

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83384; File No. SR-NYSEAMER-2018-05)

June 5, 2018

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Establish an Electronic Price Improvement Auction for Complex Orders

I. Introduction

On February 15, 2018, NYSE American LLC (the “Exchange” or “NYSE American”) 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 adopt new Exchange Rule 971.2NY to establish the Complex Customer Best Execution Auction (“Complex CUBE Auction” or “Auction”), a price improvement auction for Electronic Complex Orders (referred to herein as “Complex Orders”), and to make related changes to other rules.³ The proposed rule change was published for comment in the Federal Register on March 7, 2018.⁴ On April 18, 2018, pursuant to Section 19(b)(2) of the Act,⁵ the Commission extended the time for Commission action on the proposal until June 5, 2018.⁶ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ An Electronic Complex Order is any Complex Order, as defined in Exchange Rule 900.3NY(e), that is entered into the Exchange’s electronic order delivery, execution and reporting System. See Exchange Rules 980NY and 900.2NY(48). A Complex Order is “any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.” See Exchange Rule 900.3NY(e).

⁴ See Securities Exchange Act Release No. 82802 (March 2, 2018), 83 FR 9769 (“Notice”).

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 83061, 83 FR 17869 (April 24, 2018).

Commission received no comments regarding the proposal. On May 15, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.⁷ The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment No. 1

A. Background

NYSE American currently provides a CUBE Auction for single-leg option orders (the “Single-Leg CUBE”).⁸ As described more fully in the Notice, the Exchange proposes to adopt new Exchange Rule 971.2NY, “Complex Electronic Cross Transactions,” to establish a Complex CUBE Auction for Complex Orders that will operate in a manner that is substantially similar to

⁷ Amendment No. 1 revises the proposal to: (1) add Exchange Rules 971.1NY, Commentary .01, and 971.2NY, Commentary .03 to specify that a Single-Leg CUBE Auction for a single series may occur concurrently with a Complex CUBE Auction for a Complex Order that includes that series, and to describe the processing of such concurrent auctions; (2) add definitions of “single stop price” and “auto-match limit price,” add examples to the defined terms in proposed Exchange Rule 971.2NY, Commentary .02, and clarify that in both the Single-Leg and Complex CUBE Auctions, a Contra Order will trade solely with the CUBE Order; (3) indicate that after a Complex CUBE Order has been filled, RFR Responses, including Complex GTX Orders, may trade with Complex Orders on the same side of the market as the Complex CUBE Order; (4) further explain the rationale for not allowing customer interest on a Contra Order; (5) further explain the reasons for early Auction terminations when the same-side CUBE BBO crosses RFR Responses or a single stop price; (6) provide an example showing the allocation of a Complex CUBE Order guaranteed with an auto-match limit price; (7) modify the description of the proposed changes to Exchange Rules 980NY(e)(6)(A) and (B); and (8) provide further support for the Exchange’s argument that the proposal is consistent with Section 11(a) of the Act and the rules thereunder. To promote transparency of its proposed amendment, when NYSE American filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its website and placed in the public comment file for SR-NYSEAMER-2018-05 (available at <https://www.sec.gov/comments/sr-nyseamer-2018-05/nyseamer201805-3649246-162408.pdf>). The Exchange also posted a copy of its Amendment No. 1 on its website (available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-american/rule-filings/filings/2018/NYSEAmer-2018-05,%20Pt.%20Am.%201.pdf>).

⁸ See Exchange Rule 971.1NY.

the Single-Leg CUBE, with differences to account for the different processing of and priority rules for Complex Orders.⁹ NYSE American states that the Complex CUBE Auction will operate in a manner consistent with the electronic price improvement auctions for complex orders that are available on other options exchanges.¹⁰

B. Initiation of a Complex CUBE Auction

To initiate a Complex CUBE Auction, an ATP Holder (the “Initiating Participant”) electronically submits into the Complex CUBE Auction a Complex Order that the Initiating Participant represents as agent on behalf of a public customer, broker dealer, or other entity.¹¹ The Initiating Participant guarantees the execution of the Complex CUBE Order by submitting a contra-side order (the “Complex Contra Order”) representing principal interest or non-Customer interest the Initiating Participant has solicited to trade solely with the CUBE Order at either a single stop price or an auto-match limit price, as discussed below.¹²

⁹ See Notice, 83 FR at 9769. NYSE American notes that the Complex CUBE Auction follows the fundamental principles of the Single-Leg CUBE mechanism but with the priority and allocation rules used in auctions for Complex Orders. See id. at 9779 (citing Exchange Rule 980NY(e)).

¹⁰ See id. (citing Chicago Board Options Exchange, Inc. (“CBOE”) Rule 6.74A; Nasdaq PHLX, LLC (“Phlx”) Rule 1087; BOX Options Exchange LLC (“BOX”) Rule 7245; Nasdaq ISE, LLC (“ISE”) Rule 723; and Miami International Securities Exchange, LLC (“MIAX”) Rule 515A, Interpretation and Policy .12).

