SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82498; File No. SR-NYSEAMER-2017-26)

January 12, 2018

Self-Regulatory Organizations; NYSE American LLC; Order Approving a Proposed Rule Change to Amend Rule 971.1NY to Amend the Duration of a Customer Best Execution Auction

I.   Introduction

On November 17, 2017, NYSE American LLC ("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 amend Rule 971.1NY (Electronic Cross Transactions) to modify the parameters for the duration of a Customer Best Execution ("CUBE") Auction. The proposed rule change was published for comment in the Federal Register on December 4, 2017.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II.   Description of the Proposed Rule Change

CUBE is a process by which an ATP Holder may electronically submit for execution an order it represents as agent ("CUBE Order") against principal interest or against any other order it represents as agent.[4] When the Exchange receives a valid CUBE Order for auction processing, a Request for Responses ("RFR") detailing the series, the side of the market, the size of the CUBE Order, and the limit price of the CUBE Order is sent to all ATP Holders that subscribe to receive RFR messages. Currently, the amount of time given to ATP Holders to respond with competing

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[1]   15 U.S.C. 78s(b)(1).

[2]   17 CFR 240.19b-4.

[3]   See Securities Exchange Act Release No. 82162 (November 28, 2017), 82 FR 57322 ("Notice").

[4]   See Exchange Rule 971.1NY.

interest to trade against the CUBE Order ("Response Time Interval") is randomly set by the CUBE mechanism for each auction but cannot be shorter than 500 milliseconds or longer than 750 milliseconds, unless the auction is concluded early.[5] The Exchange proposes to revise the Response Time Interval to provide that the duration of a CUBE Auction shall be a random period of time within parameters designated by the Exchange, which parameters shall be no less than 100 milliseconds and no more than one second.[6] The proposal would require the Exchange to announce in advance, by Trader Update, any changes to the parameters.[7]

The Exchange states that the proposed rule change, among other things, would provide investors with more timely execution of their option orders while ensuring that there is an adequate exposure of orders in the CUBE mechanism; could provide more CUBE Orders an opportunity for price improvement by reducing market risk for ATP Holders that participate in CUBE Auctions; would give the Exchange flexibility in establishing the optimal duration of CUBE Auctions; and would encourage competition and thereby enhance the potential for price improvement.[8]

To substantiate that its members can receive, process, and communicate a response back to the Exchange within 100 milliseconds (the shortest possible duration of the Response Time Interval), the Exchange states that it surveyed all ATP Holders that responded to a CUBE Auction broadcast in the three months prior to the filing of this proposed rule change.[9] According to the

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[5]   See Exchange Rule 971.1NY(c)(4)(A)-(F) (providing the scenarios that would result in the early termination of a CUBE Auction).

[6]   The Exchange states that its proposal is consistent with exposure periods permitted in similar mechanisms on other options exchanges. See Notice, supra note 3, at 57323 n.5.

[7]   See id. at 57323.

[8]   See id. at 57324.

[9]   See id. at 57323.

2

Exchange, each ATP Holder it surveyed indicated that it can receive, process, and communicate a response back to the Exchange within 100 milliseconds.[10] The Exchange further states that it has analyzed its capacity and represents that it has the necessary systems capacity to handle the potential additional traffic associated with the additional transactions that may occur with the implementation of the proposed reduction of the Response Time Interval to no less than 100 milliseconds.[11] The Exchange further represents that its system will be able to sufficiently maintain an audit trail for order and trade information with the reduction in the Response Time Interval.[12]

III.   Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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. The Commission

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[10]   See id.

[11]   See id.

[12]   See id.

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

[14]   15 U.S.C. 78f(b)(5).

also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[15] which

requires that the rules of an exchange not impose any burden on competition that is not necessary

or appropriate in furtherance of the purposes of the Act.

The Commission believes that, as NYSE American maintains, permitting the Exchange to

designate an exposure time period of as short as100 milliseconds in the CUBE Auction is

consistent with the Commission's past approval of rules of options exchanges that govern the

duration of their electronic auctions. These rules provide for a period of as short as 100

milliseconds for market participants to submit responses to an auction announcement before the

auction ends.[16] Similarly, the Commission has approved rules allowing options exchanges to set

an exposure period of up to one second.[17]

The Commission notes that the fact that, in CUBE, a Response Time Interval is

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[15]   15 U.S.C. 78f(b)(8).

