

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2018-40 and should be submitted on or before October 9, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84079; File No. SR-NYSEArca-2018-63]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend NYSE Arca Rule 1.1 Official Closing Price To Exclude From the TWAP Calculation a Midpoint That Is Based on an NBBO That Is Not Reflective of the Security's True and Current Value

September 11, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 29, 2018, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend NYSE Arca Rule 1.1(l) ("Official Closing Price"). The proposed change is available on the Exchange's website at [www.nyse.com](http://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.

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

###### 1. Purpose

The Exchange recently amended Rule 1.1(l) to establish how the Official Closing Price is determined for an Exchange-listed security that is a Derivative Securities Product<sup>4</sup> if the Exchange does not conduct a Closing Auction or if a Closing Auction trade is less than a round lot.<sup>5</sup> The purpose of the OCP Filing was to adopt a method for deriving the Official Closing Price that would be more indicative of the actual value of the securities that are subject to the rule, in particular for listed securities that are thinly traded or generally illiquid. Prior to the recent rule change, the Official Closing Price for such securities would have been based on a last-sale trade that may have been hours, days, or even months old and therefore not necessarily indicative

<sup>4</sup> With respect to equities traded on the Exchange, the term "Derivative Securities Product" means a security that meets the definition of "derivative securities product" in Rule 19b-4(e) under the Securities Exchange Act of 1934. See NYSE Arca Rule 1.1(k). For purposes of Rule 19b-4(e), a "derivative securities product" means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. 17 CFR 240.19b-4(e).

<sup>5</sup> See Securities Exchange Act Release No. 82907 (March 20, 2018), 83 FR 12980 (March 26, 2018) (SR-NYSEArca-2018-08) (Approval Order) (the "OCP Filing").

of their true and current value. The OCP Filing adopted a revised calculation to derive the value for securities that have a stale last-price. Specifically, for such securities, the Official Closing Price would be derived by adding a percentage of the time-weighted average price ("TWAP") of the NBBO midpoint measured over the last five minutes before the end of Core Trading Hours and a percentage of the last consolidated last-sale eligible trade before the end of Core Trading Hours on that trading day.<sup>6</sup>

The Exchange proposes to further refine Rule 1.1(l)(1)(B) to exclude from the TWAP calculation a midpoint that is based on an NBBO that is not reflective of the security's true and current value. As proposed, the Exchange would exclude a NBBO midpoint from the calculation of the Official Closing Price if that midpoint, when multiplied by ten percent (10%), is less than the spread of that NBBO. The Exchange would also exclude a crossed NBBO from the calculation.

The proposed amendment to adopt a NBBO midpoint check is designed to validate whether an NBBO used in the calculation of the Official Closing Price bears a relation to the value of the underlying security. Under the proposal, the Exchange would calculate the midpoint of the NBBO and then multiply the midpoint by ten percent (10%) and compare this value to the spread of the NBBO. If the value of the midpoint when multiplied by ten percent (10%) is less than the spread of that NBBO, the Exchange would exclude the NBBO midpoint from the calculation. The Exchange believes that if the NBBO spread is greater than the value of the midpoint when multiplied by ten percent (10%), it would indicate that the spread is too wide, and therefore not representative of the value of the security. For example, assume the percentage for purposes of the NBBO midpoint calculation is set at 10%. Assume further that the NBBO is \$9.00 × \$11.00. The NBBO spread is therefore \$2.00, the midpoint of the NBBO is \$10.00, and the value of the midpoint is \$1.00 (10% of \$10.00). Given that the spread of the NBBO (\$2.00) is greater than the value of the NBBO midpoint (\$1.00), the \$9.00 × \$11.00 NBBO would be excluded from the calculation. Conversely, assume the NBBO is \$9.51 × \$10.49. The NBBO spread is therefore \$0.98, the midpoint of the NBBO is \$10.00, and the value of the midpoint is \$1.00 (10% of 10.00). Given that the spread of the NBBO (\$0.98) is less than the value of the NBBO midpoint (\$1.00),

<sup>6</sup> See Rule 1.1(l)(1)(B)(i)-(vi).

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

the  $\$9.51 \times \$10.49$  NBBO would be included in the calculation.

The proposed amendment is similar to, and based on, the term "Auction NBBO" as defined in Rule 7.35–E(a)(5).<sup>7</sup> The Exchange currently uses the Auction NBBO as a basis for determining the Auction Reference Price for the Core Open Auction.<sup>8</sup> If there is no Auction NBBO, then the Exchange uses the prior trading day's Official Closing Price. To qualify as an Auction NBBO for the Core Open Auction, there must be both a bid and an offer that is not zero, the NBBO cannot be crossed, and the midpoint of the NBBO when multiplied by a designated percentage, cannot be greater than or equal to the spread of the NBBO.<sup>9</sup> Although Rule 7.35–E(a)(5) currently specifies that the designated percentage used for determining the Auction NBBO for the Core Open Auction would be determined by the Exchange upon prior notice to ETP Holders, the Exchange proposes to codify within the proposed amendment to Rule 1.1(l)(1)(B) the percentage used in the TWAP calculation for the Official Closing Price at ten percent (10%).

