes it would be consistent with the Act to amend Rule 900.2NY to include Rule 971.2NYP in the list of Exchange rules for purposes of which Professional Customers are treated as Broker/Dealers (or non-Customers).[165] This proposed handling would result in consistent treatment of Complex CUBE Orders on Pillar with the handling that existed pre-Pillar, which adds clarity, transparency, and internal consistency to Exchange rules.[166]

Rule 935NY: Order Exposure Requirements

Rule 935NY requires, among other things, that a User's agency orders be exposed for at least one (1) second before such orders may be executed against the User's principal orders, unless such agency order is afforded an exemption. Current Rule 935NY (iv) exempts from its one-second order exposure requirements orders submitted to the CUBE Auction, pursuant to pre-Pillar Rule 971.2NY (Complex Electronic Cross Transactions). The Exchange proposes to amend Rule 935NY to add a cross-reference to proposed Rule 971.2NYP, which would extend the exemption from the order exposure requirements to all Pillar Complex CUBE Orders.[167] As noted herein Complex CUBE Auctions on Pillar include certain enhancements to the pre-Pillar Auctions, but the core functionality remains the same.

Accordingly, the Exchange believes that it would be consistent with the Act to exempt orders submitted to Complex CUBE Auctions on Pillar from the one-second order exposure requirement. This proposed handling would result in consistent treatment of Complex CUBE Orders that were submitted pursuant to pre-Pillar Rule 971.2NY with Complex CUBE Orders submitted on Pillar pursuant to the proposed Rule.[168]

Like the pre-Pillar Complex CUBE Auction, the proposed Rule would provide ATP Holders a minimum of 100 milliseconds to respond to Complex CUBE Auctions, which should promote timely executions, while ensuring adequate exposure of the Complex CUBE Order seeking price improvement.[169] Further, consistent with Rule 935NY, Commentary .01, the ATP Holders that submit Complex CUBE Orders would do so only when there is a genuine intention to execute a bona fide transaction.[170] Moreover, as with the pre-Pillar Complex CUBE Auction, any User on the Exchange can respond to a Complex CUBE on Pillar.[171]

Pillar Rule 980NYP: Electronic Complex Order Trading

Pillar Rule 980NYP describes how Electronic Complex Orders (''ECOs'') will trade on the Exchange.[172] The Exchange proposes to modify Pillar Rule 980NYP to reflect the proposed Complex CUBE Orders and the impact of such orders on the Complex Order Auction (or COA).

First, the Exchange proposes to modify Pillar Rule 980NYP(b) (Types of ECOs) to include Complex CUBE Orders in the list of potential ECOs available for trading on the Exchange, which addition would add clarity, transparency, and internal consistency to Exchange rules.[173]

Next, the Exchange proposes to modify Pillar Rule 980NYP(f) regarding the execution of ECOs during a COA.[174] Procedurally, the COA process is similar to the Complex CUBE Auction insofar as the Exchange sends out a Request for Responses (RFR) once a COA Order satisfies the requirements to initiate a COA, the COA lasts for a specified duration (*i.e.,* the Response Time Interval), unless it ends early, and when the COA concludes, the COA Order executes with the best-priced ECOs received during the COA, next with the leg markets, and any remaining balance is ranked in the Consolidated Book.[175] Unlike a Complex CUBE Order, the COA Order is not a paired order and is not guaranteed an execution and unlike the Complex CUBE Auction which can run concurrent auctions in the same complex strategy, only one COA may be conducted at a time.[176]

The Exchange proposes to modify Pillar Rule 980NYP(f) to specify that a

[163] Specifically, Rule 900.2NY provides that ''[a] Professional Customer will be treated in the same manner as a Broker/Dealer (or non-Customer) in securities for the purposes of'' certain Exchange rules, including but not limited to, pre-Pillar Rule 971.2NY (Complex Electronic Cross Transactions). *See id.* (defining Professional Customer).