¹¹ See proposed Exchange Rule 971.2NY(a). An “ATP Holder” is a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an American Trading Permit (“ATP”) issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities. An ATP Holder must be a registered broker or dealer pursuant to Section 15 of the Act and has status as a “member” of the Exchange, as defined in Section 3 of the Act. See Exchange Rules 900.2NY(4) and (5).

¹² See proposed Exchange Rule 971.2NY(a)(1). Requiring the Complex Contra Order to include only principal interest or non-Customer interest will preserve the intended allocation methodology for the Auction. See Amendment No. 1. NYSE American notes that a Complex Contra Order is guaranteed to trade with at least 40% of the Complex CUBE Order if RFR Responses do not improve the guaranteed price(s). See proposed

The Complex CUBE Order must be priced better than the interest resting on the Consolidated Book.¹³ In particular, a Complex CUBE Order must have a net debit/credit price that is equal to or better than the “CUBE BBO” on the same side of the market as the Complex CUBE Order (the “same-side CUBE BBO”).¹⁴ The CUBE BBO is the more aggressive of (i) the Complex BBO improved by \$0.01,¹⁵ or (ii) the Derived BBO improved by \$0.01 multiplied by the smallest leg of the complex order strategy.¹⁶ A Complex CUBE Order that does not meet

Exchange Rules 971.2NY(c)(4)(B)(i)(b) and (ii)(b). NYSE American also notes that, because Customer interest on the Exchange is afforded first priority at a price, allowing Customer interest on the Complex Contra Order would disrupt the intended allocation methodology for the Auction because the Complex Contra Order would be entitled to 100% of the Complex CUBE Order rather than 40% of the order. NYSE American further notes that allowing customer interest on the Complex Contra Order could reduce competition in the Auction and undermine its price improvement aim if other market participants choose not to participate in the Auction because they believe it is unlikely that they would receive an allocation in the Auction. See id. NYSE American states that it will file a proposed rule change if it intends to establish a customer-to-customer cross mechanism in the future. See id. The proposal likewise revises the Single-Leg CUBE rules to indicate that the Contra Order in a Single-Leg CUBE Auction must represent principal or non-Customer Interest. See Exchange Rule 971.1NY(a) and Amendment No. 1.

¹³ See Notice, 83 FR at 9771, and proposed Exchange Rule 971.2NY(b)(2). The Consolidated Book (“Book”) is “the Exchange’s electronic book of limit orders for the accounts of Customers and broker-dealers, and Quotes with Size. All orders and Quotes with Size that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 964NY.” See Exchange Rule 900.2NY(14).

¹⁴ See proposed Exchange Rule 971.2NY(b)(2).

¹⁵ See proposed Exchange Rule 971.2NY(a)(2). The proposal revises the current definition of “Complex BBO” to define the Complex BBO as the complex orders with the lowest-priced (i.e., the most aggressive) net debit/credit price on each side of the Consolidated Book for the same complex order strategy. See proposed Exchange Rule 971.2NY(b).

¹⁶ The BBO is the best bid or offer in the System. See Exchange Rule 900.2NY(7)(a). The “Derived BBO” is calculated using the BBO from the Consolidated Book for each of the options series comprising a given complex order strategy. See proposed Exchange Rule 900.2NY(7)(c). The definition of Derived BBO, which does not change the manner in which the Exchange determines what was formerly referred to as the “Complex BBO,” is designed to make clear that the Derived BBO is derived from the BBO of the leg markets. See Notice, 83 FR at 9771. The proposal makes conforming amendments to

this requirement will be rejected, along with the Complex Contra Order.¹⁷ The CUBE BBO may be updated during the Auction.¹⁸ If the CUBE BBO updates during the Auction (the “updated CUBE BBO”), the range of permissible executions for the Complex CUBE Order will adjust in accordance with the updated CUBE BBO, unless the interest that updated the CUBE BBO would cause the Auction to conclude early pursuant to proposed Exchange Rule 971.2NY(c)(3).¹⁹

C. Auction Process

An Initiating Participant must guarantee the execution of a Complex CUBE Order by submitting a Complex Contra Order with either a single stop price or an auto-match limit price, which must be executable against the initiating price of the Auction.²⁰ If the single stop price crosses the same-side CUBE BBO (i.e., would be outside the range of permissible executions), the Complex CUBE Order is not eligible to initiate an Auction and will be rejected along with

Exchange Rule 980NY to replace references to the “Complex BBO” with the “Derived BBO.” See id.

¹⁷ See proposed Exchange Rule 971.2NY(b)(2). NYSE American notes that a Complex CUBE Order that is not priced equal to or better than the same-side CUBE BBO is not the best-priced interest available and should not trade ahead of better-priced interest on the same side of the market. See Notice, 83 FR at 9773. A Complex CUBE Order and the Complex Contra Order also will be rejected if they are submitted before the opening of trading, during the final second of the trading session in the component series, or during a trading halt. See proposed Exchange Rules 971.2NY(b)(3), (4), and (5).

¹⁸ See proposed Exchange Rule 971.2NY(a)(2).

