

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100860; File No. SR-NYSEAMER-2024-48)

August 28, 2024

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend Rule 952NYP

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 13, 2024, 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 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 952NYP (Auction Process) regarding the automated process for opening (and reopening) option series on the Exchange.⁴

Rule 952NYP (the “Rule”) describes the opening Auction Process.⁵ The Exchange has determined that the Auction Process could be incrementally improved by removing the existing requirement that the Exchange disseminate a Rotational Quote before commencing an Auction. The Exchange believes that this proposed modification could enhance the speed and efficiency of its Auction Process without impairing price discovery.

Commencement of the Auction Process

Pursuant to the Rule, for each option series, the Auction Process begins once the Exchange receives the Auction Trigger, and the Exchange sends a Rotational Quote⁶ to both OPRA and proprietary data feeds.⁷ The Auction Trigger occurs when the Primary Market for the underlying security first disseminates both a two-sided quote and a trade of any size that is at or within the quote.⁸ The Auction Trigger signals the opening of trading in an underlying security, which in turn, enables the Exchange to commence the process of opening options on that

⁴ An “Auction” refers to the opening or reopening of a series for trading either with or without a trade. See Rule 952NYP(a)(1). For simplicity, the Exchange will simply refer to the “opening” of a series herein.

⁵ “Auction Process” refers to the process that begins when the Exchange receives an Auction Trigger for a series and ends when the Auction is conducted. See Rule 952NYP(a)(5).

⁶ “Rotational Quote” refers to the highest Market Maker bid and lowest Market Maker offer on the Exchange when the Auction Process begins, and such Rotational Quote will be updated (for price and size) during the Auction Process. See Rule 952NYP(a)(13).

⁷ See Rule 952NYP(d)(1).

⁸ See Rule 952NYP(a)(7). For a Core Open Auction, the Auction Trigger occurs at or after 9:30 a.m. EST and for a Trading Halt Auction, the Auction Trigger occurs at the end of a trading halt. See Rule 952NYP(a)(7)(A) and (B), respectively.

underlying.

After the Auction Trigger, the Exchange sends a Rotational Quote for each option series on the underlying security. Once a Rotational Quote is disseminated, the Exchange waits a minimum of two milliseconds and then conducts an Auction, provided that “there is both a Legal Width Quote and, if applicable, Market Maker quotes with a non-zero offer in the series (subject to the Opening MMQ Timer(s) requirements in paragraph (d)(3) of this Rule).”⁹

Proposed Change to Commencement of the Auction Process

The Exchange proposes to remove from the Rule the requirements that the Exchange delay its opening Auction until it disseminates a Rotational Quote and waits at least two additional milliseconds post-dissemination (the “Rotational Quote Requirement”).¹⁰ The proposed rule will specify that, upon receipt of an Auction Trigger for an underlying security, the Exchange will disseminate a message to market participants indicating the initiation of the opening process and will begin transitioning each option series for that underlying security from a pre-open state to continuous trading.¹¹ This proposed change does not alter any of the other prerequisites to commencing an Auction. Consistent with current functionality, the Auction

⁹ See Rule 952NYP(d)(2). See Rule 952NYP(a)(10)(A)-(C) (describing that a Legal Width Quote is comprised of a Calculated NBBO that may be locked, but not crossed, does not contain a zero offer, and does not exceed the Exchange-determined “maximum differential”). A Calculated NBBO is “the highest bid and lowest offer” among all Market Maker quotes and the ABBO [i.e., Away Market BBO] during the Auction Process. See Rule 952NYP(a)(8).

¹⁰ See proposed Rule 952NYP(d)(1)-(2). Consistent with this proposed change, the Exchange proposes to eliminate from Rule 952NYP(a)(13) the definition of Rotational Quote. See proposed Rule 952NYP(a) (which would no longer include (a)(13)).

¹¹ See proposed Rule 952NYP(d)(1). The proposed rule specifies that a message is disseminated to market participants informing them that the Auction Trigger has been received, the receipt of which enables the Exchange to transition option series in that underlying security from a pre-open state to continuous trading. The Exchange notes that the dissemination of a message indicating receipt of the Auction Trigger is consistent with current functionality except that, with the removal of the Rotational Quote Requirement, this message now signals to market participants that the Exchange may commence its transition of option series in that underlying to continuous trading.

