

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98247; File No. SR-NYSEAMER-2023-42)

August 30, 2023

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Modify Rule 900.3NYP

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 August 23, 2023, 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, 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 modify Rule 900.3NYP (Orders and Modifiers) regarding the handling of certain Market Orders subject to Trading Collars and conforming changes to Rule 952NYP (Auction Process). 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Exchange proposes to modify Rule 900.3NYP (Orders and Modifiers) regarding the handling of certain Market Orders subject to Trading Collars and conforming changes to Rule 952NYP (Auction Process).⁴ The Exchange notes that an identical rule change was recently adopted on its affiliated exchange, NYSE Arca, Inc. (“NYSE Arca”) and therefore this proposal raises no new or novel issues not previously considered by the Commission.⁵

The Exchange employs Trading Collar functionality that is designed to provide ATP Holders price protection for Market Orders and Limit Orders traded on the Exchange.⁶ In particular, the Trading Collar applies a static ceiling price (for a buy order) or floor price (for a sell order) at which such order may be traded or routed that is determined at the time of entry (or after a series opens or reopens) and which is applicable until the order is traded or cancelled.⁷ As described below, the Exchange proposes to modify the application of Trading Collars to Market Orders.

⁴ The Exchange notes that this proposed change modifies a Pillar rule (i.e., with a “P” modifier) that has not yet been implemented. The Exchange anticipates migrating to its Pillar trading platform beginning on October 23, 2023. As is the case with all Pillar rules, this proposed rule change (as well as the entire Rule 900.3NYP) will not be implemented until all other Pillar-related rule filings are approved or operative, as applicable, and the Exchange announces the migration of underlying symbols to Pillar by Trader Update.

⁵ See Securities Exchange Act Release No. 98113 (August 11, 2023), 88 FR 55791 (August 16, 2023) (SR-NYSEARCA-2023-54) (immediately effective rule change to allow market participants to reduce the time at which Market Orders are “collared” from 500 milliseconds to zero, per Rule 6.62P-O).

⁶ See Rules 900.3NYP(a)(1) (defining Market Order), (a)(2) (defining Limit Order).

⁷ See Rule 900.3NYP(a)(4)(A)-(C) (describing Trading Collar functionality, including how such Collars are assigned and calculated).

Currently, Rule 900.3NYP(a)(4)(D) describes how the Trading Collar is applied and provides that if an order to buy (sell) would trade or route above (below) the Trading Collar or would have its working price repriced to a Trading Collar that is below (above) its limit price, the order will be added to the Consolidated Book at the Trading Collar for 500 milliseconds and if not traded within that period, will be cancelled (each a “collared” order).⁸ Further, once the 500-millisecond timer begins for a collared order (the “collar timer”), such order will be cancelled at the end of the timer even if it repriced or was routed to an Away Market during that period, in which case any portion of the collared order that is returned unexecuted is cancelled.

Pursuant to the proposed rule change, Market Orders that are collared would no longer be held for the duration of the collar time (i.e., for 500 milliseconds). Instead, as proposed, if a Market Order to buy (sell) would trade or route above (below) the Trading Collar, such Market Orders would be cancelled.⁹ Thus, a collared Market Order that can trade within the Trading Collar will trade on the Exchange or route. Collared Market Orders will no longer be held and displayed on the Consolidated Book for the duration of the collar timer.

The Exchange is not proposing to modify the handling of Limit Orders and such collared orders would continue to be subject to the above-described handling, per Rule 900.3NYP(a)(4)(D)(i).¹⁰ The current rule treats collared Market Orders and collared Limit Orders the same whereas the Exchange proposes to alter only the handling of collared Market

⁸ See Rule 964NYP(a)(3) (providing that the “working price” of an order or quote means the price at which it is eligible to trade at any given time, which may be different from the limit price or display price of the order or quote). The “display price” means the price at which an order or quote ranked Priority 2 - Display Orders or Market Order is displayed, which may be different from the limit price or working price of the order. See Rule 964NYP(a)(1).

⁹ See proposed Rule 900.3NYP(a)(4)(D)(i). The Exchange notes that once an order has been cancelled, the Exchange will likewise cancel any unexecuted portion of the cancelled order that returns to the Exchange after having been routed away.

¹⁰ See proposed Rule 900.3NYP(a)(4)(D)(i).

Orders. Unlike Market Orders, Limit Orders include a specific price at which an ATP Holder is willing to trade (i.e., the limit price). Market Orders do not include a price and tend to be utilized to access liquidity. As such, the Exchange believes that the proposal to cancel back those Market Orders that have been collared would benefit ATP Holders because it would enable the order sender to reevaluate, on a timelier basis how best to handle this trading interest.

The Exchange notes that it proposes to make this change in response to ATP Holders' preference to have Market Orders for which they are agent immediately cancel back for handling-- rather than have such collared Market Orders first post at aggressive prices for 500 milliseconds.

Conforming changes

Consistent with the proposed change to the handling of collared Market Orders -- i.e., that such orders will not be held and displayed on the Consolidated Book for the duration of the collar timer, the Exchange proposes the following conforming changes.

