

Exchange's proposal to eliminate the requirement that a minimum percentage of component foreign country securities or foreign country securities underlying ADRs in an index be traded primarily on markets that are members of ISG or on markets that are parties to comprehensive surveillance sharing agreements with the Exchange? In light of the proposed amendment to NYSE Arca Rule 5.2-E (j)(6)(B)(I)(1)(b)(v) that would eliminate the requirement that a minimum percentage of component foreign country securities or foreign country securities underlying ADRs in an index be traded primarily on markets that are members of ISG or on markets that are parties to comprehensive surveillance sharing agreements with the Exchange, what are commenters' views about whether the Exchange has met its burden in demonstrating that the proposal is consistent with Section 6(b)(5) of the Act, which requires the rules of the Exchange be designed to, among other things, prevent fraudulent and manipulative acts and practices? The Commission requests any comment, data, or analysis that commenters think may be relevant to the Commission's consideration of the Exchange's proposal.

### III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>19</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the

<sup>19</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

proposal should be approved or disapproved by January 17, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 31, 2019. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,<sup>20</sup> in addition to any other comments they may wish to submit about the proposed rule change.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2018-67 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-NYSEArca-2018-67. 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 (<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

<sup>20</sup> See Notice, *supra* note 3.

Number SR-NYSEArca-2018-67 and should be submitted by January 17, 2019. Rebuttal comments should be submitted by January 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Brent J. Fields,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84871; File No. SR-NYSEAMER-2018-57]

### Self-Regulatory Organizations; NYSE American LLC.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Commentary .02 to Rule 960NY in Order to Extend the Penny Pilot in Options Classes in Certain Issues Through June 30, 2019

December 19, 2018.

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 December 18, 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 Commentary .02 to Rule 960NY in order to extend the Penny Pilot in options classes in certain issues ("Pilot Program") previously approved by the Securities and Exchange Commission ("Commission") through June 30, 2019. The Pilot Program is currently scheduled to expire on December 31, 2018. 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.

<sup>21</sup> 17 CFR 200.30-3(a)(57).

<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.

## 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange hereby proposes to amend Commentary .02 to Rule 960NY to extend the time period of the Pilot Program, which is currently scheduled to expire on December 31, 2018, through June 30, 2019.<sup>4</sup> The Exchange also proposes that the date to replace issues in the Pilot Program that have been delisted be revised to the second trading day following January 1, 2019.<sup>5</sup> The Exchange believes that extending the Pilot would allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

This filing does not propose any substantive changes to the Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>7</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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the proposed rule change, which extends the Penny Pilot Program for six months, allows the Exchange to continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. Accordingly, the Exchange believes that the proposal is consistent with the Act because it would allow the Exchange to extend the Pilot Program prior to its expiration on December 31, 2018. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

The proposal to extend the Pilot Program is designed 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 mechanisms of a free and open market and a national market system, by allowing the Exchange and the Commission additional time to analyze the impact of the Pilot Program while also allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

### 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. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how this Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity

and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot Program will allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

### 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) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder. 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, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> 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 proposal may become operative immediately upon filing. The

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 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 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.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>4</sup> See Securities Exchange Act Release No. 83507 (June 25, 2018), 83 FR 30808 (June 29, 2018) (SR-NYSEAMER-2018-33).

<sup>5</sup> The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.*, December) would not be used for purposes of the analysis for determining the replacement class. Thus, a replacement class to be added on the second trading day following January 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from June 1, 2018 through November 30, 2018. The Exchange will announce the replacement issues to the Exchange's membership through a Trader Update.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program.<sup>14</sup> Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>15</sup>

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2018-57 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-2018-57. 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 (<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 20549-1090 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-2018-57 and should be submitted on or before January 17, 2019.

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

**Brent J. Fields,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-84838; File No. SR-OCC-2018-804]**

### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice, as Modified by Partial Amendment No. 1, Related to The Options Clearing Corporation's Margin Methodology for Incorporating Variations in Implied Volatility**

December 19, 2018.

#### **I. Introduction**

On October 22, 2018, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") advance notice SR-OCC-2018-804 ("Advance Notice") pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 ("Clearing Supervision Act")<sup>1</sup> and Rule

19b-4(n)(1)(i)<sup>2</sup> under the Securities Exchange Act of 1934 ("Exchange Act")<sup>3</sup> to propose changes to OCC's model for incorporating variations in implied volatility within OCC's margin methodology, the System for Theoretical Analysis and Numerical Simulations.<sup>4</sup>

On October 30, 2018, OCC filed a partial amendment ("Partial Amendment No. 1") to modify the Advance Notice.<sup>5</sup> The Advance Notice, as modified by Partial Amendment No. 1, was published for public comment in the **Federal Register** on November 26, 2018,<sup>6</sup> and the Commission received no comments regarding the proposal contained in the Advance Notice.<sup>7</sup> This publication serves as notice of no objection to the Advance Notice.

#### **II. Background**

The System for Theoretical Analysis and Numerical Simulations ("STANS") is OCC's methodology for calculating margin. STANS includes econometric models that incorporate a number of risk factors. OCC defines a risk factor in STANS as a product or attribute whose historical data is used to estimate and simulate the risk for an associated product. The majority of risk factors utilized in STANS are the returns on individual equity securities; however, a number of other risk factors may be considered, including, among other things, returns on implied volatility risk factors.<sup>8</sup>

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> 15 U.S.C. 78a *et seq.*

<sup>4</sup> See Notice of Filing *infra* note 6, at 83 FR 60541.

<sup>5</sup> In Partial Amendment No. 1, OCC corrected an error in Exhibit 5 without changing the substance of the Advance Notice. References to the Advance Notice from this point forward refer to the Advance Notice, as amended by Partial Amendment No. 1.

<sup>6</sup> Securities Exchange Act Release No. 84626 (November 19, 2018), 83 FR 60541 (November 26, 2018) (SR-OCC-2018-804) ("Notice of Filing"). On October 22, 2018, OCC also filed a related proposed rule change (SR-OCC-2018-014) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder, seeking approval of changes to its rules necessary to implement the Advance Notice ("Proposed Rule Change"). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4, respectively. The Proposed Rule Change was published in the **Federal Register** on November 8, 2018. Securities Exchange Act Release No. 84524 (Nov. 2, 2018), 83 FR 55918 (Nov. 8, 2018) (SR-OCC-2018-014).

<sup>7</sup> Since the proposal contained in the Advance Notice was also filed as a proposed rule change, all public comments received on the proposal are considered regardless of whether the comments are submitted on the proposed rule change or the Advance Notice.

<sup>8</sup> In December 2015, the Commission approved a proposed rule change and issued a Notice of No Objection to an advance notice filing by OCC to its modify margin methodology by more broadly incorporating variations in implied volatility within STANS. See Securities Exchange Act Release No. 76781 (December 28, 2015), 81 FR 135 (January 4,

<sup>14</sup> See Securities Exchange Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR-NYSEArca-2009-44).

<sup>15</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>17</sup> 15 U.S.C. 5465(e)(1).