

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-84285; File No. SR-NYSEAMER-2018-44)

September 25, 2018

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change to Modify Rule 961 regarding the Give Up of a Clearing Member by ATP Holders and Conforming Changes to Rule 933NY

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 September 11, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to modify Rule 961 regarding the Give Up of a Clearing Member by ATP Holders and proposes conforming changes to Rule 933NY. 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

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

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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.

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 purpose of this filing is to modify Rule 961 regarding the Give Up of a Clearing Member<sup>4</sup> by ATP Holders and to make conforming changes to Rule 933NY.

Rule 961: Current Process to Give Up a Clearing Member

In 2015, the Exchange adopted its current “give up” procedure for ATP Holders executing transactions on the Exchange.<sup>5</sup> Per Rule 961, an ATP Holder may give up a “Designated Give Up” or its “Guarantor,” as defined in the Rule and described below.

The Rule defines “Designated Give Up” as any Clearing Member that an ATP Holder (other than a Market Maker<sup>6</sup>) identifies to the Exchange, in writing, as a Clearing Member the ATP Holder requests the ability to give up. To designate a “Designated Give Up,” an ATP Holder must submit written notification to the Exchange. Specifically, the Exchange uses a standardized form (“Notification Form”). An ATP Holder may currently designate any Clearing Member as a Designated Give Up. Additionally, there is no minimum or maximum number of Designated Give Ups that an ATP Holder must identify. Similarly, should an ATP Holder no

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<sup>4</sup> Rule 900.2NY(11) defines “Clearing Member” as an Exchange ATP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.

<sup>5</sup> See Securities and Exchange Act Release No. 75642 (August 7, 2015), 80 FR 48594 (August 13, 2015) (SR-NYSEMKT-2015-55).

<sup>6</sup> For purposes of this rule, references to “Market Maker” refer to ATP Holders acting in the capacity of a Market Maker and include all Exchange Market Maker capacities e.g., Lead Market Makers. As explained below, Market Makers give up Guarantors that have executed a Letter of Guarantee on behalf of the Marker Maker, pursuant to Rule 932NY; Market Makers need not give up Designated Give Ups.

longer want the ability to give up a particular Designated Give Up, the ATP Holder informs the Exchange in writing.

Rule 961 also requires that the Exchange notify a Clearing Member, in writing and as soon as practicable, of each ATP Holder that has identified it as a Designated Give Up. However, the Exchange will not accept any instructions from a Clearing Member to prohibit an ATP Holder from designating the Clearing Member as a Designated Give Up. Additionally, there is no subjective evaluation of an ATP Holder's list of Designated Give Ups by the Exchange. The Rule does, however, provide that a Designated Give Up may determine to not accept a trade on which its name was given up so long as it believes in good faith that it has a valid reason not to accept the trade.<sup>7</sup>

The Rule defines "Guarantor" as a Clearing Member that has issued a Letter of Guarantee or Letter of Authorization for the executing ATP Holder, pursuant to Rules of the Exchange<sup>8</sup> that is in effect at the time of the execution of the applicable trade. An executing ATP Holder may give up its Guarantor without such Guarantor being a "Designated Give Up." Additionally, Rule 924NY provides that a Letter of Guarantee is required to be issued and filed by each Clearing Member through which a Market Maker clears transactions. Accordingly, a Market Maker is enabled to give up only a Guarantor that had executed a Letter of Guarantee on its behalf pursuant to Rule 924NY; a Market Maker does not need to identify any Designated Give

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<sup>7</sup> See Rule 961(f)(1) (setting forth procedures for rejecting a trade). An example of a valid reason to reject a trade may be that the Designated Give Up does not have a customer for that particular trade.

<sup>8</sup> See Rule 924NY (Letters of Guarantees); Rule 932NY (Letters of Authorization).

Ups. Like Designated Give Ups, Guarantors likewise have the ability to reject a trade.<sup>9</sup>

Beginning in early 2018, certain Clearing Firms (in conjunction with the Securities Industry and Financial Markets Association (“SIFMA”)) expressed concerns related to the process by which executing brokers on U.S. options exchanges (the “Exchanges”) are allowed to designate or ‘give up’ a clearing firm for purposes of clearing particular transactions. The SIFMA-affiliated Clearing Members indicated that the Federal Reserve has recently identified the current give-up process as a significant source of risk for clearing firms. SIFMA-affiliated Clearing Members subsequently requested that the Exchanges alleviate this risk by amending Exchange rules governing the give up process.<sup>10</sup>