[164] *See* Cboe Rule 5.38(e) (providing that ''Priority Customer'' interest executes first with the Agency Order submitted to the price improvement auction, followed by non-Priority Customer interest).

[165] *See* proposed Rule 900.2NY (providing in relevant part, that for purposes of Rule 971.2NYP (Complex Electronic Cross Transactions), ''[a] Professional Customer will be treated in the same manner as a Broker/Dealer (or non-Customer) in securities'').

[166] To update and improve the accuracy of Rule 900.2NY, the Exchange proposes to remove reference to pre-Pillar Rules 971.1NY and 971.2NY because these rules are not operative on Pillar, which change would add clarity, transparency, and internal consistency to Exchange rules. *See* proposed Rule 900.2NY (removing from Professional Customer definition reference to Rules 971.1NY and 971.2NY).

[167] *See* proposed Rule 935NY(iii) (excluding from the order exposure requirement agency orders submitted to ''the Customer Best Execution Auction ('CUBE Auction') pursuant to Rules 971.1NYP or *971.2NYP.*'') (emphasis added).

[168] To update and improve the accuracy of Rule 935NY, the Exchange proposes to remove reference to pre-Pillar Rules 971.1NY and 971.2NY because these rules are not operative on Pillar, which change would add clarity, transparency, and internal consistency to Exchange rules. *See* proposed Rule 935NY (removing reference to Rules 971.1NY and 971.2NY from order exposure carve out).

[169] *See* proposed Rule 971.2NYP(c)(1)(B) (regarding a Response Time Interval of no less than 100 milliseconds).

[170] *See* Rule 935NY, Commentary .01 (''Rule 935NY prevents a User from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the User was already bidding or offering on the book'').

[171] *Compare* Rule 971.2NY(c)(1)(C) (providing that ''[a]ny ATP Holder may respond to the RFR, provided such response is properly marked specifying price, size and side of the market ('RFR Response'))'' *with* proposed Rule 971.2NYP(c)(1)(C) (same).

[172] *See generally* Rule 980NYP (Electronic Complex Order Trading). Unless otherwise specified, all capitalized terms used herein have the same meaning as is set forth in Rule 980NYP.

[173] *See* proposed Rule 980NYP(b)(1) (providing that ''ECOs may be entered as Limit Orders, Limit Orders designated as Complex Only Orders, *Complex CUBE Orders,* Complex QCCs, or as Complex Customer Cross Orders'') (emphasis added).

[174] *See* Pillar Rule 980NYP(f)(providing that ''[a] COA Order received when a complex strategy is open for trading and that satisfies the requirements of paragraph (1) [*Initiation of a COA*] below will initiate a COA only on arrival after trading with eligible interest per paragraph (2)(A) [*Pricing of a COA*] below''). A COA Order will be rejected if entered during a pre-open state or if entered during Core Trading Hours with a time in-force of FOK or GTX. Only one COA may be conducted at a time in a complex strategy).

[175] *See* Pillar Rule 980NYP(a)(3)(A)–(D) (defining terms related to the COA process); (f)(3)(A)–(D) (setting forth the circumstances under which a COA will conclude before the end of the Response Time Interval); and (f)(4)(A)–(C) (providing the allocation of COA Orders. *See* Rule 900.2NY (defining Consolidated Book as ''the Exchange's electronic book of orders and quotes'').

[176] *See* Pillar Rule 980NYP(f).