¹⁹ See proposed Exchange Rule 971.2NY(a)(4)(A). The “range of permissible executions” for a Complex CUBE Order is all prices equal to or between the initiating price and the same-side CUBE BBO. See proposed Exchange Rule 971.2NY(a)(4). The “initiating price” for a Complex CUBE Order is the less aggressive of the net debit/credit price of the order or the price that locks the contra-side CUBE BBO. See proposed Exchange Rule 971.2NY(a)(3).

²⁰ See proposed Exchange Rules 971.2NY(b)(1)(A) and (B). A single stop price is the price at which the Initiating Participant guarantees the Complex CUBE Order. An auto-match limit price is the most aggressive price at which the Initiating Participant is willing to trade with the Complex CUBE Order.

the Complex Contra Order.²¹ A Complex Contra Order with an auto-match limit price may trade with the Complex CUBE Order at prices that are better than or equal to the initiating price until trading at the auto-match limit price.²² If the auto-match limit price crosses the same-side CUBE BBO, the Complex Contra Order will be priced back to lock the same-side CUBE BBO.²³

The time at which the Auction is initiated will be considered the time of execution for the Complex CUBE Order.²⁴ Only one Complex CUBE Auction may be conducted at a time in any given complex order strategy and, once commenced, the Complex CUBE Order (as well as the Complex Contra Order) may not be cancelled or modified.²⁵

Upon receipt of a Complex CUBE Order, NYSE American will send a Request for Responses (“RFR”) identifying the complex order strategy, the side and size of the Complex CUBE Order, and the initiating price to all ATP Holders who subscribe to receive RFR messages.²⁶ ATP Holders may submit responses to the RFR during the Response Time Interval, which will last for a random period of time within parameters that NYSE American determines and announces by Trader Update.²⁷ Any ATP Holder may respond to the RFR, provided the response is properly marked specifying price, size, and side of the market (“RFR Response”).²⁸

²¹ See proposed Exchange Rule 971.2NY(b)(1)(A) and Notice, 83 FR at 9772.

²² See proposed Exchange Rule 971.2NY(b)(1)(B).

²³ See *id.*

²⁴ See proposed Exchange Rule 971.2NY(c).

²⁵ See *id.*

²⁶ See proposed Exchange Rule 971.2NY(c)(1)(A).

²⁷ See proposed Exchange Rule 971.2NY(c)(1)(B). The minimum/maximum parameters for the Response Time Interval will be no less than 100 milliseconds and no more than one second. See *id.* The proposed Response Time Interval provisions are the same as the Response Time Interval provisions for the Single-Leg CUBE Auction. See Exchange Rule 971.1NY(c)(2)(B).

²⁸ See proposed Exchange Rule 971.2NY(c)(1)(C).

The Auction will accept the following RFR Responses: (i) a Complex GTX Order, defined as an Electronic Complex Order with a time-in-force contingency for the Response Time Interval, which must specify the price, size, and side of the market;²⁹ and (ii) unrelated Complex Orders, including Complex Order Auction (“COA”)-eligible orders, on the opposite side of the market as the Complex CUBE Order that are received during the Response Time Interval, provided the unrelated orders can participate within the range of permissible executions specified pursuant to proposed Exchange Rule 971.2NY(a)(4).³⁰ NYSE American believes that considering unrelated Complex Orders to be RFR Responses would increase the number of orders against which the Complex CUBE Order could execute and thus should maximize price improvement opportunities for the Complex CUBE Order.³¹

D. Early Termination of a Complex CUBE Auction

An Auction will conclude at the end of the Response Time Interval unless there is a trading halt in any component series of the Complex CUBE Order or an early conclusion event,

²⁹ A Complex GTX Order will not be displayed on the Consolidated Book or disseminated to any participants, and a Complex GTX Order that is not fully executed will be cancelled at the conclusion of the Auction. Complex GTX Orders with a size greater than the size of the Complex CUBE Order will be capped at the size of the Complex CUBE Order. Complex GTX Orders may be cancelled or modified, and a Complex GTX Order on the same side of the market as the CUBE Order will be rejected. See proposed Exchange Rule 971.2NY(c)(1)(C)(i). NYSE American notes that because Complex GTX Orders can only trade against a Complex CUBE Order or an unrelated order on the same side as the Complex CUBE Order, same-side Complex GTX Orders are unnecessary to the Complex CUBE Auction. See Notice, 83 FR at 9774.

³⁰ See proposed Exchange Rule 971.2NY(c)(1)(C)(ii).

³¹ See Notice, 83 FR at 9775. NYSE American notes that quotes and orders in the leg markets for a complex strategy underlying a Complex CUBE Order will not be eligible to participate in the Auction, although updates to the leg markets may cause an Auction to conclude early to preserve the priority of interest at that price. NYSE American states that limiting participation in the Complex CUBE Auction to Complex Orders, but allowing certain updates to the leg markets to cause an Auction to conclude early, is consistent with the manner in which the Exchange treats interest in the COA process, as described in Exchange Rule 980NY(e)(7)(B). See id.

as provided in proposed Exchange Rule 971.2NY(c)(3).³² NYSE American states that ending the Auction early, as provided in proposed Exchange Rule 971.2NY(c)(3), will preserve the priority of incoming interest and allow a Complex CUBE Auction to operate seamlessly with the Consolidated Book.³³ Proposed Exchange Rule 971.2NY(c)(3) provides that an Auction will conclude early if, during the Response Time Interval:

