

CONTACT PERSON FOR MORE INFORMATION:

Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88757; File No. SR–NYSEAMER–2020–33]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 928NY Relating to the Risk Limitation Mechanism

April 27, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on April 17, 2020, 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 reflect modifications to the operation of the trade and trigger counters as well as the applicable time periods for determining if a risk setting is triggered in the event of a trading halt or for transactions at the open in regards to the Risk Limitation Mechanism. The Exchange also proposes to relocate certain text from Rule 928NY to Rule 970NY (Firm Quotes). 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.

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) (the “Rule”) to reflect modifications to the operation of the trade and trigger counters as well as the applicable time periods for determining if a risk setting is triggered in the event of a trading halt or for transactions at the open in regards to the Risk Limitation Mechanism. The Exchange also proposes to relocate certain text from Rule 928NY to Rule 970NY (Firm Quotes).

Risk Limitation Mechanism

Rule 928NY sets forth the risk-limitation mechanism (the “Mechanism”), which is designed to help Market Makers and ATP Holders (collectively “ATP Holders” for the purpose of this filing) better manage risk related to quoting and submitting orders during periods of increased and significant trading activity.⁴ Specifically, the Mechanism calculates for quotes and orders, respectively: The number of trades executed by the Market Maker or ATP Holder in a particular options class; the volume of contracts traded by the Market Maker or ATP Holder in a particular options class; or the aggregate percentage of the

⁴ 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 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”).

Market Maker's quoted size or ATP Holder's order size(s) executed in a particular options class.⁵ To determine whether the Mechanism is triggered (i.e., the risk setting breached), the Exchange maintains separate trade counters that are incremented every time a trade is executed; that aggregate the number of contracts traded during each such execution; and that calculate applicable percentages depending on the risk setting at issue.⁶ A breach of the Mechanism occurs if the number of increments to the trade counter, within a time period specified by the Exchange, exceeds the threshold set by the ATP Holder. Under the current Rule, the applicable time period will not be less than 100 milliseconds.⁷

Proposed Clarification to Time Period for Triggering of Risk Limitation Mechanism

Currently, the timer elapses at the conclusion of the time period specified by the Exchange, unless a breach occurs sooner than the timer expiration. The Exchange proposes to modify this functionality such that the time period is rolling (as opposed to static) and is activated each time a trade counter is incremented such that the Exchange “looks back” at other trades that occurred within the time period specified by the Exchange to see if a breach has occurred (See examples at the end of this section). The Exchange believes this modification will enhance the operation of the timer—and hence the risk protection. The Exchange proposes to modify the Rule to ensure that it is consistent with this proposed functionality change.

First, the Exchange proposes to modify the Rule regarding the applicable time period during which the increments of the trade counters are tallied, including, to account for the occurrence of trading halts or transactions occurring at the open of trading in a series. Specifically, the Exchange proposes to modify Commentary .03 to Rule 928NY to provide that the minimum time period determined by the Exchange would be “inclusive of the duration of any trading halt occurring within that time”; however, “[f]or transactions occurring at the open per Rule 952NY, the applicable time period is the lesser of (i) the time between the opening of a series and the initial transaction or (ii) the time period

⁵ See Rule 928NY(b)–(d) (setting forth the three risk limitation mechanisms available).

⁶ See Rule 928NY(a).

⁷ See Commentary .03 to Rule 928NY.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

specified by the Exchange.”⁸ The Exchange believes this proposed change adds clarity and transparency to Exchange rules making them easier to comprehend and navigate.

