

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90584; File No. SR-NYSEAMER-2020-64)

December 7, 2020

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 Modify Rule 971.1NY Regarding Customer Best Execution Auctions to Provide Optional All-or-None Functionality for Larger-Sized Orders

I. Introduction

On August 19, 2020, NYSE American LLC (“NYSE American” or the “Exchange”) 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 modify Rules 971.1NY and 971.2NY regarding the Exchange’s Customer Best Execution auction (“CUBE Auction” or “Auction”) to provide optional all-or-none (“AON”) functionality for larger-sized orders. The proposed rule change was published for comment in the Federal Register on September 8, 2020.³ On October 14, 2020, pursuant to Section 19(b)(2) of the Act,⁴ the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to December 7, 2020.⁵ The Commission has received no comments on the proposed rule change. On November 24, 2020, the Exchange filed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 89723 (September 1, 2020), 85 FR 55562 (September 8, 2020).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 90178 (October 14, 2020), 85 FR 66645 (October 20, 2020).

Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment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 Proposed Rule Change

In Amendment No. 1, the Exchange proposes to expand its electronic crossing mechanism – the CUBE Auction – to provide optional AON⁷ functionality for ATP Holders to execute larger-sized orders (i.e., 500 or more contracts) in the Single-Leg CUBE Auction.⁸ The Exchange seeks to expand the CUBE Auction functionality in a manner consistent with similar price-improvement mechanisms for larger-sized orders already available on other options exchanges.⁹ As such, the Exchange believes that its proposal would allow it to compete with

⁶ In Amendment No. 1, the Exchange modified the proposal with regard to the outcomes of the proposed new CUBE Auction functionality, as proposed for larger-sized orders, in certain situations where Customer interest at the stop price is resting on the Exchange’s book before, or arrives during, the Auction. See *infra* notes 15-18 and accompanying text for a description of these outcomes under the proposal as amended. See also Exhibit 4 of Amendment No. 1 showing the changes made by the amendment to the text of Commentary .05 to Rule 971.1NY as originally proposed. In Amendment No. 1 the Exchange also deleted proposed new Commentary .04 to Rule 971.2NY, which would have provided for optional functionality for larger-sized orders in the Exchange’s CUBE Auction for Complex Orders paralleling the similar functionality for Single-Leg CUBE Auctions proposed in new Commentary .05 to Rule 971.1NY, and made other, clarifying revisions in its discussion of the purpose of the proposal.

⁷ An All-or-None Order or AON Order is a “Market or Limit Order that is to be executed on the Exchange in its entirety or not at all.” See Rule 900.3NY(d)(4).

⁸ See proposed Rules 971.1NY, Commentary .05. Capitalized terms have the same meaning as the defined terms in Rule 971.1NY.

⁹ The Exchange cites as an example the Solicitation Auction Mechanism (“SAM” or “SAM Auction”) of the Cboe Exchange, Inc. (“Cboe”), governed by Cboe Rule 5.39, described by the Exchange as an electronic crossing mechanism for single-leg paired orders of 500 or more contracts, which the Cboe system automatically treats as All-Or-None, where the solicited contra order(s) trades entirely with the agency order at the stop

other options exchanges for such larger-sized orders and would benefit market participants who are already familiar with such price-improvement mechanisms.

According to the Exchange, the CUBE Auction operates seamlessly with the Consolidated Book – while still affording CUBE Orders an opportunity to receive price improvement.¹⁰ The Exchange states that the proposal to expand the current CUBE Auction functionality by providing an additional (optional) method for market participants to effect larger-sized orders in the CUBE Auction would likewise operate seamlessly with the Consolidated Book. The Exchange believes that its proposal would encourage ATP Holders to compete vigorously to provide the opportunity for price improvement for larger-sized orders in a competitive auction process, which may lead to enhanced liquidity and tighter markets.

