

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-86691; File No. SR-NYSEAMER-2019-31)

August 16, 2019

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 928NY to Reduce the Minimum Allowable Parameter for the Transaction- and Volume-Based Settings in the Risk Limitation Mechanism

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 7, 2019, 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 928NY (Risk Limitation Mechanism) to reduce the minimum allowable parameter for the transaction- and volume-based settings in the Risk Limitation Mechanism. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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.

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 928NY (Risk Limitation Mechanism) to reduce the minimum allowable parameter for the transaction- and volume-based settings in the Risk Limitation Mechanism. The filing would align the minimum allowable parameter for the transaction- and volume-based settings with the minimum allowable setting for the percentage-based setting, which the Exchange reduced earlier this year.<sup>4</sup> This proposal would allow the Exchange to (opt to) set uniform minimum exposure requirements, particularly for Market Makers who are obligated to utilize one of the three risk settings.<sup>5</sup>

Risk Limitation Mechanism

Rule 928NY sets forth the risk-limitation mechanism (the “Mechanism”), which is designed to help Market Makers, as well as ATP Holders, better manage risk related to quoting and submitting orders, respectively, during periods of increased and significant trading activity.<sup>6</sup>

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<sup>4</sup> See Securities Exchange Act Release No. 85497 (April 3, 2019), 84 FR 14180 (April 9, 2019) (SR-NYSEAMER-2019-08) (lowering from 100% to one percent the minimum allowable parameter for the percentage-based risk setting). For consistency with the proposed textual changes, the Exchange proposes to modify “1” to “one” in regards to the minimum allowable percentage-based parameter. See proposed Commentary .03 to Rule 928NY.

<sup>5</sup> See *infra* note 6.

<sup>6</sup> Market Makers are included in the definition of ATP Holders and therefore, unless the Exchange is discussing the quoting activity of Market Makers, the Exchange does not

The Exchange requires Market Makers to utilize a risk limitation mechanism for quotes, which automatically removes a Market Maker's quotes in all series of an options class when certain parameter settings are breached.<sup>7</sup> The Exchange permits, but does not require, ATP Holders (including Market Makers) to utilize its risk limitation mechanism for orders, which automatically cancels such orders when certain parameter settings are breached.<sup>8</sup>

Pursuant to Rule 928NY, the Exchange establishes a time period during which the Mechanism calculates for quotes and orders, respectively: (1) the number of trades executed by the Market Maker or ATP Holder in a particular options class ("transaction-based"); (2) the volume of contracts traded by the Market Maker or ATP Holder in a particular options class ("volume-based"); or (3) the aggregate percentage of the Market Maker's quoted size or ATP Holder's order size(s) executed in a particular options class ("percentage-based") (each a "risk setting"; collectively, the "risk settings").<sup>9</sup> If a risk setting is triggered, the Mechanism will cancel all of the Market Maker's quotes or the ATP Holder's open orders in that class until the

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distinguish Market Makers from ATP Holders when discussing the risk limitation mechanisms. See Rule 900.2NY(5) (defining ATP Holder as "a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP," and requires that "[a]n ATP Holder must be a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934"). See also Rule 900.2NY(38) (providing that a Market Maker is "an ATP Holder that acts as a Market Maker pursuant to Rule 920NY").

<sup>7</sup> See Rule 928NY, Commentary .04(a) (providing that Market Makers are required to utilize one of the three risk settings for their quotes); and Commentary .01 (regarding the cancellation of quotes once the risk settings have been breached).

<sup>8</sup> See Rule 928NY, Commentary .04(b) (providing that ATP Holders may avail themselves of one of the three risk limitation mechanisms for certain of their orders) and Commentary .01 (regarding the cancellation of orders once the risk settings have been breached).

<sup>9</sup> See Rule 928NY(b)-(d) (setting forth the three risk limitation mechanisms available). A Market Maker may activate one Risk Limitation Mechanism for its quotes (which is required) and a different Risk Limitation Mechanism for its orders (which is optional), even if both are activated for the same class. See also Commentary .08 to Rule 928NY.

Market Maker or ATP Holder notifies the Exchange it will resume submitting quotes or orders.<sup>10</sup> The temporary suspension of quotes or orders from the market that results when the risk settings are triggered is meant to operate as a safety valve that enables Market Makers and/or ATP Holders to re-evaluate their positions before requesting to re-enter the market.