(A) the Exchange receives a new Complex CUBE Order in the same complex order strategy that meets the conditions of proposed Exchange Rule 971.2NY(b);

(B) the Exchange receives interest that adjusts the same-side CUBE BBO to be better than the initiating price;

(C) the Exchange receives interest that adjusts the same-side CUBE BBO to cross any RFR Response(s);

(D) the Exchange receives interest that adjusts the same-side CUBE BBO to cross the single stop price specified by the Initiating Participant;

(E) the Exchange receives interest that crosses the same-side CUBE BBO; or

(F) the Exchange receives interest in the leg market that causes the contra-side CUBE BBO to be better than the stop price or auto-match limit price.

E. Allocations at the Conclusion of a Complex CUBE Auction

Proposed Exchange Rule 971.2NY(c)(4) describes the allocation of trading interest at the conclusion of an Auction. NYSE American notes that if RFR Responses can fill the Complex CUBE Order at a price or prices better than the stopped price or auto-match limit price, the Complex CUBE Order will be matched against the better-priced RFR Responses to provide the

³² See proposed Exchange Rule 971.2NY(c)(2).

³³ See Notice, 83 FR at 9776.

Complex CUBE Order the maximum amount of price improvement possible.³⁴ If there are no RFR Responses, a Complex Contra Order with a single stop price will execute against the Complex CUBE Order at the stop price, and a Complex Contra Order with an auto-match limit price will execute against the Complex CUBE Order at the initiating price.³⁵ If there are RFR Responses, any Customer orders that arrive during an Auction as RFR Responses will have first priority to execute at each price level, and they will be allocated on a size pro rata basis pursuant to Exchange Rule 964NY(b)(3).³⁶ After Customer interest at a price level has been satisfied, any remaining size of a Complex CUBE Order will be allocated first to RFR Responses within the permissible range of executions that are priced better than the stop price or the auto-match limit price, as applicable.³⁷ The allocation of any remaining size of the Complex CUBE Order varies, depending on whether the Complex Contra Order has a single stop price³⁸ or an auto-match limit

³⁴ See id.

³⁵ See proposed Exchange Rules 971.2NY(c)(4)(B)(i)(c) and (ii)(c).

³⁶ See proposed Exchange Rule 971.2NY(c)(4)(A). Any RFR Response that exceeds the size of the Complex CUBE Order will be capped at the Complex CUBE Order size for purposes of size pro rata allocation of the Complex CUBE Order. See proposed Exchange Rule 971.2NY(c)(4). In addition, a single RFR Response will not be allocated a volume that is greater than its size. See proposed Exchange Rule 971.2NY(c)(4)(C).

³⁷ See proposed Exchange Rules 971.2NY(c)(4)(B)(i)(a) and (ii)(a). The Complex CUBE Order will be allocated among RFR Responses pursuant to the size pro rata algorithm in Exchange Rule 964NY(b)(3) at each price point. See id.

³⁸ For a Complex Contra Order with a single stop price, the remaining size of the Complex CUBE Order will execute at the stop price, and the Complex Contra Order will receive an allocation of the greater of 40% of the original Complex CUBE Order size or one contract, or the greater of 50% of the original Complex CUBE Order size or one contract if there is only one RFR Response. Any remaining size of the Complex CUBE Order at the stop price will be allocated among the remaining RFR Responses on a size pro rata basis pursuant to Exchange Rule 964NY(b)(3). If all RFR Responses are filled, any remaining size of the Complex CUBE Order will be allocated to the Complex Contra Order. See proposed Exchange Rule 971.2NY(c)(4)(B)(i)(b).

price.³⁹

F. Concurrent Single-Leg and Complex CUBE Auctions

Although there will be only one Complex CUBE Auction at a time for a particular Complex Order strategy, a Single-Leg CUBE Auction for a series may occur concurrently with a Complex CUBE Auction for a strategy that includes that series, as provided in proposed Exchange Rules 971.1NY, Commentary .01, and 971.2NY, Commentary .03.⁴⁰ Thus, the Exchange will accept orders designated for the CUBE on a single option series when a Complex CUBE Auction in a Complex Order strategy that includes that series is in progress.⁴¹ The

³⁹ For a Complex Contra Order with an auto-match limit price, the remaining size of the Complex CUBE Order will execute at the Complex Contra Order's auto-match limit price and, if volume remains, at prices worse than the auto-match limit price. At each price point equal to or worse than the auto-match limit price, the Complex Contra Order will receive an allocation equal to the aggregate size of all other RFR Responses starting with the best price at which an execution against an RFR Response occurs within the range of permissible executions until a price point is reached where the balance of the CUBE Order can be fully executed (the "clean-up price"). At the clean-up price, if there is sufficient size of the Complex CUBE Order still available after executing at better prices or against Customer interest, the Complex Contra Order will be allocated additional volume required to achieve an allocation of the greater of 40% of the original Complex CUBE Order size or one contract or the greater of 50% of the original Complex CUBE Order size or one contract if there is only one RFR Response. If the Complex Contra Order meets its allocation guarantee at a price better than the clean-up price, it will cease matching RFR Responses that may be priced worse than the price at which the Complex Contra Order received its allocation guarantee. If there are other RFR Responses at the clean-up price, the remaining size of the Complex CUBE Order will be allocated to such interest pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3). Any remaining portion of the Complex CUBE Order will be allocated to the Complex Contra Order at the initiating price. See proposed Exchange Rule 971.2NY(c)(4)(B)(ii)(b).