- First, the Exchange proposes to modify Rule 900.3NYP(a)(1)(A)(ii), which provides, in relevant part, that “[a] Market Order to sell will be cancelled if it was assigned a Trading Collar, routed, and when it returns unexecuted, it has no resting portion to join and there is no NBB, regardless of the price of the NBO.” The Exchange proposes to modify this provision to instead provide that “[a] Market Order to sell that was assigned a Trading Collar, routed, and returned unexecuted, will be cancelled if there is no NBB, regardless of the price of the NBO.”¹¹

¹¹ See proposed Rule 900.3NYP(a)(1)(A)(ii). See also Rule 900.3NYP(a)(1)(A)(i)-(iv) (setting forth pricing validations that a Market Order that arrives during continuous trading or that was routed, returns unexecuted, and has no resting quantity to join must pass to prevent being rejected or cancelled, as applicable).

- Next, the Exchange proposes to modify Rule 900.3NYP(a)(1)(B), which provides, in relevant part, that “[a]fter trading or routing, or both, the Market Order will be displayed at the Trading Collar, subject to paragraph (a)(1)(C),” which provision provides that a Market Order will be cancelled before being displayed if there are no remaining contra-side Market Maker quotes on the Exchange or contra-side ABBO.¹² Proposed Rule 900.3NYP(a)(1)(B) would provide that “[a]fter trading or routing, or both, the Market Order will be cancelled.”
- In addition, the Exchange also proposes to delete as inapplicable Rule 900.3NYP(a)(1)(C).¹³ The Exchange proposes to modify Rule 952NYP(f)(3)(A)(vi), which cross references the to-be-deleted provision, and to provide that “[u]nexecuted Market Orders will be cancelled.”¹⁴
- Finally, the Exchange also proposes to delete as inapplicable Rule 900.3NYP(a)(1)(D).¹⁵

The Exchange believes that the proposed functionality would provide greater determinism for Market Orders that have been collared, which would provide ATP Holders that send Market Orders as agent greater control over, and more certainty regarding, the Exchange’s handling of such orders.

¹² See Rule 900.3NYP(a)(1)(C).

¹³ See Rule 900.3NYP(a)(1)(C) (providing that a Market Order will be cancelled before being displayed if there are no remaining contra-side Market Maker quotes on the Exchange or contra-side ABBO).

¹⁴ Compare proposed Rule 952NYP(f)(3)(A)(vi) with Rule 952NYP(f)(3)(A)(vi) (providing that Market Orders received during a pre-open state will be subject to the validation specified in Rule 900.3NYP(a)(1)(C)).

¹⁵ See Rule 900.3NYP(a)(1)(D) (providing that after being displayed at its Trading Collar, a Market Order will be cancelled if there ceases to be a contra-side NBBO). The Exchange proposes the non-substantive change to re-number current paragraph (a)(1)(E) of the Rule to new paragraph (a)(1)(C) to account for the aforementioned deletions.

Implementation

This proposed change modifies a Pillar rule (i.e., with a “P” modifier). As is the case with all Pillar rules, this proposed rule change (as well as the entire Rule 900.3NYP) will not be implemented until all other Pillar-related rule filings are approved or operative, as applicable, and the Exchange announces the migration of underlying symbols to Pillar by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁶ in general, and furthers the objectives of Section 6(b)(5),¹⁷ in particular, because 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 the proposed change to modify the handling of collared Market Orders, which is being made in response to ATP Holders’ preference to have Market Orders for which they are agent immediately cancel back for handling-- rather than have such collared Market Orders first post at aggressive prices for 500 milliseconds, would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed handling would refine the Trading Collar functionality in a manner that would enable ATP Holders to have more certainty regarding, and more control over, the handling of their Market Orders.¹⁸

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ As discussed supra, the proposal would alter the handling of collared Market Orders (but not collared Limit

The proposed conforming changes would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, would protect investors and the public interest because such changes would add clarity, transparency, and internal consistency to Exchange rules.

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 Exchange is proposing a market enhancement that would provide ATP Holders with greater control over, and more certainty regarding, collared Market Orders that such ATP Holders have submitted as agent. The proposal would apply to all similarly-situated ATP Holders and would not impose a competitive burden on any participant. The Exchange does not believe that the proposed change to the Trading Collar functionality would impose a burden on competing options exchanges. Rather, the availability of the modified Trading Collar functionality may foster more competition. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. When an exchange offers enhanced functionality that distinguishes it from the competition and participants find it useful, it has been the Exchange's experience that competing exchanges will move to adopt similar functionality. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the marketplace as it can result in enhanced processes, functionality, and technologies.

Orders) because Market Orders (unlike Limit Orders) do not include a price and tend to be utilized to access liquidity. Thus, the proposal to cancel back collared Market Orders would benefit ATP Holders because it would enable the order sender to reevaluate, on a timelier basis how best to handle this trading interest.

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 Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰ 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.²¹

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 Commission shall institute proceedings under Section 19(b)(2)(B)²² of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) 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 Exchange has satisfied this requirement.

²² 15 U.S.C. 78s(b)(2)(B).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2023-42 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-2023-42. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2023-42 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Sherry R. Haywood,

Assistant Secretary.

²³ 17 CFR 200.30-3(a)(12).