Proposed Change to Minimum Parameter for Transaction- and Volume-Based Risk Settings

Per Commentary .03 to Rule 928NY, the Exchange establishes outside allowable parameters for each risk setting and announces by Trader Update “any applicable minimum, maximum and/or default settings for the Risk Limitation Mechanisms” that are at or within these outside parameters. ATP Holders, in turn, adjust their own risk settings within the Exchange-established parameters, based on risk tolerance, taking into account such factors as present and anticipated market conditions, news in an option, and/or sudden change in volatility of an option. Put another way, the rule sets forth the minimum/maximum for each risk setting and the Exchange may, but does not have to, use these settings. However, the Exchange may instead choose settings that are higher than the minimum and lower than the maximum settings (i.e., if the rule allows a minimum of 1 and a maximum of 10, the Exchange could use these parameters or could instead establish a minimum of 3 and a maximum of 7). Once the Exchange determines and announces the applicable parameters for each risk setting, the ATP Holder, in turn, selects a setting within the Exchange announced parameters that suits their risk tolerance (i.e., assuming the Exchange selected a minimum of 3 and a maximum of 7, the ATP Holder may select a setting of 3, 4, 5, 6 or 7).

Earlier this year -- in April, the Exchange reduced from 100% to one percent the

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<sup>10</sup> See Commentaries .01 and .02 to Rule 928NY (requiring that a Market Maker or ATP Holder request that it be re-enabled after a breach of its risk settings).

minimum allowable parameter for the percentage-based risk setting.<sup>11</sup> For consistency and uniformity, the Exchange now proposes to likewise adjust the minimum allowable parameter as established by Rule for the other two risk settings: transaction- and volume-based. Currently, the transaction-based risk setting has a minimum allowable parameter of three (trades) and the volume-based risk setting has a minimum allowable parameter of 20 (contracts). The Exchange proposes to reduce the minimum allowable parameter for both risk settings to one.<sup>12</sup> The following illustrates the potential impact should the Exchange reduce to one (1) the minimum allowable parameter for each of the transaction- and volume-based risk settings:

Examples of Impact of Reducing Transaction-Based Minimum Allowable Parameter

If a market participant utilizing the transaction-based risk setting has interest in three series of the same underlying (A, B and C), for 10 contracts each, and the market participant has set the exposure risk to three, a single execution of any size in each series (A, B and C) or a combination of three executions of any size in any series (A, B or C) would result in the remaining interest in the class being canceled. In this case, because the Mechanism is counting the number of executions, the participant can be at risk for any number of executions from 3 to thirty. However, if only two executions occur, no other interest would be canceled. If there is a subsequent execution within the applicable time period<sup>13</sup> for any number of contracts, the remaining interest in the class would be canceled.

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<sup>11</sup> See supra note 4.

<sup>12</sup> See proposed Commentary .03 to Rule 928NY. The manner in which Rule 928NY operates is not being amended in this rule change.

<sup>13</sup> See Commentary .03 to Rule 928NY (providing that the Exchange will specify via Trader Update “any applicable time period(s) for the Risk Limitation Mechanisms; provided, however, that the Exchange will not specify a time period of less than 100 milliseconds”).

If the same facts as above, but instead the participant's exposure risk is set to 1 transaction (as opposed to 3), a single execution in any series for any number of contracts, would result in the remaining interest in the class being canceled.

Examples of Impact of Reducing Volume-Based Minimum Allowable Parameter

If a market participant utilizing the volume-based risk setting has interest in three series of the same underlying (A, B and C), for 10 contracts each, and the market participant has set the exposure risk to 20 contracts, any combination of executions across the three series that total twenty or more contracts would result in the remaining interest in the class being canceled. In this case, because the Mechanism is counting the volume (or number) of contracts executed, the participant can be at risk for any number of contracts from 20 to 29 (executions of 10 contracts in series A and 9 contracts in series B would not cause cancelation, but a subsequent execution of any number of contracts in series C within the applicable time period<sup>14</sup> would result in the remaining interest in the class being canceled).

If the same facts as above, but instead the participant's exposure risk is set to 1 contract (as opposed to 20), an execution in any series for any number of contracts, will result in the remaining interest in the class being canceled.

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The proposed reduction of the minimum parameter for each of the transaction- and volume-based risk settings was specifically requested by some ATP Holders and would inure to their benefit as it would allow the Exchange to offer more sensitive risk controls.

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<sup>14</sup> See id.

The Exchange notes that it is not modifying the maximum threshold for either of the transaction or volume-based settings, which provide ATP Holders, and Market Makers in particular, the ability to more finely calibrate their risk exposure.<sup>15</sup> The Exchange believes a modification to the minimum parameter for these risk settings would account for increased market volatility and fragmentation, as well as the ever-increasing automation, speed and volume transacted in today's electronic trading environment. In this regard, this proposed change would provide the Exchange with more flexibility within which to establish the lower bound risk parameter for ATP Holders that use this risk setting. To the extent this flexibility is utilized, the Exchange believes this should afford such ATP Holders the ability to better calibrate and manage risk.<sup>16</sup>

### Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>17</sup> in

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<sup>15</sup> In 2016, the Exchange modified both the upper and lower bound of the transaction-based setting and only the upper bound of the volume-based (as well as the upper bound of the percentage-based) risk setting. See Securities Exchange Act Release No. 79468 (December 5, 2016), 81 FR 89160 (December 9, 2016) (SR-NYSEMKT-2016-110). See also Securities Exchange Act Release No. 67713 (August 22, 2012), 77 FR 52090 (August 28, 2012) (SR-NYSEMKT-2012-39) (immediate effective filing to introduce minimum and maximum parameters for the risk settings).