COA Order received during a Complex CUBE Auction in the same complex strategy will not initiate a COA.[177] As is the case with COA Orders that do not initiate a COA on arrival, such COA Order would be processed in the same manner as a (non-COA) ECO per Pillar Rule 980NYP(e).[178] The Exchange will only allow one auction process for ECOs at a given time. As such, a COA received during a Complex CUBE Auction would not initiate a COA on arrival and, as with any COA Order that does not initiate a COA on arrival, the Exchange would process the COA Order as a (non-COA) ECO. The Exchange notes that allowing only one auction of complex orders is consistent with functionality on at least one other options exchange and is therefore not new or novel.[179] Consistent with the foregoing, the Exchange also proposes to modify Pillar Rule 980NYP(f)(3)(E), to specify that a COA in progress will end early upon receipt of a Complex CUBE Order in the same complex strategy as the COA.[180] This proposed change would be consistent the with the Exchange's early termination of a COA in progress upon the receipt of a Complex QCC Order in the same complex strategy as the COA Order. The Exchange's rationale for this proposed change is the same as its rationale for ending a COA upon the arrival of a Complex QCC Order in the same complex strategy: to ''allow the Exchange to incorporate executions from the COA, or any remaining balance of the COA Order, to conduct the requisite price validations'' for the Complex CUBE Order.[181] As noted above, until a COA concludes, the Consolidated Book is not updated to reflect any COA Order executions or any balance of the COA Order ranking in the Book. Thus, to allow the later-arriving Complex CUBE Order to be evaluated based on the most up-to-date Book, the Exchange proposes to end a COA upon the arrival of a Complex CUBE Order in the same complex strategy.[182] As such, the Exchange believes that its proposal would help preserve—and maintain investor's confidence in—the integrity of the Exchange's local market.[183]

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Implementation

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, is anticipated to be in the second quarter of 2024.

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.

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 enhancement to Complex CUBE Auctions on Pillar would continue to encourage ATP Holders to compete vigorously to provide the opportunity for price improvement for Complex CUBE Orders in a competitive auction process, which may lead to enhanced liquidity and tighter markets.

To the extent that the proposed Rule contains provisions that are identical (or substantively identical) to pre-Pillar Rule 971.2NY, the Exchange believes the proposed 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 streamlined, and in some cases reorganized, descriptions of approved pre-Pillar Auction functionality in a manner that adds clarity, transparency, and internal consistency to Exchange rules.[184]

Further, to the extent that the proposed Rule includes modifications and enhancements to the Auction, the Exchange believes that the proposed 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 modifications and enhancements to Auctions on Pillar would continue to encourage ATP Holders to compete vigorously to provide the opportunity for price improvement for Complex CUBE Orders in a competitive auction process, which may lead to enhanced liquidity and tighter markets. In addition, and as described herein, the proposed modifications and enhancements would align Complex CUBE Auction functionality with single-leg CUBE Auction functionality on Pillar, which would add internal consistency to Exchange rules and may encourage market participants to utilize the enhanced Complex CUBE Auction functionality.[185] Moreover, and as discussed herein, the proposed modifications and enhancements are already available on at least one other options exchange (including the proposed pricing parameters as discussed herein and below) and are therefore competitive.[186]

[177] *See* proposed Pillar Rule 980NYP(f) (providing in relevant part that ''[o]nly one COA may be conducted at a time in a complex strategy *and a COA Order received during a Complex CUBE Auction in the same complex strategy will not initiate a COA*'') (emphasis added).

[178] *See* Pillar Rule 980NYP(f)(1) (''A COA Order that does not satisfy these pricing parameters will not initiate a COA and, unless cancelled, will be ranked in the Consolidated Book and processed as an ECO pursuant to paragraph (e) above'' regarding the ''Execution of ECOs During Core Trading Hours'').

[179] *See* MIAX Options User Manual, MIAX Complex Order Price Improvement Mechanism (MIAX cPRIME, Auction Eligibility), at p. 34, *available here: https://www.miaxglobal.com/sites/default/files/2022-09/MIAX_Options_User_Manual_04042022_0.pdf* (providing, in relevant part, that ''[o]nly one complex auction whether a cPRIME or a Standard Complex auction may be in process for any given Strategy at a time'' and that MIAX will reject ''a cPRIME order in a Strategy that is already in a cPRIME or Standard Complex auction''). Like the Complex CUBE Auction, MIAX's cPRIME is an electronic price improvement mechanism for paired orders; and, like the COA, MIAX's Standard Complex auction is a price improvement auction for orders that are not guaranteed an execution. As noted herein, and unlike MIAX, the Exchange permits concurrent Complex CUBE Auctions in the same complex strategies.

