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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82162; File No. SR-NYSEAMER-2017-26)

November 28, 2017

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

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 November 17, 2017, 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, II, and III 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 971.1NY (Electronic Cross Transactions) to amend the duration of a Customer Best Execution (“CUBE”) Auction. 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 statements may be examined at the places

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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.

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 971.1NY to modify the parameters for the duration of a CUBE Auction. The CUBE Auction is an electronic crossing mechanism for single-leg orders with a price improvement auction on the Exchange.

An ATP Holder (“Initiating Participant”) may initiate a CUBE Auction by electronically submitting for execution a limit order it represents as agent on behalf of a public customer, broker dealer, or any other entity (“CUBE Order”) against principal interest or against any other order it represents as agent, provided the Initiating Participant complies with Rule 971.1NY. 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 Auction lasts for a random period of time between 500 – 750 milliseconds, unless it is concluded early.<sup>4</sup> The Exchange proposes to amend Rule 971.1NY(c)(2)(B) to provide that the duration of a CUBE Auction shall be a random period of time within parameters designated by the Exchange, which random time period [sic] shall be no less than 100 milliseconds and no more than 1 second. This proposed change is consistent with the recently amended rules of other exchanges, such as the NASDAQ International Securities

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<sup>4</sup> See Rule 971.1NY(c)(2)(B) (providing that the Response Time Interval is “the period of time during which responses to the RFR may be entered, which will last for a random period of time between 500 and 750 milliseconds). See Rule 971.1NY(c)(4)(A)-(F) (providing the scenarios that would result in the early end of a CUBE Auction).

Exchange (“ISE”), NASDAQ BX (“BX”), NASDAQ PHLX (“PHLX”), Miami International Securities Exchange, LLC (“MIAX”), and Chicago Board Options Exchange (“CBOE”).<sup>5</sup> When approving the change to exposure periods in these mechanisms, the Securities and Exchange Commission (“Commission”) concluded that reducing the time periods was consistent with the Act.<sup>6</sup>

The Exchange believes that moving to the proposed range structure provides the Exchange with greater flexibility in establishing the optimal duration for the CUBE Auction. The Exchange believes that permitting a minimum duration as low as 100 milliseconds would reduce market risk for all ATP Holders executing trades on the Exchange via the CUBE Auction. Initiating Participants are required to guarantee an execution at the National Best Bid or Offer (“NBBO”) or at a better price, and are subject to market risk during the time the CUBE Order is exposed to other ATP Holders.<sup>7</sup> While other participants are also subject to market risk, those providing RFR Responses may cancel their responses.<sup>8</sup> The Exchange believes that the Initiating Participant plays a critical role in the CUBE Auction process. Their willingness to guarantee that CUBE Orders receive an execution at the NBBO or, in some cases, a better price, is the catalyst for an order gaining the opportunity for price improvement. The Exchange believes that allowing a CUBE Auction period of no less than 100 milliseconds and no more than 1 second (when the

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<sup>5</sup> See Securities Exchange Act Release Nos. 79733 (January 4, 2017), 82 FR 3055 (January 10, 2017) (SR-ISE-2016-26); 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032); 77557 (April 7, 2016), 81 FR 21935 (April 13, 2016) (SR-PHLX-2016-40); 80570 (May 1, 2017), 82 FR 21288 (May 5, 2017) (SR-MIAX-2017-16); and 80421 (April 10, 2017), 82 FR 18048 (April 14, 2017) (SR-CBOE-2017-029).

<sup>6</sup> Id.

<sup>7</sup> See Rule 971.1NY(a).

<sup>8</sup> See Rule 971.1NY(c)(2)(C)(i)(d).

CUBE does not conclude early)<sup>9</sup> would benefit ATP Holders utilizing the CUBE Auction. The Exchange believes it could be in the best interest of Initiating Participants to minimize the CUBE Auction duration while continuing to allow other ATP Holders adequate time to respond with their best priced responses.

The Exchange notes the Commission previously approved other exchanges' rules that provide for a specified auction response time as low as 100 milliseconds and that the Exchange is not proposing to go lower than the lowest previously approved timer range.<sup>10</sup> Further, consistent with this proposal, the Commission has likewise allowed other exchanges to retain the flexibility to choose a response period of up to 1 second.<sup>11</sup>

Accordingly, the Exchange proposes to amend Rule 971.1NY(c)(2)(B) to remove the reference to the duration of the current timer setting and replace it with language providing that “[t]he Response Time Interval will last for a random period of time within parameters determined by the Exchange and announced by Trader Update. The minimum/maximum parameters for the Response Time Interval will be no less than 100 milliseconds and no more than one (1) second.”<sup>12</sup> The Exchange will continue to utilize a random timer for each CUBE Auction, because it believes (as it articulated when adopting the CUBE), that the use of a random time period for RFR Responses provides the CUBE with a functional difference to distinguish it from similar price improvement mechanisms offered by other exchanges.<sup>13</sup>

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<sup>9</sup> See supra note 4.

<sup>10</sup> See supra note 5.

<sup>11</sup> See, e.g., ISE Rule 723(c)(1) (providing ISE “will designate via circular a time of no less than 100 milliseconds and no more than 1 second” during which its members can submit responses to the ISE price improvement mechanism).

<sup>12</sup> See proposed Rule 971.1NY(c)(2)(B).

