

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88947; File No. SR-NYSEAMER-2020-41)

May 26, 2020

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 960NY to Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 22, 2020, NYSE American LLC (“NYSE American” or the “Exchange”) 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 amend Rule 960NY to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the “OLPP”) and add new Rule 960.1NY. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 purpose of this rule change is to amend Rule 960NY (Trading Differentials) to align the rule with the recently approved amendment to the OLPP.

Background

On January 23, 2007, the Commission approved on a limited basis a Penny Pilot in option classes in certain issues (“Penny Pilot”). The Penny Pilot was designed to determine whether investors would benefit from options being quoted in penny increments, and in which classes the benefits were most significant. The Penny Pilot was expanded and extended numerous times over the last 13 years.⁴ In each instance, these approvals relied upon the consideration of data

⁴ See Securities Exchange Act Release Nos. 55161 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR-Amex-2006-106); 6567 (September 27, 2007), 72 FR 56396 (October 7, 2007); 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009); 61106 (December 3, 2009), 74 FR 65193 (December 9, 2009); 63393 (November 30, 2010), 75 FR 75715 (December 6, 2010) (SR-NYSEAmex-2010-107); 65978 (December 15, 2011), 76 FR 79246 (December 21, 2011) (SR-NYSEAmex-2011-107); 68427 (December 13, 2012), 77 FR 75227 (December 19, 2012) (SR-NYSEMKT-2012-75); 67321 (June 29, 2012), 77 FR 39761 (July 5, 2012) (SR-NYSEMKT-2012-12); 61106 (December 3, 2009), 74 FR 65193 (December 9, 2009) (SR-NYSEAmex-2009-74); 69105 (March 11, 2013), 78 FR 16554 (March 15, 2013) (SR-NYSEMKT-2013-17); 69791 (June 18, 2013), 78 FR 37860 (June 24, 2013) (SR-NYSEMKT-2013-48); 71163 (December 20, 2013), 78 FR 79049 (December 27, 2013) (SR-NYSEMKT-2013-104); 72190 (May 20, 2014), 79 FR 30215 (May 27, 2014) (SR-NYSEMKT-2014-47); 73778 (December 8, 2014), 79 FR 73922 (December 12, 2014) (SR-NYSEMKT-2014-99); 75281 (June 24, 2015), 80 FR 37338 (June 30, 2015) (SR-NYSEMKT-2015-43); 78176 (June 28, 2016) 81 FR 43340 (July 1, 2016). (SR-NYSEMKT-2016-61); 80989 (June 21,

periodically provided by the Exchanges that analyzed how quoting options in penny increments affects spreads, liquidity, quote traffic, and volume. Today, the Penny Pilot includes 363 option classes, which are among the most actively traded, multiply listed option classes. The Penny Pilot is scheduled to expire by its own terms on June 30, 2020.⁵

In light of the imminent expiration of the Penny Pilot on June 30, 2020, the Exchange, together with other participating exchanges, filed, on July 18, 2019 a proposal to amend the OLPP.⁶ On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the “OLPP Program”).⁷

The OLPP Program replaces the Penny Pilot by instituting a permanent program that would permit quoting in penny increments for certain option classes. Under the terms of the OLPP Program, designated option classes would continue to be quoted in \$0.01 and \$0.05 increments according to the same parameters for the Penny Pilot. In addition, the OLPP Program would: (i) establish an annual review process to add option classes to, or to remove option classes from, the OLPP Program; (ii) to allow an option class to be added to the OLPP Program if it is a newly listed option class and it meets certain criteria; (iii) to allow an option class to be added to the OLPP Program if it is an option class that has seen a significant growth in activity;

2017), 82 FR 29130 (June 27, 2017) (SR-NYSEMKT-2017-36); 79525 (December 12, 2016), 81 FR 91230 (December 16, 2016) (SR-NYSEMKT-2016 111); 83507 (June 25, 2018), 83 FR 30808 (June 29, 2018) (SR-NYSEAMER-2018-33); 84871 (December 19, 2018) 83 FR 66789 (December 27, 2018) (SR- NYSE AMER-2018-57); and 86061 (June 7, 2019) 84 FR 27665 (June 13, 2019) (SR-NYSEAMER-2019-22).

⁵ See Securities and Exchange Act Release No. 87633 (November 26, 2019), 84 FR 66251 (December 3, 2019) (NYSEAmex-2019-51).

⁶ See Securities Exchange Act Release No. 87681 (December 9, 2019), 84 FR 68960 (December 17, 2019) (“Notice”).

⁷ See Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4-443) (“Approval Order”).

(iv) to provide that if a corporate action involves one or more option classes in the OLPP Program, all adjusted and unadjusted series and classes emerging as a result of the corporate action will be included in the OLPP Program; and (v) to provide that any series in an option class participating in the OLPP Program that have been delisted, or are identified by OCC as ineligible for opening Customer transactions, will continue to trade pursuant to the OLPP Program until they expire.