[180] *See* proposed Rule 980NYP(f)(3)(E). *See* Securities Exchange Act Release No. 99354 (January 17, 2024), 89 FR 4358, 4359 (January 23, 2024) (SR–NYSEAMER–2024–03) (adopting, on an immediately effective basis, Pillar Rule 980NYP(f)(3)(E) which specifies that a COA in progress ends early upon receipt of a Complex QCC Order in the same complex strategy).

[181] *See id.,* 89 FR, at 4359.

[182] *See id.* (providing the same rationale for ending a COA early upon the receipt of a Complex QCC in the same complex strategy as the COA Order).

[183] *See id.*

[184] *See, e.g.,* proposed Rule 971.2NYP(b)(1)(A)–(B) (describing stop price and auto-match limit price); (b)(2)–(4) (regarding eligibility of Complex CUBE Orders submitted to the Auction); (c)(1) (regarding RFRs and RFR Responses) and (c)(2) (regarding conclusion of Complex CUBE Auction).

[185] *See, e.g.,* Pillar Rule 971.1NYP (c)(permitting concurrent Auctions); (c)(1)(A) (providing that each RFR include an AuctionID); (c)(1)(B) (providing for a minimum of 100 milliseconds fixed duration of the Response Time Interval); (c)(1)(C)(i) (regarding handling of GTX Orders and optional AuctionID feature); (c)(4)(A) and (B) (incorporating Pillar Rule 964NYP for the priority and allocation of CUBE Orders); and (c)(4)(C) (regarding the optional Surrender Quantity feature).

[186] *See, e.g.,* Cboe Rule 5.38(c)(1) (permitting concurrent auctions in the same strategy); (c)(2) (providing that each C–AIM Auction notification message include an AuctionID) (c)(3) (providing for a minimum of 100 milliseconds fixed duration of C–AIM Auction period); (c)(5) (regarding optional ''AuctionID'' for auction responses); (e)(5) (regarding optional ''last priority'' (*i.e.,* Surrender Quantity) feature); and (e)(5)(B) (describing range of permissible executions in C–AIM and requiring that auction responses price improve Priority Customer interest).

In particular, the proposed rule change to modify the pricing requirements for initiating and participating in Complex CUBE Auctions, including updating the CUBE BBO definition to incorporate the Pillar concept of DBBO, 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 add internal consistency to Exchange rules and streamline Pillar Auction functionality making it easier for market participants to navigate and comprehend.[187]

The Exchange believes that the modified requirements for Complex CUBE Auctions, including the requisite (one penny) price improvement to the proposed CUBE BBO in the presence of displayed Customer interest, 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 change would incorporate and align with Pillar Rules 964NYP and 980NYP and would allow the Exchange to better compete for complex auction order flow with a competing options exchange.[188]

Further, the proposed CUBE BBO, which requires price improvement over the best-priced interest if such interest represents displayed Customer interest on the Exchange would continue to protect the priority of such interest. The Exchange believes that making price improvement contingent on Customer interest, which is consistent with pricing requirements on Cboe for its price improvement auction for complex trading interest, may increase Complex CUBE Orders directed to the Exchange, while maintaining the Exchange's Customer-centric priority scheme.[189] The proposed CUBE BBO would protect investors and the public interest by assuring that Complex CUBE Orders comply with the existing priority and allocation rules applicable to the processing and execution of Complex Orders per Pillar Rule 980NYP. In particular, the proposed CUBE BBO would continue to protect same-priced, displayed Customer interest and would ensure that Complex CUBE Orders do not trade ahead of such displayed Customer interest, whether in the leg markets or as Customer Complex Orders. In addition, using the proposed CUBE BBO would ensure that the proposed Rule aligns with the Exchange's priority and allocation rules, per Pillar Rules 964NYP and 980NYP, and that interest in the leg markets, including displayed Customer interest, continues to be protected.