⁴⁰ The proposed rules indicate that to the extent that Single-Leg and Complex CUBE Auctions involving the same option series occur concurrently, each CUBE Auction will be processed sequentially based on the time each CUBE Auction commenced. At the time each CUBE Auction concludes, including when it concludes early, it will be processed pursuant to Exchange Rule 971.1NY(c)(5) or proposed Exchange Rule 971.2NY(c)(4), as applicable. See proposed Exchange Rules 971.1NY, Commentary .01, and 971.2NY, Commentary .03.

⁴¹ See Notice, 83 FR at 9780.

Exchange will also accept Complex Orders designated for the Complex CUBE Auction when a Single-Leg CUBE Auction in any of the component series is in progress.⁴² The Exchange believes that providing for these concurrent auctions could reduce the potential for an Auction to be terminated early by other incoming orders designated for CUBE in the same single options series and that this could, in turn, reduce order cancellations.⁴³

G. Conduct Inconsistent with Just and Equitable Principles of Trade

NYSE American also proposes to adopt rules identifying conduct that would be considered inconsistent with just and equitable principles of trade with respect to a Complex CUBE Auction to discourage ATP Holders from attempting to misuse or manipulate the Auction process.⁴⁴ NYSE American notes that proposed Exchange Rule 971.2NY, Commentary .01 is based on Exchange Rule 971.1NY, Commentary, .02 relating to the Single-Leg CUBE, and is consistent with the rules of other options exchanges that offer electronic price improvement auction mechanisms.⁴⁵

⁴² See id.

⁴³ See Amendment No. 1.

⁴⁴ See proposed Exchange Rule 971.2NY, Commentary .01, and Notice, 83 FR at 9777. Proposed Exchange Rule 971.2NY, Commentary .01 provides that the following conduct would be inconsistent with just and equitable principles of trade: (a) an ATP Holder entering RFR Responses to an Auction for which the ATP Holder is the Initiating Participant; (b) engaging in a pattern and practice of trading or quoting activity for the purpose of causing an Auction to conclude before the end of the Response Time Interval; (c) an Initiating Participant that breaks up an agency order into separate Complex CUBE Orders for the purpose of gaining a higher allocation percentage than the Initiating Participant would have otherwise received in accordance with the allocation procedures contained in proposed Exchange Rule 971.2NY(c)(5); and (d) engaging in a pattern and practice of sending multiple RFR Responses at the same price that in the aggregate exceed the size of the Complex CUBE Order.

⁴⁵ See id. at 9777 n.47 (citing PHLX Rule 1087(c)–(e); ISE Rule 723, Supplementary Material .01; and BOX Rule 7150, IM–7150–2(a) and (b)). NYSE American also proposes to correct a typographical error in Exchange Rule 971.1NY, Commentary .02, by adding the word “of” to the rule text, which was inadvertently omitted.

H. Order Exposure Requirements

Current Exchange Rule 935NY prohibits Users⁴⁶ from executing as principal any orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one second; (ii) the User has been bidding or offering on the Exchange for at least one second prior to receiving an agency order that is executable against such bid or offer; (iii) the User utilizes the Single-Leg CUBE Auction pursuant to Exchange Rule 971.1.NY; or (iv) the User utilizes the COA auction process pursuant to Exchange Rule 980NY(e). NYSE American proposes to amend Exchange Rule 935NY to provide that a User may execute as principal an order that the User represents as agent, provided that the User utilizes the Complex CUBE Auction process. Such a Complex CUBE Order would not be subject to the one-second order exposure requirement of Exchange Rule 935NY.⁴⁷ NYSE American believes that the proposed Response Time Interval, with a random length of no less than 100 milliseconds and no greater than one second (as determined and announced by the Exchange), is of sufficient length to permit ATP Holders time to respond to a Complex CUBE Auction, thereby enhancing opportunities for competition among participants and increasing the likelihood of price improvement for the Complex CUBE Order.⁴⁸

I. Changes to the Single-Leg CUBE Auction and COA Rules

The proposal revises the title of Exchange Rule 971.1NY to “Single-Leg Electronic Cross Transactions,” to distinguish Exchange Rule 971.1NY from proposed Exchange Rule 971.2NY, “Complex Electronic Cross Transactions.” The proposal revises also revises Exchange Rule

⁴⁶ A User is any ATP Holder that is authorized to obtain access to the System. See Exchange Rule 900.2NY(87).

⁴⁷ See Notice, 83 FR at 9778.

⁴⁸ See id.

