

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98853; File No. SR-NYSEAMER-2023-54)

November 3, 2023

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Amending Rule 935NY

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 October 27, 2023, NYSE American LLC (“Exchange”) filed with the Securities and Exchange Commission (“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 935NY (Order Exposure Requirements) to include reference to Rule 971.1NYP (Single-Leg Electronic Cross Transactions) to exempt orders submitted to the Customer Best Execution (“CUBE”) Auction on Pillar from the order exposure requirements. 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 amend Rule 935NY (Order Exposure Requirements) to include reference to the recently-adopted Rule 971.1NYP (Single-Leg Electronic Cross Transactions) to exempt orders submitted to the CUBE Auction on Pillar from the order exposure requirements.⁴

Rule 971.1NY describes the CUBE Auction, which is an electronic crossing mechanism for single-leg orders with a price improvement auction on the Exchange (the “CUBE”).⁵ Agency orders (or “CUBE Orders) submitted to the CUBE are exempt from the one-second order exposure requirement set forth in Rule 935NY.⁶

In connection with the Exchange’s migration to the Pillar trading platform, which began

⁴ See Securities Exchange Act Release No. 97938 (July 18, 2023), 88 FR 47536 (July 24, 2023) (NYSEAmer-2023-35) (proposing, on an immediately effective basis, new Pillar Rule 971.1NYP (Single-Leg Electronic Cross Transactions), which will govern single-leg CUBE Auctions on Pillar) (the “Pillar Single-Leg CUBE Filing”). Beginning on October 23, 2023, the Exchange implemented Rule 971.1NYP in connection with the migration to the Exchange’s Pillar trading platform pursuant to the scheduled rollout of underlying symbols as announced by Trader Update. See e.g., Trader Update, October 20, 2023 (announcing that Pillar Migration Tranche 1 will include underlying symbol Range: H, I), [available here: https://www.nyse.com/trader-update/history#110000748106](https://www.nyse.com/trader-update/history#110000748106); and Trader Update, January 30, 2023 (announcing Pillar Migration Launch date of October 23, 2023, for the Exchange), [available here: https://www.nyse.com/trader-update/history#110000530919](https://www.nyse.com/trader-update/history#110000530919) (the “Pillar Trader Updates”). The Exchange notes that, other than the rule change proposed herein, all Pillar-related rules (i.e., with a “P” modifier) have either been approved or are currently operative and, beginning on October 23, 2023, will apply to options traded on underlying symbols that have been migrated to Pillar.

⁵ See generally Rule 971.1NY(Single-Leg Electronic Cross Transactions).

⁶ Rule 935NY requires, among other things, that a User’s agency orders be exposed for at least one (1) second before such orders may be executed against the User’s principal orders, unless such agency order is afforded an exemption pursuant to Rule 935NY(iii). See Rule 935NY(iii).

on October 23, 2023, the Exchange adopted Rule 971.1NYP to describe the operation of the CUBE on Pillar (the “Pillar CUBE”).⁷ Pillar CUBE offers certain enhancements to the existing CUBE Auction but the core functionality of Pillar CUBE is substantively identical to the existing CUBE Auction.⁸

Accordingly, the Exchange believes that it would be consistent with the Act to exempt orders submitted to Pillar CUBE from the one-second order exposure requirement.⁹ This proposed handling would result in consistent treatment of CUBE Orders whether submitted to the existing CUBE or to Pillar CUBE. Like the existing CUBE Auction, Pillar CUBE provides ATP Holders a minimum of 100 milliseconds to respond to CUBE Orders, which should promote timely executions, while ensuring adequate exposure of the CUBE Order seeking price improvement.¹⁰ Further, consistent with Rule 935NY, Commentary .01, the ATP Holders that submit CUBE Orders -- whether to the existing CUBE Auction or to Pillar CUBE -- would do so only when there is a genuine intention to execute a bona fide transaction.¹¹ Furthermore, as with the existing CUBE Auction, any User on the Exchange can respond to a Pillar CUBE which is the same as the existing CUBE Auction.¹²

⁷ See generally Rule 971.1NYP(Single-Leg Electronic Cross Transactions).

⁸ See supra note 4, Pillar Single-Leg CUBE Filing. 88 FR 47536, at 47538 (stating that on Pillar, per Rule 971.1NYP, “the Exchange is not proposing to change the core functionality of CUBE Auctions”).

