

provisions in the FINRA By-Laws and reflected the governance structure set forth in the FINRA By-Laws those amendments were consistent with the Exchange Act.<sup>32</sup> Similarly, this proposal will also further conform the FINRA Regulation By-Laws with the FINRA By-Laws and will also continue to reflect the previously approved governance structure of the NAC. As a result, the Commission believes that this proposal will continue to help assure the fair representation of FINRA members in the administration of FINRA's affairs and, therefore, is consistent with Section 15A(b)(4) of the Act.

The Commission further observes that the NAC acts on behalf of the FINRA Board in several important capacities, including presiding over disciplinary matters that have been appealed to or called for review by the NAC and acting on applications in statutory disqualification and membership proceeding.<sup>33</sup> Given the NAC's ability to perform these actions and prepare written decisions on behalf of the FINRA Board, and that these decisions become FINRA's final action in the vast majority of cases,<sup>34</sup> the Commission finds that applying the same grounds for the removal of a NAC member as those that apply for the removal of a governor is consistent with the Act. The proposal will strengthen the FINRA Board's oversight of the NAC and further support the principles outlined in the NAC's Conflict of Interest and Bias Policy, which include independence, impartiality, integrity, and accountability.<sup>35</sup> In doing so, the proposal will help protect investors and further the public interest by expanding the scope of the FINRA Board's authority to remove NAC members that, in the Board's view, may be biased or have actual or apparent conflicts of interest or otherwise impede the NAC's adjudicatory responsibilities.<sup>36</sup>

In sum, the Commission finds that the proposal will continue to help assure the fair representation of FINRA members in the administration of FINRA's affairs. The Commission also finds that this proposal will help protect investors and further the public interest by supporting fair and impartial adjudicatory processes for, among other things, FINRA's disciplinary matters as well as statutory disqualification and membership proceedings.

<sup>32</sup> See NASD By-Laws Approval Order, 72 FR at 42188.

<sup>33</sup> See *supra* note 7 and accompanying text.

<sup>34</sup> See Notice, 85 FR at 71389.

<sup>35</sup> See *id.* at 71388, n.12. See also *supra* note 20 and accompanying text.

<sup>36</sup> See *id.* at 71388 (citing Article IV, Section 4.14(a) of the FINRA Regulation By-Laws).

#### IV. Conclusion

*It is therefore ordered* pursuant to Section 19(b)(2) of the Exchange Act<sup>37</sup> that the proposal (SR-FINRA-2020-037) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-02779 Filed 2-10-21; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91068; File No. SR-NYSEAMER-2021-06]

#### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 971.2NY Regarding Its Complex Customer Best Execution Auction

February 5, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 27, 2021, NYSE American LLC ("NYSE American" or the "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 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 modify Rule 971.2NY regarding its Complex Customer Best Execution ("CUBE") auction to provide optional all-or-none functionality for larger-sized orders and to make conforming changes to Rule 971.1NY to clarify existing functionality of the Single-Leg AON CUBE functionality. 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>37</sup> 15 U.S.C. 78s(b)(2).

<sup>38</sup> 17 CFR 200.30-3(a)(12).

<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 proposes to expand its electronic crossing mechanism—the CUBE Auction, to provide optional all-or-none ("AON")<sup>4</sup> functionality for ATP Holders to execute larger-sized orders (*i.e.*, at least 500 contracts on the smallest leg) in the Complex CUBE Auction and to make conforming changes to Rule 971.1NY to clarify existing functionality of the Single-Leg AON CUBE functionality.<sup>5</sup>

The proposed rule change would be consistent with the recently approved AON CUBE Order functionality for the Single-Leg CUBE Auction.<sup>6</sup> In this regard, the Exchange seeks to expand this functionality to the Complex CUBE Auction, which functionality is also consistent with similar price-improvement mechanisms for larger-sized complex orders already available on other options exchanges.<sup>7</sup> As such,

<sup>4</sup> 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).

