



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82802; File No. SR-NYSEAMER-2018-05]

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change for New Rule 971.2NY for An Electronic Price Improvement Auction for Complex Orders

March 2, 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 February 15, 2018, NYSE American LLC (the “Exchange” or “NYSE American”) 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 a new Rule 971.2NY for an electronic price improvement auction for complex orders. The proposed rule 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

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<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.

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 proposes to expand its electronic crossing mechanism offering, which is the Customer Best Execution or "CUBE" Auction described in Rule 971.1NY, to make it available for complex orders. To effect this change, the Exchange proposes new Rule 971.2NY (Complex Electronic Cross Transactions) to establish the CUBE for complex orders ("Complex CUBE Auction" or "Auction"). The proposed Complex CUBE Auction would operate in a manner substantially similar to the CUBE Auction for single-leg orders (the "Single-Leg CUBE"). Accordingly, proposed Rule 971.2NY is based on Rule 971.1NY with differences as necessary to account for different processing of and priority rules for Complex Orders.<sup>4</sup> In addition to being substantially similar to the Single-Leg CUBE (discussed below), the proposed

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<sup>4</sup> Rule 980NY sets forth how the Exchange conducts trading of Electronic Complex Orders (referred to herein simply as Complex Orders). Per Rule 980NY, "an 'Electronic Complex Order' means any Complex Order as defined in Rule 900.3NY(e) that is entered into the System." Rule 900.3NY defines Complex Order as "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."

Complex CUBE Auction would operate in a manner consistent with electronic price improvement auctions for complex auctions available on other options markets.<sup>5</sup>

As proposed, the Complex CUBE Auction (like the Single-Leg CUBE) would be available to ATP Holders both on and off the Trading Floor of the Exchange, subject to the requirements of Section 11(a) of the Act (discussed below). In addition to the Complex CUBE Auction, Floor-based ATP Holders may continue to use existing Floor-based crossing rules.

The Exchange also proposes to amend Rule 900.2NY(7)(a), make minor updates to the Single-Leg CUBE, and amend other Exchange rules (as noted herein) for purposes of clarity, transparency and internal consistency.

### **Single-Leg CUBE**<sup>6</sup>

The Single-Leg CUBE provides a mechanism through which an ATP Holder may seek to guarantee the execution of a limit order it represents as agent on behalf of a public customer, broker dealer, or any other entity (the “CUBE Order”). The ATP Holder that submits the CUBE Order (the “Initiating Participant”) agrees to guarantee the execution of the CUBE Order by

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<sup>5</sup> See Chicago Board Options Exchange, Inc. (“CBOE”) Rule 6.74A – Automated Improvement Mechanism (“AIM”); Nasdaq PHLX, LLC (“PHLX”) Rule 1087 – Price Improvement XL (“PIXL”); BOX Options Exchange LLC (“BOX”) Rule 7245 – Complex Order Price Improvement Period (“COPIP”); Nasdaq ISE, LLC (“ISE”) Rule 723 – Price Improvement Mechanism (“PIM”); Miami International Securities Exchange, LLC (“MIAX”) Rule 515A, Interpretation and Policies .12 - Price Improvement Mechanism (“PRIME”).

<sup>6</sup> See Rule 971.1NY. See Securities Exchange Act Release No. 72025 (April 25, 2014), 79 FR 24779 (May 1, 2017 [sic]) (SR-NYSEMKT-2014-17) (order approving CUBE Auction for single-leg orders) (“Single-Leg CUBE Approval Order”). To make clear that Rule 971.1NY relates to the CUBE Auction for single leg orders, the Exchange proposes to re-title this rule, and modify cross-references to this rule, to “Single-Leg Electronic Cross Transactions.” See proposed Rules 971.1NY; 900.2NY(18A) (regarding the definition of a Professional Customer); 935NY (regarding order exposure requirements). The Exchange also proposes to modify Rules 900.2NY(18A) to exclude Professional Customers from the definition of “Customer” for purposes of this proposed rule. See proposed Rule 900.2NY(18A).

submitting a contra-side order (“Contra Order”) representing principal interest or interest it has solicited to trade with the CUBE Order at a specified price (“single stop price”) or by utilizing auto-match or auto-match limit features. The Auction starts with an initiating price that is displayed (while the price(s) at which the Contra Order has guaranteed the CUBE Order is not displayed). Except as specified by rule, a CUBE Order to buy (sell) may trade at prices equal to or between the initiating price as the upper (lower) bound and the National Best Bid (“NBB”) (National Best Offer (“NBO”)) as the lower (upper) bound.<sup>7</sup>

Although the Contra Order would guarantee the CUBE Order an execution, the purpose of the Single-Leg CUBE is to provide the opportunity for price improvement for the CUBE Order as well as the opportunity for other market participants to interact with the CUBE Order. Accordingly, the Exchange notifies market participants with a Request for Response (“RFR”) when an Auction is occurring so that they have an opportunity to participate by submitting RFR Responses in the form of GTX Orders (though unrelated quotes and order received during the Auction may be eligible to participate in the CUBE as well). The Response Time Interval (“RTI”) for the Auction is determined by a random timer, but will never be less than 100 milliseconds or more than 1 second. However, the CUBE may end prior to the end of the RTI if during an Auction, the Exchange receives quotes or orders that are marketable to allow such incoming orders or quotes an opportunity to interact with interest in the Auction and then continue with regular order processing without delay.<sup>8</sup>

At the conclusion of the Single-Leg CUBE, the CUBE Order may execute at multiple prices within a permissible range but would always trade at the best-priced interest in the

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<sup>7</sup> See Rule 971.1NY(b)(1) (regarding exceptions to general parameters, including tighter execution parameters when there is Customer interest on the Book and for CUBE Orders for 50 or fewer contracts).

<sup>8</sup> See Rule 971.1NY(c)(4).

Auction.<sup>9</sup> Generally, the CUBE mechanism will determine whether the total RFR Responses can fill the CUBE Order at a price or prices better than the initiating price. If so, the CUBE Order is matched against the better-priced RFR Responses granting the CUBE Order the maximum amount of price improvement possible. As noted above, certain unrelated orders may be considered RFR Responses and may interact with the CUBE Order (thus maximizing opportunities for price improvement) and any portion of these unrelated orders remaining thereafter would be placed on the Consolidated Book.

The Exchange proposes to make the CUBE mechanism available to Complex Orders, as described below.

### **Complex CUBE Overview**

The purpose of the Complex CUBE Auction is to provide the opportunity for price improvement for a Complex Order in an electronic paired auction as well as the opportunity for other market participants to interact with such Complex Order. Accordingly, just as in the Single-Leg CUBE, the Exchange would notify market participants when an Auction is occurring so that they may have an opportunity to participate.

Like the Single-Leg CUBE, the Complex CUBE Auction is designed to work in conjunction with the Exchange's Consolidated Book – the Exchange's single electronic order book that contains all quotes and limit orders, including Complex Orders.<sup>10</sup> Any orders executed in the Complex CUBE Auction would occur in the Complex Matching Engine ("CME"), which is the mechanism that ranks and maintains priority of Complex Orders, and monitors the bids and

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<sup>9</sup> See Rule 971.1NY(c)(5).

<sup>10</sup> See Rule 900.2NY(14) (defining Consolidated Book (or "Book") and providing that all quotes and orders "that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 964NY").

offers in the leg markets for possible execution of a Complex Order.<sup>11</sup> By integrating the Complex CUBE Auction into the CME, the Exchange would assure that the Complex CUBE Auction respects the priority of interest in the Consolidated Book.<sup>12</sup>

As discussed in more detail below, the Auction may conclude early (to preserve priority) if, during the Auction, the Exchange receives trading interest that improves the interest that existed on the Consolidated Book at the start of the Auction. If such incoming trading interest is a Complex Order, that order would have an opportunity to participate in the Auction; if such trading interest updates the legs markets, it would be processed per Rule 980NY after the Complex Order that initiated the Auction is fully executed.<sup>13</sup>

The Exchange believes that the operation of the proposed Complex CUBE Auction is consistent with processing of Complex Orders in the CME and respects the processing of updates to the leg markets consistent with Rule 980NY. In addition, the Exchange believes that the Complex CUBE Auction would provide more efficient transactions, reduce execution risk to ATP Holders, and afford greater opportunities for price improvement. The Exchange also believes this proposal would result in tighter markets, and ensure that each order receives the best possible price.

### **Definitions**

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<sup>11</sup> See Rule 980NY(b) (“Priority of Electronic Complex Orders in the Consolidated Book”). See also proposed Rule 971.2NY (regarding processing of Complex CUBE Orders purposes to Rule 980NY).

<sup>12</sup> See proposed Rule 971.2NY(a).

<sup>13</sup> The Exchange notes that, as described in the “Conclusion of the Complex CUBE Auction and Order Allocation” section, the allocation of the Complex CUBE Order is consistent with the allocation of orders executed in the Complex Order Auction. See Rule 980NY(c)(7)(B) [sic].

Because of different processing of and priority rules for Complex Orders, the Exchange proposes to both amend current definitions in Exchange rules relating to Complex Orders and add new terms that would be used for purposes of the Complex CUBE Auction.