⁹ See proposed Rule 935NY(iii) (excluding from the order exposure requirement agency orders submitted to “the Customer Best Execution Auction (‘CUBE Auction’) pursuant to Rules 971.1NY, 971.1NYP, or 971.2NY”) (emphasis added).

¹⁰ See Rule 971.1NYP(c)(1)(B) (regarding a Response Time Interval of no less than 100 milliseconds).

¹¹ See Rule 935NY, Commentary .01 (“Rule 935NY prevents a User from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the User was already bidding or offering on the book”).

¹² See Rule 971.1NY(c)(2)(C) (providing that “[a]ny ATP Holder may respond to the RFR, provided such response is properly marked specifying price, size and side of the market (‘RFR Response’)”); Rule 971.1NY(c)(1)(C) (same).

2. Statutory Basis

The proposed rule change 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),¹⁴ 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 that adding a cross-reference to newly-adopted Rule 971.1NYP and thus extending the exemption from the one-second order exposure requirement set forth in Rule 935NY to include the Pillar CUBE would remove impediments to and perfect the mechanism of a free and open market and a national market system. Pillar CUBE was adopted in connection with the Exchange’s migration to the Pillar trading platform and offers features that are substantively identical to the existing CUBE Auction. Accordingly, the Exchange believes that it would promote just and equitable principles of trade to exempt orders submitted to Pillar CUBE from the one-second order exposure requirement, particularly because this would result in consistent treatment of CUBE Orders whether submitted to the existing CUBE or to Pillar CUBE. Like the existing CUBE Auction, Pillar CUBE provides ATP Holders a minimum of 100 milliseconds to respond to CUBE Orders, which should promote timely executions, while ensuring adequate exposure of Pillar CUBE Orders.¹⁵ Further, consistent with Rule 935NY, Commentary .01, the ATP Holders submitting CUBE Orders -- to the existing CUBE or to Pillar

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See Rule 971.1NYP(c)(1)(B) (regarding a Response Time Interval of no less than 100 milliseconds).

CUBE -- would do so only when there is a genuine intention to execute a bona fide transaction.¹⁶

In addition, the proposed rule change would promote clarity and transparency of which rules would be eligible for the exception specified in Rule 935NY. Finally, adding the reference to Pillar CUBE would promote internal consistency in Exchange rules and would ensure that CUBE Orders submitted to Pillar CUBE are afforded the same treatment as CUBE Orders submitted to the existing CUBE.

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 does not believe that its proposed rule change will impose any burden on intra-market competition because any User on the Exchange may utilize Pillar CUBE and all orders submitted to Pillar CUBE would be treated in the same manner for purposes of Rule 935NY (i.e., such orders would be exempt from the one-second order exposure requirement).

The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because other options exchanges are free to adopt (if they haven't already done so) electronic crossing mechanisms with price improvement auctions and to seek to have orders submitted to such mechanisms exempt from order exposure requirements.

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.

¹⁶ See Rule 935NY, Commentary .01 ("Rule 935NY prevents a User from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the User was already bidding or offering on the book").

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 Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would allow the Exchange to update Exchange Rule 935NY without delay to include the Pillar CUBE, in addition to the existing CUBE Auction, as an exception to the one-second exposure requirement in Exchange Rule 935NY. The Exchange states that the Pillar CUBE Auction offers features that are substantively identical to the Exchange's existing CUBE Auction.

The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. Exchange Rule 935NY currently allows Users to utilize the CUBE Auction to satisfy the requirement in Exchange Rule 935NY that a User expose

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange 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 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.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

an agency order on the Exchange for at least one second before trading with the agency order as principal. The proposal would amend Exchange Rule 935NY to allow Users to utilize the Pillar CUBE Auction in Exchange Rule 971.1NYP for the same purpose. As discussed above, the Exchange states that the Pillar CUBE Auction offers features that are substantively identical to the existing CUBE Auction. The Commission believes that the proposal does not raise new or novel regulatory issues and that waiver of the operative delay will allow the Exchange to immediately provide consistent treatment, for purposes of Exchange Rule 935NY, of agency orders submitted to the CUBE and the Pillar CUBE Auctions. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.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.

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

²¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

SR-NYSEAMER-2023-54 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-2023-54. 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-2023-54 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.²²

Sherry R. Haywood,

Assistant Secretary.

²² 17 CFR 200.30-3(a)(12), (59).