SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87794; File No. SR-NYSEAMER-2019-56)

December 18, 2019

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 967NY (Price Protection – Orders)

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on December 5, 2019, NYSE American LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 amend Rule 967NY (Price Protection - Orders) to modify and enhance certain of its current price protection mechanisms. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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

2 15 U.S.C. 78a.

3 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 paragraph (c) of Rule 967NY to modify and enhance its Price Reasonability Checks for options orders to sell puts or calls (the "Sell Check"). As proposed, the Exchange would enhance the Sell Checks applied when the National Best Bid ("NBB") is below a specified price and would exclude from the Sell Check any Intermarket Sweep Orders, both of which changes would allow for a more finely calibrated Sell Check.

Price Reasonability Checks

The Exchange has in place various price check mechanisms that are designed to prevent incoming orders from automatically executing at potentially erroneous prices.[4] In particular, the Exchange has Price Reasonability Checks ("Price Checks") for Limit Orders based on the principle that an option order is in error and should be rejected (or canceled) when the same result can be achieved on the market for the underlying equity security at a lesser cost.[5] The Price Checks are based on the consolidated last sale price of the security underlying the option, once the security opens for trading (or reopens following a Trading Halt).[6] The Exchange offers Price Checks for buy and sell options orders.[7] The proposed change relates only to the Price Checks for sell

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4 See, e.g., Rules 967NY(a) (trading collars) and (b) (limit order price filter), Rule 967.1NY(a) (price protection for Market Maker quotes).

5 A Limit Order is an order to buy or sell a stated number of option contracts at a specified price, or better. See Rule 900.3NY(b).

6 See Rule 967NY(c).

7 The Price Checks -- or arbitrage checks -- for buy orders operate as follows: unless otherwise provided in Commentary .01 of the Rule, the Exchange rejects or cancels any

options orders (i.e., the Sell Check).[8]

Current Rule 967NY(c)(2) sets forth the current Sell Check, which is designed to protect sellers of calls and puts from presumptively erroneous executions based on the "Intrinsic Value" of an option. The Intrinsic Value of an option series is measured as the difference between the strike price and the consolidated last sale price. A sell order in a call series creates an obligation to *sell* the underlying security at the strike price and a sell order in a put series creates an obligation to *buy* the underlying security at the strike price. Thus, the Intrinsic Value for a call option is equal to the consolidated last sale price of the underlying security minus the strike price; whereas the Intrinsic Value for a put option is equal to the strike price minus the consolidated last sale price of the underlying security.[9] Under the current Rule, the Exchange rejects or cancels options Limit Orders to sell a call or to sell a put if the price of the order is equal to or lower than its Intrinsic Value, minus a threshold percentage ("percentage threshold"), which is determined by the Exchange and announced by Trader Update.[10] The percentage threshold buffer is an important aspect of the Sell Check because there may be situations in which market participants willingly opt to execute

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limit order to buy a put option if the price of the order is equal to or greater than the strike price of the option; and, the Exchange rejects or cancels any limit order to buy a call option if the price of the order is equal to or greater than the consolidated last sale price of the underlying security, plus a dollar amount to be determined by the Exchange and announced by Trader Update. See Rule 967NY(c)(1)(A), (B).

8 The proposed rule change would not impact the securities that are excluded from the Price Checks per Commentary .01 to the Rule, which currently are options series for which the underlying security has a non-standard cash or stock deliverable as part of a corporate action; options series for which the underlying security is identified as OTC; option series on an index; and ByRDs. See Commentary .01 to Rule 967NY.

9 See Rule 967NY(c)(2).

10 See Rule 967NY(c)(2)(A). The percentage threshold for sell orders is currently set to twenty-five percent (25%). The Exchange refers to this existing percentage threshold as the "Regular Intrinsic Value percentage threshold" to differentiate from the proposed threshold. See proposed Rule 967NY(c)(2)(A).

certain trading strategies even if such trade or trades occur for a price less than the Intrinsic Value of the options series.[11] Absent this percentage threshold buffer, application of the Sell Check could result in the rejection or cancelation of certain options sell orders where market participants seek an execution.