#### Proposed Amendment to Rules 961 and 933NY

The Exchange proposes to amend Rule 961 to provide a means for a Designated Give Up to opt out of acting as the give up for certain ATP Holders. As proposed, Rule 961(b)(4) would be revised to provide that the Exchange would “accept instruction from a Clearing Member not to permit an ATP Holder to designate the Clearing Member as the Designated Give Up.” The Exchange further proposes to add language to Rule 961(b)(7) to provide that “[i]f a Clearing Member no longer wants to be a Designated Give Up of a particular ATP Holder, the Clearing Member must notify the Exchange, in a form and manner prescribed by the Exchange.” In

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<sup>9</sup> See Rule 961(f)(2) (providing that a Guarantor may “change the give up to another Clearing Member that has agreed to be the give up on the subject trade, provided such Clearing Member has notified the Exchange and the executing ATP Holder in writing of its intent to accept the trade”).

<sup>10</sup> Cboe Exchange, Inc. (“CBOE”) recently filed to amend its give up procedure to require CBOE Trading Permit Holders (each a “TPH”) to receive written authorization from a Clearing TPH (“CTPH”) before it may give up that CTPH. See Securities and Exchange Act Release No. 83872 (August 17, 2018), 83 FR 42751 (August 23, 2018) (SR-CBOE-2018-55). The Exchange’s proposal leads to the same result of providing Clearing Members the ability to control risk, but it differs in process.

practice, a Clearing Member that has been designated as the Designated Give Up need only tell the Exchange that it refuses this designation.

Consistent with this proposed change, the Exchange also proposes to amend Rule 933NY(f) regarding the responsibilities of Floor Brokers to maintain error accounts “for the purposes of correcting bona fide errors, as provided in Rule 960.” As proposed, the Exchange would specify that “it will not be a violation of this provision if a trade is transferred away from an error account through the CMTA process at OCC.”<sup>11</sup> This additional language would enable an executing ATP Holder that has executed an order to CMTA that order through its own clearing relationship. For example, assume a Floor Broker executes a trade giving up Firm A (a Clearing Member that is one of its Designated Give Ups) and, after the execution, the Floor Broker is informed that a portion of the trade needs to be changed to give-up Firm B (a Clearing Member that is not one of the Floor Broker’s Designated Give Ups). The proposed language would enable the Floor Broker to CMTA the trade to Firm B through its own clearing arrangement (i.e., error account/Letter of Authorization) rather than nullifying or busting the trade.

### Implementation

The Exchange proposes to announce the implementation date of the proposed rule change via Trader Notice, to be published no later than thirty (30) days following Commission approval. The implementation date will be no later than sixty (60) days following Commission approval. This additional time would afford the Exchange and ATP Holders the time to make any changes current give up designations.

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<sup>11</sup> See proposed Rule 933NY(f).

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>12</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>13</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

Particularly, as discussed above, several Clearing Firms affiliated with SIFMA have recently expressed concerns relating to the current give up process that permits ATP Holders to identify any Clearing Members as a Designated Give Up for purposes of clearing particular transactions. Also, as noted above, the Clearing Members have relayed that the Federal Reserve has recently identified the current give-up process (i.e., a process that lacks authorization) as a significant source of risk for clearing firms. The Exchange believes the proposed changes to Rule 961 would help alleviate this risk by enabling Clearing Members to refuse to act as a Designated Give Up for certain ATP Holders, which would afford Clearing Members a measure of control. The Exchange believes its proposal addresses concerns raised by Clearing Members, while maintaining the basic give up process. The Exchange does not anticipate Clearing Members to routinely refuse the role of Designated Give Up, but rather to utilize this option only when there is a valid reason and good faith basis to do so. The Exchange notes that Clearing Member would still have the ability to reject trades on an ad hoc basis for ATP Holders for which it has not refused to be a Designated Give Up. Accordingly, the Exchange believes the proposed rule

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

change is reasonable and continues to provide certainty that a Clearing Member would be responsible for a trade, which protects investors and the public interest.

The Exchange also believes that the proposed change to Rule 933NY would protect investors because it would permit an executing ATP Holder to utilize its error account to CMTA an order through its own clearing relationship. This would preserve executions while accommodating the proposed rule change that could result in an executing ATP Holder not being permitted to for a particular give-up.

Thus, this proposal would 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.

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

The Exchange does not believe that this proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change would impose an unnecessary burden on intramarket competition because it would apply equally to all similarly situated ATP Holders. The Exchange also notes that, should the proposed changes make the Exchange more attractive for trading, market participants trading on other exchanges can always elect to become ATP Holders on the Exchange to take advantage of the trading opportunities.

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 within such longer period 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-2018-44 on the subject line.

#### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR- NYSEAMER-2018-44. 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-2018-44, 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>14</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).