First, the Exchange proposes to amend Rule 900.2NY(7), which currently defines the term “Complex BBO,” to mean “the BBO for a given complex order strategy as derived from the best bid on OX and best offer on OX for each individual component series of a Complex Order.” The Exchange proposes both (i) a non-substantive amendment to rename the “Complex BBO” as the “Derived BBO,” and revise the description, and (ii) a substantive amendment to add a new definition of “Complex BBO” to refer to the best-priced Complex Orders in the Consolidated Book.

To effect this change, the Exchange proposes to amend current Rule 900.2NY(7)(b) to provide that a Complex BBO means complex orders with the lowest-priced net debit/credit price on each side of the Consolidated Book for the same complex order strategy.<sup>14</sup> The Exchange believes that defining the Complex BBO to refer to Complex Orders would promote transparency and clarity in Exchange rules because the definition would be more closely correlated to prices of Complex Orders, and not a derived price from the leg markets. As discussed below, the Exchange proposes to use this amended term “Complex BBO” in the rule text describing the Complex CUBE Auction.

The Exchange proposes this definition of Complex BBO to reflect the distinctions between pricing of Complex Orders (which are entered at net debit/credit prices) and single-leg

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<sup>14</sup> See Rule 980NY(b) (providing that Electronic Complex Orders are ranked in the Consolidated Book, in part, based on their “total or net debit or credit” price). Complex orders are entered with a plus (“+”) sign when the order sender wants to receive money (“credit”) or a negative (“-“) to indicate they are willing to pay out money (“debit”) when the order executes. In the examples used herein, prices are assumed to be credit, unless it is preceded by negative sign (indicating a debit).

orders. Among Complex Orders with the same complex strategy, a Complex Order willing to pay money, which is expressed with a negative sign, is lower priced than a Complex Order willing to pay out a smaller amount or a Complex Order that wants to receive money. For example, a Complex Order with a net debit price of -\$2.00 is lower-priced than a Complex Order with a net debit price of -\$1.00, and both those orders are lower-priced (and, as discussed below, better priced) than a Complex Order with a net credit of +\$1.00. Accordingly, the concept of “lower-priced” for Complex Orders relates to the net debit/credit price associated with the order, and not whether such order is designated as a “buy” or “sell” order.

The Exchange also proposes new Rule 900.2NY(7)(c) to provide that the “Derived BBO” is calculated using the BBO from the Consolidated Book for each of the options series comprising the given complex order strategy.<sup>15</sup> This revised definition would not change how the Exchange determines what was formerly referred to as the “Complex BBO.” The Exchange proposes this change to terminology to make clear that the Derived BBO is derived from BBO of the leg markets, as is described in the current definition of a “Complex BBO.” The Exchange proposes to make conforming amendments to Rule 980NY to replace all references to “Complex BBO” in that rule to the new term “Derived BBO.”<sup>16</sup>

Second, the Exchange proposes that Commentary .02 to proposed Rule 971.2NY would include terms used in Rule 971.2NY. The Exchange proposes to use the term “interest” in these definitions because these terms relate to any interest that could interact with a Complex Order, including quotes and orders in the leg markets that comprise the complex order strategy. As proposed:

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<sup>15</sup> Rule 900.2NY(7) (defining the BBO as the best bid or offer in the System).

<sup>16</sup> See proposed Rule 980NY(e)(2), (e)(3)(ii), (e)(6)(A)(i), (ii) and (iii), (e)(6)(B)(ii) and (iii), (e)(6)(C)(i) – (iv), and (e)(6)(7)(A), and Commentary .02 and .05(a) to Rule 980NY.

- *Better-priced* or *more aggressive* interest would mean lower-priced net debit/credit interest on each side of the Consolidated Book for the same complex order strategy. As further proposed, higher-priced interest would be *worse-priced* or *less aggressive* than lower-priced interest. For example, a complex order entered with a price of -\$4.00, indicating the sender is willing to pay out up to \$4.00 when the order trades, is more aggressively priced than a complex order entered with a price of -\$3.00, indicating the sender is only willing to pay out up to \$3.00 when the order trades.
- Interest *improves* the Complex or Derived BBO if it would be priced lower than the same-side Complex or Derived BBO. As noted above, for Complex Orders, a lower-priced order is better priced, and therefore an improved price for a Complex Order would be lower-priced.
- Interest *locks* when it would be priced at the exact inverse price of any contra-side interest.
- Interest *crosses* when it would be priced lower than the exact inverse price of any contra-side interest.
- A Complex Order would be *executable* against contra-side interest price [sic] at the exact inverse value or lower. For example, a Complex Order with a debit price of \$1.00 would be executable against a Complex Order with a credit price of \$1.00 or lower, and vice versa.

The Exchange believes that defining these terms in the proposed rule would promote transparency and clarity regarding how the Complex CUBE Auction would function.

#### **Criteria for Starting a Complex CUBE Auction**

Under proposed Rule 971.2NY(a), a Complex CUBE Order is a Complex Order, as defined in Rule 900.3NY(e) (see supra note 4) 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.

Proposed Rule 971.2NY(a)(1) 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 with the Complex CUBE Order at either (A) a specified price (“stop price”) (as described below in proposed Rule 971.2NY(b)(1)(A)), or (B) an auto-match limit price (as described below in proposed Rule 971.2NY(b)(1)(B)).<sup>17</sup> Proposed Rule 971.2NY(a)(1)(A)-(B) is based on Rule 971.1NY(a), but differs in that it uses the term “Complex” and does not include details about the initiating price (see proposed Rule 971.2NY(a)(3)) or any reference to an auto-match feature.<sup>18</sup>

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<sup>17</sup> The Exchange previously filed a proposed rule change that it would issue guidance advising ATP Holders that Contra Orders for the account of a Customer may not be entered into a CUBE Auction. See Securities Exchange Act Release No. 72389 (June 13, 2014), 79 FR 35201, 35203 (SR-NYSEMKT-2014-51). The Exchange proposes to amend Rule 971.1NY(a) relating to Single-Leg CUBE and to include in proposed Rule 971.2NY the requirement that any solicited interest included in the Contra Order be non-Customer interest.

<sup>18</sup> Because the Exchange does not offer Market Orders for Complex Orders, there is no auto-match feature for Complex CUBE (which is a feature that is offered in the Single-Leg CUBE). See Rule 971.1NY(c)(1)(B) (describing auto-match feature as allowing the Initiating Participant for a CUBE Order to buy (sell) to “automatically match as principal or as agent on behalf of a Contra Order the price and size of all RFR Responses” that are worse than are lower (higher) than the initiating price and within the range of permissible executions”). The Exchange proposes a clarifying amendment to Rule 971.1NY(c)(1)(B) relating to the Single-Leg CUBE to modify the auto-match text to remove, as redundant, the clause “as principal or as agent on behalf of a Contra Order,” given that the function of the Initiating Participant is already set forth in the Rule 971.1NY(a).

Proposed Rule 971.2NY(a)(2) would define the term “CUBE BBO,” which would be determined upon entry of a CUBE Order in the System, and is 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.<sup>19</sup> As described below, the Exchange would use the CUBE BBO both for purposes of determining whether an Auction may begin or if an Auction must conclude early. Put another way, in order to initiate an Auction, the Complex CUBE Order must be priced better than the interest resting on the Consolidated Book, i.e., the CUBE BBO, which ensures that price-time priority is respected. Accordingly, the Exchange proposes to embed within the definition of CUBE BBO the requirement for price improvement, which concept is described for the Single-Leg CUBE for CUBE Orders for fewer than 50 contracts in Rules 971.1NY(b)(1)(B) and (b)(6).

The Exchange also proposes to define in proposed Rule 971.2NY(a)(2) that the “same-side CUBE BBO” and “contra-side CUBE BBO” refer to the CUBE BBO on the same or opposite side of the market as the Complex CUBE Order, respectively. As described below, the Exchange proposes to use these terms throughout the proposed rule to provide parameters for commencing and, in some cases, concluding an Auction early. As further proposed, the time at which the Auction is initiated would be considered the time of execution for the Complex CUBE Order.<sup>20</sup> Proposed Rule 971.2NY(a)(2) is based in part on Rule 971.1NY(b) for the Single-Leg

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<sup>19</sup> A complex order strategy is entered with the ratio expressed in the fewest number of contracts for each leg of the ratio. For a complex order strategy with a ratio of 2, 3, and 6 contracts per leg, the \$0.01 figure would be multiplied by 2 contracts, which represents the smallest leg. To calculate the CUBE BBO for this strategy, the Derived BBO would need to be priced improved by \$0.02.

<sup>20</sup> Pursuant to Rule 991NY(b)(7), option transactions effected as part of a Complex Trade are exempt from NBBO trade through liability and therefore an individual leg market of a Complex Order may trade at or between the Exchange Exchange’s best bid /offer, without regard to the NBBO. See also Rule 980NY (providing that “[n]o leg of an

Cube with differences to refer to the CUBE BBO (as opposed to the NBBO or BBO) to account for distinctions between single-leg orders and Complex Orders.