To conform its Rules to the OLPP Program, the Exchange proposes to delete Commentary .02 to Rule 960NY (the “Penny Pilot Rule”), which will be “Reserved,” and replace it with new Rule 960.1NY (Requirements for Penny Interval Program), which is described below, and to replace references to “Penny Pilot” in the Exchange rules with “Penny Interval Program.”⁸ The Exchange also proposes to delete the superfluous operational language in Commentary .01 regarding the process for modifying trading differential by rule filing because such requirement remains the case today, as the Exchange must submit proposed rule changes -- including for Rule 960NY -- to the Commission; the Exchange will hold this Commentary as Reserved.⁹

Penny Interval Program

The Exchange proposes to codify the OLPP Program in new Rule 960.1NY (Requirements for Penny Interval Program) (the “Penny Program”), which will replace the Penny Pilot Rule and permanently permit the Exchange to quote certain option classes in

⁸ This proposed rule change will become operative on July 1, 2020, upon expiration of the current Penny Pilot on June 30, 2020.

⁹ See Commentary .01 to Rule 960NY (providing that “[t]he Exchange may only change the trading differentials for option contracts traded on the Exchange by filing a rule change proposal with the SEC, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (effective upon filing”).

minimum increments of one cent (\$0.01) and five cents (\$0.05) (“penny increments”). The penny increments that currently apply under the Penny Pilot will continue to apply for option classes included in the Penny Program. Specifically, (i) the minimum quoting increment for all series in the QQQ, SPY, and IWM would continue to be \$0.01, regardless of price;¹⁰ (ii) all series of an option class included in the Penny Program with a price of less than \$3.00 would be quoted in \$0.01 increments; and (iii) all series of an option class included in the Penny Program with a price of \$3.00 or higher would be quoted in \$0.05 increments.

The Penny Program would initially apply to the 363 most actively traded multiply listed option classes, based on National Cleared Volume at The Options Clearing Corporation (“OCC”) in the six full calendar months ending in the month of approval (i.e., November 2019 - April 2020) that currently quote in penny increments, or overlie securities priced below \$200, or any index at an index level below \$200. Eligibility for inclusion in the Penny Program will be determined at the close of trading on the monthly Expiration Friday of the second full month following April 1, 2020 (i.e., June 19, 2020).

Once in the Penny Program, an option class will remain included until it is no longer among the 425 most actively traded option classes at the time the annual review is conducted (described below), at which point it will be removed from the Penny Program. As described in more detail below, the removed class will be replaced by the next most actively traded multiply listed option class overlying securities priced below \$200 per share, or any index at an index level below \$200, and not yet in the Penny Program. Advanced notice regarding the option classes included, added, or removed from the Penny Program will be provided to the Exchange’s membership via Trader Update and published by the Exchange on its website.

¹⁰ See Rule 960NY(a)(3)(A)-(C).

Annual Review

The Penny Program would include an annual review process that applies objective criteria to determine option classes to be added to, or removed from, the Penny Program. Specifically, on an annual basis beginning in December 2020 and occurring ever December thereafter, the Exchange will review and rank all multiply listed option classes based on National Cleared Volume at OCC for the six full calendar months from June 1st through November 30th for determination of the most actively traded option classes. Any option classes not yet in the Penny Program may be added to the Penny Program if the class is among the 300 most actively traded multiply listed option classes and priced below \$200 per share or any index at an index level below \$200.

Following the annual review, option classes to be added to the Penny Program would begin quoting in penny increments (i.e., \$0.01 if trading at less than \$3; and \$0.05 if trading at \$3 and above) on the first trading day of January.¹¹ In addition, following the annual review, any option class in the Penny Program that falls outside of the 425 most actively traded option classes would be removed from the Penny Program. After the annual review, option classes that are removed from the Penny Program will be subject to the minimum trading increments set forth in Rule 960NY, effective on the first trading day of April.

Changes to the Composition of the Penny Program Outside of the Annual Review

Newly Listed Option Classes and Option Classes with Significant Growth in Activity

The Penny Program would specify a process and parameters for including option classes in the Program outside the annual review process in two circumstances. These provisions are

¹¹ See id. (providing that the minimum quoting increment for all series in the QQQ, SPY, and IWM would continue to be \$0.01, regardless of price).

designed to provide objective criteria to add to the Penny Program new option classes in issues with the most demonstrated trading interest from market participants and investors on an expedited basis prior to the annual review, with the benefit that market participants and investors will then be able to trade these new option classes based upon quotes expressed in finer trading increments.