Proposed AON Single-Leg CUBE functionality

The Exchange proposes to add new Commentary .05 to Rule 971.1NY to provide that a CUBE Order of at least 500 contracts would execute in full at the single stop price against the

price unless, in the aggregate, the agency order can be filled entirely by responses to the auction at improved prices or, if there are Priority Customer orders at the stop price, by such Priority Customer orders alone or in combination with responses to the auction at the stop price or improved prices. If there are Priority Customer orders at the stop price but insufficient size of such orders alone or when aggregated with responses at the stop price or better prices to fill the agency order, both the agency order and solicited contra order(s) will be cancelled. The Exchange notes that Cboe's affiliated exchanges similarly offer such auction mechanism for larger-sized orders. See, e.g., Cboe EDGX Exchange, Inc. ("Cboe EDGX") Rules 21.21 (SAM). The Exchange also notes that similar mechanisms are available on other options exchanges. See, e.g., Nasdaq ISE LLC ("ISE"), Options 3, Section 11(d) (setting forth its Solicited Order Mechanism).

¹⁰ See Rule 900.2NY(14) (defining Consolidated Book (or "Book") and providing that all quotes and orders "that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 964NY"). Rule 964NY (Display, Priority and Order Allocation - Trading Systems) dictates the priority of quotes and orders.

Contra Order, except under specified circumstances (the “AON CUBE Order”).¹¹ As further proposed, a Contra Order would not be permitted to guarantee an AON CUBE Order for auto-match or an auto-match limit, which features are otherwise available in a Single-Leg CUBE Auction.¹²

The initiating price and permissible range of executions for a proposed AON CUBE Order would be determined in the same manner as for a standard CUBE Order.¹³ An AON CUBE Order Auction would also be subject to the same early end events as a Single-Leg CUBE Order.¹⁴

As proposed, an AON CUBE Order would not execute with the Contra Order if the entire AON CUBE Order could be satisfied in full by certain eligible contra-side interest. Specifically, the Exchange proposes that paragraph (a) to Commentary .05 to Rule 971.1NY would provide that:

- (a) the Contra Order would not receive any allocation and will be cancelled if (i) RFR Responses to sell (buy) at prices lower (higher) than the stop price can satisfy the full quantity of the AON CUBE Order or (ii)

¹¹ See proposed Commentary .05, Rule 971.1NY. See Rule 971.1NY(c)(1)(A) (setting forth parameters for single stop price). An AON CUBE Order would be rejected for the same reasons as a CUBE Order (see Rule 971.1NY(b)(2)-(10)), except that the minimum size for an AON CUBE Order is 500 contracts, as opposed to one contract, as set forth in Rule 971.1NY(b)(8).

¹² See proposed Commentary .05, Rule 971.1NY. See also Rule 971.1NY(c)(1)(B)-(C) (regarding parameters for auto-match and auto-match limit price).

¹³ An AON CUBE Order and its paired Contra Order would be rejected if it failed to meet the pricing parameters. See Rule 971.1NY(b) (regarding auction eligibility requirements).

¹⁴ See Rule 971.1NY(c)(4) (setting forth the type of interest that causes the early end to a Single-Leg CUBE Auction).

there is Customer interest to sell (buy) at the stop price that on its own, or when aggregated with RFR Responses to sell (buy) at the stop price or prices lower (higher) than the stop price, can satisfy the full quantity of the AON CUBE Order. In either such case, the RFR Responses will be allocated as provided for in paragraphs (c)(5)(A) and (c)(5)(B)(i) of this Rule, as applicable.¹⁵

Thus, as noted by the Exchange, if there is price-improving contra-side interest that can satisfy the AON condition of the Auction, the AON CUBE Order would execute in full against those price-improving RFR Responses and the Contra Order would cancel. Or, absent such price-improving interest, if there is Customer interest equal to the stop price that on its own, or when combined with equal- or better-priced RFR Responses that can satisfy the AON condition of the Auction, the AON CUBE Order would execute in full against such interest and the Contra Order would cancel. Under either scenario, the AON CUBE Order would be allocated against contra-side interest at the best price(s) pursuant to the Exchange's priority rules.¹⁶

As further proposed, both the AON CUBE Order and Contra Order would be cancelled, i.e., the Auction would be cancelled, if there is contra-side Customer interest at the stop price and such interest on its own or when combined with RFR Responses (at the stop price or better) is insufficient to satisfy the entire AON CUBE Order. To effect this result, the Exchange proposes that paragraph (b) to Commentary .05 to Rule 971.1NY would provide that:

¹⁵ See proposed Commentary .05, Rule 971.1NY(a).

¹⁶ See Rule 971.1NY (c)(5)(A) (providing Customer interest first priority to trade with the CUBE Order, pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3) at each price point) and (c)(5)(B)(i) (providing that, second to Customer interest, RFR Responses priced below (above) the stop price, beginning with the lowest (highest) price within the range of permissible executions will execute with the CUBE Order, pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3) at each price point).