The Exchange believes that the proposed NBBO midpoint check, which uses the same methodology as determining an Auction NBBO for the Core Open Auction, achieves the same purpose as the Auction NBBO because it would eliminate use of an NBBO that does not reflect the true value of a security. For the same reasons that the Exchange would not use an NBBO that does not pass the Auction NBBO test as an Auction Reference Price, the Exchange similarly proposes that if an NBBO fails that same test, it would not be used for determining the TWAP calculation for the Official Closing Price of a security.

The Exchange also proposes a non-substantive clarifying change to Rule 1.1(l). Under Rule 1.1(l), if the Official Closing Price cannot be determined under paragraph (A) of Rule 1.1(l), then the procedure under paragraph (B) would be utilized. If the Official Closing Price cannot be determined under paragraphs (A) and (B) of Rule 1.1(l), then the procedure under paragraph (C) would be utilized. And lastly, if the Official Closing Price cannot be determined under paragraphs (A), (B), or (C) of Rule 1.1(l) then the procedure

under paragraph (D) would be utilized. To reflect this decision tree methodology, the Exchange proposes to adopt rule text to reflect that the process under paragraph (D) of Rule 1.1(l)(1) would be utilized if the Official Closing Price cannot be determined under paragraphs (1)(A), (B) or (C) of the Rule. The Exchange is not proposing any substantive change to paragraph (D) of Rule 1.1(l)(1). The Exchange believes that the proposed rule change would provide additional clarity in the Rules and reflect current practice for the purpose of determining the Official Closing Price.

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date of this proposed rule change by Trader Update. The Exchange anticipates that the implementation date will be in the first quarter of 2019.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because creating a process to validate the NBBO midpoint to determine the Official Closing Price by comparing the midpoint value to the spread of the NBBO, and if the NBBO midpoint is not valid, to exclude it from the calculation, would ensure that the NBBO is sufficiently tight to guarantee that the midpoint of the NBBO would be a meaningful and accurate basis for determining the Official Closing Price. The Exchange also believes the proposed refined methodology for determining the Official Closing Price would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a more up-to-date indication of the value of the underlying security if there have

not been any last-sale eligible trades leading in to the close of trading. The Exchange believes the proposed NBBO midpoint check for purposes of determining the Official Closing Price would also provide a closing price that more accurately reflects the most recent and reliable market information possible. As noted above, the Exchange already uses this methodology for determining whether an NBBO can be used as an Auction Reference Price for the Core Open Auction.

The Exchange further believes that the proposed TWAP calculation would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a more robust mechanism to determine the value of an affected security for purposes of determining an Official Closing Price. By calculating the midpoint of the NBBO and then multiplying the midpoint by ten percent (10%) and comparing this value to the spread of the NBBO, the Exchange believes that the proposed methodology would result in the price of a security that is even more reflective of the true and current value of such security than the methodology in place today.

The Exchange believes the proposed non-substantive amendment to current Rule 1.1(l)(1)(D) is intended to provide additional clarity and detail and will eliminate confusion among market participants, which is in the interests of all investors and the general public.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose any burden on competition because the proposal would simply provide for a more efficient manner to determine the Official Closing Price for a Derivative Securities Product.

### *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**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the

<sup>7</sup> See Rule 7.35–E(a)(5). The term "Auction NBBO" means an NBBO that is used for purposes of pricing an auction.

<sup>8</sup> The Exchange also uses the Auction NBBO for determining the Indicative Match Price in specified situations for the Closing Auction. See Rule 7.35–E(a)(8)(C).

<sup>9</sup> See Rule 7.35–E(a)(5).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2018-63 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2018-63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only

information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2018-63 and should be submitted on or before October 9, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84078; File No. SR-C2-2018-018]

### Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fees Schedule

September 11, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 4, 2018 Cboe C2 Exchange, Inc. (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe C2 Exchange, Inc. (the "Exchange" or "C2 Options") proposes to amend its Fees Schedule.

The text of the proposed rule change is also available on the Exchange's website (<http://www.c2exchange.com/Legal/>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

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

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

##### 1. Purpose

The Exchange proposes to amend its Fees Schedule, effective September 4, 2018.

The Exchange first proposes to reduce fees for Public Customer, Market-Maker and Non-Customer, Non-Market Maker orders that remove liquidity in Penny Classes. Particularly, the Exchange proposes to reduce the Penny Class Remove rate for Public Customers (which orders yield fee code PC) from \$0.49 per contract to \$0.43 per contract and reduce the Penny Class Remove rate for Market-Maker and Non-Customer, Non-Market Maker orders (which orders yield fee codes PR and PP, respectively) from \$0.50 per contract to \$0.49 per contract.

The Exchange also proposes to reduce the current rebates given to Market Maker and Non-Customer, Non-Market Maker orders that add liquidity in Penny Classes. Specifically, the Exchange proposes reduce the Penny Class Add rebate for Market-Maker orders (which orders yield fee code PM) from \$0.45 per contract to \$0.41 per contract. The Exchange also proposes to reduce the Penny Class Add rebate for Non-Customer, Non-Market Maker orders (which orders yield fee code PN) from \$0.40 per contract to \$0.36 per contract.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>3</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>4</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>5</sup> requirement that

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

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

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

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4).

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