First, the Penny Program provides for certain newly listed option classes to be added to the Penny Program outside of the annual review process, provided that (i) the class is among the 300 most actively traded, multiply listed option classes, as ranked by National Cleared Volume at OCC, in its first full calendar month of trading; and (ii) the underlying security is priced below \$200 or the underlying index is at an index level below \$200. Such newly listed option classes added to the Penny Program pursuant to this process would remain in the Penny Program for one full calendar year and then would be subject to the annual review process.

Second, the Penny Program would allow an option class to be added to the Penny Program outside of the annual review process if it is an option class that meets certain specific criteria. Specifically, new option classes may be added to the Penny Program if: (i) the option class is among the 75 most actively traded multiply listed option classes, as ranked by National Cleared Volume at OCC, in the prior six full calendar months of trading and (ii) the underlying security is priced below \$200 or the underlying index is at an index level below \$200. Any option class added under this provision will be added on the first trading day of the second full month after it qualifies and will remain in the Penny Program for the rest of the calendar year, after which it will be subject to the annual review process.

Corporate Actions

The Penny Program would also specify a process to address option classes in the Penny Program that undergo a corporate action and is designed to ensure continuous liquidity in the affected option classes. Specifically, if a corporate action involves one or more option classes in the Penny Program, all adjusted and unadjusted series of an option class would continue to be included in the Penny Program.¹² Furthermore, neither the trading volume threshold, nor the initial price test would apply to option classes added to the Penny Program as a result of the corporate action. Finally, the newly added adjusted and unadjusted series of the option class would remain in the Penny Program for one full calendar year and then would become subject to the annual review process.

Delisted or Ineligible Option Classes

Finally, the Penny Program would provide a mechanism to address option classes that have been delisted or those that are no longer eligible for listing. Specifically, any series in an option class participating in the Penny Program in which the underlying has been delisted, or is identified by OCC as ineligible for opening customer transactions, would continue to quote pursuant to the terms of the Penny Program until all options series have expired.

Technical Changes

The Exchange proposes to replace reference to the Penny Pilot with reference to the Penny Interval Program in Rules 903, Commentary .14, 960NY(a), and 986NY(a) and Commentary .01 thereto. The Exchange believes these technical changes would add clarity, transparency and internal consistency to Exchange rules making them easier to navigate.

¹² For example, if Company A acquires Company B and Company A is not in the Penny Program but Company B is in the Penny Program, once the merger is consummated and an options contract adjustment is effective, then Company A would be added to the Penny Program and remain in the Penny Program for one calendar year.

Implementation

This proposed rule change will become operative on July 1, 2020, upon expiration of the current Penny Pilot on June 30, 2020. The Exchange proposes to implement the Penny Program on July 1, 2020, which is the first trading day of the third month following the Approval Order issued on April 1, 2020 -- i.e., July 1, 2020.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 proposed rule change, which conforms the Exchange rules to the recently adopted OLPP Program, allows the Exchange to provide market participants with a permanent Penny Program for quoting options in penny increments, which maximizes the benefit of quoting in a finer quoting increment to investors while minimizing the burden that a finer quoting increment places on quote traffic.

Accordingly, the Exchange believes that the proposal is consistent with the Act because, in conforming the Exchange rules to the OLPP Program, the Penny Program would employ processes, based upon objective criteria, that would rebalance the composition of the Penny

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

Program, thereby helping to ensure that the most actively traded option classes are included in the Penny Program, which helps facilitate the maintenance of a fair and orderly market.

Technical Changes

The Exchange notes that the proposed change to Rules 903, 960NY and 968NY to replace references to the Penny Pilot with references to the Penny Interval Program would provide clarity and transparency to the Exchange rules and would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule changes would also provide internal consistency within Exchange rules and operate to protect investors and the investing public by making the Exchange rules easier to navigate and comprehend.

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 Penny Program, which modifies the exchange's rules to align them with the Commission approved OLPP Program, is not designed to be a competitive filing nor does it impose an undue burden on intermarket competition as the Exchange anticipates that the options exchanges will adopt substantially identical rules. Moreover, the Exchange believes that by conforming Exchange rules to the OLPP Program, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. To the extent that there is a competitive burden on those option classes that do not qualify for the Penny Program, the Exchange believes that it is appropriate because the proposal should benefit all market participants and investors by maximizing the benefit of a finer quoting increment in those option classes with the most trading interest while minimizing the burden of

greater quote traffic in option classes with less trading interest. The Exchange believes that adopting rules, which it anticipates will likewise be adopted by all option exchanges that are participants in the OLPP, would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ 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.¹⁷

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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii). 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 at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange satisfied this requirement.

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁸ 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. Please include File Number SR-NYSEAMER-2020-41 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-2020-41. 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

¹⁸ 15 U.S.C. 78s(b)(2)(B).

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-2020-41 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.¹⁹

J. Matthew DeLesDernier
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).