Proposed Rule 971.2NY(a)(3) would provide that the initiating price of a Complex CUBE Order would be the less aggressive of the net debit/credit price of such order or the price that locks the contra-side CUBE BBO. Proposed Rule 971.2NY(a)(3) is similar to the second to last sentence of Rule 971.1NY(a) describing the initiating price at which a Single-Leg CUBE Auction begins. As described above in Commentary .02(a) to proposed Rule 971.2NY, for purposes of this Rule, “less aggressive” interest refers to higher-priced interest. Accordingly, to respect price-time priority of the Consolidated Book, the Exchange proposes that if the net debit/credit price of a Complex CUBE Order is crossing the contra-side CUBE BBO, the initiating price of such order would be the price that locks the contra-side CUBE BBO. The concept of an initiating price for Complex CUBE Orders set forth in proposed Rule 971.2NY(a)(3) is based on the same concept introduced for CUBE Orders in a Single-Leg CUBE (in Rule 971.1NY(a),(b)(1)), but the means of determining that price differs to account for distinctions between single-leg orders and Complex Orders.

Proposed Rule 971.2NY(a)(4) would establish the “range of permissible executions” for an Auction. Specifically, proposed Rule 971.2NY(a)(4) would provide that a Complex CUBE Order may trade at all prices equal to or between the initiating price and the same-side CUBE BBO. Proposed Rule 971.2NY(a)(4) is based in part on Rules 971.1NY(b)(1)(A) and (B) in that it sets forth the permissible range of executions for an Auction. However, because a Complex CUBE Auction would be based on the CUBE BBO rather than the NBBO, and the CUBE BBO already accounts for price improvement over the Consolidated Book, the Exchange would not

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Electronic Complex Order will be executed at a price outside the Exchange’s best bid /offer for that leg”).

need to differentiate permissible ranges of execution based on the size of the Complex CUBE Order or the presence of Customer interest, as set forth in Rule 971.1NY(b)(1)(A) and (B) for the Single-Leg CUBE. Moreover, because of distinctions between Complex Orders and single-leg orders, the Exchange proposes that the range of permissible executions for an Auction be based on the side of the Complex CUBE Order as it relates to the CUBE BBO.

Proposed Rule 971.1NY(a)(4)(A) would further provide that if the CUBE BBO updates during the Auction (referred to as the “updated CUBE BBO”), the range of permissible executions would be adjusted with the updated CUBE BBO unless the incoming interest would cause the Auction to conclude early, as described below pursuant to paragraph (c)(3) of this Rule. This proposed rule text is based on Rule 971.1NY(b)(1)(C), which similarly provides that the range of permissible executions will adjust if the BBO on the same side of the Single-Leg CUBE Order updates. The proposed requirement that the initiating price improve the best-priced interest in the Consolidated Book, including interest that arrives during the Auction, is designed to ensure that the Auction is integrated with the Consolidated Book such that it respects and preserves the priority of interest in the Book.

Example: Complex CUBE Auction Initiating Price and Range of Permissible Executions (proposed Rule 971.2NY(a)(2)-(4))

LMM Jan 50 C 10 x 7.03 - 7.05 x 10

LMM Jan 55 C 10 x 3.00 - 3.02 x 10

Derived BBO for {S 1 Jan 50 C/ B 1 Jan 55 C} = -\$4.01 to **\$4.05**

Complex BBO for {S 1 Jan 50 C/ B 1 Jan 55 C} = N/A (no complex orders on book)

Complex CUBE Order: Cust1 {B 1 Jan 50 C/ S 1 Jan 55 C} x 700 **-\$4.05**

Complex Contra Order: Firm1 {S 1 Jan 50 C/ B 1 Jan 55 C} x 700 \$4.02 Auto-match limit price

CUBE BBO: -\$4.02 to \$4.04

RFR sent identifying the complex order strategy, side and size, with initiating price of -\$4.04.

Permissible range of executions = -\$4.02 to -\$4.04

In the above example, the initiating price is -\$4.04 because the initiating price for a Complex CUBE Order will be the less aggressive of the limit price of such order (i.e., -\$4.05) or the price that locks the contra-side CUBE BBO (i.e., -\$4.04). If during the Auction the LMM Jan 50C bid were to update to \$7.04, the updated CUBE BBO would be -\$4.03 to \$4.04 and therefore the new range of executions would be -\$4.03 to -\$4.04 (per proposed Rule 971.2NY(a)(4)(A)).

Proposed Rule 971.2NY(b) sets forth the eligibility requirements for initiating a Complex CUBE Auction, which Auction is available to all options traded on the Exchange. To initiate a Complex CUBE Auction, pursuant to proposed Rule 971.2NY(b)(1), the Initiating Participant must mark the Complex CUBE Order for Auction processing and must specify one of two ways in which it would guarantee the execution of a Complex CUBE Order – a single stop price or “auto-match limit,” which is consistent with the operation of the Single-Leg CUBE as well as the rules of other options exchanges that offer electronic price improvement auctions.<sup>21</sup> The Exchange believes that these guarantee alternatives would afford the Initiating Participant

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<sup>21</sup> See Rule 971.1NY(c)(1)(A) and (C). As previously stated (*supra* note 18), because the Exchange does not offer Complex Orders to be entered as market orders, the Exchange does not propose to offer the “auto-match” option described in Rule 971.1(c)(1)(B) for the Complex CUBE Auction. See also CBOE Rule 6.74A(b)(1)(A).

flexibility and control over the price(s) at which it would be willing to guarantee a Complex CUBE Order. Neither the stop price nor any use of auto-match limit would be displayed.

Pursuant to proposed Rule 971.2NY(b)(1)(A), if the Initiating Participant specifies a single stop price, the stop price must be executable against the initiating price of the auction.<sup>22</sup> When an Initiating Participant elects a single stop price, this would be the price at which the Complex Contra Order would trade with the Complex CUBE Order, pursuant to paragraph (c)(4) of this proposed Rule, as discussed below. As further proposed, if a stop price crosses the same-side CUBE BBO (i.e., would be priced outside the permissible range of executions), the Complex CUBE Order would not be eligible to initiate an Auction and would be rejected along with the Complex Contra Order. Thus, using the information in the above Example, the CUBE BBO is -\$4.02 to \$4.04 and a Complex CUBE Order to buy starts an Auction with an initiating price of -\$4.04, a stop price of \$4.01 would be rejected because it crosses the same-side CUBE BBO (of -\$4.02). The proposal to allow a Complex CUBE to be guaranteed by a single stop price is based in part on how the single-stop price feature operates with the Single-Leg CUBE, but with differences to reflect the permissible range of executions for a Complex CUBE Order.<sup>23</sup>

Rather than opt for a single stop price, an Initiating Participant may, pursuant to proposed Rule 971.2NY(b)(1)(B), elect the “auto-match limit price” alternative, which price must be

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<sup>22</sup> See proposed Commentary .02 to Rule 971.2NY (defining executable for purposes of this Rule). The Exchange proposes to modify the definition of the single stop price in the Single-Leg CUBE to similarly refer to the stop price being “equal to,” as opposed to “at” the initiating price, which would add clarity and consistency to Exchange rules. See proposed Rule 971.1NY(c)(1)(C).

<sup>23</sup> See Rule 971.1NY(c)(1)(A). The Exchange notes however that it would re-price a stop price to be within the range of permissible executions on the Single-Leg CUBE, which feature the Exchange does not allow in the Complex CUBE Auction.

executable against the initiating price of the Auction.<sup>24</sup> As further proposed, the Complex Contra Order may trade with the Complex CUBE Order at prices that are better than or equal to the initiating price up to the auto-match limit price, if applicable, pursuant to paragraph (c)(4) of this proposed Rule.<sup>25</sup> Accordingly, a Complex Contra Order with an auto-match limit price is eligible to trade at all prices within the range of permissible executions for such Auction, subject to the specified limit price.

As proposed, if the auto-match limit price crosses the same-side CUBE BBO (i.e., would be outside the range of permissible executions), the Complex Contra Order would be priced back to lock the same-side CUBE BBO. The Exchange believes that if an Initiating Participant specifies an auto-match limit price, such ATP Holder has indicated that it is willing to trade with the Complex CUBE Order at more than one price. The Exchange therefore believes it would be consistent with the intent of the auto-match limit price election to adjust the price of such order so that it would be eligible to trade within the range of permissible executions for a Complex CUBE Order. Accordingly, if the auto-match limit price selected is *inferior* to the same-side CUBE BBO bound of permissible execution prices, the auto-match limit price would be re-priced to within the permissible execution range. Thus, using the information in the above Example, if the Initiating Participant submitted an auto-match limit price of \$4.01 (which is outside the permissible range of executions of -\$4.02 to -\$4.04), it would be re-priced to -\$4.02 and an Auction would be initiated.

The manner in which a Complex CUBE Order would be guaranteed by an auto-match limit price is consistent with how the Single-Leg CUBE functions, as described in Rule

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<sup>24</sup> See proposed Commentary .02 to Rule 971.2NY (defining executable for purposes of this Rule).

<sup>25</sup> See proposed Rule 971.2NY(c)(1)(C) [sic].