[16]   See Securities Exchange Act Release Nos. 76301 (October 29, 2015), 80 FR 68347
        (November 4, 2015) (SR-BX-2015-032) (establishing an exposure period for Nasdaq
        BX's options price improvement mechanism ("PRISM") of no less than 100 milliseconds
        and no more than one second); 77557 (April 7, 2016), 81 FR 21935 (April 13, 2016) (SR-
        Phlx-2016-40) (amending the exposure period for Nasdaq Phlx's Price Improvement XL
        ("PIXL") to be no less than 100 milliseconds and no more than one second); 79733
        (January 4, 2017), 82 FR 3055 (January 10, 2017) (SR-ISE-2016-26) (amending the
        exposure period for Nasdaq ISE's Price Improvement Mechanism ("PIM") to be no less
        than 100 milliseconds and no more than one second); 80738 (May 22, 2017), 82 FR
        24417 (May 26, 2017) (SR-CBOE-2017-029) (amending the exposure periods for
        CBOE's Automated Improvement Mechanism ("AIM") and Solicitation Auction
        Mechanism ("SAM") to be no less than 100 milliseconds and no more than one second);
        and 80940 (June 15, 2017), 82 FR 28369 (June 21, 2017) (SR-MIAX-2017-16)
        (amending the exposure periods for MIAX's Price Improvement Mechanism ("PRIME")
        and PRIME Solicitation Mechanism to be no less than 100 milliseconds and no more than
        one second). See also the rules as codified at NASDAQ Phlx Rule 1080(n)(ii)(A)(4),
        NASDAQ BX Options Rules Chapter VI, Section 9(ii)(A)(3), Nasdaq ISE Rule 716,
        Supplementary Material .04, Nasdaq ISE Rule 723(c)(1), CBOE Rule 6.74A(b)(1)(C),
        CBOE Rule 6.74B(b)(1)(C), MIAX Rule 515A(a)(2)(i)(C), and MIAX Rule
        515A(b)(2)(i)(C).

[17]   See supra note 16.

separately and randomly set by the auction mechanism for each individual auction (provided that no auction can be longer or shorter than specified limits) is not unique with respect to the instant proposal.[18] The feature of CUBE that randomly sets a Response Time Interval for each auction—which is unique in contrast to electronic auction mechanisms at other options exchanges—has been a component of CUBE since approval of the Exchange's Rule governing the CUBE[19] and is consistent with the mechanism's current functionality.

The Exchange's proposal revises how the minimum and maximum time lengths for the randomly-set Response Time Interval for each CUBE Auction would be established.   Currently, Exchange Rule 971.1NY sets the minimum and maximum: no less than 500 milliseconds and no more than 750 milliseconds. Under the proposal, the Exchange is granted the discretion to establish the minimum and maximum possible durations of an auction and change them from time to time (with adequate notice to market participants).   However, that discretion itself is restricted under the proposal. The Exchange would not be permitted to establish the limits in a way that would allow even a randomly-set Response Time Interval to be shorter than 100 milliseconds or longer than one second. The Commission thus notes that, under the proposed parameters, the exposure period for an order submitted to a CUBE Auction could never be shorter than the exposure period of any other options exchange's electronic auction.

Accordingly, for the reasons discussed above, the Commission believes that the Exchange's proposal is consistent with the Act.

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[18]   Currently, for example, the Response Time Interval for each individual auction is randomly set by the CUBE mechanism, but it is not possible for the mechanism to set a duration that is shorter than 500 milliseconds or longer than 750 milliseconds.

[19]   See Exchange Rule 971.1NY(c)(2)(B). See also Securities Exchange Act Release No. 72025 (April 25, 2014), 79 FR 24779, 24782, 24787 (May 1, 2017) (SR-NYSEMKT-2014-17) (order approving a proposed rule change to adopt the CUBE Auction).

IV.   Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[20] that the

proposed rule change (SR-NYSEAMER-2017-26) be, and hereby is, approved.

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

authority.[21]

Eduardo A. Aleman
Assistant Secretary

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[20]   15 U.S.C. 78s(b)(2).

[21]   17 CFR 200.30-3(a)(12).