process will begin opening an option series once there is a Legal Width Quote.¹²

The Exchange believes that this proposed change would result in a more timely and efficient opening process. At a minimum, once the Auction Trigger is received and, absent the Rotational Quote Requirement, each option series would open at least two milliseconds earlier.¹³ The Exchange has determined (based on feedback from market participants) that the relative benefit of delaying the Auction Process for the Rotational Quote Requirement is outweighed by the benefit of improving the speed at which each option series opens. The Exchange notes that, notwithstanding the proposal to eliminate the Rotational Quote Requirement, the Exchange would continue to disseminate imbalance messages as early as 8:00 a.m. EST indicating the trading interest available in each option series pre-Auction (i.e., the “Auction Imbalance Information”).¹⁴ Similarly, the proposed elimination of the Rotational Quote Requirement would likewise not alter the other prerequisites to the Exchange commencing an Auction (e.g., the presence of a Legal Width Quote). Furthermore, the Exchange notes that its Auction Process, as modified herein, would remain consistent with that of at least one other options exchange that likewise does not include a Rotational Quote Requirement as a precondition to opening each option series.¹⁵ The Exchange therefore believes that the proposal to eliminate the Rotational

¹² The Rule addresses how an option series transitions from pre-open state to continuous trading in circumstances where, after a specified time period, the prerequisites to commencing an Auction have not yet been satisfied. See Rule 952NYP(d)(4).

¹³ Compare proposed Rule 952NYP(d)(2) with (current) Rule 952NYP(d)(2). The Exchange notes that the required delay of *at least* two milliseconds occurs *after* the Exchange has disseminated a Rotational Quote. Thus, under the current Rule, the time lapse from receipt of Auction Trigger to commencing an Auction is, by necessity, longer than two milliseconds. See Rule 952NYP(d)(2).

¹⁴ See Rule 952NYP(c)(1). The Auction Imbalance Information includes the Auction Collars, Auction Indicator, Book Clearing Price, Far Clearing Price, Indicative Match Price, Matched Volume, Market Imbalance, and Total Imbalance. See Rule 952NYP(a)(3)(A)-(D). For Trading Halt Auctions, the Exchange disseminates the Auction Imbalance Information at the beginning of a trading halt See Rule 952NYP(c)(2).

¹⁵ See, e.g., Cboe Options Exchange Inc. (“Cboe”) Rule 5.31(d)(1)(A)(ii) (providing that Cboe initiates its “opening rotation” for a series upon receipt of “both the first disseminated transaction and the first disseminated quote on the primary market” on or after 9:30 a.m. EST, which is identical the Exchange’s “Auction Trigger,” without waiting for the dissemination of a Rotational Quote (or an additional two

Quote Requirement would benefit market participants because it would allow the Exchange to compete on more equal footing with at least one other options exchange that does not include such a requirement as a precondition to opening each series.

Finally, the Exchange proposes to make a technical change to renumber current Rule 952NYP(a)(5)(i) to Rule 952NYP(a)(5)(A), which would add clarity and internal consistency to Exchange rules.

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 changes to its Auction Process would promote a fair and orderly market by improving the speed and efficiency of the Exchange’s opening process. The Exchange has determined (based on feedback from market participants) that the relative benefit of delaying the Auction Process for the Rotational Quote Requirement is outweighed by the benefit of improving the speed at which each option series opens. The Exchange notes that,

milliseconds)). The Exchange believes that its “Auction Process” is akin to Cboe’s “opening rotation” (compare Rule 952NYP(a)(5) with Cboe Rule 5.31(e)) and its “Auction Imbalance Information” is akin to Cboe’s “Opening Auction Updates” (compare Rule 952NYP(a)(3) with Cboe Rule 5.31(c)). Like Cboe, the Exchange disseminates a message to its market participants to signal the initiating of the opening process. Compare Cboe Rule 5.31(d) with proposed Rule 952NYP(d)(1).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

notwithstanding the proposal to eliminate the Rotational Quote Requirement, the Exchange would continue to disseminate the Auction Imbalance Information, which informs market participants about the trading interest available pre-Auction. Moreover, the proposed change would not alter any of the Exchange's other prerequisites to commencing an Auction (e.g., the presence of a Legal Width Quote).

Furthermore, the Exchange believes that the proposed change would promote just and equitable principles of trade because it would allow the Exchange to compete on more equal footing with at least one other options exchange that does not include an analogous Rotational Quote Requirement as a precondition to opening each option series.¹⁸

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 believes that the proposed change to the Auction Process would not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all market participants that participate in the opening process may benefit equally from the proposal, as the rules of the Exchange apply equally to all market participants. With respect to inter-market competition, the Exchange notes that the Exchange's modified Auction Process would remain consistent with that of other options exchanges that likewise do not include a Rotational Quote Requirement as a precondition to opening each option series.¹⁹

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

¹⁸ See supra note 15 (regarding Cboe's opening process, per Cboe Rule 5.31).

¹⁹ Id.

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 Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹ 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.²²

A proposed rule change filed under Rule 19b-4(f)(6)²³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6). In addition, 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, 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.

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

Commission shall institute proceedings under Section 19(b)(2)(B)²⁵ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-48 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-2024-48. 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

²⁵ 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 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-2024-48 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.²⁶

Sherry R. Haywood,

Assistant Secretary.

²⁶ 17 CFR 200.30-3(a)(12).