<sup>5</sup> See proposed Commentary .04 to Rule 971.2NY; proposed Commentary .05 to Rule 971.1NY. Capitalized terms have the same meaning as the defined terms in Rules 971.1NY and 971.2NY.

<sup>6</sup> See Commentary .05 to Rule 971.1NY; see also Securities Exchange Act Release No. 90584 (December 7, 2020), 85 FR 80196 (December 11, 2020) (SR-NYSEAmer-2020-60) (order approving auction functionality for Single-Leg AON CUBE Orders of at least 500 contracts). As proposed, AON Complex CUBE Orders would be processed and executed in the Complex CUBE Auction in a similar manner as Single-Leg AON CUBE Orders are processed and executed in the Single-Leg CUBE Auction—the differences for Complex relating primarily to the underlying differences between simple and complex order processing and execution (*i.e.*, auction pricing and allocation).

<sup>7</sup> See, *e.g.*, Nasdaq ISE LLC ("ISE"), Options 3, Section 11(e) (setting forth its Complex Solicited Order Mechanism which allows an agency complex order to execute in full against the solicited complex order—both of which are designated as AON—at the proposed execution net price so long

this is a filing that will allow the Exchange to compete with other options exchanges for such larger-sized Complex Orders which would in turn benefit market participants already familiar with such price-improvement mechanisms in that it would provide another venue to trade their larger-sized orders.

The Complex CUBE Auction operates seamlessly with the Consolidated Book—while still affording Complex CUBE Orders an opportunity to receive price improvement.<sup>8</sup> In particular, the Exchange utilizes the concept of a CUBE BBO, which requires price improvement over resting interest to initiate a Complex CUBE Auction.<sup>9</sup> Upon entry of a Complex CUBE Order in the System, the CUBE BBO is determined to be the more aggressive of (i) the Complex BBO improved by \$0.01, or (ii) the Derived BBO improved by: \$0.01 multiplied by the smallest leg of the complex order strategy.<sup>10</sup> A Complex CUBE Auction begins with an “initiating price,” which for a Complex CUBE Order is the less aggressive of the net debit/credit price of such order or the price that locks the contra-side CUBE BBO and the “range of permissible executions” of a Complex CUBE Order is all prices equal to or

as, at the time of execution such price is not inferior to interest in the ISE leg markets or ISE's complex order book and there are no ISE Priority Customers equal to the net execution price. If there is Priority Customer interest at the proposed execution price and there is sufficient size in the aggregate (*i.e.*, Customer interest plus any other quotes, orders, and responses) to fill the agency complex order, such agency order will trade first with the Priority Customer, followed by other interest and the solicited order is canceled. If, however, in such a scenario, there is insufficient size of the Priority Customer and aggregated interest to fill the agency order, both the agency complex order and solicited order are canceled. *See also* Choe Options Rule 5.40 (Complex Solicitation Auction Mechanism).

<sup>8</sup> *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. The Exchange has integrated the Complex CUBE Auction into the Complex Matching Engine (or CME), which ensures that the Complex CUBE Auction respects the priority of interest in the Consolidated Book. *See* Rule 971.2NY(a).

<sup>9</sup> *See generally* Rule 971.2NY and Commentary .02 (definitions). *See also* Rule 900.2NY(7)(b),(c) (defining Complex BBO and Derived BBO). The “same-side CUBE BBO” and “contra-side CUBE BBO” refer to the CUBE BBO on the same or opposite side of the market as the Complex CUBE Order, respectively. *See* Rule 971.2NY(a)(2).

<sup>10</sup> *See* Rule 971.2NY(a)(2). A complex order strategy is entered with the ratio expressed in the fewest number of contracts for each leg of the ratio. For a complex order strategy with a ratio of 2, 3, and 6 contracts per leg, the \$0.01 figure would be multiplied by 2 contracts, which represents the smallest leg. To calculate the CUBE BBO for this strategy, the Derived BBO would need to be priced improved by \$0.02.

between the initiating price and the same-side CUBE BBO.<sup>11</sup> As proposed, the initiation of, and the range of permissible executions for, an AON Complex CUBE Order would align with the protections afforded a standard (non-AON) Complex CUBE Order.