Proposed Low Price Intrinsic Value percentage threshold

The Exchange proposes to modify the Sell Check to introduce a separate percentage threshold to better account for sell orders in options series that are trading at relatively low prices so as to avoid such orders potentially being (incorrectly) rejected or canceled. Specifically, the Exchange would apply this modified check to limit orders to sell when the NBB for the option series is equal to or below a specified minimum price, as determined and announced by the Exchange (the "Minimum Price").[12] As proposed, if the Exchange receives an order to sell a put or a call in an option series where the NBB "is equal to or below the Minimum Price," such order would be canceled or rejected "if the price of the order is equal to or lower than its Intrinsic Value, minus a threshold percentage" to be determined by the Exchange and announced by Trader Update (the "Low Price Intrinsic Value percentage threshold").[13] The rule text would also make clear that this Low Price Intrinsic Value percentage threshold would be calculated as a

11 For example, if the market participant is looking to close out a position, it may be financially beneficial to pay a small premium and close out the position rather than carry such position to expiration and take delivery. See, e.g., Securities Exchange Act Release No. 85925 (May 23, 2019), 84 FR 24831, 24832, fn14 (May 30, 2019) (SR-NYSEAMER-2019-19) (immediately effective filing implementing Price Checks, including the Sell Check).

12 See proposed Rule 967NY(c)(2)(A)(i) (providing that the current Sell Check will apply to orders "provided the NBB for the option series is greater than" the Minimum Price; otherwise the Low Price Intrinsic Value percentage threshold would apply). See also proposed Rule 967NY(c)(2)(A)(i) [sic].

13 See proposed Rule 967NY(c)(2)(A)(i).

percentage of the Intrinsic Value.[14] The Exchange believes this proposed modification would enable the Exchange to apply a more finely calibrated Sell Check (i.e., to options orders trading at or below a certain price), which is distinct from the Regular Intrinsic Value percentage threshold, and should reduce the possibility of such orders on lower-priced options being improperly canceled or rejected.[15]

As noted above, market participants may opt to willingly execute trading strategies regardless of whether the result is an execution for a price less than the Intrinsic Value of the options series. The Low Price Intrinsic Value percentage threshold is designed to allow greater flexibility to market participants submitting sell orders in option series trading at lower prices. This would allow participants additional opportunities to execute certain orders (rather than reject or cancel), while still maintaining a tolerance range. Thus, the proposal would protect investors by adding flexibility and sensitivity to the Sell Check for orders in lower-priced options and allow the balance of the Price Checks to continue to operate as intended.

The following examples illustrate this proposed functionality.

Assumptions:

- Minimum Price is $1.00
- (Regular) Intrinsic Value percentage threshold is 25%
- Low Price Intrinsic Value percentage threshold is 100%
- Series A: XYZ DEC 136 Call

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14 See id.

15 See id. The Exchange anticipates setting the Minimum Price to $1.00 and the Low Price Intrinsic Value percentage threshold to one hundred percent (100%) and whether and when these amounts change would depend upon the interest and/or behavior of market participants.

- XYZ Stock is trading at $136.36

<u>Example 1</u>: NBBO for Series A: (100) $2.00 x $3.00 (100)

- The NBB of $2.00 is above the Minimum Price (i.e., $1.00), thus, the (Regular) Intrinsic Value percentage threshold, per Rule 967NY(c)(2)(A), applies.
- The Intrinsic Value of Series A is $0.36 ($136.36-$136.00); and
- The lowest acceptable price for a sell in Series A is $0.27 (after applying the 25% percentage threshold ($0.09)).

<u>Example 2</u>: NBBO for Series A: (100) $0.50 x $3.00 (100)

- The NBB of $0.50 is below the Minimum Price (i.e., $1.00), thus, the Low Price Intrinsic Value percentage threshold, per proposed Rule 967NY(c)(2)(A)(i), applies.
- The Intrinsic Value of Series A is $0.36 ($136.36-$136.00); and
- The lowest acceptable price for a sell in Series A is $0.00 (after applying the 100% percentage threshold ($0.36)) (i.e. there is no intrinsic check in this case).