971.1NY(c)(1)(C). The Exchange proposes to amend Rule 971.1NY(c)(1)(C) to update the Single-Leg CUBE rule to reflect this functionality. As proposed, the Exchange proposes to specify for the Single-Leg CUBE that, when selecting auto-match limit, the Initiating Participant may specify an “auto-match limit price” that is equal to or below (above) the initiating price of the Auction and that the Contra Order may trade with the CUBE Order at prices that are lower (higher) than the initiating price down (up) to the auto-match limit price. The Exchange also proposes to specify that it would adjust the auto-match limit price to within the range of permissible executions by adding a new sentence to that Rule that would provide: “An auto-match limit price specified for a CUBE Order to buy (sell) that is below (above) the lower (upper) bound of the range of permissible executions will be repriced to the lower (upper) bound.”

Paragraphs (b)(2)-(5) of proposed Rule 971.2NY set forth additional requirements for initiating a Complex CUBE Auction, including specifying the various reasons that a proposed Complex CUBE Order would be deemed ineligible to commence an Auction and thus would be rejected along with the Complex Contra Order. The enumerated bases for rejecting a Complex CUBE Order (and Complex Contra Order) are substantially similar to the bases for rejecting a CUBE Order (and Contra Order) in the Single-Leg CUBE.

1. Proposed Rule 971.2NY(b)(2) would provide 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 would be rejected, along with the Complex Contra Order. The Exchange believes that rejecting such Complex CUBE Orders would be appropriate because they are not the best-priced interest available and should not trade ahead of better-priced interest on the same side of the market. This proposed

rule text is based on Rule 971.1NY(b)(2), which similarly provides that a Single-Leg CUBE Order would be rejected if priced less aggressively than the permissible range of executions.

2. Proposed Rule 971.2NY(b)(3) 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. Because a Complex CUBE Order is deemed executed at the initiation of the Auction, any Complex CUBE Orders entered before the opening of trading would not be able to execute, and therefore the Exchange believes it would be appropriate to reject these Complex CUBE Orders. This proposed treatment of the Complex CUBE Order is the same as for a Single-Leg CUBE Order, per Rule 971.1NY(b)(4).
3. Proposed Rule 971.2NY(b)(4) would provide that Complex CUBE Orders submitted during the final second of the trading session in the component series would not be eligible to initiate an Auction and would be rejected, along with the Complex Contra Order. As discussed below, the length of the Auction may be a random time between 100 milliseconds and 1 second, to be determined and announced by the Exchange. The Exchange believes, however, that it would be appropriate to reject Complex CUBE Orders submitted during the final second of the trading session to assure that the processing of a Complex CUBE Order may be completed. This proposed treatment of the Complex CUBE Order is the same as for a Single-Leg CUBE Order, per Rule 971.1NY(b)(5).
4. Proposed Rule 971.2NY(b)(5) would provide that Complex CUBE Orders submitted during a trading halt would not be eligible to initiate an Auction and

would be rejected, along with the Complex Contra Order. Because a Complex CUBE Order is deemed executed at the initiation of the Auction, any Complex CUBE Orders entered during a trading halt would not be able to execute, and therefore the Exchange believes it would be appropriate to reject these Complex CUBE Orders. This functionality mirrors that of the Single-Leg CUBE and the Exchange similarly proposes to amend the Rule 971.1NY to add sub-paragraph (b)(10) to set forth the same feature in the rule for Single-Leg CUBE.

The Exchange notes that Complex Orders may be expressed in any decimal price, and the legs(s) of a complex order may be executed in one cent increments regardless of the minimum price increment (“MPV”) otherwise applicable to the individual legs of the order.<sup>26</sup> Accordingly, the Exchange does not propose rule text based on Rule 971.1NY(b)(7) for the Single-Leg CUBE, because this pricing requirement is already provided for in Rule 980NY.

The Exchange believes that the above-described restrictions and requirements would ensure that the existing priority and display rules for Electronic Complex Orders, as well as quotes and orders making up the leg markets for a complex order strategy, are preserved, while still providing ATP Holders an opportunity to guarantee either price improvement, more liquidity beyond the displayed size, or both, for orders they represent as agent.<sup>27</sup>

#### **Complex CUBE Auction Process: RFRs, RTI and Responses**

Proposed Rule 971.2NY(c) sets forth the Auction process, which is substantially similar to the Single-Leg CUBE. Proposed Rule 971.2NY(c), which is based on Rule 971.1NY(c), would provide that the time at which the Auction is initiated would be considered the time of

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<sup>26</sup> See Commentary .01 to Rule 980NY.

<sup>27</sup> See Rule 980NY.

execution for the Complex CUBE Order.<sup>28</sup> As further proposed, only one Auction may be conducted at a time in any given complex order strategy and, once commenced, the Complex CUBE Order, as well as the Complex Contra Order, may not be cancelled or modified. This functionality is consistent with the Single-Leg CUBE as well as rules of other options exchanges that operate electronic price improvement auctions for complex orders.<sup>29</sup>

Proposed Rule 971.2NY(c)(1) would describe the Auction Request for Responses (“RFR”) and Response Time Interval. Pursuant to proposed Rule 971.2NY(c)(1)(A), upon receipt of a valid Complex CUBE Order, the Exchange would announce the Auction by disseminating an RFR to all participants who subscribe to receive Auction messages for options. The RFR would identify the following characteristics of a Complex CUBE Order: the complex order strategy, the side of the market, the size, and the initiating price. Proposed Rule 971.2NY(c)(1)(A) is based on Rule 971.1NY(c)(2)(A) with differences only to add the term “complex” as applicable.<sup>30</sup>

The Exchange proposes to define the term “Response Time Interval” or “RTI” in proposed Rule 971.2NY(c)(1)(B) as the period of time during which responses to the RFR may be entered. As proposed, the Response Time Interval would last for a random period of time within parameters determined by the Exchange and announced by Trader Update. The proposed minimum/maximum parameters for the Response Time Interval would be no less than 100

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<sup>28</sup> Pursuant to Rule 991NY(b)(7), option transactions effected as part of a Complex Trade are exempt from NBBO trade through liability and therefore an individual leg market [sic] of a Complex Order may trade at or between the Exchange [sic] Exchange’s best bid /offer, without regard to the NBBO. See also Rule 980NY (providing that “[n]o leg of an Electronic Complex Order will be executed at a price outside the Exchange’s best bid /offer for that leg”).

<sup>29</sup> See, e.g., Rule 971.1NY(b),(c); CBOE Rule 6.74A(b); ISE Rule 723(b)(4); ISE Rule 723 Supplementary Material .04.

<sup>30</sup> See also CBOE Rule 6.74A(b)(1)(B); ISE Rule 723(c).

milliseconds and no more than one (1) second. The proposed duration of an Auction would be determined in the same manner as the Response Time Interval is determined for a Single-Leg CUBE under Rule 971.1NY(c)(2)(B). The proposed use of a random Response Time Interval would provide each Complex CUBE Auction with a functional difference that distinguishes it from similar price improvement mechanisms offered by other exchanges.<sup>31</sup>

Pursuant to proposed Rule 971.2NY(c)(1)(C), during the RTI, any ATP Holder may respond to the RFR, provided such response is properly marked specifying price, size, and side of the market (each, an “RFR Response”). This proposed rule text is based on Rule 971.1(c)(2)(C).

As proposed, any RFR Response (including unrelated Electronic Complex Orders) that crosses the same-side CUBE BBO would be eligible to trade in the Auction at a price that locks the same-side CUBE BBO. In such instance, the RFR Response would have been priced more aggressively than the contra-side range of permissible execution prices, and it would trade with the Complex CUBE Order at a price both within the range of permissible executions and within the limit price of the RFR Response. Thus, using the information in the above Example, if the Initiating Participant submitted an auto-match limit price of \$4.01 (which is outside the permissible range of executions of -\$4.02 to -\$4.04), it would be re-priced to -\$4.02. The Exchange notes that this re-pricing is consistent with treatment of RFR Responses in the Single-Leg CUBE.<sup>32</sup>

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<sup>31</sup> See e.g., CBOE Rule 6.74A(b)(2)(C) [sic]; PHLX Rule 1087(b)(1)(D); ISE Rule 723(c)(1).

<sup>32</sup> See Rule 971.1NY(c)(2)(i)(f) [sic] (providing that “[f]or a CUBE Order to buy (sell), GTX Orders priced below (above) the lower (upper) bound of executions shall be repriced to the lower (upper) bound of executions, as specified in paragraph (b)(1) of this Rule).

