

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91779; File No. SR-NYSEAMER-2021-05)

May 5, 2021

Self-Regulatory Organizations; NYSE American, LLC.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Rule 970NY and Rule 970.1NY to Eliminate the Use of Dark Series on the Exchange

I. Introduction

On January 26, 2021, NYSE American, LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 970NY (“Firm Quotes”) and Rule 970.1NY (“Quote Mitigation”) to eliminate the use of “dark” series on the Exchange. The proposed rule change was published for comment in the Federal Register on February 8, 2021.³ On March 18, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁵ On April 27, 2021, the Exchange filed Amendment No. 1 to the proposed rule change.⁶ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 91039 (February 2, 2021), 86 FR 8659 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 91355, 86 FR 15733 (March 24, 2021). The Commission designated May 9, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.

⁶ In Amendment No. 1, the Exchange provided data that showed that during the eighteen (18) trading days between March 1, 2021 and March 24, 2021, quotes in dark series

received no comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

Currently, NYSE American Rule 970NY (“Firm Quotes”) requires the Exchange to collect, process, and make available to quotation vendors the best bid and best offer for each option series that is a reported security unless the series is subject to an approved quote mitigation plan.⁷ Pursuant to the quote mitigation plan set forth in NYSE American Rule 970.1NY, the Exchange only disseminates quotes in “active” series.⁸ A series is considered active if the series: (i) has traded on any options exchange in the previous 14 calendar days; (ii) is solely listed on the Exchange; (iii) has been trading ten days or less; or (iv) is a series in which

accounted for 2.43% of NYSE Arca, Inc. (“NYSE Arca”) quotes and 1.99% of NYSE American quotes, and quotes in dark series averaged 0.174% on NYSE Arca and 0.190% on NYSE American when compared to the total OPRA disseminated quotes during the same period. The Exchange also stated that on March 4, 2021 and March 5, 2021, OPRA processed the most messages in its history and provided data that shows that on March 4th, quotes in dark series from NYSE Arca and NYSE American combined for 0.5095% compared to OPRA message traffic. On March 5th, quotes in dark series from NYSE Arca and NYSE American combined for 0.2562% when compared to OPRA quote volume. The Exchange concluded that eliminating the suppression of quotes in dark series would result in a *de minimis* increase in quotes sent by NYSE Arca and NYSE American to OPRA and have essentially no impact on messaging at an industry level. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-nyseamer-2021-05/srnyseamer202105-8730999-237044.pdf>.

⁷ See NYSE American Rule 970NY(b)(1).

⁸ The quote mitigation plan set forth in NYSE American Rule 970.1NY was adopted in conformance with NYSE Arca’s similar quote mitigation rule, which was adopted in connection with the Penny Pilot Program, a program which was subsequently approved on a permanent basis in 2020. See Notice, *supra* note 3, at 8659.

the Exchange has an order.⁹ In addition, a series may be considered active on an intraday basis if: (i) the series trades at any options exchange; (ii) the Exchange receives an order in the series; or (iii) the Exchange receives a request for quote from a customer in that series.¹⁰ Any options series that does not meet the definition of an active series is deemed to be an inactive or “dark” series. Consequently, under the Exchange’s current rules, although the Exchange accepts quotes from ATP Holders in all series, the only quote messages the Exchange disseminates to the Options Price Reporting Authority (“OPRA”) are quotes for active series.¹¹ The Exchange proposes to delete NYSE American Rule 970.1NY. Therefore, the proposed rule change would eliminate the distinction between active and dark series, and thus require quotes in all series to be disseminated to OPRA.¹²

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No.1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,¹⁴ which

⁹ See NYSE American Rule 970.1NY.

¹⁰ See NYSE American Rule 970.1NY.

¹¹ See Notice, supra note 3, at 8659. See also Amendment No. 1, supra note 6 (providing data to support the Exchange’s conclusion that eliminating the suppression of quotes in dark series would result in a *de minimis* increase in quotes sent by NYSE Arca and NYSE American to OPRA and would have essentially no impact on messaging at an industry level).

¹² See Notice, supra note 3, at 8659.