The proposal to expand the current Complex CUBE Auction functionality by providing an additional (optional) method for market participants to effect larger-sized orders in the Complex CUBE Auction would likewise operate seamlessly with the Consolidated Book. The Exchange also believes this 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 Complex CUBE Functionality<sup>12</sup>

The Exchange proposes to add new Commentary .04 to Rule 971.2NY to provide that a Complex CUBE Order that has at least 500 contracts on the smallest leg would execute in full at the single stop price against the Complex Contra Order, except under specified circumstances (the “AON Complex CUBE Order”).<sup>13</sup> As further proposed, a Complex Contra Order would not be permitted to guarantee an AON Complex CUBE Order for auto-match limit, which feature is otherwise available in a Complex CUBE Auction.<sup>14</sup>

The CUBE BBO for a proposed AON Complex CUBE Order would be determined in the same manner as for a standard Complex CUBE Order.<sup>15</sup> An AON Complex CUBE Order Auction would also be subject to the same early end events as a Complex CUBE Order.<sup>16</sup>

<sup>11</sup> *See* Rule 971.2NY(a)(2)–(4).

<sup>12</sup> *See generally* Rule 971.2NY (for detailed description of operation of Complex CUBE Auction).

<sup>13</sup> *See also* proposed Commentary .04 to Rule 971.2NY. *See* Rule 971.2NY(b)(1)(A) (setting forth parameters for single stop price). An AON Complex CUBE Order would be rejected for the same reasons as a Complex CUBE Order (*see* Rule 971.2NY(b)(2)–(5)).

<sup>14</sup> *See also* proposed Commentary .04 to Rule 971.2NY. *See also* Rule 971.2NY(b)(1)(B) (regarding parameters for auto-match limit price).

<sup>15</sup> An AON Complex CUBE Order and its paired Complex Contra Order would be rejected if it failed to meet the pricing parameters. *See* Rule 971.2NY(b) (regarding auction eligibility requirements).

<sup>16</sup> *See* Rule 971.2NY(c)(3) (setting forth the type of interest that causes the early end to a Complex CUBE Auction). In particular, to respect priority of the leg markets, the AON Complex CUBE Auction would end early if during the Auction the Exchange receives “[i]nterest in the leg market that causes the contra-side CUBE BBO to be better than the stop price or auto-match limit price.” *See* Rule 971.2NY(c)(3)(F).

As proposed, an AON Complex CUBE Order would execute in full with the Complex Contra Order at the single stop price even if there is non-Customer interest priced better than the stop price that, either on its own or when aggregated with other better-priced non-Customer RFR Responses, is insufficient to satisfy the full quantity of the AON Complex CUBE Order.<sup>17</sup> In addition, as proposed, an AON Complex CUBE Order would *not* execute with the Complex Contra Order if the entire AON Complex CUBE Order can be satisfied in full by certain eligible contra-side interest. Specifically, the Exchange proposes that paragraph (b) to Commentary .04 to Rule 971.2NY would provide that:

(b) The Complex Contra Order will not receive any allocation and will be cancelled (i) if RFR Responses that are priced better than the stop price can satisfy the full quantity of the AON Complex CUBE Order or (ii) there is contra-side Customer interest at the stop price or better than on its own, or when aggregated with RFR Responses equal to or priced better than the stop price, can satisfy the full quantity of the AON Complex CUBE Order. In either such case, the RFR Responses will be allocated as provided for in paragraphs (c)(4)(A) and (c)(4)(B)(i) of this Rule, as applicable.<sup>18</sup>

Thus, if there is price-improving contra-side interest that can satisfy the AON condition of the Auction, the AON