The Exchange also proposes to modify Commentary .06 to the Rule, which relates to the operation of trade and trigger counters once the Mechanism is activated. Current Commentary .06 to Rule provides that “[t]he trade counters will automatically reset and commence a new count for the ATP Holder (1) when a time period specified by the Exchange elapses or, (2) if one of the Risk Limitation Mechanisms is triggered”, upon the ATP Holder submitting a message to the Exchange to be re-enabled.⁹ The Exchange proposes to clarify that the trade counters do not reset, per se, when the time period specified by Exchange elapses as the trade counters only commence a new count after a breach of the risk settings upon the ATP Holder’s re-entry to the market. As proposed, modified Commentary .06 to the Rule would provide in relevant part that “[f]ollowing a breach of any of the Risk Limitation Mechanisms set forth in paragraphs (b), (c) or (d), the trade counters will commence a new count for the ATP Holder” upon the ATP Holder submitting a message to the Exchange to be re-enabled.¹⁰ Consistent with this change, the Exchange also proposes to modify the rule text regarding the operation of the timer as it relates to the trigger counter.¹¹ As proposed, the Exchange would remove language regarding instances resulting in the automatic reset of the trigger counter and instead state simply that “[f]ollowing any breach pursuant to Rule 928NY(f), the trigger counter will commence a new count” when the ATP Holder submits a request to be re-enabled.¹² The Exchange believes this proposed clarification adds specificity and transparency to Exchange rules.

⁸ See proposed Commentary .03 to Rule 928NY. See also Rule 953NY (Trading Halts and Suspensions) and Rule 952NY (Opening Process)

⁹ See Commentary .06 to Rule 928NY.

¹⁰ See proposed Commentary .06 to Rule 928NY.

¹¹ See Commentary .06 to Rule 928NY (providing that “[a]bsent a breach pursuant to Rule 928NY(f), the trigger counter will automatically reset and commence a new count for the ATP Holder (1) when a time period specified by the Exchange elapses; or (2) following any intraday update to configurable thresholds, as provided in Commentary .03 to this Rule 928NY” and that “[f]ollowing any breach pursuant to Rule 928NY(f), the trigger counter will be reset and commence a new count” when the ATP Holder makes non-automated contact requesting to be re-enabled).

¹² See proposed Commentary .06 to Rule 928NY.

Examples Illustrating Current and Proposed Functionality

Assumptions: The ATP Holder utilizes the transaction-based risk setting for orders with a maximum of three transactions before the setting is breached and the time period announced by the Exchange is 100ms.

Current Mechanism: Timer is asynchronous and covers fixed, non-overlapping periods.

Timer starts at 10:10:00.101 (end of fixed period is 10:10:00.201).

Event 1: At 10:10:00.150, the ATP Holder trades 10 contracts.

—The Exchange determines there was one transaction (Event 1) since start of timer (*i.e.*, 10:10:00.101—10:10:00.201) = no breach.

Event 2: At 10:10:00.190, the ATP Holder trades 15 contracts.

—The Exchange determines there were two transactions (Events 1 and 2) since start of timer (*i.e.*, 10:10:00.101–10:10:00.201) = no breach.

Timer expires at 10:10:00.201.

Timer re-starts at 10:10:00.202 (end of fixed period is 10:10:00.302).

Event 3: At 10:10:00.210, the ATP Holder trades 20 contracts.

—The Exchange determines there was one transaction (Event 3 since start of timer (*i.e.*, 10:10:00.202—10:10:00.302) = no breach.

Event 4: At 10:10:00.220, the ATP Holder trades 10 contracts.

—The Exchange determines there were two transactions (Events 3 and 4) since start of timer (*i.e.*, 10:10:00.202—10:10:00.302) = no breach.

Event 5: At 10:10:00.240, the ATP Holder trades 15 contracts.

—The Exchange determines there were three transactions (Events 3, 4 and 5) since start of timer (*i.e.*, 10:10:00.202—10:10:00.302) = BREACH.

Proposed Mechanism: Timer “looks back” prior 100ms each time a transaction occurs.

Event 1: At 10:10:00.150, the ATP Holder trades 10 contracts.

—The Exchange determines there was one transaction (Event 1) that occurred in the prior 100ms (*i.e.*, 10:10:00.150–10:10:00.050) = no breach.

Event 2: At 10:10:00.190, the ATP Holder trades 15 contracts.

—The Exchange determines there were two transactions (Events 1 and 2) that occurred in the prior 100ms (*i.e.*, 10:10:00.190—10:10:00.090) = no breach.

Event 3: At 10:10:00.210, the ATP Holder trades 20 contracts.