Similarly, the proposed modification to the ''initiating price,'' which incorporates the DBBO, 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, consistent with pre-Pillar functionality, it would ensure that the price of the Complex CUBE Order respects the priority of the leg markets, including when they contain displayed Customer interest.

The Exchange believes that the proposal to reject Complex CUBE Orders that are submitted when there is not enough time for a Complex 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 Complex 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 align with the operation of the single-leg CUBE auction as well as with other options exchanges that include this feature.[190]

The proposed rule change 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, as discussed below, 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 Complex CUBE Auctions to occur on the Exchange (because of concurrent Auctions) but would also allow more targeted participation in Complex CUBE Auctions with the new AuctionID feature available for Complex GTX Orders. Market participants that respond to Auctions with Complex GTX Orders would be able to direct their trading interest to a specific Auction thus increasing determinism. That said, and as noted herein, the AuctionID functionality would be optional and a Complex GTX Order sent without an AuctionID would respond to the Auction that began closest in time to the submission of the Complex GTX Order. The Exchange notes that these proposed modifications and enhancements are substantively identical to existing Pillar functionality for single-leg CUBE Auctions and are also available on another options exchange.[191]

The proposal to permit concurrent auctions in the same complex strategies for Complex CUBE Orders would benefit investors because it would allow more Complex 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. The Exchange believes the proposal to allow concurrent Auctions should promote and foster competition and provide more options contracts with the opportunity for price improvement—including because receipt of a new Complex CUBE Order would no longer cause the Auction in progress to end early, which should benefit all market participants. Further, and as noted herein the Exchange permits the conduct of concurrent single-leg CUBE Auctions, per Pillar Rule 971.1NYP(c), and therefore this proposal would add internal consistency to Exchange rules. In addition, the proposed change is consistent with functionality offered on at least one competing options exchange.[192] In addition, this proposed change may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already permit overlapping price improvement auctions for complex orders. Moreover, because at least one other options exchange permits concurrent auctions in price improvement auctions for complex orders, this proposal is not

[187] *See, e.g.,* proposed Rule 971.2NYP(a)(1)(A) (defining the key terms for the proposed Rule, including incorporating the concept of the DBBO per Pillar Rule 980NYP).

[188] *See* Cboe Rule 5.38(b)(1) (requiring that the ''Initiating Order'' (akin to Complex CUBE Order) must be guaranteed by the ''Agency Order'' (akin to Complex Contra Order) at a price that improves by at least one MPV the best-priced interest on the complex order book or in the leg markets when such interest represents a ''Priority Customer''); (e)(5)(B) (describing range of permissible executions in C–AIM and requiring that auction responses price improve Priority Customer interest). *See, e.g.,* proposed Rule 971.2NYP(a)(1)(A) (proposed definitions, including incorporating the concept of the DBBO per Pillar Rule 980NYP).

[189] *See* Cboe Rule 5.38(b)(1) and (e)(5)(B) (regarding required price improvement in the presence of Customer interest). *See supra* note 47 (regarding the Exchange's supposition that Cboe's C–AIM Rule requires price improvement of Priority Customer interest that is displayed).

[190] *See* Pillar Rule 971.1NYP(c)(1)(B). *See also* Cboe Rule 5.38(c)(3) (citing to the minimum auction interval of 100 milliseconds in place on Cboe).

[191] *See* Pillar Rule 971.1NYP(c)(1)(A). *See also* Cboe Rule 5.38(c)(2) (regarding ''AuctionID'' feature).