971.1NY to indicate, as discussed above, that an Initiating Participant that solicits interest to trade with a Single-Leg CUBE Order may solicit only non-Customer interest to be the Contra Order.⁴⁹ In addition, the proposal amends Exchange Rule 971.1NY to clarify that the Contra Order will trade solely with the CUBE Order and to indicate that a CUBE Order and Contra Order submitted during a trading halt will be rejected.⁵⁰ The proposal revises the auto-match provisions in Exchange Rule 971.1NY(c)(1)(C) to indicate that the auto-match limit price for a CUBE Order that is outside of the range of permissible executions may be repriced so that it is within the range of permissible executions.⁵¹ The proposal modifies Exchange Rule 971.1NY(c)(2)(i)(d) to indicate that a GTX Order may be modified, as well as cancelled. Finally, as discussed above, the proposal adds new Commentary .01 to Exchange Rule 971.1NY, which addresses concurrent CUBE Auctions for a single option series and for a Complex Order that includes that series.

The proposal also amends Exchange Rule 980NY(e)(6)(A) and (B) to indicate that incoming Complex CUBE Orders are among the incoming Complex Orders that could cause a COA Auction to end early.⁵² The Exchange notes that this is consistent with the principle that

⁴⁹ See Exchange Rule 971.1NY(a). Alternatively, the Contra Order may represent principal interest.

⁵⁰ See Exchange Rule 971.1NY(a) and proposed Exchange Rule 971.1NY(b)(10).

⁵¹ In particular, NYSE American proposes to specify in Exchange Rule 971.1NY(c)(1)(C) that it would adjust the auto-match limit price to within the range of permissible executions by adding a new sentence stating that: “An auto-match limit price specified for a CUBE Order to buy (sell) that is below (above) the lower (upper) bound of the range of permissible executions will be repriced to the lower (upper) bound.” See Notice, 83 FR at 9773.

⁵² Exchange Rule 980NY(e)(6)(A)(i), as amended by the current proposal, will provide that an incoming Complex Order, including an incoming Complex CUBE Order, or a COA-eligible order on the opposite side of the market as the initiating COA-eligible order, that locks or crosses the initial Derived BBO will cause the COA to end early. Exchange Rule 980NY(e)(6)(B)(i), as amended by the current proposal, will provide that an

the Exchange will conduct only one auction in a given Complex Order strategy at a time, as provided in proposed Exchange Rule 971.2NY(c) and Exchange Rule 980NY(e)(3).⁵³

J. Additional Changes

The proposal revises the definition of “Professional Customer” in Exchange Rule 900.2NY(18A) to add the Complex CUBE Auction provisions in proposed Exchange Rule 971.2NY to the existing list of Exchange rules for which a Professional Customer will be treated in the same manner as a Broker/Dealer (or non-Customer) in securities. NYSE American notes that this is consistent with the treatment of Professional Customer Orders in the Single-Leg CUBE Auction.⁵⁴ NYSE American also proposes to add Commentary .02 to proposed Exchange Rule 971.2NY to further explain the defined terms used in proposed Rule 971.2NY.⁵⁵ NYSE American believes that these definitions will help to clarify how the Auction will operate.⁵⁶

K. Implementation

NYSE American will announce the implementation date of the proposed rule change in a Trader Update to be published no later than 60 days following Commission approval of the

incoming Complex Order, including a Complex CUBE Order, or COA-eligible order that is priced equal to or lower (higher) than the initiating COA-eligible order to buy (sell), and also locks or crosses the contra-side initial Derived BBO, will cause the COA to end early. As noted above, the proposal also revises Exchange Rule 980NY(e)(6) to replace references to the “Complex BBO” with references to the “Derived BBO.”

⁵³ See Amendment No. 1.

⁵⁴ See Notice, 83 FR at 9780, and Exchange Rule 900.2NY(18A).

⁵⁵ Proposed Exchange Rule 971.2NY, Commentary .02 provides definitions and examples of “better-priced” and “more aggressive” interest, and “worse-priced” and “less aggressive” interest; interest that “improves the BBO;” interest that “locks” contra-side interest; interest that “crosses” contra-side interest; and “executable” interest. The Exchange notes that the definitions use the term “interest” because they apply to any interest that could interact with a Complex Order, including quotes and orders in the leg markets that comprise the complex order strategy. See Notice, 83 FR at 9771.

⁵⁶ See id.

proposal.⁵⁷ The implementation date would be no later than 60 days following publication of the Trader Update announcing Commission approval.⁵⁸ The Exchange believes that this implementation schedule will provide ATP Holders with adequate notice of the Complex CUBE Auction and allow time for ATP Holders that intend to participate in Complex CUBE Auctions to prepare their systems for participation in the Auctions.⁵⁹

III. Discussion and Commission Findings

After careful review, 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.⁶⁰ 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,⁶¹ which requires, among other things, that the rules of a national securities exchange be 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 regulating, clearing, settling, processing information with respect to, 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

⁵⁷ See id. at 9779.

⁵⁸ See id.

⁵⁹ See id.

⁶⁰ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶¹ 15 U.S.C. 78f(b)(5).