<sup>16</sup> The Exchange would still announce by Trader Update the actual minimum setting for the transaction- and volume-based risk settings, which may be the same as or greater than the proposed minimum parameter of one (1) (but no greater than the maximum allowable transaction- or volume-based setting, as applicable). See Commentary .03 to Rule 928NY.

<sup>17</sup> 15 U.S.C. 78f(b).

general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

ATP Holders are vulnerable to the risk from a system or other error or a market event that may cause them to send a large number of orders or receive multiple, automatic executions before they can adjust their exposure in the market. Without adequate risk management tools, such as the available risk settings, ATP Holders may opt to reduce the amount of order flow and liquidity that they provide to the market, which could undermine the quality of the markets available to market participants. The Exchange believes that the proposed reduction of the minimum parameter for each of the transaction- and volume-based risk settings would remove impediments to and perfect the mechanism of a free and open market by providing the Exchange with more flexibility within which to establish the appropriate lower bound of these risk settings, in consideration of market conditions, which would enable this risk setting to operate in the manner intended to the benefit of all market participants. To the extent this flexibility is utilized, the Exchange believes this should afford ATP Holders that utilize this risk setting the ability to better calibrate and manage risk.

Further, this proposed change, which was specifically requested by some ATP Holders, would remove impediments to and perfect the mechanism of a free and open market because it would be available to all ATP Holders (if the Exchange chooses to reduce the minimum

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<sup>18</sup> 15 U.S.C. 78f(b)(5).

parameter --down to one (1)-- for one or both of the transaction- and volume-based risk settings) and may encourage more ATP Holders to utilize the transaction- or volume-based risk settings, specifically, or the risk settings generally, which would benefit all market participants. The Exchange believes this proposal has the potential to help ATP Holders better manage their risk as it would allow for more precise customization of their risk settings which would, in turn, help ATP Holders avoid trading a number of contracts that exceeds the ATP Holder's risk tolerance level. In particular, this proposed reduction in the minimum allowable parameter would mean that the Exchange has the ability to set a minimum as low as one (1) for each of the three risk settings.<sup>19</sup>

The Exchange notes that other options exchanges offer risk settings for quotes and orders, including analogous transaction- and volume-based settings. For example, Rule 21.16, Risk Monitor Mechanism, on both Cboe BZX Exchange, Inc. ("BZX") and Cboe EDGX Exchange, Inc. ("EDGX") states that each BZX or EDGX Member may (but is not required to) configure a single counting program or multiple counting programs to govern its trading activity (i.e., on a per port basis).<sup>20</sup> Just as with the Exchange's risk settings, both BZX and EDGX offer risk settings based on the number of contracts (or "volume") executed and the number of executions (or "count") within a time period designated by the BZX/EDGX member (collectively, the "risk limits").<sup>21</sup> These risk limits are calculated similarly to the risk setting on the Exchange: for each

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<sup>19</sup> See supra note 4.

<sup>20</sup> See BZX and EDGX Rule 21.16(a)(i)-(iv) (providing optional risk control settings). On each market (BZX and EDGX), risk setting limits have been reached, the Risk Monitor Mechanism cancels or rejects such Member's orders or quotes in all underlying securities and cancels or rejects any additional orders or quotes. See BZX and EDGX Rule 21.16(b)(i)-(iii).

<sup>21</sup> See BZX and EDGX Rule 21.16(a)(i), (iii) (setting forth volume and count risk settings). See also BZX and EDGX Rule 21.16(a)(iv) (setting forth percentage-based setting).

series of an option class, the number of executions or contracts traded (depending on the applicable risk setting) are counted and when they reach the applicable threshold, the risk protections are activated. Unlike the Exchange’s rule, which establishes potential minimum and maximum settings to be determined by the Exchange, BZX/EDGX Rule 21.16 has no minimum equivalent, which would allow the Member (whether orders or market maker quotes) to set its risk settings for its trading activity as low as one contract or one execution. And unlike the Exchange, BZX/EDGX do not require its market makers to establish risk settings for quotes, nor does it impose a default setting for participants that do not establish such risk settings. The proposed change would authorize the Exchange to set the minimum parameters for the transaction- and volume-based to be as low as one trade or one contract, as applicable, which would thus allow the Exchange’s rule to align with the minimum per the percentage-based risk setting as well as with the BZX/EDGX rule.<sup>22</sup> The Exchange believes that this proposal is consistent with the BZX/EDGX rules that allow order senders (i.e., including non-Market Makers) to use a transactional- or volume-based risk parameter that may be set as low as one execution or one contract.