[192] *See* Cboe Rule 5.38(c)(1) (providing for ''Concurrent C–AIM Auctions in Same Complex Strategies'').

new or novel functionality and would be a competitive change that may make the Exchange a more attractive venue for auction-related order flow.

The proposed changes to streamline early end scenarios for Complex 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 Complex CUBE Auction to run the full length of the (fixed duration) Response Time Interval, 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 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 Complex Contra Order and may result in increased Complex CUBE Auction volume on the Exchange. Moreover, this proposed enhancement would align with the single-leg CUBE Auction which likewise allows the Initiating Participant to designate a Surrender Quantity and would allow the Exchange to compete on more equal footing with another options exchange that offers this feature in their price improvement auctions.[193]

The proposed rule changes to modify the handling and operation of Complex GTX Orders on Pillar (*e.g.,* that such orders will execute solely with the Complex CUBE Order, if at all, and then cancel) and to clarify that Complex 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 Pillar 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 an Auction with a Complex GTX Order how such interest would be prioritized and handled on Pillar, thus adding clarity, transparency, and internal consistency to Exchange rules. This proposed change would also align with the handling of GTX Orders in single-leg CUBE Auctions.[194]

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 Complex CUBE Order allocation is consistent with the pre-Pillar Complex CUBE rule except that it is modified to align with Pillar Rule 964NYP (as discussed in detail herein), which sets forth a priority model on Pillar that is consistent with the Exchange's Customer-centric allocation model and affords Customers priority within each Pillar Priority category. In addition, this alignment of Complex CUBE Order functionality with Pillar Rule 964NYP would add clarity, transparency, and internal consistency to Exchange rules to the benefit of investors. This proposed change would also align the allocation of Complex CUBE Orders with the handling of CUBE Orders in single-leg CUBE Auctions, per Pillar Rule 971.1NYP(c)(4)(A).

The Exchange believes the proposed rule change is not unfairly discriminatory because the proposed handling of Complex CUBE Auctions on Pillar would be the same for similarly-situated ATP Holders. As was the case for pre-Pillar Auctions, 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.

Overall, the Exchange believes this proposal may lead to an increase in Exchange volume and should allow the Exchange to better compete against another options market that already offers the enhanced functionality proposed herein.[195] As is the case for single-leg CUBE Auctions on Pillar, 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 Complex CUBE Orders of any size.[196] 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.

Conforming Changes to Rule 900.2NY

The proposed change to the definition of Professional Customer to make clear that Professional Customers are treated as Broker/Dealers (or non-Customers) for purposes of the Complex CUBE Auction on Pillar, per proposed Rule 971.2NYP would remove impediments to and perfect the mechanism of a free and open market and a national market system and would protect investors and the public interest because such changes would ensure consistent handling of Professional Customer interest in the Complex CUBE Auction prior to and after the Exchange's migration to Pillar. The proposed change would align Exchange rules with the rules of at least one other options exchange that likewise differentiates the treatment of Professional Customer interest from Customer interest for purposes of price improvement auctions for paired orders, where Customers (but not Professional Customers) are afforded first priority to trade in the auction.[197] Further, the proposal to remove reference to the pre-Pillar Rules 971.1NY and 971.2NY because these rules are not operative on Pillar would benefit investors because it would improve the accuracy of, and add clarity, transparency, and internal consistency to, Exchange rules making them easier to navigate and understand.

Conforming Changes to Rule 935NY

The Exchange believes that adding a cross-reference to proposed Rule 971.2NYP and thus extending the exemption from the one-second order exposure requirement set forth in Rule 935NY to include the Complex CUBE Auctions on Pillar would remove impediments to and perfect the mechanism of a free and open market and a national market system. As noted herein, the proposed Complex CUBE Auctions on Pillar would offer features that are substantively identical to the pre-Pillar Complex CUBE Auction. Accordingly, the Exchange believes that it would promote just and equitable principles of trade to exempt from the

[193] *See* Pillar Rule 971.1NYP(c)(4)(C). *See also* Cboe Rule 5.38(e)(5) (regarding ''last priority'' feature).