Similar to Rule 971.1NY(c)(2)(C), proposed Rule 971.2NY(c)(1)(C) would specify that the Auction would accept RFR Responses as described in proposed sub-paragraphs (i) and (ii) to that Rule. Proposed Rule 971.2NY(c)(1)(C)(i) would define a “Complex GTX Order,” which would operate in the same manner as GTX Orders in the Single-Leg CUBE.<sup>33</sup> As proposed, a Complex GTX Order would be an Electronic Complex Order, as defined in Rule 980NY, with a time-in-force contingency for the RTI, and must specify the price, size, and side of the market:

- Pursuant to proposed Rule 971.2NY(c)(1)(C)(i)(a), Complex GTX Orders would not be displayed on the Consolidated Book or disseminated to any participants. Any portion of a Complex GTX Order that is not fully executed as provided for in paragraphs (c)(3) and (4) of this Rule would be cancelled at the conclusion of the Auction. This rule text is based on Rule 971.1NY(c)(2)(C)(i)(a) for Single-Leg CUBE without any substantive differences.
- Pursuant to proposed Rule 971.2NY(c)(1)(C)(i)(b), Complex GTX Orders with a size greater than the size of the Complex CUBE Order would be capped at the size of the Complex CUBE Order. This rule text is based on Rule 971.1NY(c)(2)(C)(i)(c) for Single-Leg CUBE without any substantive differences.
- Pursuant to proposed Rule 971.2NY(c)(1)(C)(i)(c), Complex GTX Orders may be cancelled or modified, which would afford ATP Holders opting to utilize this order type additional flexibility and control. This rule text is based on Rule 971.1NY(c)(2)(C)(i)(d) for Single-Leg CUBE. The Exchange proposes to amend Rule 971.1NY(c)(2)(C)(i)(d) for Single-Leg CUBE to similarly provide that in

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<sup>33</sup> See Rule 971.1NY(c)(2)(C)(i).

addition to being cancelled, GTX Orders submitted to the Single-Leg CUBE may be modified.

- Pursuant to proposed Rule 971.2NY(c)(1)(C)(i)(d), Complex GTX Orders on the same side of the market as the Complex CUBE Order would be rejected. Because Complex GTX Orders can only trade against a Complex CUBE Order or an unrelated order on the same side as a Complex CUBE Order, same-side Complex GTX Orders are unnecessary to the Complex CUBE Auction process. Therefore, the Exchange proposes that same-side Complex GTX Orders would be rejected. This rule text is based on Rule 971.1NY(c)(2)(C)(i)(e) for Single-Leg CUBE without any substantive differences.

In addition to being substantively identical to GTX Orders in the Single-Leg CUBE, other options exchanges that offer electronic price improvement auctions for complex orders similarly enable market participants to enter non-displayed interest that would participate in the auction only, which interest generally operates in the same manner as the proposed Complex GTX Order.<sup>34</sup>

Pursuant to proposed Rule 971.2NY(c)(1)(C)(ii), the Exchange proposes to define “Unrelated Electronic Complex Orders” as Electronic Complex Orders (as defined in Rule 980NY, including COA-eligible orders<sup>35</sup>) on the opposite side of the market as the Complex

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<sup>34</sup> See, e.g., CBOE 6.74A(b)(1)(I) (non-displayed interest intended only for the auction may be cancelled); ISE 723(c)(3) (non-displayed interest intended only for the auction may be modified, but not cancelled). See also supra note 26 (regarding the MPV for Complex Orders).

<sup>35</sup> Rule 980NY(e) describes the Complex Order Process or COA, which is designed to offer price improvement to Complex Orders; however, the COA is not a crossing mechanism and a COA-eligible order is not guaranteed an execution. See Rule 980NY(e)(1) (defining COA-eligible orders).

CUBE Order that are received during the RTI, even if not marked for consideration in the Auction (i.e., as a Complex GTX Order), provided such orders can participate within the range of permissible executions specified for the Auction pursuant to paragraph (a)(4) of this Rule. Accordingly, similar to Rule 971.1NY(c)(2)(C)(ii), which provides for unrelated quotes and orders that are entered during the RTI for the Single-Leg CUBE to be considered RFR Responses, the Exchange would consider Electronic Complex Orders that are entered during the RTI for an Auction to be RFR Responses if they could participate in the range of permissible executions. The Exchange believes that considering these unrelated complex orders as RFR Responses would increase the number of orders against which the Complex CUBE Order may be executed, and should thus maximize opportunities for price improvement of the Complex CUBE Order.

However, unlike the Single-Leg CUBE, because quotes and orders in the leg markets for a complex strategy underlying a Complex CUBE Order would not be eligible to participate in the Auction, such quotes and orders would not be considered “unrelated orders” and therefore would not be RFR Responses. As described in more detail below in proposed Rule 971.2NY(c)(3)(B)-(F), updates to the leg markets during the Auction may cause it to conclude early to preserve priority of that interest at a price. Limiting participation in the Complex CUBE Auction to Complex Orders, but allowing certain updates to the leg markets to cause an Auction to conclude early, is consistent with how the Exchange treats interest in the COA process, as described in Rule 980NY(e)(7)(B). Because the Exchange would not consider quotes and orders in the leg markets to be RFR Responses for an Auction, the Exchange does not propose rule text based on Rule 971.1NY(c)(2)(C)(ii)(a) – (c).

#### **Conclusion of the Complex CUBE Auction**

As proposed in Rule 971.2NY(c)(2), just as with the Single-Leg CUBE, the Complex CUBE Auction would conclude at the end of the RTI.<sup>36</sup> This proposed functionality is similar to the operation of electronic price improvement mechanisms for complex orders offered by other exchanges.<sup>37</sup> Consistent with the Single-Leg CUBE and the rules of other exchanges that operate electronic price improvement auctions for complex orders, this rule would further provide that an Auction would conclude in the event of a trading halt in any of the component series<sup>38</sup> and the Complex CUBE Order would be executed per proposed Rule 971.2NY(c)(4).<sup>39</sup> As described in proposed Rule 971.2NY(c)(3) (and discussed below), specified additional events may result in the early conclusion of the Auction. Proposed Rule 971.2NY(c)(2) would further provide that any RFR Responses that do not execute in the Auction would execute in accordance with Rule 980NY, Complex Order Trading, and any remaining balance of Complex GTX Orders would cancel, because such orders have a time-in-force for the duration of the Auction.

#### **Early Conclusion of a Complex CUBE Auction**

As noted earlier, like the Single-Leg CUBE, a Complex CUBE Auction would conclude early (i.e., before the end of the RTI) as a result of certain events that would otherwise disrupt the priority of the Auction within the Consolidated Book.<sup>40</sup> Such early conclusion events are

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<sup>36</sup> See Rule 971.1NY(c)(3).

<sup>37</sup> See, e.g., CBOE Rule 6.74A(b)(2)(A); PHLX Rule 1087(b)(2)(A); ISE Rule 723(c)(5)(i).

<sup>38</sup> See, e.g., Rule 971.1NY(c)(3); CBOE Rule 6.74A(b)(2)(F); PHLX Rule 1087 (b)(2)(D).

<sup>39</sup> Because the execution [sic] of the Auction would be deemed the time the Complex CUBE Auction is initiated, if a trading halt occurs in the series during the RTI and the Auction concludes early, the Exchange does not believe that such execution needs to be nullified pursuant to Rule 953NY Commentary .03 [sic].

<sup>40</sup> See Rule 971.1NY(c)(4).

consistent with how the electronic price improvement auctions for complex orders on other markets operate.<sup>41</sup>

Proposed Rule 971.2NY(c)(3) would provide that an Auction would conclude early before the end of the RTI as described in paragraphs (c)(3)(A) – (F) of the proposed Rule and that when it concludes, the Complex CUBE Order would execute as provided for in proposed Rule 971.2NY(c)(4), described below.<sup>42</sup> While the precise circumstances that result in the early end of a Complex CUBE Auction differ from those of a Single-Leg CUBE, the tenets of honoring price/time are the same. Specifically, the Exchange proposes to use references to the same-side and contra-side CUBE BBO to describe early conclusion scenarios for Complex CUBE Auctions because these definitions take into consideration updates to both the leg markets and better-priced Electronic Complex Orders in the Consolidated Book.

- First, pursuant to proposed Rule 971.2NY(c)(3)(A), an Auction would conclude early if, during the RTI, the Exchange receives a new Complex CUBE Order in the same complex order strategy that meets the conditions of proposed Rule 971.2NY(b). As proposed, after the first Auction concludes, the incoming Complex CUBE Order would initiate its own Auction and proceed as described in proposed Rule 971.2NY(c). Proposed Rule 971.1NY(c)(3)(A) functions in the same manner as Rule 971.1NY(c)(4)(A) relating to the Single-Leg CUBE with non-substantive differences to refer to the same complex order strategy instead of the same series. This proposed basis for an early conclusion of an Auction is also

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<sup>41</sup> See, e.g., CBOE Rule 6.74A(b)(2)(B),(C),(E); PHLX Rule 1087(b)(2)(C); ISE Rule 723(c)(5)(ii)-(iii); BOX IM 7150.