<sup>17</sup> *See* proposed Commentary .04(a) to Rule 971.2NY. The Exchange also proposes to modify Commentary .05 to Rule 971.1NY to clarify the handling of AON CUBE Orders in a Single-Leg CUBE Auction—including by relocating certain text to a new paragraph (a), which would not alter existing functionality and mirrors the handling of AON Complex CUBE Orders in a Complex CUBE Auction. *See* proposed Commentary .05(a) to Rule 971.1NY (providing that “[a]n AON CUBE Order to buy (sell) will execute in full with the Contra Order at the single stop price even if there is non-Customer interest priced higher (lower) than the stop price that, either on its own or when aggregated with other non-Customer RFR Responses at the stop price or better, is insufficient to satisfy the full quantity of the AON CUBE Order”). In addition, the Exchange proposes to make a non-substantive change to remove the now extraneous text “provided that” and to re-number existing paragraphs (a) and (b) to new paragraphs (b) and (c), which makes the Rule easier to navigate and would align with the AON Complex CUBE rule. *See* proposed Commentary .05(b), (c) to Rule 971.1NY.

<sup>18</sup> *See* proposed Commentary .04(b) to Rule 971.2NY. The Exchange also proposes to modify (new) paragraph (b) to Commentary .05 to Rule 971.1NY regarding the Single-Leg CUBE Auction to make clear that Customer interest “at the stop price or better” may prevent the Contra Order from executing, which does not alter existing functionality and mirrors the handling of AON Complex CUBE Orders in a Complex CUBE Auction. *See* proposed Commentary .05(b) to Rule 971.1NY (emphasis added). In addition, the Exchange proposes to make a non-substantive change to capitalize the first sentence of this paragraph, which makes the Rule easier to navigate and would align with the AON Complex CUBE rule. *See id.*

Complex CUBE Order would execute in full against those price-improving RFR Responses and the Complex Contra Order would cancel. Or, absent such price-improving interest, if there is contra-side Customer interest equal to the stop price or better that on its own, or when combined with equal or better-priced RFR Responses, can satisfy the AON condition of the Auction, the AON Complex CUBE Order would execute in full against such interest and the Complex Contra Order would cancel. Under either scenario, the AON Complex CUBE Order would be allocated against contra-side interest at the best price(s) pursuant to the Exchange's priority rules.<sup>19</sup> This proposal is also consistent with the AON nature of similar mechanisms on other options exchanges.<sup>20</sup>

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 Complex CUBE Order. To effect this, the Exchange proposes that paragraph (b) [sic] to Commentary .04 to Rule 971.2NY would provide that:

(c) The AON Complex CUBE Order and Complex Contra Order will both be cancelled if there is contra-side Customer interest at the stop price or better and such interest, either on its own or when aggregated with RFR Responses equal to or priced better than the stop price is insufficient to satisfy the full quantity of the AON Complex CUBE Order.<sup>21</sup>

Thus, as proposed, if there is contra-side Customer interest at the stop price,

<sup>19</sup> See also Rule 971.2NY (c)(4)(A) (providing Customer interest first priority to trade with the Complex CUBE Order, at each price level, pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3)) and (c)(4)(B)(i)(a) (providing RFR Responses priced better than the stop price, beginning with the most aggressive price within the range of permissible executions, pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3) at each price point).

<sup>20</sup> See, *e.g.*, *supra* note 7 (regarding Nasdaq ISE's Complex Solicited Order Mechanism and Cboe's Complex Solicitation Auction Mechanism, both of which are mechanisms for larger-sized paired complex orders designated as AON).

<sup>21</sup> See proposed Commentary .04(c) to Rule 971.2NY. The Exchange also proposes to modify (new) paragraph (c) to Commentary .05 to Rule 971.1NY regarding the Single-Leg CUBE Auction to make clear that Customer interest "at the stop price or better" would result in cancellation of the AON CUBE Order and the Contra Order, which would mirror the AON Complex CUBE functionality. See proposed Commentary .05(c) to Rule 971.1NY (emphasis added). In addition, the Exchange proposes to make a non-substantive change to capitalize the first sentence of this paragraph, which makes the Rule easier to navigate and would align with the AON Complex CUBE rule. See *id.*

