

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-97173; File No. SR-NYSEAMER-2023-19)

March 21, 2023

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Replace the Thirteenth Amended and Restated Operating Agreement

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 7, 2023, NYSE American LLC (“NYSE American” or the “Exchange”) 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 replace the Thirteenth Amended and Restated Operating Agreement of the New York Stock Exchange LLC (“NYSE”) as a rule of the Exchange with the Fourteenth Amended and Restated Operating Agreement of the NYSE. 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Exchange proposes to replace the Thirteenth Amended and Restated Operating Agreement of the NYSE (the “Thirteenth Operating Agreement”) as a rule of the Exchange with the Fourteenth Amended and Restated Operating Agreement of the NYSE (the “Fourteenth NYSE Operating Agreement”).

NYSE has a wholly-owned subsidiary, NYSE Market (DE), Inc. (“NYSE Market (DE), Inc.”), which owns a majority interest in NYSE Amex Options LLC (“NYSE Amex Options”), a facility of the Exchange. The Exchange and NYSE Market (DE) are the only members of NYSE Amex Options.<sup>3</sup> Because of NYSE’s ownership of NYSE Market (DE), the Exchange filed the Thirteenth Operating Agreement of the NYSE as a “rule of the Exchange” under Section 3(a)(27) of the Exchange Act.<sup>4</sup>

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<sup>3</sup> See Exchange Act Release No. 75301 (June 25, 2015), 80 FR 37695 (July 1, 2015) (SR-NYSEMKT-2015-44) (notice of filing and immediate effectiveness of proposed rule change amending the members' schedule of the Amended and Restated Limited Liability Company Agreement of NYSE Amex Options LLC).

<sup>4</sup> See 15 U.S.C. 78c(a)(27); Securities Exchange Act Release No. 87993 (January 16, 2020), 85 FR 4050 (January 23, 2020) (SR-NYSEAMER-2020-04) (Notice of Filing and Immediate Effectiveness of Proposed Change To Add to the Rules of the Exchange the Thirteenth Amended and Restated Operating Agreement of the New York Stock Exchange LLC); see also Securities Exchange Act Release Nos. 82923 (March 22, 2018), 83 FR 13161 (March 27, 2018) (SR-NYSEAMER-2018-10); 79232 (November 3, 2016), 81 FR 78873 (November 9, 2016) (SR-NYSEMKT2016-96); and 75984 (September 25, 2015), 80 FR 59213 (October 1, 2015) (SR-NYSEMKT2015-71) (adding previous NYSE operating agreements as rules of the Exchange).

On February 23, 2023, the NYSE amended the Thirteenth NYSE Operating Agreement to provide that the board of directors of its ultimate parent, Intercontinental Exchange, Inc. (“ICE,” and its board of directors, the “ICE Board”) or the compensation committee of the ICE Board may fix the compensation of the board of directors of the NYSE, and (b) make certain clarifying, technical and conforming changes.<sup>5</sup> Such rule change will become operative 30 days from the date on which it was filed, or such shorter time as the Commission may designate.<sup>6</sup>

Consistent with that change, the Exchange is filing to remove the obsolete Thirteenth NYSE Operating Agreement as a “rule of the exchange” under Section 3(a)(27) of the Act, and replace it with the Fourteenth NYSE Operating Agreement as a “rule of the exchange” under Section 3(a)(27) of the Act.<sup>7</sup> The Exchange proposes that the rule change become operative on the date that the rule change amending the Thirteenth NYSE Operating Agreement becomes operative.

The proposed rule change is a non-substantive administrative change that does not impact the governance or ownership of the Exchange, its facility NYSE Amex Options, or NYSE Amex Options’ direct and indirect parent entities.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act<sup>8</sup> in general, and with Section 6(b)(1)<sup>9</sup> in particular, in that it enables the

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<sup>5</sup> See SR-NYSE-2023-13 (February 23, 2023).

<sup>6</sup> Id., at 10.

<sup>7</sup> 15 U.S.C. 78c(a)(27).

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

<sup>9</sup> 15 U.S.C. 78f(b)(1).

Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members because, by removing the obsolete Thirteenth NYSE Operating Agreement and making the Fourteenth NYSE Operating Agreement a rule of the Exchange, the Exchange would be ensuring that its rules remain consistent with the NYSE operating agreement in effect.

The Exchange notes that, as with the Thirteenth NYSE Operating Agreement, it would be required to file any changes to the Fourteenth NYSE Operating Agreement with the Commission as a proposed rule change.<sup>10</sup> In addition, the Exchange believes that the proposed changes are consistent with and will facilitate an ownership structure of the Exchange's facility NYSE Amex Options that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to NYSE Amex Options and its direct and indirect parent entities.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act<sup>11</sup> because the proposed rule change would

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<sup>10</sup> The Exchange notes that any amendment to the Fourteenth NYSE Operating Agreement would require that NYSE file a proposed rule change with the Commission.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

be consistent with and facilitate a governance and regulatory structure 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, 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. The Exchange believes that removing the Thirteenth NYSE Operating Agreement from its rules and adding the Fourteenth NYSE Operating Agreement would remove impediments to the operation of the Exchange by ensuring that its rules remain consistent with the NYSE operating agreement in effect. The Exchange notes that, as with the Thirteenth NYSE Operating Agreement, no amendment to the Fourteenth NYSE Operating Agreement could be made without the Exchange filing a proposed rule change with the Commission. For the same reasons, the proposed rule change is also designed to protect investors as well as the public interest.

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 Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with ensuring that the Commission will have the ability to enforce the Exchange Act with respect to NYSE Amex Options and its direct and indirect parent entities.

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 [sic.]

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(3)<sup>13</sup> thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may 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 under Section 19(b)(2)(B)<sup>14</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-2023-19 on the subject line.

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12 15 U.S.C. 78s(b)(3)(A).

13 17 CFR 240.19b-4(f)(3).

14 15 U.S.C. 78s(b)(2)(B).

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-2023-19. 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-2023-19 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>15</sup>

Sherry R. Haywood,  
Assistant Secretary.

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<sup>15</sup> 17 CFR 200.30-3(a)(12).