<sup>42</sup> Pursuant to proposed Rule 971.2NY(c)(2), and as discussed herein, a trading halt in the affected series would also result in the early conclusion of an Auction and contracts would be allocated pursuant to proposed paragraph (c)(4).

consistent with the rules of other exchanges operating electronic auctions for complex orders.<sup>43</sup>

- Second, pursuant to proposed Rule 971.2NY(c)(3)(B), an Auction would conclude early if, during the RTI, the Exchange receives any interest that would adjust the same-side CUBE BBO to be better than the initiating price. The Exchange proposes to conclude the Auction early in such circumstance to honor the priority of the Consolidated Book, which would now be equal to or better-priced than the initiating price of the Auction. This early conclusion scenario is based in part on Rule 971.1NY(c)(4)(D) for Single-Leg CUBE, but uses Complex CUBE terminology.
- Third, pursuant to proposed Rule 971.2NY(c)(3)(C), an Auction would conclude early if, during the RTI, the Exchange receives any interest that adjusts the same-side CUBE BBO to cross any RFR Responses. This early conclusion scenario is based in part on Rule 971.1NY(c)(4)(B) for Single-Leg CUBE in that the interest would be on the same side as the Complex CUBE Order and would be marketable against RFR Responses, but uses Complex CUBE terminology.
- Fourth, pursuant to proposed Rule 971.2NY(c)(3)(D), an Auction would conclude early if, during the RTI, the Exchange receives any interest that adjusts the same-side CUBE BBO to cross the single stop price specified by the Initiating Participant. This early end scenario would not apply to instances where the Initiating Participant specified an auto-match limit price. The Exchange proposes

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<sup>43</sup> See, e.g., CBOE Rule 6.74A(b); ISE Rule 723 Supplementary Material .04. The Exchange notes that although these rules specify that auctions may not overlap or queue in any manner, the rules are nonetheless silent on how this is enforced (i.e., by rejecting new auction orders or by concluding an ongoing auction early).

to conclude the Auction early in such circumstances because the stop price would not be eligible to trade as part of an updated CUBE BBO.<sup>44</sup> Accordingly, the Exchange proposes to conclude such Auction early and execute the Complex CUBE Order as provided for in proposed Rule 971.2NY(c)(4).

- Fifth, pursuant to proposed Rule 971.2NY(c)(3)(E), an Auction would conclude early if, during the RTI, the Exchange receives interest that crosses the same-side CUBE BBO. This early conclusion scenario is based in part on Rule 971.1NY(c)(4)(C) for the Single-Leg CUBE because arriving interest that crosses the same-side CUBE BBO would be marketable against interest in the Consolidated Book, but uses Complex CUBE terminology.
- Finally, pursuant to proposed Rule 971.2NY(c)(3)(F), an Auction would conclude early if, during the RTI, the Exchange receives interest in the leg market that causes the contra-side CUBE BBO to be better than the stop price or auto-match limit price. This early conclusion scenario is based in part on Rule 971.1NY(c)(4)(C) for the Single-Leg CUBE because arriving interest that crosses the contra-side CUBE BBO would be marketable against interest in the Consolidated Book, but uses Complex CUBE terminology.

In each of the above scenarios, the Auction would conclude early to preserve priority of incoming interest. When the Auction concludes, the Complex CUBE Order would be matched with the best-priced interest received during the Auction and, once the Complex CUBE Order is filled, the incoming interest (that caused the Auction to conclude early) would be ranked and prioritized. If the incoming interest is a Complex Order and on the opposite side, it may execute

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<sup>44</sup> See proposed Rule 971.2NY(a)(4).

against the Complex CUBE Order; if the incoming interest is on the same side as the Complex CUBE Order, it may execute against any unfilled RFR Responses before being posted to the Consolidated Book. If the incoming interest (that caused the Auction to conclude early) is an updated quote or order in the leg markets, it would be processed after the Complex CUBE Auction pursuant to Rule 980NY. Again, the rationale for concluding the Auction early in each of the above scenarios is to operate seamlessly with the Consolidated Book and honor the price-time priority model on the Exchange – while still affording the Complex CUBE Order an opportunity to receive price improvement.

#### **Complex CUBE Order Allocation**

Proposed Rule 971.2NY(c)(4) sets forth the order allocation process for the Auction. Generally, at the conclusion of the Complex CUBE Auction, the Auction mechanism would determine whether the total RFR Responses can fill the Complex CUBE Order at a price or prices better than the stopped price or auto-match limit price.<sup>45</sup> If so, the Complex CUBE Order is matched against the better-priced RFR Responses granting the Complex CUBE Order the maximum amount of price improvement possible.

When there are multiple RFR Responses at a given price, the Complex CUBE Order would be executed against the RFR Responses on a pro-rata basis pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3), except that Customers at a given price would be executed first in priority. The Exchange believes that, as proposed, the Auction would maximize the opportunity for price improvement while maintaining the priority of Customer orders.

Proposed Rule 971.2NY(c)(4) would provide that any RFR Response that exceeds the size of the Complex CUBE Order would be capped at the Complex CUBE Order for allocation

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<sup>45</sup> See proposed Rule 971.2NY(c)(4)(A), (B)(i)-(ii).

purposes, per Rule 964NY(b)(3). This function is based on Rule 971.1NY(c)(5), which similarly caps the size of RFR Responses to a Single-Leg CUBE.

Pursuant to proposed Rule 971.2NY(c)(4)(A), at each price level, any Customer orders that arrived during the Complex CUBE Auction as RFR Responses would have first priority to execute and be allocated on a size pro rata allocation pursuant to Rule 964NY(b)(3). Allocating Customer interest first is consistent with the Exchange's allocation model and is based on Rule 971.1NY(c)(5)(A) for the Single-Leg CUBE.

Pursuant to proposed Rule 971.2NY(c)(4)(B), after Customer interest at a particular price level has been satisfied, any remaining size would be allocated among the Complex Contra Order and RFR Responses differently depending on whether the Initiating Participant designated a single stop price or auto-match limit. In each case, the proposed allocation of a Complex CUBE Order would follow the same allocation rules for a Single-Leg CUBE Order, as described below.

Proposed Rule 971.2NY(c)(4)(B)(i) would specify how remaining size of the Complex CUBE Order for which the Initiating Participant specifies a single stop price would trade with interest received during the Auction as follows:

- First, to RFR Responses priced better than the stop price, beginning with the most aggressive price within the range of permissible executions, pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3) at each price point. Proposed Rule 971.2NY(c)(4)(B)(i)(a) is based on Rule 971.1NY(c)(5)(B)(i)(a), with differences only to use terminology for Complex CUBE Orders as defined in proposed Commentary .02 to Rule 971.2NY.

- Next, any remaining size of the Complex CUBE Order would execute at the stop price. At the stop price, if there is sufficient size of the Complex CUBE Order still available after executing at prices better than the stop price or against Customer interest, 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). Any remaining size of the Complex CUBE Order at the stop price would be allocated among remaining RFR Responses pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3). If all RFR Responses are filled, any remaining size of the Complex CUBE Order would be allocated to the Complex Contra Order.

Proposed Rule 971.2NY(c)(4)(B)(i)(b) is based on Rule 971.1NY(c)(5)(B)(i)(b), with differences to use terminology for Complex CUBE Orders as defined in proposed Commentary .02 to Rule 971.2NY and non-substantive differences to refer to “size” rather than “contracts” and to use “will” instead of “shall.” In addition, other exchanges that operate electronic pricing mechanism for complex orders similarly guarantee minimum levels of participation for the initiating participant.<sup>46</sup>

- If there are no RFR Responses, the Complex CUBE Order would execute against the Complex Contra Order at the stop price. Proposed Rule

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<sup>46</sup> See, e.g., PHLX Rule 1087(b)(5)(B)(iv) (providing up to 50% allocation with participation guarantees); ISE Rule 713 Commentary .03 (providing up to 60% allocation for participation guarantees); CBOE Rule 6.74A(b)(3)(F).

971.2NY(c)(4)(B)(i)(c) is based on Rule 971.1NY(c)(5)(B)(i)(c) without any substantive differences.

Proposed Rule 971.2NY(c)(4)(B)(ii) would specify how remaining size of the Complex CUBE Order for which an Initiating Participant specifies an “auto-match limit price” would trade with interest received during the Auction as follows:

- First, to RFR Responses at each price level priced better than the auto-match limit price (if any) within the range of permissible executions, beginning with the most aggressive price, pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3) at each price point. Proposed Rule 971.2NY(c)(4)(B)(ii)(a) is based on Rule 971.1NY(c)(5)(B)(iii)(a), with differences to use terminology for Complex CUBE Orders as defined in proposed Commentary .02 to Rule 971.2NY.
- Next, 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 worse than the auto-match limit price. At each price point equal to or worse than the auto-match limit price, the Complex Contra Order would receive an allocation equal to the aggregate size of all other RFR Responses starting with the best price at which an execution against an RFR Response occurs within the range of permissible executions until a price point is reached where the balance of the CUBE Order can be fully executed (the “clean-up price”). At the clean-up price, if there is sufficient size of the Complex CUBE Order still available after executing at better prices or against Customer interest, the Complex Contra Order would be allocated additional volume 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 the Complex Contra Order meets its allocation guarantee at a price better than the clean-up price, it would cease matching RFR Responses that may be priced worse than the price at which the Complex Contra Order received its allocation guarantee. If there are other RFR Responses at the clean-up price, the remaining size of the Complex CUBE Order would be allocated to such interest pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3). Any remaining portion of the Complex CUBE Order would be allocated to the Complex Contra Order at the initiating price.

Proposed Rule 971.2NY(c)(4)(B)(ii)(b) is based on Rule 971.1NY(c)(5)(B)(iii)(b), with differences to use terminology for Complex CUBE Orders as defined in proposed Commentary .02 to Rule 971.2NY and includes non-substantive differences to define the term “clean-up price,” which for the Single-Leg CUBE, is defined in Rule 971.1NY(c)(5)(B)(ii)(a).

- If there are no RFR Responses, the Complex CUBE Order would execute against the Complex Contra Order at the initiating price. Proposed Rule 971.2NY(c)(4)(B)(iii)(c) without any substantive differences.

