

Dated: April 3, 2023.

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-411, OMB Control No. 3235-0465]

Submission for OMB Review; Comment Request; Extension: Rule 104

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 104 of Regulation M (17 CFR 242.104), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 104 permits stabilizing by a distribution participant during a distribution so long as the distribution participant discloses information to the market and investors. This rule requires disclosure in offering materials of the potential stabilizing transactions and that the distribution participant inform the market when a stabilizing bid is made. It also requires the distribution participants (*i.e.*, the syndicate manager) to maintain information regarding syndicate covering transactions and penalty bids and disclose such information to the Self-Regulatory Organization. There are approximately 1,211 respondents per year that require an aggregate total of approximately 242 hours per year to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 0.20 hours (12 minutes) to complete. Thus, the total hour burden per year is approximately 242 hours. The total internal labor cost of compliance for the respondents is approximately \$19,618.20 per year, resulting in an internal cost of compliance per respondent of approximately \$16.20 (*i.e.*, \$19,618.20/1,211 respondents).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent by May 8, 2023 to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: April 3, 2023.

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97231; File No. SR-NYSEAMER-2023-22]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Make a Clarifying Change to the Term Settlement Style Applicable to Flexible Exchange Options

March 31, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act"),² and Rule 19b-4 thereunder,³ notice is hereby given that on March 22, 2023, 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 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 .01 under Rule 903G to make a clarifying change to the flex term settlement style applicable to Flexible Exchange ("FLEX") Options. The proposed rule change is available on the Exchange's website at www.nyse.com, at

the principal office of the Exchange, and at the Commission's Public Reference Room.

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 amend Commentary .01 under Rule 903G to make a clarifying change to the flex term settlement style applicable to FLEX Options.

FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options. Commentary .01 under Rule 903G currently states that, provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options will be permitted in puts and calls that do not have the same exercise style, same settlement style, same expiration date and same exercise price as Non-FLEX Options that are already available for trading on the same underlying security or index.⁴ The rule also provides that FLEX Options are permitted before the options are listed for trading as Non-FLEX Options. Once and if an option series is listed for trading as a Non-FLEX Option series, (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Options series, and (ii) any further trading in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures and rules, however, in the event a Non-FLEX series is added intra-day, the holder of a position established under FLEX Trading Procedures would be permitted to close such position using FLEX trading procedures against another closing only FLEX position for

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Rule 903G, Commentary .01.

the balance of the trading day on which the series is added.⁵

Commentary .01 to Rule 903G is designed to prevent the trading of a FLEX Option that has the exact same terms (underlying security, exercise style, settlement style, expiration date and exercise price) as a non-FLEX Option. In other words, as long as just one term of the FLEX Option is different from an existing “regular” or “non-FLEX” option it may be traded as a FLEX Option.

Under Exchange rules, certain FLEX Equity Options where the underlying security is an Exchange-Traded Fund are permitted to be settled by delivery in cash if the underlying security meets prescribed criteria.⁶ The purpose of this proposed rule change is to amend Commentary .01 under Rule 903G to clarify that the reference to “same settlement style” in the rule applies to FLEX Index Options and not to the FLEX ETF Options permitted for listing and trading pursuant to Rule 903G(c)(3)(ii).⁷ As proposed, the first sentence in Commentary .01 under Rule 903G would be modified to state that “provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options shall be permitted in puts and calls that do not have the same exercise style, same settlement style (with respect to FLEX index options only), same expiration date and same exercise price as Non-FLEX Options that are already available for trading on the same underlying security or index.” As a result of this change, for FLEX ETF Options, at least one of the following terms—exercise style, expiration date and exercise price—must differ from options in the non-FLEX market. The Exchange believes the proposed rule change will add clarity and certainty regarding the flex term settlement style applicable for

FLEX Options listed and traded on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

The Exchange believes that clarity regarding the flex term settlement style applicable for FLEX Options will promote fair and orderly markets by eliminating potential confusion and would allow ATP Holders and investors with additional opportunities to trade customized options in an exchange environment.

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 proposed change is designed to more clearly describe the current operation of an existing rule without changing its substance and, therefore, the Exchange believes that the proposed change will not impose a burden on competition.

