



8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82402; File No. SR-NYSEAMER-2017-39]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 991

December 26, 2017.

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 December 12, 2017, NYSE American LLC (the “Exchange” or “NYSE American”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 991, regarding options communications, to conform with the rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”). 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 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 purpose of this filing is to amend NYSE American Rule 991, regarding options communications, to conform with the rules of FINRA. Previously, the Exchange harmonized its then extant Rule 991 to FINRA Rule 2220.⁴ For the sake of consistency, and to further promote a more comprehensive and coordinated regulatory process for the review of communications, the Exchange now proposes to conform its rulebook to subsequent amendments by FINRA.⁵

Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934 (the “Act”), several exchanges, including the Exchange, entered into an agreement dated June 5, 2008 (the “17d-2 Agreement”) to allocate regulatory responsibility for common rules.⁶ In order to continue this

⁴ See Securities Exchange Act Release No. 61499 (February 4, 2010), 75 FR 6738 (February 10, 2010) (SR-NYSEAmex-2010-04). This proposed rule change would further conform the rule books of the Exchange and FINRA.

⁵ See Securities Exchange Act Release No. 68650 (January 14, 2013), 78 FR 4182 (January 18, 2013) (SR-FINRA-2013-001) and No. 73576 (November 12, 2014), 79 FR 68731 (November 18, 2014) (SR-FINRA-2014-045).

⁶ In addition to the Exchange, the other exchanges that entered into the 17d-2 Agreement were: the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, LLC, FINRA, the NASDAQ Stock Market LLC, the

successful regulatory approach, the Exchange proposes to further harmonize Rule 991 (Options Communications) with the comparable FINRA rule, in furtherance of the 17d-2 Agreement and in order to continue to maintain substantial similarity with the relevant FINRA rules.

Rule 991 sets forth the regulatory standards applicable to options communications including *inter alia* the definitions of diverse categories of communications, and the standards and attendant review and approval processes for those categories of communications.

Specifically, in order to continue to ensure a uniform regulatory approach, and to reduce any potential risks or inefficiencies in rules, the Exchange proposes to:

- Replace the definition of “correspondence” in Rules 991(a)(1)(C)(i) and (ii) with the substantially similar though more succinct definition of “correspondence” in FINRA Rule 2210(a)(2), that in turn is referenced in FINRA Rule 2220(a)(1)(A);⁷
- Replace the definition of “institutional sales material” in Rule 991(a)(1)(D) with the substantially similar though expanded definition of “Institutional Communication” in FINRA Rule 2210(a)(3) concerning options;⁸
- Add the definition of “Retail Communication” in FINRA Rule 2210(a)(5), that in turn is referenced in FINRA Rule 2220(a)(1)(C), to Rule 991(a)(1)(C);⁹

New York Stock Exchange, LLC, NYSE Arca, Inc. and the Philadelphia Stock Exchange.

⁷ As FINRA Rule 2220 is the operative rule concerning options communications, for the sake of clarity and for ease of reference, the Exchange proposes to copy the text of the definition into new proposed Rule 991(a)(1)(A) in lieu of cross-referencing FINRA Rule 2210(a)(2).

⁸ FINRA’s definition excludes a member’s internal communications from this institutional category. In addition, given the distinction between institutional and retail investors, the Exchange believes that a cross-reference to FINRA Rule 2210(a)(3) in proposed Rule 991(a)(1)(B) is appropriate.

⁹ As FINRA Rule 2220 is the operative rule concerning options communications, for the

- Delete the now inapplicable individual definitions of “advertisement”, “sales literature”, “correspondence”, “institutional sales material”, “public appearance”, and “independently prepared reprints”, as contained in Rule 991(a)(1)(A), Rule 991(a)(1)(B), Rule 991(a)(1)(C), Rule 991(a)(1)(D), Rule 991(a)(1)(E), Rule 991(a)(1)(F), respectively;
- Replace the definition of “existing retail customer” in Rule 991(a)(2) with the definition of “retail investor” in FINRA Rule 2210(a)(6), that in turn is referenced in the definition of “Retail Communication” supra;¹⁰
- Replace the approval requirement of advertisements, sales literature and independently prepared reprints in Rule 991(b)(1) with the approval requirement of “Retail Communications” in FINRA Rule 2220(b)(1);¹¹
- Replace the procedural supervisory and review requirements of correspondence in Rule 991(b)(2) with the substantially similar requirements in FINRA Rule 2220(b)(2), that in turn references the requirements of FINRA Rules 3110(b) and 3110.06 through .09;¹²

sake of clarity and for ease of reference, the Exchange proposes to copy the text of the definition into new proposed Rule 991(a)(1)(C) in lieu of cross-referencing FINRA Rule 2210(a)(5).