As noted above, certain unrelated orders may be considered RFR Responses and may interact with the Complex CUBE Order (thus maximizing opportunities for price improvement) and any portion of these unrelated orders remaining thereafter would be processed in accordance with Rule 980NY, Electronic Order Trading. Proposed Rule 971.2NY(c)(4)(C) is based on Rule 971.1NY(c)(5)(C) without any substantive differences.

Finally, proposed Rule 971.2NY(c)(4)(D) would provide that a single RFR Response would not be allocated a volume that is greater than its size. This proposed rule text is based on Rule 971.1NY(c)(4)(D) without any substantive differences.

**Conduct Inconsistent with Just and Equitable Principles of Trade**

The Exchange is proposing Commentary .01 to Rule 971.2NY to set forth that certain activity in connection with the Complex CUBE Auction would be considered conduct inconsistent with just and equitable principles of trade to discourage ATP Holders from attempting to misuse or manipulate the Auction process. Proposed Commentary .01 to the Rule is based on Commentary .02 to Rule 971.1NY relating to the Single-Leg CUBE without any substantive differences and is consistent with the rules of other options exchanges that offer electronic price improvement auction mechanisms.<sup>47</sup> Specifically, pursuant to proposed Commentary .01 (a) – (d) to Rule 971.2NY, the Exchange proposes that the following conduct would be considered conduct inconsistent with just and equitable principles of trade:

- (a) An ATP Holder entering RFR Responses to a Complex CUBE Auction for which the ATP Holder is the Initiating Participant. The Exchange believes this would prevent Initiating Participants from submitting an inaccurate or misleading stop price or trying to improve their allocation entitlement by participating with multiple expressions of interest.

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<sup>47</sup> See, e.g., Rule 971.1NY, Commentary .02; PHLX 1087(c)-(e); ISE 723 Supplementary Material .01; BOX IM-7150-2(a) and (b). The Exchange proposes to correct a typographical error in Commentary .02 of the Single-Leg CUBE rule by adding the word “of,” which was inadvertently omitted, to add clarity and consistency to the Rule. See proposed Commentary .02(b) to Rule 971.1NY (providing, as updated, that “[e]ngaging in a pattern and practice of trading or quoting activity for the purpose of causing a CUBE Auction to conclude before the end of the Response Interval Time”).

(b) Engaging in a pattern and practice of entering unrelated orders and quotes for the purpose of causing a Complex CUBE Auction to conclude early, i.e., before the end of the RTI. The Exchange believes this would prevent an ATP Holder from shortening the duration of the Auction thus possibly reducing the number Responses to an Auction in order to gain a higher allocation than the percentage the ATP Holder may have otherwise received had the Auction not concluded early.

(c) 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 proposed paragraph (c)(5) to proposed Rule 971.2NY. The Exchange believes this would prevent Initiating Participants from manipulating the Complex CUBE Orders size and number to gain a higher guaranteed execution than the Initiating Participant would have otherwise received.

(d) 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. The Exchange believes this will prevent ATP Holders from attempting to misuse or manipulate the process.

**Order Exposure and Prohibited Conduct**

Current Rule 935NY prohibits Users<sup>48</sup> from executing as principal any orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second or (ii) the User has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. This rule helps to ensure that orders are properly exposed to market participants, affording them a reasonable amount of time in which to participate in the execution of the agency order.

As previously stated in this filing, the Exchange believes that the proposed RTI, with a random length of no less than 100 milliseconds and no greater than 1 second (to be determined and announced by the Exchange), is of sufficient length so as to permit ATP Holders time to respond to a Complex CUBE Auction thereby enhancing opportunities for competition among participants and increasing the likelihood of price improvement for the Complex CUBE Order. Accordingly, the Exchange proposes to amend Rule 935NY to stipulate that a User may execute as principal an order that the User represents as agent, provided that the User avails him or herself of the Complex CUBE Auction process, pursuant to Rule 971.2NY. Such Complex CUBE Order would not be subject to the one-second order exposure requirement of Rule 935NY, which exclusion from the one-second order exposure requirement is consistent with the treatment of similar orders on the Exchange.<sup>49</sup> Consistent with Rule 935NY Commentary .01, ATP Holders would only utilize the Auction where there is a genuine intention to execute a bona fide transaction.<sup>50</sup>

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<sup>48</sup> Rule 900.2NY(87) defines User as any ATP Holder that is authorized to obtain access to the System.

<sup>49</sup> See Rule 935NY(iii),(iv) (exempting orders submitted into the Single-Leg CUBE and into the Complex Order Auction Process from the one second order exposure requirement).

<sup>50</sup> 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

### **Modification to Complex Order Trading Rule regarding COA**

Consistent with the principle that the Exchange would only conduct one auction in a given complex order strategy at a time, the Exchange proposes to amend Rule 980NY(e)(6) to make clear that a COA in progress would end upon receipt of a better-priced Complex CUBE Order received during the COA.<sup>51</sup>

### **Section 11(a) of the Exchange Act**

Section 11(a) of the Exchange Act prohibits any member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated persons exercises discretion (“covered accounts”), unless, as discussed below, an exception applies.<sup>52</sup> The Commission, in its order to approve the Single-Leg CUBE, determined that orders effected utilizing this mechanism complied with the requirements of Section 11(a).<sup>53</sup> As noted herein, the Complex CUBE Auction operates in a manner substantially similar to the Single-Leg CUBE and the argument supporting the Exchange’s position that the proposed Complex CUBE Auction is consistent with the requirements of Section 11(a) and the rules thereunder mirror those made (and accepted by the Commission) in regards to the Single-Leg CUBE.

First, Section 11(a)(1) contains a number of exceptions for principal transactions by members and their associated persons. Specifically, Section 11(a)(1)(A) provides an exception

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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.”)

<sup>51</sup> See proposed Rule 980NY(e)(6)(A),(B) (making clear that Complex CUBE Orders are included in the category of “[i]ncoming Electronic Complex Orders” that may cause the COA in progress to end early”).

<sup>52</sup> 15 U.S.C. 78k(a)(1).

<sup>53</sup> See Single-Leg CUBE Approval Order, supra note 6, 79 FR at 24787-24788.

from the prohibitions in Section 11(a) for dealers acting in the capacity of market makers. The Exchange believes that orders sent by on- and off-floor market makers, for covered accounts, to the proposed Complex CUBE Auction would qualify for this exception from Section 11(a).

In addition to this market maker exception, Rule 11a2-2(T) under the Exchange Act, known as the “effect versus execute” rule, provides exchange members with an exception from Section 11(a) by permitting them, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange.<sup>54</sup> To comply with the “effect versus execute” rule’s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;<sup>55</sup> (iii) may not be affiliated with the member executing the transaction on the floor, or through the facilities, of the Exchange; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the rule.<sup>56</sup>

The Exchange believes that orders sent by off-floor ATP Holders, for covered accounts, to the proposed Complex CUBE Auction would qualify for this “effect versus execute” exception from Section 11(a), as described below. In this regard, the first condition of Rule 11a2-2(T) is that orders for covered accounts be transmitted from off the exchange floor. The Exchange represents that orders for covered accounts from off-floor ATP Holders sent to the Complex CUBE Auction would be transmitted from remote terminals that are off the Exchange

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<sup>54</sup> 17 CFR 240.11a2-2(T).

<sup>55</sup> The member, however, may participate in clearing and settling the transaction. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978).

<sup>56</sup> 17 CFR 240.11a2-2(T).

floor directly to the mechanisms by electronic means.<sup>57</sup> In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.<sup>58</sup>

The second condition of Rule 11a2-2(T) requires that the member not participate in the execution of its order once the order is transmitted to the floor for execution.<sup>59</sup> The Exchange represents that, upon submission to the Complex CUBE Auction, an order will be executed automatically pursuant to the proposed rules set forth for the Auction. In particular, execution of an order sent to the Auction depends not on the ATP Holder entering the order, but rather on what other orders are present and the priority of those orders. Thus, at no time following the

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<sup>57</sup> In the alternative, orders for a covered account may be sent by an off-floor ATP Holder to an unaffiliated Floor Broker for entry into the Complex CUBE Auction mechanism. Floor Brokers, however, may not enter orders for their own covered accounts into the Auction mechanism from on the floor, or transmit such orders from on the floor to off of the floor for entry into the Complex CUBE Auction mechanism.

<sup>58</sup> See, e.g., Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (approving, among other things, the equity rules of the Boston Stock Exchange); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving rules governing the trading of options on The NASDAQ Options Market); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15) (approving the Boston Options Exchange as an options trading facility of BSE); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (approving the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange Automated Communications and Execution System) ("1979 Release"); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (approving NYSE's Designated Order Turnaround System) ("1978 Release").

<sup>59</sup> The description above covers the universe of the types of ATP Holders (*i.e.*, on- and off-floor market makers, off-floor firms that are not market makers, and Floor Brokers).

submission of an order is an ATP Holder able to acquire control or influence over the result or timing of order execution.<sup>60</sup>

The third condition of Rule 11a2-2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the Complex CUBE Auction, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.<sup>61</sup> The Exchange represents that the CUBE Auction is designed so that no ATP Holder has any special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanism.