(b) the AON CUBE Order and Contra Order will both be cancelled if there is Customer interest to sell (buy) at the stop price and such interest, either on its own or when aggregated with RFR Responses to sell (buy) at the stop price or prices lower (higher) than the stop price, is insufficient to satisfy the full quantity of the AON CUBE Order.¹⁷

Thus, as proposed, if there is contra-side Customer interest at the stop price, but there is not enough size (considering the Customer interest and all RFR Responses at the stop price or better) to satisfy the entire AON CUBE Order, then both the AON CUBE Order and the Contra Order would be cancelled. The Exchange believes that this proposal is consistent with the terms of how AON orders function generally without violating the Exchange's general priority rules.¹⁸ With respect to allocation, the Exchange notes that the proposed functionality differs from the allocation of a standard Single-Leg CUBE Order in that the Contra Order is not guaranteed a minimum allocation at the stop price. Instead, given the AON nature of the functionality, the Contra Order either trades with the entire AON CUBE Order or not at all.¹⁹ The Exchange's proposal also is consistent with the AON nature of similar mechanisms on other options exchanges.²⁰

With the exception of differences to the minimum size and allocation described in proposed Commentary .05 to Rule 971.1NY, an AON CUBE Order would otherwise be subject

¹⁷ See proposed Commentary .05, Rule 971.1NY(b).

¹⁸ See Rule 964NY (regarding order ranking and priority).

¹⁹ See Rule 971.1NY(c)(5)(B)(i)(b) (providing that, "if there is sufficient size of the CUBE Order still available after executing at better prices or against Customer interest, the Contra Order shall receive additional contracts required to achieve an allocation of the greater of 40% of the original CUBE Order size or one contract (or the greater of 50% of the original CUBE Order size or one contract if there is only one RFR Response)").

²⁰ See supra note 9 (regarding Cboe's SAM functionality for larger-sized paired orders designated as AON).

to Rule 971.1NY with respect to all other aspects of the CUBE Auction functionality.²¹

Implementation

The Exchange states that it will announce the implementation date of the proposed rule change in a Trader Update following the approval of this proposed rule change.

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 national securities exchanges.²² 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,²³ which requires that the rules of an exchange be designed, among other things, 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, and 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 Commission believes that approving the Exchange's proposal, as amended, to provide optional AON functionality for larger-sized orders may allow for greater flexibility in executing large-sized orders and could provide additional opportunities for such orders to receive price improvement over the NBBO, in the interest of perfecting the mechanism of free and open markets. The Commission further believes that the proposal, as amended, includes appropriate conditions to protect the priority of public customer orders on the Exchange, and is thereby

²¹ See proposed Commentary .05, Rule 971.1NY.

²² 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).

²³ 17 U.S.C. 78f(b)(5).

consistent with the protection of investors and the public interest, because it assures that public customers who have taken the risk of placing limit orders on the Exchange have a fair opportunity to participate in transactions taking place on the Exchange. The Commission notes that the proposed rules providing this protection are similar to the rules of other exchanges with similar functionality and believes that they raise no novel issues.²⁴ Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act.

IV. Solicitation of Comments on Amendments No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendments 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-2020-64 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-2020-64. 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

²⁴ See supra note 9 and see also Rules of the Miami International Securities Exchange, LLC at Rule 515A(b).

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 this filing will also 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-2020-64 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of the 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 Amendment No. 1 in the Federal Register. In Amendment No. 1, the Exchange modified the proposal with respect to the outcomes of AON CUBE Auctions for larger-sized orders in certain cases where there is Customer interest on the Exchange's book.²⁵ In doing so, the Exchange aligned the outcomes of the Auction with the outcomes of similar mechanisms on other exchanges, affording appropriate protections for the priority of Customer interest,²⁶ which the Commission has found to be

²⁵ See supra note 6.

²⁶ See supra note 9

consistent with the Act.²⁷ Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁸ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change SR-NYSEAMER-2020-64, as modified by Amendment No. 1 be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁷ In the other changes made by Amendment No. 1, the Exchange exercised its discretion not to propose an AON CUBE Auction for Complex Orders at this time, and enhanced the clarity of its proposal.

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).