On January 26, 2021, NYSE American, LLC (‘‘NYSE American’’ or the ‘‘Exchange’’) filed with the Securities and Exchange Commission (‘‘Commission’’), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (‘‘Act’’) and Rule 19b–4 thereunder,2 a proposed rule change to amend Rule 970NY (‘‘Firm Quotes’’) and Rule 970.1NY (‘‘Quote Mitigation’’) to eliminate the use of ‘‘dark’’ series on the Exchange. The proposed rule change was published for comment in the Federal Register on February 8, 2021.3

On March 18, 2021, pursuant to Section 19(b)(2) of the Act,4 the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.5 On April 27, 2021, the Exchange filed Amendment No. 1 to the proposed rule change.6 The Commission received no comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

Currently, NYSE American Rule 970NY (‘‘Firm Quotes’’) requires the Exchange to collect, process, and make available to quotation vendors the best bid and best offer for each option series that is a reported security unless the series is subject to an approved quote mitigation plan.7 Pursuant to the quote mitigation plan set forth in NYSE American Rule 970.1NY, the Exchange only disseminates quotes in ‘‘active’’ series.8 A series is considered active if the series: (i) Has traded on any options exchange in the previous 14 calendar days; (ii) is solely listed on the Exchange; (iii) has been trading ten days or less; or (iv) is a series in which the Exchange has an order.9 In addition, a series may be considered active on an intraday basis if: (i) The series trades at any options exchange; (ii) the Exchange receives an order in the series; or (iii) the Exchange receives a request for designated May 9, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.

In Amendment No. 1, the Exchange provided data that showed that during the eighteen (18) trading days between March 1, 2021 and March 24, 2021, quotes in dark series accounted for 2.43% of NYSE Arca, Inc. (‘‘NYSE Arca’’) quotes and 1.99% of NYSE American quotes, and quotes in dark series averaged 0.174% on NYSE Arca and 0.190% on NYSE American when compared to the total OPRA disseminated quotes during the same period. The Exchange also stated that on March 4, 2021 and March 5, 2021, OPRA processed the most messages in its history and provided data that shows that on March 4th, quotes in dark series from NYSE Arca and NYSE American combined for 0.5095% compared to OPRA message traffic. On March 5th, quotes in dark series from NYSE Arca and NYSE American combined for 0.2562% when compared to OPRA quote volume. The Exchange concluded that eliminating the suppression of quotes in dark series would result in a de minimis increase in quotes sent by NYSE Arca and NYSE American to OPRA and have essentially no impact on messaging at an industry level. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available on the Commission’s website at: https://www.sec.gov/comments/sr-nyseamer-2021-05/srnyseamer202105-87-30999-237044.pdf.

The Commission finds that the proposed rule change, as modified by Amendment No.1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.13 In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,14 which requires that the rules of an exchange be designed, among other things, 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 and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In support of its proposal, the Exchange states the proposed rule change would increase transparency, enhance price discovery, and alleviate potential confusion among market participants regarding what quotes are being published in the disseminated quote feed and what quotes are being suppressed.15 According to the

10 See NYSE American Rule 970.1NY.

11 See Notice, supra note 3, at 8659.

12 See Amendment No. 1, supra note 6 (providing data to support the Exchange’s conclusion that eliminating the suppression of quotes in dark series would result in a de minimis increase in quotes sent by NYSE Arca and NYSE American to OPRA and would have essentially no impact on messaging at an industry level).

13 See Notice, supra note 3, at 8659.

14 In approving this proposed rule change, as modified by Amendment No.1, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78f(b)(5).

15 See Notice, supra note 3, at 8660 (stating that ‘‘over the years, certain market participants have...’’ Continued

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE American, LLC.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 970NY and Rule 970.1NY To Eliminate the Use of Dark Series on the Exchange

May 5, 2021.

I. Introduction

On January 26, 2021, NYSE American, LLC (‘‘NYSE American’’ or the ‘‘Exchange’’) filed with the Securities and Exchange Commission (‘‘Commission’’), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (‘‘Act’’) and Rule 19b–4 thereunder, a proposed rule change to amend Rule 970NY (‘‘Firm Quotes’’) and Rule 970.1NY (‘‘Quote Mitigation’’) to eliminate the use of ‘‘dark’’ series on the Exchange. The proposed rule change was published for comment in the Federal Register on February 8, 2021.3

On March 18, 2021, pursuant to Section 19(b)(2) of the Act, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.5 On April 27, 2021, the Exchange filed Amendment No. 1 to the proposed rule change.6 The Commission received no comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

Currently, NYSE American Rule 970NY (‘‘Firm Quotes’’) requires the Exchange to collect, process, and make available to quotation vendors the best bid and best offer for each option series that is a reported security unless the series is subject to an approved quote mitigation plan.7 Pursuant to the quote mitigation plan set forth in NYSE American Rule 970.1NY, the Exchange only disseminates quotes in ‘‘active’’ series.8 A series is considered active if the series: (i) Has traded on any options exchange in the previous 14 calendar days; (ii) is solely listed on the Exchange; (iii) has been trading ten days or less; or (iv) is a series in which the Exchange has an order.9 In addition, a series may be considered active on an intraday basis if: (i) The series trades at any options exchange; (ii) the Exchange receives an order in the series; or (iii) the Exchange receives a request for designated May 9, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.