The Commission notes that NYSE American's Complex CUBE Auction mechanism is similar to rules on other options exchanges that permit the entry of complex orders into an electronic price improvement auction mechanism.⁶² In addition, NYSE American states that the Complex CUBE Auction will operate in a manner that is substantially similar to the Single-Leg CUBE Auction, with differences to account for the different processing of and priority rules for Complex Orders.⁶³ The Commission believes that allowing ATP Holders to enter orders into the Complex CUBE Auction mechanism may provide additional opportunities for Complex Orders to receive price improvement.

The Commission notes that Initiating Participant must enter a Complex CUBE Order with a net debit/credit price that is equal to or better than the same-side CUBE BBO (i.e., the more aggressive of the Complex BBO improved by \$0.01 or the Derived BBO improved by \$0.01 multiplied by the smallest leg of the complex order strategy), and that the Initiating Participant must submit a Complex Contra Order for the full size of the Complex CUBE Order.⁶⁴ Once the Complex CUBE Auction begins, the Complex CUBE Order and the Complex Contra Order may not be cancelled or modified.⁶⁵ Therefore, a Complex CUBE Order submitted to the Complex CUBE Auction will be guaranteed price improvement over the Complex BBO or the Derived BBO at the time the Complex CUBE Order was entered into the System, and will be given an opportunity for further price improvement by being exposed to ATP Holders during the Complex CUBE Auction.

⁶² See, e.g., Phlx Rule 1080(n); MIAX Rule 515A, Interpretation and Policy .12(a); CBOE Rule 6.74A; BOX Rule 7245; and ISE Rule 723, Supplementary Material .09.

⁶³ See Notice, 83 FR at 9769.

⁶⁴ See proposed Exchange Rules 971.2NY(b)(2) and (a)(1).

⁶⁵ See proposed Exchange Rule 971.2NY(c).

IV. Section 11(a) of the Act

Section 11(a)(1) of the Act⁶⁶ prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, “covered accounts”), unless an exception applies. Section 11(a)(1) and the rules thereunder contain a number of exceptions for principal transactions by members and their associated persons, including the exceptions set forth in Rule 11a2-2(T) under the Act.⁶⁷ The Exchange has represented that it has analyzed its rule proposed hereunder, and believes that they are consistent with the requirements of Section 11(a) of the Act and rules thereunder.⁶⁸ For the reason set forth below, the Commission believes that the proposed Complex CUBE Auction rules are consistent with the requirements of Section 11(a) of the Act and the rules thereunder.

A. Rule 11a2-2(T) under the Act (“Effect versus Execute” Rule)

Rule 11a2-2(T) under the Act,⁶⁹ known as the “effect versus execute” rule, provides exchange members with an exception from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with the conditions of Rule 11a2-2(T), a member: (1) may not be affiliated with the executing member; (2) must transmit the order from off the exchange floor; (3) may not participate in the execution of the transaction once it has been transmitted to the member

⁶⁶ 15 U.S.C. 78k(a)(1).

⁶⁷ 17 CFR 240.11a2-2(T).

⁶⁸ See Notice, 83 FR at 9778-79, and Amendment No. 1.

⁶⁹ Id.

performing the execution;⁷⁰ and (4) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. The Exchange believes that orders sent by off-floor ATP Holders, for covered accounts, to the proposed Complex CUBE Auction would qualify for this “effect versus execute” exception.⁷¹

Rule 11a2-2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the Exchange’s Complex CUBE Auction, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the Exchange.⁷² The Exchange represents that the design of the Complex CUBE Auction ensures that ATP Holders do not have any special or unique trading advantages in the handling

⁷⁰ The member may, however, participate in clearing and settling the transaction. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the Designated Order Turnaround System of the New York Stock Exchange (“1978 Release”)).

⁷¹ See Notice, 83 FR at 9778.

⁷² In considering the operation of automated execution systems operated by an exchange, the Commission has noted that, while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into each system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the American Stock Exchange’s Post Execution Reporting System and Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange Automated Communications and Execution System (“1979 Release”)).

of their orders after transmission.⁷³ Based on the Exchange's representations, the Commission believes that the Complex CUBE Auction's rules satisfy this requirement.

Second, Rule 11a2-2(T) requires orders for covered accounts be transmitted from off the exchange floor. The Exchange represents that orders for covered accounts sent to the Complex CUBE Auction from off-floor ATP Holders will be transmitted from remote terminals directly to the Complex CUBE Auction by electronic means.⁷⁴ In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.⁷⁵ With respect to such orders transmitted electronically from remote terminals directly to the Complex CUBE Auction, the Commission believes that the Complex CUBE Auction's rules satisfy the off- floor transmission requirement.⁷⁶ The Commission believes that,

⁷³ See Notice, 83 FR at 9779.

⁷⁴ See id. at 9778.

⁷⁵ See, e.g., Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (approving, among other things, the equity rules of the Boston Stock Exchange ("BSE")); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving rules governing the trading of options on The NASDAQ Options Market); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15) (approving the Boston Options Exchange as an options trading facility of BSE); the 1979 Release; and the 1978 Release.