<sup>13</sup> See Securities Exchange Act Release No. 72025 (April 25, 2014), 79 FR 24779, 24782 and 24787 (May 1, 2017) (SR-NYSEMKT-2014-17) (the “CUBE Approval Order”)

The Exchange does not believe that requiring the CUBE Auction to run for a random time of at least 500 milliseconds (absent an early end) is necessary in today's market where, generally, ATP Holders' systems have the capability to respond within 100 milliseconds or less. As such, reducing the minimum potential Response Time Interval in the CUBE is appropriate as ATP Holders no longer need 500 milliseconds to respond to an Auction. Further, reducing the potential minimum Response Time Interval would allow ATP Holders the opportunity to seek out liquidity in an expedient manner that is consistent with today's system capabilities.

The Exchange believes that ATP Holders operate electronic systems that enable them to react and respond to orders in a meaningful way in fractions of a second. The Exchange anticipates that its ATP Holders would continue to compete within the proposed Response Time Interval designated by the Exchange. In particular, the Exchange believes that the proposed Response Time Interval – which would be a random period of time no less than 100 milliseconds and no more than 1 second – would continue to provide ATP Holders with sufficient time to respond to, compete for, and provide price improvement for CUBE Orders. As such, the Exchange believes this proposed change would continue to provide the investing public with more timely executions, and reduce their market risk.

To substantiate that ATP Holders are able to receive, process and communicate a response to an auction broadcast within 100 milliseconds, the Exchange surveyed all responders to a CUBE Auction over the last three months. Each of these ATP Holders confirmed that they can receive, process and communicate a response back to the Exchange within 100 milliseconds.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it has the necessary systems capacity to handle the potential

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(describing the operation of the random timer for the duration of the Response Timer Interval).

additional traffic associated with the additional transactions that may occur with the implementation of the proposed modification to the Response Time Interval to no less than 100 milliseconds. Additionally, the Exchange 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.

### Implementation

Pursuant to the modified rule, the Exchange will announce by Trader Update any changes to the current random time period applicable to CUBE Auctions in advance.

### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> 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.

In particular, the proposed rule change would provide investors with more timely execution of their option orders, while ensuring that there is an adequate exposure of orders in the mechanisms. Additionally, the proposed change could provide more CUBE Orders an opportunity for price improvement because it would reduce market risk for ATP Holders that participate in CUBE Auctions. Finally, as mentioned above, other exchanges such as ISE, BX, PHLX, MIAX, and CBOE, have already amended their rules to permit response times consistent

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<sup>14</sup> 15 U.S.C. 78f(b).

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

with the instant proposal – i.e., no less than 100 milliseconds and no more than 1 second.<sup>16</sup> As such, the Exchange believes the proposed rule change would help perfect the mechanism for a free and open national market system, and generally help protect investors and the public’s interest.<sup>17</sup>

The Exchange believes the proposed rule change is not unfairly discriminatory because the Response Time Interval for each CUBE Auction would be the same for all participating ATP Holders. As is the case today, all ATP Holders would continue to have an equal opportunity to receive the broadcast and respond with their best prices during the auction. Additionally, the Exchange believes the proposed modification to the Response Time Interval to be as low as 100 milliseconds would reduce the market risk for all ATP Holders, inclusive of Initiating Participants and those ATP Holders responding to a CUBE Action.<sup>18</sup>

Finally, the proposal would promote just and equitable principles of trade because it would allow the Exchange to continue to use a random timer for each CUBE Auction (within the outside parameters announced by the Exchange), which timer provides the CUBE with a functional difference to distinguish it from similar price improvement mechanisms offered by other exchanges.<sup>19</sup> The Exchange believes this flexibility would allow the Exchange to modify the outside parameters of uninterrupted CUBE Auctions to provide ATP Holders with sufficient time to submit RFR Responses and would encourage competition among participants, thereby enhancing the potential for price improvement for the CUBE Order.

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<sup>16</sup> See supra note 5.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> The Exchange notes that, as proposed, the duration of a CUBE Auction could be a maximum of 1 second, as determined and announced by the Exchange.

<sup>19</sup> See CUBE Approval Order, supra note 13.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal to provide the Exchange flexibility in determining potentially shorter durations for CUBE Auctions does not impose an undue burden on intra-market competition as the Exchange believes that allowing for a Response Time Interval of no less than 100 milliseconds and no more than 1 second (absent an early end) would benefit all ATP Holders utilizing the CUBE Auctions. Specifically, it is in Initiating Participants' best interest to minimize the Response Time Interval while continuing to allow other ATP Holders adequate time to electronically respond.

The proposed rule would allow ATP Holders to respond quickly at the most favorable price while reducing the risk that the market will move against that response. The Exchange believes that its ATP Holders would be able to compete within a Response Time Interval of no less than 100 milliseconds and no more than 1 second, and that any random duration within this range is a sufficient amount of time to respond to, compete for, and provide price improvement for CUBE Orders, which would, in turn, provide investors and other market participants more timely executions, and reduce their market risk.

The Exchange does not believe its proposed rule change would impose an undue burden on inter-market competition as the Exchange notes other exchanges offer similar functionality with similar auction duration lengths.<sup>20</sup>

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<sup>20</sup> See *supra* note 5. See also ISE Rule 723(c)(1); BX Rules, Chapter VI, Section 9(ii)(A)(3); PHLX Rule 1080(n)(ii)(A)(4); MIAX Rule 515A; and CBOE Rule 6.74A and 6.74B.

For all the reasons stated, the Exchange does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change would enhance 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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-2017-26 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-2017-26. 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 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-2017-26 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>21</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).

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