Cboe Exchange Inc. (“Cboe”) Rule 8.18, Quote Risk Monitor (“QRM”) likewise requires risk settings that apply solely to quotes. For each such option class in which the Cboe market maker is engaged in trading, that market maker must establish “a maximum number of contracts

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<sup>22</sup> The Exchange notes that other options in exchanges in the Cboe family offer a similar Risk Monitor Mechanism. See, e.g., Cboe C2 Exchange, Inc. (“C2”) Rule 6.14(c)(5)(A)(i)-(v) (setting forth risk settings, with paragraphs (i) and (iii) setting forth the volume- and count (or transaction)-based setting, each of which mirror those offered by BZX and EDGX). See also Securities Exchange Act Release No. 84778 (December 10, 2018), 83 FR 64384 (December 14, 2018) (SR-CboeEDGX-2018-058) (immediately effective EDGX filing to harmonize risk mechanism to that of its affiliated exchange, C2 in Rule 21.16).

for such option class and “the maximum number of series for which either side of the quote is fully traded.”<sup>23</sup> While Cboe requires a maximum for each of these risk settings, it does not require or set a minimum. In addition, Nasdaq PHLX (“PHLX”) -- like the Exchange and Cboe -- also requires its market makers to utilize one of its risk settings (either volume-based or percentage-based) for quotes.<sup>24</sup> PHLX’s volume-based risk setting operates similar to the Exchange’s analogous setting, except that the PHLX market maker need only establish a maximum volume threshold that, when reached, will trigger PHLX to remove that market maker’s quotes.<sup>25</sup> The Exchange believes that this proposal is consistent with the Cboe and PHLX rules that require market makers on those exchanges to use a risk parameter that may be set as low as one contract or one execution, given that those exchanges only require that a maximum threshold be selected.

Finally, the Exchange also believes that the proposed rule change would promote just and equitable principles of trade because Market Makers have the option to select any one of the three risk settings for quotes and non-Market Makers have this same option or may choose to utilize no risk settings at all. Thus, this proposal merely provides the Exchange additional latitude in establishing the potential minimum for the transaction- and volume-based risk settings and may encourage more ATP Holders to utilize these or the third (percentage-based) risk setting, which benefits all market participants.

The Exchange believes the technical change replacing “one” for “1” with regard to the minimum allowable percentage-based parameter change would promote just and equitable

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<sup>23</sup> The Exchange notes that the QRM also allows Cboe market makers to establish “a maximum cumulative percentage” that the market maker is willing to trade, where the cumulative percentage is the sum of the percentages of the original quoted size of each side of each series that traded, and a Measurement Interval.” See Cboe Rule 8.18.

<sup>24</sup> See PHLX Rule 1099(c)(2)(A),(B).

<sup>25</sup> See PHLX Rule 1099(c)(2)(B).

principles of trade because it would add 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 minimum parameter for two of its risk settings that would provide the Exchange with greater flexibility in establishing the appropriate lower bound of the transaction and volume-based settings, which may in turn provide ATP Holders that utilize this setting with greater control and flexibility over setting their risk tolerance and, potentially, more protection over risk exposure. The proposal is structured to offer the same enhancement to all ATP Holders, regardless of size, and would not impose a competitive burden on any participant. The proposal may foster competition among Market Makers by providing them with the ability to enhance and customize their settings in order to compete for executions and order flow.

The Exchange does not believe that the proposed enhancement to the existing risk limitation mechanism would impose a burden on competing options exchanges. Rather, it provides ATP Holders with the opportunity to avail themselves of risk settings for quotes and orders that are consistent with such tools currently available on BZX, EDGX, Cboe and PHLX.<sup>26</sup>

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

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)

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<sup>26</sup> See supra notes 20-25.

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 Act<sup>27</sup> and Rule 19b-4(f)(6) thereunder.<sup>28</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>29</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>30</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that such waiver would allow the Exchange to implement without delay the proposed functionality and compete more evenly with other exchanges that offer similar functionality for quotes and orders. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>31</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>28</sup> 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.

<sup>29</sup> 17 CFR 240.19b-4(f)(6).

<sup>30</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>31</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2019-31 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-2019-31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 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-2019-31 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>32</sup> 17 CFR 200.30-3(a)(12).