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 Complex CUBE Order, then both the AON Complex CUBE Order and the Contra Complex Order would be cancelled. The Exchange believes that this proposal is consistent with the terms of how AONs function generally without violating the Exchange's general priority rules.<sup>22</sup> With respect to allocation, the Exchange notes that the proposed functionality differs from the allocation of a standard Complex CUBE Order in that the Complex Contra Order is not guaranteed a minimum allocation at the stop price. Instead, given the AON nature of the functionality, the Complex Contra Order either trades with the entire AON Complex CUBE Order or not at all.<sup>23</sup> This proposal is also consistent with the AON nature of similar mechanisms on other options exchanges.<sup>24</sup>

With the exception of differences to the minimum size and allocation described in proposed Commentary .04 to Rule 971.2NY, an AON Complex CUBE auction would be subject to all of the provisions of Rule 971.2NY.<sup>25</sup>

Finally, proposed paragraph (d) to Commentary .04 to Rule 971.2NY would provide that prior to entering an agency order (*i.e.*, Complex CUBE Order) on behalf of a Customer into the Complex CUBE Auction as an AON Complex CUBE Order, Initiating Participants would be required to deliver to the Customer a written notification informing the Customer that such order may be executed using the Complex CUBE Auction, which notification would disclose the terms and conditions of Commentary .04 to Rule 971.2NY and

<sup>22</sup> See Rule 980NY(b) ("Priority of Electronic Complex Orders in the Consolidated Book"). See also Rule 971.2NY (regarding processing of Complex CUBE Orders per Rule 980NY).

<sup>23</sup> See Rule 971.2NY(c)(4)(B)(i)(b) (providing that, "[a]t the stop price, if there is sufficient size of the Complex CUBE Order still available after executing at prices better than the stop price or against Customer interest, the Complex Contra Order will receive an allocation of the greater of 40% of the original Complex CUBE Order size or one contract (or the greater of 50% of the original Complex CUBE Order size or one contract if there is only one RFR Response)").

<sup>24</sup> See *e.g.*, *supra* note 7 (regarding Nasdaq ISE's Complex Solicited Order Mechanism and Cboe's Complex Solicitation Auction Mechanism, both of which are mechanisms for larger-sized paired complex orders designated as AON).

<sup>25</sup> See proposed Commentary .04 to Rule 971.2NY. The Exchange also proposes to modify the text in the last paragraph of Commentary .05 to Rule 971.1NY regarding the Single-Leg CUBE Auction to clarify that "[e]xcept as provided in this Commentary .05, an AON CUBE auction will be subject to all of the provisions of Rule 971.1NY," which makes the Rule easier to navigate and would align with the AON Complex CUBE rule. See proposed Commentary .05 to Rule 971.1NY.

be in a form approved by the Exchange.<sup>26</sup> This notification requirement is consistent with the rules of other options exchanges that offer an AON paired order auction mechanism for complex orders.<sup>27</sup>

## Implementation

The Exchange will announce the implementation date of the proposed rule change in a Trader Update to be published no later than 60 days following the approval of this proposed rule change. The Exchange has already notified ATP Holders about the planned implementation of AON Complex CUBE functionality, which has provided them advance time to prepare their systems for participation in the AON Complex CUBE Auction once it becomes available.<sup>28</sup>

## 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 proposed optional all-or-none functionality for larger-sized orders, which is consistent with Exchange's recently approved Single-Leg AON CUBE Order functionality,<sup>29</sup> is intended to benefit investors, because it is designed to provide investors seeking to execute larger-sized option orders in the Complex CUBE Auction with greater certainty regarding the price at which the order would be executed. In this regard, the Exchange seeks to expand this functionality to the Complex CUBE Auction, which functionality is also consistent with similar price-improvement mechanisms for larger-

<sup>26</sup> See proposed Commentary .04(d) to Rule 971.2NY. The Exchange also proposes to add a paragraph (d) to Commentary .05 to Rule 971.1NY regarding the Single-Leg CUBE Auction to adopt a notice provision identical to that being proposed for the AON Complex CUBE functionality, which clarifies the obligations of ATP Holders to their customers and does not alter existing functionality. See proposed Commentary .05(d) to Rule 971.1NY.