<u>ISOs Excluded from Sell Checks</u>

The Exchange also proposes to modify the Sell Check to exclude any Intermarket Sweep Order or ISO.[16] An ISO is a Limit Order for an options series that instructs the Exchange to execute the order up to the price of its limit, regardless of the NBBO. An ATP Holder may submit an ISO to sell only if it has simultaneously routed one or more additional ISOs, as necessary, to execute against the full displayed size of any better-priced protected quotations for

16 <u>See</u> proposed Rule 967NY(c)(2).

the options series (i.e., the Protected Bid), with a price that is superior to the limit of the ISO.[17] Because an ISO is generally used when trying to sweep a price level across multiple exchanges in an effort to post the balance of an order without locking an away market, the Exchange believes it is appropriate to exclude such orders from the Sell Check so as not to interfere with the intended functioning of such order type.

Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the Exchange believes the proposed Sell Check as modified to account for lower-priced options and to exclude ISOs would protect investors and the public interest and maintain fair and orderly markets by ensuring that properly entered orders are not inadvertently rejected or canceled by the Exchange. In particular, the Low Price Intrinsic Value percentage

17 See Rule 900.3NY(u).

18 15 U.S.C. 78f(b).

19 15 U.S.C. 78f(b)(5).

threshold would allow for better calibration of the Sell Check (i.e., to options orders trading at or below a certain price), which should reduce the possibility of such orders on lower-priced options being improperly canceled or rejected. Under certain circumstances, market participants may choose to execute trading strategies regardless of whether the result is an execution for a price less than the Intrinsic Value of the options series. The Low Price Intrinsic Value percentage threshold (which is distinct from the Regular Intrinsic Value percentage threshold) is designed to allow greater flexibility to market participants submitting sell orders in option series trading at lower prices. This would allow participants additional opportunities to execute certain orders (rather than reject or cancel), while still maintaining a tolerance range. Thus, the proposal would promote just and equitable principles of trade and would protect investors by adding flexibility and sensitivity to the Sell Check for orders in lower-priced options and allow the balance of the Price Checks to continue to operate as intended.

In addition, with regard to ISOs, the Exchange believes it is appropriate to exclude such orders from the Sell Check to ensure that the order type (as well as the Sell Check) operates as intended. Moreover, modifying the rule to specify that ISOs would be excluded from the Sell Check would add clarity and transparency to Exchange rules.

The Exchange is proposing the modifications to the Sell Check for the benefit of, and in consultation with ATP Holders and believes the proposed rule change would help to maintain a fair and orderly market, and provide a valuable service to investors. In particular, the proposed changes to the Sell Check are responsive to member input regarding certain orders being erroneously rejected or canceled by the Sell Check (either an ISO or a sell order on an option series trading at a (relatively) low price). This proposal would thus facilitate transactions in securities and perfect the mechanism of a free and open market by providing ATP Holders with enhanced functionality that will assist them with managing their portfolio and risk profile.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change enhances the existing Sell Check for option orders of all ATP Holders submitted to the Exchange and is designed to ensure that properly entered orders are not inadvertently rejected or canceled by the Exchange -- insofar as the Sell Check would exclude (and not interfere with the operation of) ISO orders, and, would apply a modified/more finely calibrated percentage threshold to sell orders in option series trading at a relatively low price.

The Exchange further believes that because the proposed rule change would be applicable to all ATP Holders it would not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b-4(f)(6) thereunder.[21]

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20 15 U.S.C. 78s(b)(3)(A).

21 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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. Please include File Number SR-NYSEAMER-2019-56 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-2019-56. 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).

business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2019-56 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.[22]

J. Matthew DeLesDernier
Assistant Secretary

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[22] 17 CFR 200.30-3(a)(12).