[194] *See* Pillar Rule 971.1NYP(c)(1)(C)(i). The proposed handling of Complex GTX Orders is also consistent with the handling of COA GTX Orders submitted to a COA, per Pillar Rule 980NYP.

[195] *See generally* Cboe Rule 5.38 (offering, in its C–AIM, similar enhanced features and requiring the same pricing parameters and price improvement over ''Priority Customers'' as are proposed herein).

[196] *See generally* Pillar Rule 971.1NYP (regarding single-leg CUBE Auctions on Pillar). *See* discussions, *supra* (detailing features of single-leg CUBE Auctions on Pillar that mirror the enhancements proposed herein).

[197] *See* Cboe Rule 5.38(e) (providing that ''Priority Customer'' interest executes first with the Agency Order submitted to the price improvement auction, followed by non-Priority Customer interest).

one-second order exposure requirement Complex CUBE Orders submitted on Pillar, per proposed Rule 971.2NYP. Like the pre-Pillar CUBE Auction, the proposed Complex CUBE provides ATP Holders a minimum of 100 milliseconds to respond to Complex CUBE Orders, which should promote timely executions, while ensuring adequate exposure of such orders.[198] Further, consistent with Rule 935NY, Commentary .01, the ATP Holders submitting CUBE Orders—to the existing CUBE or to Pillar CUBE—would do so only when there is a genuine intention to execute a bona fide transaction.[199] Finally, the proposal to remove reference to pre-Pillar Rules 971.1NY and 971.2NY because these rules are not operative on Pillar, add clarity, transparency, and internal consistency to Exchange rules.

Conforming Changes to Rule 980NYP

The proposed change to Pillar Rule 980NYP(b)(1) to include Complex CUBE Orders in the list of potential ECOs would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would add clarity, transparency, and internal consistency to Exchange rules. The proposed change to Pillar Rule 980NYP(f) to specify that a COA Order received during a Complex CUBE Auction in the same complex strategy would not initiate a COA and that a COA in progress would end early upon the receipt of a Complex CUBE Order in the same complex strategy would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow the Exchange to conduct only one auction process of ECOs at a time, which handling is consistent with functionality on at least one other options exchange.[200] Similarly, the proposal to end a COA in progress early upon the receipt of a Complex CUBE Order would promote internal consistency a COA in progress will end early upon receipt of a Complex QCC Order in the same complex strategy per Pillar Rule 980NYP(f)(3)(E).[201]

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 proposed rule changes would support that intermarket 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 pre-Pillar priority model. As noted herein, the proposed enhancements would align the proposed Rule with the operation of the single-leg CUBE Auction (per Pillar Rule 971.1NYP), which may encourage ATP Holders to utilize both auction mechanisms thus attracting additional liquidity to the Exchange.

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 auctions offered by other options exchanges. As noted herein, several of the proposed enhancements to the Auction—*i.e.,* concurrent auctions, inclusion of an AuctionID on Request for Responses and the option to include an AuctionID on Complex GTX Orders, a fixed duration during which auction responses are submitted, and the ability to designate an optional Surrender Quantity—are offered on at least one other options exchange (*e.g.,* Cboe) and the addition of these features would make the Exchange a more competitive venue for price improvement auctions. As discussed herein, the proposed changes to the CUBE BBO definition, which incorporate Pillar concepts (including regarding priority and the DBBO), are designed to enhance the Exchange's ability to compete with Cboe for complex order auction flow. To the extent that the proposed functionality leads to an increase in Exchange volume, this increase 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 options exchanges that offer similar price improvement mechanisms.