<sup>27</sup> See, *e.g.*, *supra* note 7, Nasdaq ISE, Options 3, Section 11(e)(5) and Cboe Options Rule 5.40, Interpretations and Policies .01 (both setting forth substantially similar notice requirements for agency orders handled on behalf of customers).

<sup>28</sup> See Trader Update, October 6, 2020, NYSE American Options: AON CUBE Orders Available for Testing, available here: <https://www.nyse.com/trader-update/history#110000319620>.

<sup>29</sup> See *supra* note 6 (regarding recent approval of Commentary .05 to Rule 971.1NY).

sized complex orders already available on other options exchanges. As such, this is a filing that will allow the Exchange to compete with other options exchanges for such larger-sized Complex Orders and would benefit market participants who are already familiar with such price-improvement mechanisms.<sup>30</sup>

This proposal would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide ATP Holders that locate liquidity for their customers' larger-sized orders a facility in which to execute those orders at the agreed-upon price, while also providing an opportunity for such orders to be price improved. In addition, ATP Holders that opt to utilize this proposed functionality would have an equal opportunity to initiate their own or to respond with their best prices to other AON CUBE Auctions. The Exchange believes the proposed functionality would promote and foster competition and provide more options contracts with the opportunity for price improvement.

The Exchange believes that the proposed functionality would provide more efficient transactions, reduce execution risk to ATP Holders, and afford greater execution opportunities for larger-sized orders. The proposed functionality would operate within the Complex CUBE (including by integrating Complex CUBE into the Complex Matching Engine, per Rule 971.2NY(a)) such that the Exchange is able to assure that the proposed functionality would continue to respect the priority of interest, in particular Customer interest. The proposal ensures that the AON Complex CUBE Order is exposed to ATP Holders for the possibility of price improvement and that Customer orders on the Exchange are protected. As noted above, at the conclusion of an AON Complex CUBE Auction, the AON Complex CUBE Order would be executed in full (against the Complex Contra Order or eligible contra-side auction interest) or would be cancelled, together with the Complex Contra Order.

Further, the proposed functionality is reasonable and promotes a fair and orderly market and national market system, because it is substantially similar to the price-improvement mechanisms for larger-sized orders available on other options exchanges. The Exchange believes this proposal

may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already offer an all-or-none electronic solicitation mechanism for larger-sized orders. The Exchange believes that its proposal would allow the Exchange to better compete for solicited transactions, while providing an opportunity for price improvement on the larger-sized orders. In addition, the proposed functionality should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit market participants.

The proposed clarifications to the Single-Leg CUBE Auction Rule would protect investors and the public interest because the proposed changes add clarity, transparency and internal consistency to Exchange rules.<sup>31</sup>

Finally, consistent with other options exchanges offering similar price-improvement auctions, the proposed rule change would require ATP Holders to provide customers with the terms and conditions of agency orders that might be submitted as AON Complex CUBE Orders on their behalf.<sup>32</sup>

#### *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 Exchange does not believe the proposed rule change would impose any burden on intramarket competition, as the proposed rule change will apply in the same manner to all orders submitted as AON Complex Orders to the Complex CUBE Auction. The Exchange recently received rule approval for AON CUBE Order functionality in the Single-Leg CUBE Auction, which operates in a substantially similar manner to the complex functionality, accounting for differing priority and allocation rules.<sup>33</sup>

The Exchange is proposing the functionality for Complex Orders as an optional market enhancement that, if utilized, should increase competition for ATP Holders seeking to execute such larger-sized orders in an electronic auction mechanism. ATP Holders that

opt to utilize this proposed functionality would have an equal opportunity to initiate their own or to respond with their best prices to other AON CUBE Auctions. The Exchange notes that other options exchanges offer electronic auction mechanisms for larger-sized orders on an AON basis. The Exchange believes the proposed functionality would provide ATP Holders with a greater choice of exchanges from which to execute such orders. The proposal is structured to offer the same enhancement to all market participants and would not impose an intra-market competitive burden on any participant. The price-improvement functionality for the AON Complex CUBE Auction is designed to promote competition for ATP Holders to compete amongst each other by responding with not only their best price, but also the full size for a particular auction.