¹⁰ In connection with equities communications, the Exchange previously adopted the text of FINRA Rule 2210(a)(6), and the same definition of “retail investor”. See NYSE American Rule 2210 - Equities. See also Securities Exchange Act Release No. 70963 (November 29, 2013), 78 FR 73223 (December 5, 2013) (SR-NYSEMKT-2013-95).

¹¹ FINRA Rule 2210 (concerning communications) is premised upon three categories of communications--retail communications, correspondence, and institutional communications--that in turn categorize [sic] the approval and procedural requirements of FINRA Rule 2220(b)(1), (2) and (3) (concerning options communications) *and* the corresponding rule changes to Rules 991(b)(1), (2) and (3) proposed herein.

¹² Ibid.

- Replace the written procedural requirements of institutional sales material in Rule 991(b)(3) with the substantially similar requirements in FINRA Rule 2220(b)(3), that regards [sic] institutional communications written procedural requirements of FINRA Rule 2210(b)(3);¹³
- Replace the reference to “advertisements, sales literature, and independently prepared reprints” in Rule 991(c)(1) with “Retail Communications”, the current category of such communications;
- Replace the reference to the “designated” Advertising Regulation Department with the Advertising Regulation Department “of FINRA” in Rule 991(c)(1), for clarification and specificity; and
- Replace the reference to “institutional sales material” in Rule 991(d)(2)(B) with “Institutional Communications”, the current category of such communications.

The Exchange believes that the proposed rule change would structurally and procedurally align the Exchange’s rule concerning options communications with FINRA rule concerning the same subject matter, and would further both the Exchange’s self-regulatory responsibilities and FINRA’s delegated responsibilities under the 17d-2 Agreement.

In addition, the Exchange proposes a non-substantive amendment to Rule 991 to replace the term “member” with the term “ATP Holder” throughout the rule. Rule 900.2NY defines “ATP Holder”, and provides that “references to ‘member’, ‘member organization’ and ‘86 Trinity Permit Holder’ as those terms are used in the Rules of the Exchange should be deemed to be references to ATP Holders.” Because the Exchange uses the term “ATP Holder” rather than “member,” the Exchange proposes to update this rule consistent with that terminology.

¹³ Ibid.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

Specifically, the Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed rule change would provide ATP Holders with a clearer, more consistent, and more comprehensive regulatory scheme by further harmonizing the NYSE American rule concerning options communications with the FINRA rule in the same subject matter. The proposed rule change would continue to ensure a uniform regulatory approach and would reduce any potential risks or inefficiencies in rules. Structurally and procedurally, harmonizing and aligning the Exchange’s rule with the FINRA rule would further both the Exchange’s self-regulatory responsibilities and FINRA’s delegated responsibilities under the 17d-2 Agreement. The Exchange also believes that harmonizing definitions, categories of communications, and the standards and attendant review and approval processes of those categories of communications, would also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

facilitating transactions in securities. The Exchange further notes that the proposed change are neither novel nor controversial and are modeled on existing and operative FINRA rules.

The Exchange also believes that the proposal to use the term “ATP Holder” instead of “member” would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed change would update terminology in the Exchange’s rulebook, reducing any potential ambiguity and providing clarification concerning options communications. The proposed use of the term “ATP Holder” would be consistent with the FINRA term “member,” as both terms refer to the broker-dealer members of a self-regulatory organization.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues. Rather, the proposed change is designed to further harmonize the Exchange’s rule regarding options communications to the comparable FINRA rule, and to update the terms used in Exchanges rules.

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

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 for 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 Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ 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 upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to immediately implement the proposed rule change to promote greater harmonization between the rules of FINRA and the Exchange and also to make clerical changes that may minimize potential investor confusion. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.²⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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 met this requirement.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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)²¹ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2017-39 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-2017-39. This file number should be included on the subject line if e-mail 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

²¹ 15 U.S.C. 78s(b)(2)(B).

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-2017-39, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Brent J. Fields,
Secretary.

²² 17 CFR 200.30-3(a)(12).

[FR Doc. 2017-28229 Filed: 12/29/2017 8:45 am; Publication Date: 1/2/2018]