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.32 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.33 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,34 the Commission finds that applying the same grounds for 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.35 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.36

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.

IV. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act 37 that the proposal (SR–FINRA–2020–037) is approved.

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

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION


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) 1 of the Securities Exchange Act of 1934 ("Act") 2 and Rule 19b–4 thereunder, 3 notice is hereby given that on January 27, 2021, NYSE American LLC ("NYSE American" or the "Exchange") 4 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 ("AON") 5 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. 6

The proposed rule change would be consistent with the recently approved AON CUBE Order functionality for the Single-Leg CUBE Auction. 6 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. 7 As such, 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 905.3NY(d)(4).

32 See Notice, 85 FR at 71389.
33 See id. at 71388, n.12. See also supra note 20 and accompanying text.
34 See id. at 71388 (citing Article IV, Section 4.14(a) of the FINRA Regulation By-Laws).
35 See NASD By-Laws Approval Order, 72 FR at 42188.
36 See supra note 7 and accompanying text.
37 See Notice, 85 FR at 71389.
38 See id. at 71388.
39 See also supra note 20 and accompanying text.
40 See id. at 71388 (citing Article IV, Section 4.14(a) of the FINRA Regulation By-Laws).
this is a filing that will allow the Exchange to compete with other options for larger-sized Complex Orders, which could 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. In particular, the Exchange has integrated the Complex CUBE Auction into the Complex Matching Engine (CME) (defining Complex 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 the ISE leg markets or ISE's complex order book and there are no ISE Priority Customer interests). The Exchange has integrated the Complex CUBE Auction into the Complex Matching Engine (CME) (defining Complex 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 the ISE leg markets or ISE's complex order book and there are no ISE Priority Customer interests).

A Complex CUBE Auction begins with an "initiating price," which for a Complex CUBE Order is the less 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. A Complex CUBE Auction respects the priority of interest in the Complex CUBE Auction into the Complex Matching Engine (CME) (defining Complex 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 the ISE leg markets or ISE's complex order book and there are no ISE Priority Customer interests).

The Exchange also proposes to add new Comment. 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"). 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. The CUBE BBO for a proposed AON Complex CUBE Order would be determined in the same manner as for a standard Complex CUBE Order. An AON Complex CUBE Order Auction would also be subject to the same early events as a Complex CUBE Order. 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 no Customer interest priced better than the stop price that, either on its own or when aggregated with other non-Customer RFR Responses, is insufficient to satisfy the full quantity of the AON Complex CUBE Order. 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 at least one 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 if (i) 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 that cannot be matched, 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.

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

12 See generally Rule 971.2NY(a)(2)–(4).
13 See also proposed Commentary .04 to Rule 971.2NY 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 insufficient 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 new extraneous text "providing 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. See generally 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. This proposal is also consistent with the AON nature of similar mechanisms on other options exchanges.

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 the extent that 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.

Thus, as proposed, if there is contra-side Customer interest at the stop price, 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. With respect to allocation, the Exchange notes that the proposed functionality differs from the allocation of a standard Complex CUBE Order or 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. This proposal is also consistent with the AON nature of similar mechanisms on other options exchanges.

With the exception of differences to the minimum size and allocation described in proposed Commentary .04 to Rule 971.2NY for AON Complex CUBE auction would be subject to all of the provisions of Rule 971.2NY.

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

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.

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, 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-
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.30

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, which would 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.31

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.32

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 complexity functionality, accounting for differing priority and allocation rules.33

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 that 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.
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 34 and Rule 19b–4(f)(6) thereunder.35 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) 36 normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii), 37 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 temporarily close its trading floor for reasons related to COVID–19.38 The temporarily close its trading floor for reasons related to COVID–19.38 The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act 39 and Rule 19b–4(f)(6)(iii) thereunder.

Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.40 At any time within 60 days of the filing of such proposed rule change, the Commission may 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) 41 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. 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.52

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation


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.


Vanessa A. Countryman,
Secretary.

[FR Doc. 2021–02961 Filed 2–9–21; 4:15 pm]
BILLING CODE 8011–01–P


39 See, e.g., note 7, supra.
40 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).