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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99639; File No. SR-NYSEAMER-2024-12]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend Rule 7.19E

February 29, 2024

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 16, 2024, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 7.19E to make additional pre-trade risk controls available to Entering Firms and Clearing Firms. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 A, B, and C below, of the most significant parts of such statements.

A. *Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. *Purpose*

The Exchange proposes to amend Rule 7.19E to make additional pre-trade risk controls available to Entering Firms and Clearing Firms.

Background and Proposal

In 2020, in order to assist ETP Holders’ efforts to manage their risk, the Exchange amended its rules to add Rule 7.19E (Pre-Trade Risk Controls),³ which established a set of optional pre-trade risk controls by which Entering Firms and their designated Clearing Firms⁴ could set credit limits and other pre-trade risk controls for an Entering Firm’s trading on the Exchange and authorize the Exchange to take action if those credit limits or other pre-trade risk controls are exceeded. These pre-trade risk controls include a Gross Credit Risk Limit, which is defined in Rule 7.19E(b)(1) as “a pre-

³ See Securities Exchange Act Release No. 88878 (May 14, 2020), 85 FR 30770 (May 20, 2020) (SR-NYSEAMER-2020-38). Later, in 2023, the Exchange amended its rules to make additional pre-trade risk controls available to Entering Firms. See Securities Exchange Act Release No. 96922 (February 14, 2023), 88 FR 10580 (February 21, 2023) (SR-NYSEAMER-2023-12).

⁴ The terms “Entering Firm” and “Clearing Firm” are defined in Rule 7.19E.

established maximum daily dollar amount for purchases and sales across all symbols, where both buy and sell orders are counted as positive values.” The current version of Rule 7.19E(b)(1) specifies that both open and executed orders are considered: “[f]or purposes of calculating the Gross Credit Risk Limit, unexecuted orders in the Exchange Book, orders routed on arrival pursuant to Rule 7.37E(a)(1), and executed orders are included.”

The Exchange has recently received several requests from market participants to create two additional Gross Credit Risk Limit risk controls: one that includes only open orders and another that includes only executed orders. Market participants have explained that Entering Firms and Clearing Firms would benefit from having more granular gross credit risk controls available, which would allow them to set limits and breach actions based solely on open orders or executed orders, in addition to the Exchange’s existing Gross Credit Risk Limit that includes both open and executed orders.

The Exchange notes that the MIAX Pearl equities exchange (“MIAX Pearl”) currently offers risk controls substantially similar to those proposed here. Specifically, MIAX Pearl offers its “Equity Members” and their “Clearing Members” the option to use a “Gross Notional Trade Value” risk check, which includes only executed orders, and a “Gross Notional Open Value” risk check, which includes only unexecuted orders, in addition to a “Gross Notional Open and Trade Value” risk check, for which both executed and unexecuted orders are included.⁵ As such, market participants are already familiar with these various gross credit risk checks, such that the ones proposed by the Exchange in this filing are not novel.

⁵ See MIAX Pearl Rule 2618(a)(2)(A), (C), and (E).

In light of these requests, the Exchange proposes to amend Rule 7.19E(b)(1) to rename the existing Gross Credit Risk Limit as “Gross Credit Risk Limit - Open + Executed,” and to add two additional risk limits: “Gross Credit Risk Limit - Open Only” and “Gross Credit Risk Limit - Executed Only.”

Specifically, the Exchange proposes to amend and reorganize Rule 7.19E(b)(1) as follows. First, the Exchange would amend the language in the first sentence of the rule to refer to plural Gross Credit Risk Limits, instead of just one. At the end of the first sentence, the Exchange would add that “[a]vailable Gross Credit Risk Limits include” the three types described in new sub-sections (A), (B), and (C).

Proposed sub-section (A) would define the “Gross Credit Risk Limit - Open + Executed” risk check to include unexecuted orders in the Exchange Book, orders routed on arrival pursuant to Rule 7.37E(a)(1), and executed orders (just as the current Gross Credit Risk Limit does).