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. The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish more uniform price-improvement auction rules on the various options exchanges. The proposed functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already offer similar price-improvement mechanisms for larger-sized orders. The Exchange anticipates that this proposal will create new opportunities for the Exchange to attract new business and compete on equal footing with those options exchanges that offer auction AON functionality for larger-sized Complex Orders and for this reason the proposal does not create an undue burden on intermarket competition. By contrast, not having the proposed functionality places the Exchange at a competitive disadvantage vis-à-vis other exchanges that offer similar price-improvement mechanisms for larger-sized Complex Orders.

#### *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.

<sup>30</sup> See *supra* note 7 (regarding Nasdaq ISE's Complex Solicited Order Mechanism and Cboe's Complex Solicitation Auction Mechanism, both of which are mechanisms for larger-sized paired complex orders designated as AON).

<sup>31</sup> See *supra* notes 17, 18, 21 and 26.

<sup>32</sup> See Nasdaq ISE, Options 3, Section 11(e)(5) and Cboe Options Rule 5.40, Interpretations and Policies .01 (both setting forth substantially similar notice requirements for agency orders handled on behalf of customers). See *supra* note 26 (regarding the addition of a notice provisions to the Single-Leg CUBE auction rule).

<sup>33</sup> See *supra* note 6 (regarding recent approval of Commentary .05 to Rule 971.1NY).

### 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 Act<sup>34</sup> and Rule 19b-4(f)(6) thereunder.<sup>35</sup> 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)<sup>36</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>37</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 Exchange states that waiver of the operative delay would allow the Exchange to deploy the new functionality immediately, which would help to ease the potential disruption to floor trading in the event that the Exchange is required to temporarily close its trading floor for reasons related to COVID-19.<sup>38</sup> The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the proposed functionality without delay in the event that the Exchange must temporarily close its trading floor. As discussed above, the proposed AON complex CUBE auction is substantially similar to the paired solicited complex order auctions in place on other options exchanges and does not raise new or novel regulatory issues.<sup>39</sup> In addition,

the proposed changes to the single-leg AON CUBE provisions in Rule 971.1NY should help to avoid confusion by assuring that the descriptions of the single-leg and the complex AON CUBE auctions remain consistent. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>40</sup>

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 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)<sup>41</sup> 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 (<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-2021-06 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-2021-06. 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 Number SR-NYSEAMER-2021-06, and should be submitted on or before March 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-02777 Filed 2-10-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting; Cancellation

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 86 FR 8061, February 3, 2021.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** Tuesday, February 9, 2021 at 5:00 p.m.

**CHANGES IN THE MEETING:** The Closed Meeting scheduled for Tuesday, February 9, 2021 at 5:00 p.m., has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: February 9, 2021.

**Vanessa A. Countryman,**  
Secretary.

[FR Doc. 2021-02961 Filed 2-9-21; 4:15 pm]

**BILLING CODE 8011-01-P**

<sup>42</sup> 17 CFR 200.30-3(a)(12).

<sup>34</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>35</sup> 17 CFR 240.19b-4(f)(6).

<sup>36</sup> 17 CFR 240.19b-4(f)(6).

<sup>37</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>38</sup> The Exchange notes that it temporarily closed its trading floor for several months in 2020 and for the last week of December 2020 for reasons related to COVID-19. See Trader Update, December 24, 2020, NYSE American Options to Move Temporarily to All-Electronic Trading on December 28, 2020, available here: <https://www.nyse.com/trader-update/history#110000331853>.

<sup>39</sup> See, e.g., note 7, *supra*.

<sup>40</sup> For purposed only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>41</sup> 15 U.S.C. 78s(b)(2)(B).