

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100674; File No. SR-NYSEAMER-2024-46)

August 8, 2024

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Modify Rule 971.2NYP to Clarify the Definition of CUBE BBO

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 24, 2024, NYSE American LLC (“NYSE American” or “Exchange”) filed with the Securities and Exchange Commission (“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 modify Rule 971.2NYP to clarify the definition of CUBE BBO. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 modify Rule 971.2NYP to clarify the definition of CUBE BBO.

In October 2023, the Exchange completed its transition to its Pillar trading technology platform (“Pillar”).⁴ In May 2024, the Exchange adopted Rule 971.2NYP (the “Rule”), which describes the operation of its Complex Customer Best Execution (“CUBE”) Auction on Pillar (“Auction”).⁵ On June 10, 2024, the Exchange deployed the Complex CUBE Auction functionality.⁶ The Exchange proposes to amend the Rule to clarify the definition of CUBE BBO, which would add transparency and alleviate potential investor confusion.

The Complex CUBE Auction is a paired auction, with a price improvement mechanism, for Electronic Complex Orders. The Rule sets forth the definitions applicable to the Auction as well as the requirements for initiating an Auction. In particular, the Rule specifies that, to initiate an Auction, “the net price of a Complex CUBE Order to buy (sell) must be equal to or higher (lower) than the CUBE BB (BO).”⁷

⁴ See Trader Update, NYSE American Options: NYSE Pillar Final Migration Tranche, dated October 30, 2023, available here: <https://www.nyse.com/trader-update/history#110000748137> (announcing the last phase of the Pillar migration).

⁵ See Securities Exchange Act Release No. 100033 (April 25, 2024) 89 FR 35270 (May 1, 2024) (SR-NYSEAMER-2024-24) (immediately effectiveness filing to adopt Rule 971.2NYP regarding the Complex CUBE Auction on Pillar). See generally Rule 971.2NYP (Complex Electronic Cross Transactions).

⁶ See Trader Update, NYSE American Options: Complex CUBE Available June 10, 2024, dated May 13, 2024, available here: <https://www.nyse.com/trader-update/history#110000748137> <https://www.nyse.com/trader-update/history#110001076051> (announcing implementation of Complex CUBE Auctions on Pillar effective June 10, 2024).

⁷ See Rule 971.2NYP(a)(2) (Initiation of Auction).

Per the Rule, the CUBE BBO refers to the CUBE BB and the CUBE BO and the CUBE BBO is comprised of higher of the Complex BBO⁸ or DBBO⁹ as follows.

The CUBE BB for a Complex CUBE Order to buy is comprised of the higher of: the Complex BB or the Complex BB plus one cent (\$0.01) if there is a Customer Complex Order on the Complex BB; or the DBB or the DBB plus one cent (\$0.01) if there is displayed Customer interest on the Exchange BBO and the DBB is calculated using the Exchange BBO.

The CUBE BO for a Complex CUBE Order to sell is comprised of the lower of: the Complex BO or the Complex BO minus one cent (\$0.01) if there is a Customer Complex Order on the Complex BO; or the DBO or the DBO minus one cent (\$0.01) if there is displayed Customer interest on the Exchange BBO and the DBO is calculated using the Exchange BBO.¹⁰

Thus, to initiate an Auction, a Complex CUBE Order must be priced at least equal to the best priced interest on the Exchange, unless the best-priced interest represents Customer interest, in which case such interest must be price improved. In instances where the DBB (DBO) represents the best-priced interest on the Exchange, the rule text specifies that the DBO (DBB) must be improved by one cent (\$0.01) “if there is displayed Customer interest on the Exchange BBO” and the DBB(DBO) “is calculated using the Exchange BBO.”¹¹

⁸ See Rule 971.2NYP(a)(1)(A)(i) (defining Complex BBO as “the best-priced complex order(s) in the same complex strategy to buy (sell)” and providing that “[t]he Complex BB cannot exceed the DBO and the Complex BO cannot exceed the DBB”).

⁹ See Rule 971.2NYP(a)(1)(A)(ii) (specifying that the DBBO has the meaning set forth in Rule 980NYP(a)(5). Rule 980NYP described Complex Order Trading on the Exchange.

¹⁰ See Rule 971.2NYP(a)(1)(A)(i)-(ii).

¹¹ See id.

