

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-84069; File No. SR-NYSEAMER-2018-43)

September 10, 2018

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.23E, Obligations of Market Makers

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 28, 2018, NYSE American LLC (the “Exchange” or “NYSE American”) 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 7.23E, Obligations of Market Makers. 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 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

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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.

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 codify existing practice by harmonizing Rule 7.23E, Obligations of Market Makers, with similar rules of its affiliates, the New York Stock Exchange, Inc. (“NYSE”),<sup>4</sup> NYSE Arca, Inc. (“NYSE Arca”),<sup>5</sup> and NYSE National LLC (“NYSE National”)<sup>6</sup>. Specifically, the Exchange proposes to add language to paragraphs (a)(1)(B)(iii) and (iv) of Exchange Rule 7.23E to state that for purposes of each paragraph, rights and warrants will be considered Tier 2 NMS Stocks. This text was inadvertently not included in each paragraph when Exchange Rule 7.23E was first adopted.<sup>7</sup>

In sum, Exchange Rule 7.23E(a)(1) sets forth the two-side quoting obligations of market makers and requires that the price of the bid (offer) interest shall be not more than the Designated Percentage away from the then current National Best Bid (Offer), or if no National Best Bid (Offer), not more than the Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that the National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale) increases

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<sup>4</sup> See NYSE Rule 104(a)(1)(B)(iii) and (iv).

<sup>5</sup> See NYSE Arca Rule 7.23-E(a)(1)(B)(iii) and (iv).

<sup>6</sup> See NYSE National Rule 7.23(a)(1)(B)(iii) and (iv).

<sup>7</sup> See Securities Exchange Act Release No. 80577 (May 2, 2017), 82 FR 21446 (May 8, 2017) (SR-NYSEMKT-2017-04).

(decreases) to a level that would cause the bid (offer) interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale) or if the bid (offer) is executed or cancelled, the Market Maker shall enter new bid (offer) interest at a price not more than the Designated Percentage away from the then current National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

Exchange Rules 7.23E(a)(1)(B)(iii) and (iv) include definitions for the terms “Designated Percentage” and “Defined Limit.” Pursuant to paragraph (a)(1)(B)(iii) of Exchange Rule 7.23E, the “Designated Percentage” shall be 8% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan (“Tier 1 NMS Stocks”), 28% for Tier 2 NMS Stocks under the Limit Up - Limit Down Plan (“Tier 2 NMS Stocks”) with a price equal to or greater than \$1.00, and 30% for Tier 2 NMS Stocks with a price lower than \$1.00, except that between 9:30 a.m. and 9:45 a.m. Eastern Time and between 3:35 p.m. Eastern Time and the close of Core Trading Hours, the Designated Percentage shall be 20% for Tier 1 NMS Stocks, 28% for Tier 2 NMS Stocks with a price equal to or greater than \$1.00, and 30% for Tier 2 NMS Stocks with a price lower than \$1.00.

Pursuant to paragraph (a)(1)(B)(iv) of Exchange Rule 7.23E, the “Defined Limit” shall be 9.5% for Tier 1 NMS Stocks, 29.5% for Tier 2 NMS Stocks with a price equal to or greater than \$1.00, and 31.5% for Tier 2 NMS Stocks with a price lower than \$1.00, except that between 9:30 a.m. and 9:45 a.m. Eastern Time and between 3:35 p.m. Eastern Time and the close of Core Trading Hours, the Defined Limit shall be 21.5% for Tier 1 NMS Stocks, 29.5% for Tier 2 NMS Stocks with a price equal to or greater than \$1.00,

and 31.5% for Tier 2 NMS Stocks with a price lower than \$1.00.

The Exchange proposes to add the following sentence to the end of subparagraphs (a)(1)(B)(iii) and (iv) of Exchange Rule 7.23E: For purposes of this paragraph, rights and warrants will be considered Tier 2 NMS Stocks. Because rights and warrants are not subject to the Limit Up-Limit Down Plan, but are subject to market maker quoting requirements, the Exchange proposes to provide that for purposes of Rule 7.23E(a)(1)(B)(iii) and (iv), rights and warrants would be considered Tier 2 NMS Stocks. This sentence is included in similar rules of the Exchange's affiliates, NYSE,<sup>8</sup> NYSE Arca,<sup>9</sup> and NYSE National<sup>10</sup> and was inadvertently not included when Exchange Rule 7.23E was first adopted.<sup>11</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>13</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed

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<sup>8</sup> See NYSE Rule 104(a)(1)(B)(iii) and (iv).

<sup>9</sup> See NYSE Arca Rule 7.23-E(a)(1)(B)(iii) and (iv).

<sup>10</sup> See NYSE National Rule 7.23(a)(1)(B)(iii) and (iv).

<sup>11</sup> See supra note 7.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

rule change would further harmonize the definition of the terms “Designated Percentage” and “Defined Limit” under Exchange Rule 7.23E(a)(1)(B) with the definition of those same terms under the rules of its affiliates<sup>14</sup> by inserting language that was inadvertently excluded when Exchange Rule 7.23E was adopted. The proposed rule change should, therefore, provide for consistency among similar rules of the Exchange and its affiliates, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system and, in general, protecting investors and the public interest.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would not have any impact on competition since it simply seeks to further harmonize the text of Exchange Rule 7.23E(a)(1)(B) with the rules of its affiliates<sup>15</sup> by inserting language that was inadvertently excluded when Exchange Rule 7.23E was adopted.

**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.

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<sup>14</sup> See supra notes 4, 5, and 6.

<sup>15</sup> Id.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup> Because the foregoing proposed rule 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 if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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,<sup>18</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>18</sup> The Exchange has satisfied this requirement.

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

19(b)(2)(B)<sup>21</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<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-2018-43 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2018-43. 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

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<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

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-2018-43 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>22</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).