⁷⁶ The Exchange further represents that there may be instances of orders for a covered account that may be sent by an off-floor ATP Holder to an unaffiliated Floor Broker for entry into the Complex CUBE Auction mechanism. The Exchange represents that at the current time, Exchange-sponsored Floor Broker systems are not enabled to accept orders into the Complex CUBE Auction mechanism from Floor Brokers. The Exchange further represents that, if a Floor Broker were to gain access to the Complex CUBE Auction mechanism via a third-party system, that Floor Broker may not rely on any exceptions found in Section 11(a) of the Act or rules thereunder to enter orders for their own covered accounts into the Auction mechanism from on the floor, or transmit such orders from on the floor to off of the floor for entry into the Complex CUBE Auction mechanism. See Amendment No. 1.

based on the foregoing, the proposal satisfies the off-floor transmission requirement for the purposes of “effect versus execute” rule.

Third, Rule 11a2-2(T) requires that the member not participate in the execution of its order once it has been transmitted to the member performing the execution. The Exchange represents that, upon submission to the Complex CUBE Auction, an order will be executed automatically pursuant to the proposed rules set forth for the Auction.⁷⁷ The Exchange states that, in particular, execution of an order sent to the Auction depends not on the ATP Holder entering the order, but rather on what other orders are present and the priority of those orders. Thus, at no time following the submission of an order is an ATP Holder able to acquire control or influence over the result or timing of order execution.⁷⁸ Accordingly, the Commission believes that an ATP Holder does not participate in the execution of an order submitted into the Complex CUBE Auction. Based on the Exchange’s representations, the Commission believes that the proposal satisfies the non-participation requirement of Rule 11a2-2(T).

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T).⁷⁹ The Commission notes that ATP Holders trading for covered accounts over

⁷⁷ See Notice, 83 FR at 9778-79.

⁷⁸ See Notice, 83 FR at 9779. The Exchange notes that the Initiating Participant may not cancel or modify a Complex CUBE Order once a Complex CUBE Auction has started. See *id.* at 9779 n.60 and proposed Exchange Rule 971.2NY(c).

⁷⁹ 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated

which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.

V. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 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. Please include File Number SR-NYSEAMER-2018-05 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-2018-05. 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

person thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

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-2018-05, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. As discussed above, Amendment No. 1 revises the proposal to: (1) add Exchange Rules 971.1NY, Commentary .01, and 971.2NY, Commentary .03 to specify that a Single-Leg CUBE Auction for a single series may occur concurrently with a Complex CUBE Auction for a Complex Order that includes that series, and to describe the processing of such concurrent auctions; (2) add definitions of "single stop price" and "auto-match limit price," add examples to the defined terms in proposed Exchange Rule 971.2NY, Commentary .02, and clarify that in both the Single-Leg and Complex CUBE Auctions, a Contra Order will trade solely with the CUBE Order; (3) indicate that after the Complex CUBE Order has been filled, RFR Responses, including Complex GTX Orders, may trade with Complex Orders on the same side of the market as the Complex CUBE Order; (4) further explain the

rationale for not allowing customer interest on a Contra Order; (5) further explain the reasons for early Auction terminations when the same-side CUBE BBO crosses RFR Responses or a single stop price; (6) provide an example showing the allocation of a Complex CUBE Order guaranteed with an auto-match limit price; (7) modify the description of the proposed changes to Exchange Rules 980NY(e)(6)(A) and (B); and (8) provide further support for the Exchange’s argument that the proposal is consistent with Section 11(a) of the Act and the rules thereunder.

With respect to the processing of Single-Leg and Complex CUBE Auctions, NYSE American believes that the new rule language describing the sequential processing of these auctions is consistent with the handling by Cboe EDGX Exchange, Inc. (“EDGX”) of orders executed in concurrent complex order auctions (“COAs”) involving the same complex order strategy.⁸⁰ Thus, NYSE American believes that its proposed rules describing the processing of Single-Leg and Complex CUBE Auctions do not raise new or novel regulatory issues.⁸¹ NYSE American also notes that none of the proposed changes that provide additional details regarding the operation of the Single-Leg and Complex CUBE Auctions alter the functionality of the proposed Complex CUBE mechanism (or Single-Leg CUBE), as described in the original filing, but rather, provide additional details regarding the operation of the Auctions.⁸² In addition, the Commission believes that Amendment No. 1 provides additional clarity in the rule text and additional analysis of several aspects of the proposal, thus facilitating the Commission’s ability

⁸⁰ See Amendment No. 1. See also EDGX Rule 21.20, Interpretation and Policy .02. Although the EDGX COA Auction is distinct from the CUBE Auctions in that the EDGX COA Auction is not an auction of paired orders, NYSE American believes that its proposed rules describing the sequential processing of Single-Leg and Complex CUBE Auctions are consistent with the sequential processing of COAs described in EDGX’s rules. See Amendment No. 1.

⁸¹ See id.

⁸² See id.

to make the findings set forth above to approve the proposal. For these reasons, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁸³ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸⁴ that the proposed rule change (SR-NYSEAMER-2018-05), as modified by Amendment No. 1, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁵

Eduardo A. Aleman
Assistant Secretary

⁸³ 15 U.S.C. 78s(b)(2).

⁸⁴ Id.

⁸⁵ 17 CFR 200.30-3(a)(12).