—The Exchange determines there were three transactions (Events 1, 2 and 3) that occurred in the prior 100ms (*i.e.*, 10:10:00.210—10:10:00.110) = BREACH.

Technical Changes

Finally, the Exchange also proposes to delete the text located in Commentary .05 to Rule and to hold this Commentary as “Reserved.”¹³ Current Commentary .05 to the Rule relates to the Exchange’s dissemination of a best bid and offer when no Market Makers are quoting in a class, which information is irrelevant to the operation of the Mechanism.¹⁴ At the time Rule 928NY was implemented, the Exchange noted that it would “no longer generate two-sided quotes on behalf of a Specialist in the event that there are no Market Makers quoting in an issue” but would instead disseminate as the BBO “the best bids and offers of those orders residing in the Consolidated Book in the issue”—if such orders existed—or would “disseminate a bid of zero and an offer of zero in that issue.”¹⁵ In retrospect, the Exchange believes that Rule 928NY—which is focused on managing risk not quote dissemination—was not the optimal placement for this information. Instead, the Exchange believes such information would be more appropriately included with information regarding quote dissemination requirements. The Exchange therefore proposes to relocate this text to Rule 970NY (Firm Quotes) as market participants would be more likely to consult this rule (as opposed to Rule 928NY) in regards to quoting information. The Exchange believes the proposed relocation of this text would add clarity and consistency to Exchange rules, making them easier to navigate.¹⁶

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

¹³ See proposed Commentary .05 to Rule 928NY.

¹⁴ See Commentary .05 to Rule 928NY (providing that “[i]n the event that there are no Market Makers quoting in a class, the best bids and offers of those orders residing in the Consolidated Book in the class will be disseminated as the BBO. If there are no Market Makers quoting in the class and there are no orders in the Consolidated Book in the class, the System shall disseminate a bid of zero and an offer of zero”).

¹⁵ See Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494, 80498 (December 31, 2008) (SR-NYSEALTR-2008-14) (adopting, among other Section 900NY rules, Rule 928NY).

¹⁶ See proposed Rule 970NY(b)(1)(A). The Exchange notes that it proposes the change “System” to “Exchange” regarding the source that disseminates the BBO for consistency with the rest of Rule 970NY.

of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ 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 change would remove impediments to and perfect the mechanism of a free and open market by adding clarity, transparency and specificity regarding the operation of the Mechanism thereby making Exchange rules easier to comprehend and navigate to the benefit of all market participants.

The Exchange believes the proposal to modify the time period to a rolling basis (as opposed to static time segments) would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide ATP Holders with greater ability to monitor their risk. The proposed change, which allows for a count after each transaction on a rolling “look back” basis, would provide a more finely tuned tracking method for ATP Holders related to each transaction within a specified time period. As such, ATP Holders that use the Mechanism to reduce their risk, particularly in the event of a system issue or due to the occurrence of unusual or unexpected market activity, would have greater certainty of how the Mechanism would function with respect to each transaction. Moreover, the proposed rule change would provide ATP Holders with transparency regarding the manner in which the Exchange counts quotes and orders, which would provide ATP Holders with an increased ability to monitor

transactions. Finally, the Exchange believes the proposed change is consistent with risk timers utilized by other options markets that offer similar risk limitation mechanisms.¹⁹

The Exchange believes that the non-substantive change to Rule 928NY, Commentary.05 (to delete and relocate text) related to quote dissemination requirements from the Rule, which relates to managing risk, to the Firm Quote rule would make Exchange rules easier to navigate, thus adding clarity and transparency to Exchange rules to the benefit of the investing public.

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. Rather, the Exchange believes that the proposed rule change would enhance the Mechanism by providing ATP Holders with greater ability to monitor their risk by providing a more finely tuned tracking method for ATP Holders related to each transaction within a specified time period. In addition, the Exchange does not believe the proposal creates any significant impact on competition as the proposed “look back” time period is consistent with risk timers utilized by other options markets that offer similar risk limitation mechanisms.²⁰

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) 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 Act²¹ and Rule 19b-4(f)(6) thereunder.²²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁴ 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. Waiver of the operative delay would allow the Exchange to immediately amend its rules to provide ATP Holders with a more finely tuned tracking method for each transaction within a specified time period, which could provide greater certainty of how the Mechanism would function with respect to each transaction. 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.²⁵

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 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.