Proposed sub-section (B) would define the “Gross Credit Risk Limit - Open Only” risk check to include only unexecuted orders in the Exchange Book and orders routed on arrival pursuant to Rule 7.37E(a)(1).

Proposed sub-section (C) would define the “Gross Credit Risk Limit - Executed Only” risk check to include executed orders only.

In addition, the Exchange proposes to make a conforming change to section (c)(1)(B) of the rule, to make plural the current singular reference to “Gross Credit Risk Limit.”

As with the Exchange’s existing risk controls, use of the pre-trade risk controls proposed herein would be optional. The Exchange proposes no other changes to Rule

7.19E or its Commentary.

Continuing Obligations of ETP Holders Under Rule 15c3-5

The proposed Pre-Trade Risk Controls described here are meant to supplement, and not replace, the ETP Holders' own internal systems, monitoring, and procedures related to risk management. The Exchange does not guarantee that these controls will be sufficiently comprehensive to meet all of an ETP Holder's needs, the controls are not designed to be the sole means of risk management, and using these controls will not necessarily meet an ETP Holder's obligations required by Exchange or federal rules (including, without limitation, the Rule 15c3-5 under the Act⁶ ("Rule 15c3-5")). Use of the Exchange's Pre-Trade Risk Controls will not automatically constitute compliance with Exchange or federal rules and responsibility for compliance with all Exchange and SEC rules remains with the ETP Holder.⁷

Timing and Implementation

The Exchange anticipates implementing the proposed change in the first quarter of 2024 and, in any event, will implement the proposed rule change no later than the end of June 2024. The Exchange will announce the timing of such changes by Trader Update.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with Section

⁶ See 17 CFR 240.15c3-5.

⁷ See also Commentary .01 to Rule 7.19E, which provides that "[t]he pre-trade risk controls described in this Rule are meant to supplement, and not replace, the ETP Holder's own internal systems, monitoring and procedures related to risk management and are not designed for compliance with Rule 15c3-5 under the Exchange Act. Responsibility for compliance with all Exchange and SEC rules remains with the ETP Holder."

6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ 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 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, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed additional Pre-Trade Risk Controls would provide Entering Firms and Clearing Firms with enhanced abilities to manage their risk with respect to orders on the Exchange. The proposed additional Pre-Trade Risk Controls are not novel; they are based on existing risk settings already in place on MIAX Pearl and market participants are already familiar with the types of protections that the proposed risk controls afford.¹⁰ As such, the Exchange believes that the proposed additional Pre-Trade Risk Controls would provide a means to address potentially market-impacting events, helping to ensure the proper functioning of the market.

In addition, the Exchange believes that the proposed rule change will protect investors and the public interest because the proposed additional Pre-Trade Risk

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ *See supra* note 6.

Controls are a form of impact mitigation that will aid Entering Firms and Clearing Firms in minimizing their risk exposure and reduce the potential for disruptive, market-wide events. The Exchange understands that ETP Holders implement a number of different risk-based controls, including those required by Rule 15c3-5. The controls proposed here will serve as an additional tool for Entering Firms and Clearing Firms to assist them in identifying any risk exposure. The Exchange believes the proposed additional Pre-Trade Risk Controls will assist Entering Firms and Clearing Firms in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

Finally, the Exchange believes that the proposed rule change does not unfairly discriminate among the Exchange's ETP Holders because use of the proposed additional Pre-Trade Risk Controls is optional and is not a prerequisite for participation on the Exchange.

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. In fact, the Exchange believes that the proposal will have a positive effect on competition because, by providing Entering Firms and Clearing Firms additional means to monitor and control risk, the proposed rule will increase confidence in the proper functioning of the markets. The Exchange believes the proposed additional Pre-Trade Risk Controls will assist Entering Firms and Clearing Firms in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system. As a result, the level of

competition should increase as public confidence in the markets is solidified.

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*

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the 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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

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 19(b)(2)(B)¹⁵ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-12 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-2024-12. 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

¹⁵ 15 U.S.C. 78s(b)(2)(B).

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. 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-2024-12, and should be submitted on or before **[INSERT 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

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¹⁶ 17 CFR 200.30-3(a)(12).