

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-84412; File No. SR-NYSEAMER-2018-45)

October 11, 2018

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.14E, Clearance and Settlement

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on September 27, 2018, NYSE American LLC (“Exchange” or “NYSE American”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 7.14E, Clearance and Settlement, to remove language that is inconsistent with the Exchange’s Price List. 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 Exchange proposes to amend Rule 7.14E, Clearance and Settlement, to remove language that was inadvertently included when the rule was first adopted and that is inconsistent with the Exchange’s Price List. The Exchange adopted Rule 7.14E as part of a proposed rule change to adopt rules for trading on the Exchange’s new trading technology platform.<sup>4</sup> Rule 7.14E was based on similar rules of its affiliate, NYSE Arca, Inc. (“NYSE Arca”) Rule 7.14-E and adopted by the Exchange without any substantive differences.<sup>5</sup>

Paragraph (c) of Rule 7.14E states that “[e]ach clearing firm must be admitted to the Exchange as an ETP Holder by meeting the qualification requirements set forth in Rule 2 - Equities.” Paragraph (c) of Rule 7.14E also includes language that exempts clearing firms from paying the regular ETP Holder fee where that clearing firm became an ETP Holder for the sole purpose of acting as a clearing firm on the Exchange. This language was inadvertently included when Rule 7.14E was adopted and is inconsistent with the Exchange’s Price List, which does not include language exempting clearing only ETP Holders from the fee’s application.<sup>6</sup> The

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<sup>4</sup> See Securities Exchange Act Release Nos. 79242 (November 4, 2016), 81 FR 79081 (November 10, 2016) (SR-NYSEMKT-2016-97); 80590 (May 4, 2017), 82 FR 21843 (May 10, 2017) (SR-NYSEMKT-2017-01); and 79982 (February 7, 2017), 82 FR 105008 (February 13, 2017) (Notice) and 80577 (May 2, 2017), 82 FR 21446 (May 8, 2017) (SR-NYSEMKT-2017-04).

<sup>5</sup> Id.

<sup>6</sup> The Exchange does not currently charge ETP Holders a separate ETP Holder fee. See the Exchange’s Price List on page 4 available at <https://www.nyse.com/publicdocs/nyse/markets/nyse->

Exchange notes that no such exemption exists in the Exchange’s rule governing the trading of Exchange-listed securities. Therefore, the Exchange proposes to remove the following phrase from the first sentence of Exchange Rule 7.14E(c): “provided, however, if the clearing firm has become an ETP Holder for the sole purpose of acting as a clearing firm on the Exchange, such clearing firm need not pay the regular ETP Holder fee”.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>8</sup> in particular, because it is designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would remove language from Exchange Rule 7.14E(c) that was inadvertently included when the rule was adopted and that is inconsistent with the Exchange’s Price List. The proposed rule change would delete language from Rule 7.14E(c) that incorrectly exempts clearing only ETP Holders from the ETP Holder fee and would, therefore, remove an inconsistency between Rule 7.14E and the Exchange’s Price List. The Exchange does not currently charge an ETP Holder fee.<sup>9</sup> Further, no ETP Holders currently acts solely as a clearing firm and, therefore, no ETP Holder would be affected by the proposed rule change. The proposed rule change should avoid potential

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[american/NYSE America Equities Price List.pdf](#) (dated July 26, 2018).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See supra note 6.

confusion about the applicability of the ETP Holder fee should an ETP Holder seek to act solely as a clearing firm on the Exchange. Lastly, the Exchange notes that no such exemption exists in the Exchange's rule governing the trading of Exchange-listed securities. Therefore, the proposed rule change would allow for the consistent application of the ETP Holder fee among ETP Holders that act solely as clearing firms.

The Exchange also believes that the proposed rule change is consistent with Sections 6(b)(4) of the Act<sup>10</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed rule change is equitable, reasonable, and not unfairly discriminatory because it would clarify the application of the ETP Holder fee and apply it equally to ETP Holders that act solely as a clearing firm.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>11</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to have a competitive impact. It is simply intended to amend the Exchange's rules to remove language from Exchange Rule 7.14E(c) that was inadvertently included when the rule was adopted and that is inconsistent with the Exchange's Price List. It is not intended to address any competitive issues or to attract additional order flow the Exchange.

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

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<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78f(b)(8).

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii) [sic],<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

Commission shall institute proceedings under Section 19(b)(2)(B)<sup>16</sup> of the Act to determine whether the proposed rule change should be approved or 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-2018-45 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-2018-45. 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

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<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

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-2018-45, 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>17</sup>

Eduardo A. Aleman  
Assistant Secretary

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