Similarly, the proposal to treat Professional Customer interest as Broker/Dealer (non-Customer) interest for purposes of the proposed Rule would not impose any undue burden on intramarket or intermarket competition as use of the Complex CUBE Auction is optional. For those market participants that choose to utilize CUBE Auctions on Pillar, the proposed definition applies equally to all similarly-situated investors. In addition, all investors that opt to use the Complex CUBE Auction would be subject to the same (amended) definition—which is consistent with the definition that applied to pre-Pillar Rule 971.2NY—and would also align the Exchange with at least one other options exchange that likewise affords priority in price improvement auctions to ''Priority Customers'' but not to Professional Customers.[202]

The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition because any User on the Exchange may utilize the Complex CUBE Auction, as described in the proposed Rule, and all orders submitted to the Auction would be treated in the same manner for purposes of Rule 935NY (*i.e.,* such orders would be exempt from the one-second order exposure requirement).

In addition, the proposed change to include Complex CUBE Orders among the list of available Complex Orders set forth in Pillar Rule 980NYP(b)(1) would not impose an undue burden on competition but would instead add clarity, transparency, and internal consistency to Exchange rules. Furthermore, the proposal to modify Pillar Rule 980NYP(f) to disallow a COA at the same time there is a Complex CUBE Auction in progress (or end a COA early upon receipt of a Complex CUBE Auction) likewise would not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the

[198] *See* proposed Rule 971.2NYP(c)(1)(B) (regarding a Response Time Interval of no less than 100 milliseconds).

[199] *See* Rule 935NY, Commentary .01 (''Rule 935NY prevents a User from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the User was already bidding or offering on the book'').

[200] *See* MIAX Options User Manual, *supra* note 179 (stating that, on MIAX, ''[o]nly one complex auction whether a cPRIME or a Standard Complex auction may be in process for any given Strategy at a time'' and that MIAX will reject ''a cPRIME order in a Strategy that is already in a cPRIME or Standard Complex auction'').

[201] *See* Pillar Rule 980NYP; *see also* note 179 [sic], *supra* (regarding the Exchange's adoption, on an immediately effective basis, new Pillar Rule 980NYP(f)(3)(E), which specifies that a COA in progress ends early upon receipt of a Complex QCC Order in the same complex strategy).

[202] *See* Cboe Rules 5.38(e)–(f) (regarding the handling of Priority Customer interest for purposes of priority and allocation in Cboe's C–AIM Auction and for inclusion on customer crossing orders).

purposes of the Act. First, this proposed change would enable the Exchange to compete on more equal footing with at least one other options exchange that likewise prevents complex trading interest from being subject to simultaneous auctions.[203] Furthermore, options exchanges are free to adopt (if they have not already done so) electronic crossing mechanisms with price improvement auctions that similarly prevent multiple complex auction mechanisms to occur in the same strategy at the same time.

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

Pursuant to Section 19(b)(3)(A) of the Act [204] and Rule 19b–4(f)(6) [205] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[206]

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.

[203] *See supra* note 179 (citing to MIAX Options User Manual, which prohibits more than one complex auction at a time—whether in the same mechanism (*i.e.,* cPRIME) or in different auction mechanisms (*i.e.,* cPRIME versus MIAX's ''Standard Complex auction'').

[204] 15 U.S.C. 78s(b)(3)(A).

[205] 17 CFR 240.19b–4(f)(6).

[206] 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.* Please include file number SR–NYSEAMER–2024–24 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–2024–24. 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–NYSEAMER–2024–24 and should be submitted on or before May 22, 2024.

[207] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[207]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–09329 Filed 4–30–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100027; File No. SR–NYSE–2024–13]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change for Amendments to Rule 7.35 and Rule 7.35B

April 25, 2024.

On March 1, 2024, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 7.35 and Rule 7.35B. The proposed rule change was published for comment in the **Federal Register** on March 18, 2024.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 2, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change, so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates June 16, 2024, as the date by

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99719 (Mar. 12, 2024), 89 FR 19370 (Mar. 18, 2024) (SR–NYSE–2024–13).

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).