The fourth condition of Rule 11a2-2(T) requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member, nor any associated person thereof, may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract, referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.<sup>62</sup> The Exchange

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<sup>60</sup> The Exchange notes that the Initiating Participant may not cancel or modify a Complex CUBE Order once a Complex CUBE Auction has started. See proposed Rule 971.2NY(c).

<sup>61</sup> In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release.

<sup>62</sup> See 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated

recognizes that ATP Holders relying on Rule 11a2-2(T) for transactions effected through the Complex CUBE Auction must comply with this condition of the Rule.

For all of the foregoing reasons, like the Single-Leg CUBE, the Exchange believes the Complex CUBE Auction promotes just and equitable principles of trade and is consistent with the general policy objectives of Section 11(a) of the Act.

### **Implementation**

The Exchange will announce the implementation date of the proposed rule change in a Trader Update to be published no later than 60 days following Commission approval. The implementation date will be no later than 60 days following publication of the Trader Update announcing Commission approval. The Exchange believes that this implementation schedule would provide ATP Holders with adequate notice of the Auction and would allow ample time for ATP Holders to prepare their systems for participation in the Auction process, if such participation is desired.

### 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

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persons thereof exercises investment discretion, to furnish, at least annually to the person authorized to transact business for the account, a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement, which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. See also 1978 Release (stating “[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).

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 proposes to add new Rule 971.2NY to allow Complex Orders to be submitted to the Complex CUBE Auction in substantially the same manner as orders for single options series instruments currently are submitted to the Single-Leg CUBE, except as necessary to account for distinctions between regular orders on the Book and Complex Orders. As described in greater detail above, the provisions in proposed Rule 971.2NY are substantially similar to those in Rule 971.1NY, with non-substantive differences to reflect their applicability to an Auction for a Complex Order as compared to a CUBE for orders in a single-leg options series. The Exchange believes that the Complex CUBE Auction would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to afford Complex Orders the opportunity for price improvement in a paired auction, similar to the Single-Leg CUBE. The Exchange believes that the Complex CUBE would provide more efficient transactions, reduce execution risk to ATP Holders, and afford greater opportunities for price improvement for Complex Orders. The Exchange also 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 it result in tighter markets for complex orders, and ensure that each order receives the best possible price. Similar to how the Single-Leg CUBE operates, the Exchange believes that by integrating the Auction into the CME, the Exchange is able to assure that the Auction respects the priority of interest in the Consolidated Book.

The Exchange believes that this rule filing is reasonable, equitable and not unfairly discriminatory to customers and Participants because it follows the fundamental principles of the

existing Single-Leg CUBE mechanism<sup>63</sup> and the Exchange's priority and allocation rules in the context of the auction for Complex Orders,<sup>64</sup> each of which has been previously approved by the Commission. The Exchange further believes the proposal is not unfairly discriminatory because the benefits of the proposed Complex CUBE on the Exchange, like the Single-Leg CUBE, are equally available to all ATP Holders.

The Exchange believes this proposal would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would increase opportunities for execution of Complex Orders. Further, the Exchange believes the proposed Complex CUBE Auction would provide greater flexibility to ATP Holders trading Complex Orders on the Exchange. The Exchange also believes that the proposed Complex CUBE would provide additional opportunities for ATP Holders to achieve better handling of Complex Orders and result in increased opportunities for execution and better pricing. These benefits have been realized for orders on single option series under its existing Single-Leg CUBE mechanism and the same principles are expected to transfer readily to Complex Orders. As a result, the proposed Complex CUBE Auction mechanism would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

For purposes of the Complex CUBE Auction, only Complex Orders received during the Auction would be considered RFR Responses because quotes and orders in the leg markets would not be eligible to interact with the Complex CUBE Order. Although this aspect of the

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<sup>63</sup> See Rule 971.1NY, amended to reflect their applicability to a Complex CUBE on a Complex Order as compared to a CUBE on orders for single-leg options series.

<sup>64</sup> See Rule 980NY(e) (describing COA process generally).

Complex CUBE Auction would differ from the Single-Leg CUBE, it is consistent with the current treatment of interest in auctions for complex orders on the Exchange, e.g., the COA.<sup>65</sup> Similarly, to ensure that the Exchange preserves price/time priority, the Complex CUBE would conclude early when interest arrives during the Auction (including quotes and orders) that improve the best-priced interest at the start of the Complex CUBE, which is also consistent with COA processing.<sup>66</sup>

The Exchange believes that proposed Commentary .02 to Rule 971.2NY and amendments to Rule 900.2NY(7) relating to definitions that would be applicable to the Complex CUBE would remove impediments to and perfect the mechanism of a free and open market because these terms reflect the different processing of and priority of Complex Orders. The Exchange believes that use of these terms achieves the same results as the Single-Leg CUBE, but the terms for Complex CUBE are tailored to how Complex Orders function. The Exchange further believes that defining these terms in Exchange rules would promote transparency and clarity for members, the public, and the Commission to understand how the Complex CUBE functions, including circumstances when an Auction would conclude early. Accordingly, any such differences between the rule for Complex CUBE and Single-Leg CUBE are designed to provide clarity in the rules and promote just and equitable principles of trade.

Upon adoption of the proposal, the Exchange would operate price improvement auctions in both single-leg options series and Complex Orders.<sup>67</sup> As with the Single-Leg CUBE, the

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<sup>65</sup> See Rule 980NY(e)(7)(describing that only Complex Orders are eligible for execution in Auction).

<sup>66</sup> See Rule 980NY(e)(6)(describing that updates to the leg markets can end a COA early to preserve priority)

<sup>67</sup> Exchange rules governing events occurring during permitted, simultaneous auctions are clear. Processes on the Exchange System are sequential, which prevents any two orders

Exchange will not operate multiple, simultaneous Complex CUBE Auctions on the same complex order strategy. However, the Exchange proposes that it would accept orders designated for the CUBE on a single option series where a Complex CUBE on a Complex Order strategy that includes such series may be in progress. The Exchange would also accept Complex Orders designated for the Complex CUBE where a Single-Leg CUBE on either of the component series may be in progress. The Exchange believes this simultaneous price improvement auction functionality would reduce order cancellation and, thereby remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

ATP Holders must not use the Complex CUBE process to create a misleading impression of market activity (i.e., the facilities may be used only where there is a genuine intention to execute a bona fide transaction). These provisions are substantially the same as the corresponding rules for the Single-Leg CUBE and are important customer protection features that prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and protect investors and the public interest.

In addition, the Complex CUBE Auction promotes equal access by providing any ATP Holder that elects to subscribe to receive auction messages with the opportunity to interact with orders in the Auction. As a result, no ATP Holder would have an information advantage and the proposal serves to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed changes to Rule 980NY(e)(6) that make clear that a COA in progress would end upon receipt of a better-priced Complex CUBE Order received during the COA would add clarity, transparency and internal consistency to Exchange rules and thereby remove

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(including CUBE Orders and Complex CUBE Orders) from having the same time stamp. Each order is processed in accordance with Exchange rules without race conditions.

impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange also believes that the proposed amendment to Rule 900.2NY to exclude Professional Customers from the definition of “Customer” for purposes of this rule is consistent with just and equitable principles of trade because it is intended to protect investors that are not broker dealers and ensure that their orders are protected regardless of whether there is an Auction, and is consistent with treatment for Single-Leg CUBE. The Exchange also believes the proposed changes to Rule 953NY to exempt Complex CUBE Orders from the 1-second order exposure requirement would add clarity, transparency and internal consistency to Exchange rules to the benefit of investors and the investing public.

As discussed herein, the Exchange proposes to make certain miscellaneous conforming and clarifying changes to Rules 900.2NY(18A), 935NY, 980NY to make them consistent with the adoption of the proposed Complex CUBE rule. These conforming and clarifying changes are required to make the Complex CUBE rules consistent with the Exchange’s Single-Leg CUBE rule and are necessary 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.

For the foregoing reasons, the Exchange believes this proposal is a reasonable modification to its rules, designed to facilitate increased interaction of Complex Orders on the Exchange, and to do so in a manner that ensures a dynamic, real-time trading mechanism that maximizes opportunities for trade executions for Complex Orders. The Exchange believes it is appropriate and consistent with the Act to adopt the proposed rule changes.

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 is proposing the Auction as a market enhancement that should increase competition for Complex Order flow on the Exchange in a manner that would be beneficial to investors. Specifically, the Exchange believes that the Complex CUBE Auction would provide investors seeking to effect Complex Orders with an opportunity for increased liquidity available at improved prices, with competitive final pricing out of the Initiating Participant's complete control. The proposal is structured to offer the same enhancement to all market participants and would not impose a competitive burden on any participant. 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 the proposed rule change is pro-competitive because it would enable the Exchange to provide market participants with functionality that is similar to that of other options exchanges. The Exchange notes that not having the Complex CUBE Auction at the Exchange places the Exchange at a competitive disadvantage vis-à-vis other exchanges that offer similar price improvement mechanisms.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2018-05 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-NYSEAMER-2018-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE,

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2018-05 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>68</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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<sup>68</sup> 17 CFR 200.30-3(a)(12).

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