The Exchange believes that, while accurate, the Rule could be more transparent regarding what interest on the DBBO (i.e., side of market) must be price improved when there is Customer interest at the DBBO and the CUBE BBO is based on the DBBO. Thus, as proposed, the modified Rule would specify that the DBB (DBO) must be price improved when there is displayed Customer interest on the Exchange BBO and the DBB (DBO) is calculated using the *price of that displayed Customer interest*.¹² The proposed modification also would help clarify the circumstance under which price improvement is not required, e.g., the CUBE BB (when based on the DBB) is not impacted when both component legs of a Complex Order are buying and, for one of the component legs, there is displayed Customer interest at the Exchange BO.

Example:

Trading interest on the Exchange when Complex CUBE Order is submitted

MM1 Leg A: 10 x 10 @ 0.85 x 1.05

Firm1 Leg A to sell 4 @ 1.00 (Limit Order)

MM1 Leg B: 10 x 40 @ 0.10 x 0.30

Cust1 Leg B: buy 4@ 0.10 (Limit Order)

cCUBE to buy {5A-7B} 40 @ 4.32 x cContra to sell {5A-7B} @ 4.10

-The complex strategy to Auction is buy 5 LegA and sell 7 LegB

-The Complex Contra Order specifies an automatch limit price

DBBO for {5A-7B}: 2.15 x 4.30

$$DBB = 4.25 - 2.10 = 2.15$$

Calculation: Sum of (best bid of each buy leg * leg ratio) (0.85x5)

– Sum of (best offer of each sell leg * leg ratio) (0.30x7)

¹² See proposed Rule 971.2NYP(a)(1)(A)(i)-(ii).

$$4.25 - 2.10 = 2.15$$

$$DBO = 5.00 - 0.70 = 4.30$$

Calculation: Sum of (best offer of each buy leg * leg ratio)

(1.00x5) – Sum of (best bid of each sell leg * leg ratio) (0.10x7)

CUBE BBO: 2.15 x 4.29

For purposes of the CUBE BBO, the DBO (calculated at 4.30) must be improved by one cent (down to 4.29) because the DBO contains Customer interest on the leg market (i.e., LegB bid @0.10)

To initiate the Auction, the price of the cCUBE @4.32 is adjusted to @4.29 (to be on the CUBE BBO).

RFR announcing the Auction @4.29 is disseminated.

During Auction, only one RFR Response is received:

Firm2 Complex GTX Order to sell {5A-7B} 5 @ 4.10

The allocation of the cCUBE Order at the conclusion of Auction, is as follows:

Trades 5 with Firm2 @ 4.10; then

Trades 5 with cContra @ 4.10;

Trades 30 (i.e., the balance) with cContra @ 4.29

As shown in this example, because there is displayed Customer interest at the Exchange BB, which is used to calculate the DBO for the strategy (i.e., a Customer order to buy LegB @0.10), the CUBE BO must price improve such interest by one cent. Also illustrated is the fact that, to initiate the Auction, the price of the Complex CUBE Order must be priced (back) to comply with the CUBE BBO requirements. This existing (and clarified) Auction functionality is designed to ensure that displayed Customer interest (in this case on the leg markets) is not disadvantaged by the

Auction.

The Exchange believes this proposed rule change would add clarity and transparency to Exchange rules making them easier to navigate and comprehend to the benefit of investors.

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system^{and}, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because it would elucidate what interest on the DBBO (i.e., side of market) must be price improved when there is Customer interest at the DBBO, and thus improve the accuracy and comprehensibility of the Rule.

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 proposed rule is not designed to impact competition but is instead designed to improve the clarity (and thus enhance the accuracy) of the Rule by making more explicit the pricing requirements to initiate a Complex CUBE Auction. The Exchange does not believe that the proposed rule changes would impact intra-market competition as the proposed rule changes would be applicable to all similarly-situated ATP Holders that trade on the Exchange. To the extent that this improved clarity encourages ATP Holders to utilize the Auction, all market participants

stand to benefit from additional liquidity being directed to the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. To the extent that the proposed clarification leads to an increase in Exchange volume, this increase should allow the Exchange to better compete against other options markets that already offer similar price improvement mechanisms and for this reason the proposal does not create an undue burden on intermarket competition.

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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would clarify the definition of the CUBE BBO and the circumstances under which price improvement over displayed Customer interest is required, thus improving the accuracy and comprehensibility of the Rule, without undue delay. For these reasons, and because the proposal does not raise any new or novel issues, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁷

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.

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

(<https://www.sec.gov/rules/sro.shtml>); or

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-46 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-2024-46. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2024-46 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,

Assistant Secretary.

¹⁸ 17 CFR 200.30-3(a)(12), (59).