¹³ In approving this proposed rule change, as modified by Amendment No.1, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

requires that the rules of an exchange be designed, among other things, 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 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 support of its proposal, the Exchange states the proposed rule change would increase transparency, enhance price discovery, and alleviate potential confusion among market participants regarding what quotes are being published in the disseminated quote feed and what quotes are being suppressed.¹⁵ According to the Exchange, discontinuing the use of the quote mitigation plan set forth in NYSE American 970.1NY would result in all Market Maker quotes (including those currently being suppressed because they are considered inactive) being displayed and reflected in the market, benefitting market participants by providing notice of such liquidity and removing the element of potential confusion.¹⁶

Further, the Exchange states the proposed rule change would not change the amount of capacity needed at OPRA to accommodate the inclusion of quotes in dark series because the Exchange already includes such quotes in the Exchange's current capacity planning requests to OPRA.¹⁷ According to the Exchange, the proposal would not impact market participants or

¹⁵ See Notice, supra note 3, at 8660 (stating that “over the years, certain market participants have expressed confusion regarding what quotes are being published and which are being suppressed”).

¹⁶ See Notice, supra note 3, at 8660.

¹⁷ See Notice, supra note 3, at 8660. The Exchange represents that it has always factored the total quote traffic it receives from Market Makers, including quotes in dark series, when making its capacity requests to OPRA. Specifically, the Exchange “presumes that all series will be active and therefore requests capacity to accommodate sending quotes in all series to OPRA.” Id.

downstream users that consume Exchange or OPRA data because the quote capacity information OPRA currently publishes already reflects quotes in dark series because they are part of the Exchange's current capacity request.¹⁸ Thus, according to the Exchange, market participants (including data vendors and subscribers) currently have the opportunity to prepare for and make necessary accommodations for anticipated quote traffic (including quotes in dark series).¹⁹ Further, the Exchange anticipates that the proposed increase in quote message traffic due to the dissemination of quotes in inactive series is likely to be minimal and therefore unlikely to impact the flow of message traffic and/or harm downstream consumers of OPRA data.²⁰ In support of this assertion, the Exchange states that on the two trading days that OPRA processed the most messages in its history (March 4, 2021 and March 5, 2021), quotes in dark series from NYSE Arca and NYSE American combined were only 0.5095% and 0.2562%, respectively, compared to OPRA message traffic.²¹ Finally, the Exchange states its additional existing quote mitigation strategies are sufficient to continue to mitigate quote traffic.²²

The Commission believes that eliminating the exclusion of inactive or dark series from the requirements of NYSE American Rule 970NY should increase transparency and may enhance opportunities for price discovery. Publishing all quotes (not just those in active series) in the disseminated quote feed may benefit market participants because it will provide notice of

¹⁸ See Notice, supra note 3, at 8660.

¹⁹ See id.

²⁰ See id. at 8661. See also Amendment No.1, supra note 6.

²¹ See Amendment No.1, supra note 6.

²² See Notice, supra note 3, at 8660 (discussing three quote mitigation strategies the exchange currently employs to reduce the potential for excessive quoting and to reduce quote traffic).

additional liquidity. Further, because the Exchange currently includes Market Maker quotes in inactive series in its capacity planning request to OPRA²³ and because publication of dark quotes from both the Exchange and NYSE Arca combined would result in a percentage increase in OPRA disseminated quotes that is *de minimis* according to the Exchange's data,²⁴ the Commission believes that dissemination of these quotes as part of the Exchange's quote feed to OPRA is not likely to negatively impact systems capacity. In addition, the Exchange has existing additional quote mitigation strategies that also serve to reduce the potential for excessive quoting.²⁵

Accordingly, for the reasons set forth above, the Commission finds that the proposed rule change, as modified by Amendment No.1, is consistent with Section 6(b)(5) of the Act²⁶ and the rules and regulations thereunder applicable to a national securities exchange.

²³ See id. at 8660.

²⁴ See Amendment No.1, supra note 6. In addition, the Exchange states that there is sufficient capacity at OPRA to accommodate any additional quote traffic that will result from the elimination of dark series. See Notice, supra note 3, at 8660. The Exchange further notes that it does not believe its proposal will impact any other exchange's capacity at OPRA. See id. at 8660 n.8.

²⁵ See Notice, supra note 3, at 8660.

²⁶ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-NYSEAMER-2021-05), as modified by Amendment No. 1, hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier
Assistant Secretary

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).