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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)¹² of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹³

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)¹⁴ 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-2023-22 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-2023-22. 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

⁵ *Id.*

⁶ Rule 903G(c)(3)(ii) provides that the exercise settlement for a FLEX ETF Option may be by physical delivery of the underlying security or by delivery in cash if the underlying security, measured over a six-month period, has an average daily notional value of \$500 Million or more and a national average daily volume (ADV) of at least 4,680,000 shares. *See also* Securities Exchange Act Release No. 88131 (February 5, 2020), 85 FR 7806 (February 11, 2020) (SR-NYSEAmerican-2019-38) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Allow Certain Flexible Equity Options To Be Cash Settled).

⁷ *See* Securities Exchange Act Release No. 79125 (October 19, 2016), 81 FR 73452 (October 25, 2016) (SR-NYSEMKT-2016-48) (Adding 2 new settlement styles for FLEX Index Options—Asian and Cliquet—and adding a reference to settlement style in Commentary .01 under Rule 903G).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description of the text of 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.

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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-2023-22 and should be submitted on or before April 27, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-07140 Filed 4-5-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97234; File No. SR-NYSEARCA-2023-28]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

March 31, 2023.

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 March 24, 2023, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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 modify the NYSE Arca Options Fee Schedule ("Fee Schedule") regarding (1) credits for Qualified Contingent Cross ("QCC") transactions, (2) fees applicable to routed orders, and (3) certain Market Maker incentives. The Exchange proposes to implement the fee changes effective March 24, 2023.⁴ The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 purpose of this filing is to amend the Fee Schedule to (1) provide for additional credits to qualifying Submitting Brokers for QCC transactions⁵ and clarify the cap applicable to QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program ("FB Rebates"), (2) modify the Routing Fees applicable to routed orders, and (3) eliminate the Market Maker Incentive For Penny Issues and the Market Maker Incentive For Non-Penny Issues (collectively, the "Market Maker Incentives"). The Exchange proposes to

implement the rule change on March 24, 2023.

QCC Transaction Credits

Currently, the Exchange offers Submitting Brokers a credit of (\$0.22) per contract for Non-Customer vs. Non-Customer QCC transactions or (\$0.16) per contract for Customer vs. Non-Customer QCC transactions.⁶ QCC executions in which a Customer is on both sides of the QCC trade are not eligible for a credit.⁷

The Exchange proposes to offer additional credits on QCC transactions to Submitting Brokers that meet certain monthly volume thresholds. Submitting Brokers who achieve 1.5 million QCC contracts in a month will receive an additional (\$0.01) credit on Customer vs. Non-Customer QCC transactions, and an additional (\$0.03) credit on Non-Customer vs. Non-Customer QCC transactions. Submitting Brokers who achieve 3 million QCC contracts in a month will receive an additional (\$0.02) credit on Customer vs. Non-Customer QCC transactions, and an additional (\$0.06) credit on Non-Customer vs. Non-Customer QCC transactions. The proposed additional credits would be applicable back to the first QCC contract executed by a Submitting Broker in a month, but would not be cumulative across tiers (e.g., a Submitting Broker who transacts 3.1 million QCC contracts in a month would be eligible for an additional (\$0.02) credit on Customer vs. Non-Customer QCC transactions or an additional (\$0.06) credit on Non-Customer vs. Non-Customer QCC transactions, but would not also earn the additional credits offered to Submitting Brokers that achieve 1.5 million QCC contracts in a month). Although the Exchange cannot predict with certainty whether the proposed change would encourage Submitting Brokers to increase their QCC volume, the proposed change is intended to continue to incentivize additional QCC executions by Submitting Brokers by increasing the credits available on such orders.

Endnote 13 of the Fee Schedule currently provides that QCC executions in which a Customer is on both sides of the QCC trade will not be eligible for the Submitting Broker credit and that there is a \$375,000 maximum monthly credit per firm on QCC transactions by a Submitting Broker.⁸ The Exchange recently modified the Fee Schedule to

⁴ The Exchange originally filed to amend the Fee Schedule on March 1, 2023 (SR-NYSEARCA-2023-22), then withdrew such filing and amended the Fee Schedule on March 15, 2023 (SR-NYSEARCA-2023-25), which latter filing the Exchange withdrew on March 24, 2023.

⁵ A QCC Order is defined as an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade coupled with a contra-side order or orders totaling an equal number of contracts. See Rule 6.62P-O(g)(1)(A).

⁶ See Fee Schedule, QUALIFIED CONTINGENT CROSS ("QCC") TRANSACTION FEES AND CREDITS.

⁷ See *id.*

⁸ See Fee Schedule, Endnote 13.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.