²¹ 15 U.S.C. 78s(b)(3)(A).

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).

²⁵ 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).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See, e.g., MIAX Rule 519A, Risk Protection Monitor (providing that, for orders, MIAX utilizes a counter that will “look back over the specified time period” to determine if a market participant has triggered its risk settings) and Rule 612, Aggregate Risk Manager (ARM) (providing that, for quotes, MIAX utilizes a counter that will “look back over the specified time period” to determine if a market maker has triggered its risk settings).

²⁰ See *id.* (regarding MIAX risk mechanisms for orders and quotes, both of which utilize a counter that “looks back over the specified time period” to determine if risk settings have been triggered).

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 email to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2020-33 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-2020-33. 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 (<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, 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-2020-33 and should be submitted on or before May 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-505, OMB Control No. 3235-0562]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Extension: Rule 17d-1.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Section 17(d) (15 U.S.C. 80a-17(d)) of the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) (the "Act") prohibits first- and second-tier affiliates of a fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund or a company controlled by the fund is a joint or a joint and several participant in contravention of the Commission's rules. Rule 17d-1 (17 CFR 270.17d-1) prohibits an affiliated person of or principal underwriter for any fund (a "first-tier affiliate"), or any affiliated person of such person or underwriter (a "second-tier affiliate"), acting as principal, from participating in or effecting any transaction in connection with a joint enterprise or other joint arrangement in which the fund is a participant, unless prior to entering into the enterprise or arrangement "an application regarding [the transaction] has been filed with the Commission and has been granted by an order." In reviewing the proposed affiliated transaction, the rule provides that the Commission will consider whether the proposal is (i) consistent with the provisions, policies, and purposes of the Act, and (ii) on a basis different from or less advantageous than that of other participants in determining whether to grant an exemptive application for a proposed joint enterprise, joint arrangement, or profit-sharing plan.

Rule 17d-1 also contains a number of exceptions to the requirement that a fund must obtain Commission approval prior to entering into joint transactions or arrangements with affiliates. For

example, funds do not have to obtain Commission approval for certain employee compensation plans, certain tax-deferred employee benefit plans, certain transactions involving small business investment companies, the receipt of securities or cash by certain affiliates pursuant to a plan of reorganization, certain arrangements regarding liability insurance policies and transactions with "portfolio affiliates" (companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities) so long as certain other affiliated persons of the fund (e.g., the fund's adviser, persons controlling the fund, and persons under common control with the fund) are not parties to the transaction and do not have a "financial interest" in a party to the transaction. The rule excludes from the definition of "financial interest" any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material, as long as the board records the basis for its finding in their meeting minutes.

Thus, the rule contains two filing and recordkeeping requirements that constitute collections of information. First, rule 17d-1 requires funds that wish to engage in a joint transaction or arrangement with affiliates to meet the procedural requirements for obtaining exemptive relief from the rule's prohibition on joint transactions or arrangements involving first- or second-tier affiliates. Second, rule 17d-1 permits a portfolio affiliate to enter into a joint transaction or arrangement with the fund if a prohibited participant has a financial interest that the fund's board determines is not material and records the basis for this finding in their meeting minutes. These requirements of rule 17d-1 are designed to prevent fund insiders from managing funds for their own benefit, rather than for the benefit of the funds' shareholders.

Based on an analysis of past filings, Commission staff estimates that 23 funds file applications under section 17(d) and rule 17d-1 per year. The staff understands that funds that file an application generally obtain assistance from outside counsel to prepare the application. The cost burden of using outside counsel is discussed below. The Commission staff estimates that each applicant will spend an average of 154 hours to comply with the Commission's applications process. The Commission staff therefore estimates the annual burden hours per year for all funds under rule 17d-1's application process to be 3,542 hours at a cost of

²⁶ 17 CFR 200.30-3(a)(12).