In Amendment No. 1, the Exchange provided data that showed that during the eighteen (18) trading days between March 1, 2021 and March 24, 2021, quotes in dark series accounted for 2.43% of NYSE Arca, Inc. (‘‘NYSE Arca’’) quotes and 1.99% of NYSE American quotes, and quotes in dark series averaged 0.174% on NYSE Arca and 0.190% on NYSE American when compared to the total OPRA disseminated quotes during the same period. The Exchange also stated that on March 4, 2021 and March 5, 2021, OPRA processed the most messages in its history and provided data that shows that on March 4th, quotes in dark series from NYSE Arca and NYSE American combined for 0.5095% compared to OPRA message traffic. On March 5th, quotes in dark series from NYSE Arca and NYSE American combined for 0.2562% when compared to OPRA quote volume. The Exchange concluded that eliminating the suppression of quotes in dark series would result in a de minimis increase in quotes sent to a customer in that series.10 Any options series that does not meet the definition of an active series is deemed an inactive or ‘‘dark’’ series. Consequently, under the Exchange’s current rules, although the Exchange accepts quotes from ATP Holders in all series, the only quote messages the Exchange disseminates to the Options Price Reporting Authority (‘‘OPRA’’) are quotes for active series.11 The Exchange proposes to delete NYSE American Rule 970.1NY. Therefore, the proposed rule change would eliminate the distinction between active and dark series, and thus require quotes in all series to be disseminated to OPRA.12

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No.1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.13 In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,14 which requires that the rules of an exchange be designed, among other things, 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 and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In support of its proposal, the Exchange states the proposed rule change would increase transparency, enhance price discovery, and alleviate potential confusion among market participants regarding what quotes are being published in the disseminated quote feed and what quotes are being suppressed.15 According to the
Exchange, discontinuing the use of the quote mitigation plan set forth in NYSE American Rule 970NY, would result in all Market Maker quotes (including those currently being suppressed because they are considered inactive) being displayed and reflected in the market, benefitting market participants by providing notice of such liquidity and removing the element of potential confusion.  

Further, the Exchange states the proposed rule change would not change the amount of capacity needed at OPRA to accommodate the inclusion of quotes in dark series because the Exchange already includes such quotes in the Exchange’s current capacity planning requests to OPRA. According to the Exchange, the proposal would not impact market participants or downstream users that consume Exchange or OPRA data because the quote capacity information OPRA currently publishes already reflects quotes in dark series because they are part of the Exchange’s current capacity request. Thus, according to the Exchange, market participants (including data vendors and subscribers) currently have the opportunity to prepare for and make necessary accommodations for anticipated quote traffic (including quotes in dark series). Further, the Exchange anticipates that the proposed increase in quote message traffic due to the dissemination of quotes in inactive series is likely to be minimal and therefore unlikely to impact the flow of message traffic and/or harm downstream consumers of OPRA data. In support of this assertion, the Exchange states that on the two trading days that OPRA processed the most messages in its history (March 4, 2021 and March 5, 2021), quotes in dark series from NYSE Arca and NYSE American combined were only 0.5095% and 0.2562%, respectively, compared to American combined were only 0.5095% and 0.2562%, respectively, compared to NYSE Arca and NYSE American Rule 970NY would result in all quotes in dark series from the requirements of NYSE American Rule 970NY should increase transparency and may enhance opportunities for price discovery. Publishing all quotes (not just those in active series) in the disseminated quote feed may benefit market participants because it will provide notice of additional liquidity. Further, because the Exchange currently includes Market Maker quotes in inactive series in its capacity planning request to OPRA and because publication of dark quotes from both the Exchange and NYSE Arca combined would result in a percentage increase in OPRA disseminated quotes that is de minimis according to the Exchange’s data, the Commission believes that dissemination of these quotes as part of the Exchange’s quote feed to OPRA is not likely to negatively impact systems capacity. In addition, the Exchange has existing additional quote mitigation strategies that also serve to reduce the potential for excessive quoting.  

Accordingly, for the reasons set forth above, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEAMER–2021–05), as modified by Amendment No. 1, hereby is approved.

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

J. Matthew DeLeder, Assistant Secretary.

May 5, 2021.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, notice is hereby given that on April 22, 2021, MIAX PEARL, LLC ("MIAX Pearl" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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


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 Exchange 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 these 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 aspects 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 404, Series of Option Contracts Open for Trading. Specifically, this