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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- 83842; File No. SR-NYSEAMER-2018-40]

### **Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 903 and 903A**

August 14, 2018

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 August 3, 2018, NYSE American LLC (“Exchange” or “NYSE American”) 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 Rules 903 and 903A. 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.

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

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<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.

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 Rules 903 (Series of Options Open for Trading) and 903A (Select Provisions of the Options Listing Procedures Plan) -- or OLPP -- to conform to recently approved changes to the OLPP.<sup>4</sup>

The Exchange, which is one of the Participant Exchanges<sup>5</sup> to the OLPP, currently has rules that are designed to incorporate the requirements of the OLPP. All Participant Exchanges have similar such (essentially uniform) rules to ensure consistency and compliance with the OLPP. The Exchange proposes to modify such rules to reflect the recent updates as described below.

Addition of Long-Term Equity Options ("LEAPS")

First, the OLPP has been amended to change the earliest date on which new January LEAPS on equity options, options on Exchange Traded Funds ("ETF"), or options on Trust Issued Receipts ("TIR") may be added to a single date (from three separate months). As noted in

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<sup>4</sup> See Securities Exchange Act Release Nos. 82235 (December 7, 2017), 82 FR 58668 (December 13, 2017) (order approving the Fourth Amendment to the OLPP); 81893 (October 18, 2017), 82 FR 49249 ("OLPP Notice").

<sup>5</sup> In addition to the Exchange, the "Participant Exchanges" are: Chicago Board Options Exchange, Incorporated (now known as Cboe Exchange, Inc.), on behalf of the BATS Exchange, Inc. (now known as Cboe BZX Exchange, Inc.); Box Options Exchange, LLC; C2 Exchange, Incorporated (now known as Cboe C2 Exchange, Inc.); EDGX Exchange, Inc. (now known as Cboe EDGX Exchange, Inc.); Miami International Securities Exchange, LLC; MIAx PEARL, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq Options Market, LLC; Nasdaq PHLX, LLC; and NYSE Arca Inc.

the OLPP Notice, in the past there were operational concerns related to adding new January LEAPs series for all options classes on which LEAPs were listed on a single trading day.<sup>6</sup> And, the addition of new series in a pre-electronic trading environment was a manual process. To accommodate this, the addition of new January LEAPs series was spread across three months (September, October, and November). Today, however, these operational concerns related to January LEAPs have been alleviated as new series can be added in bulk electronically. The Plan Participants, including the Exchange, believe that moving the addition of new January LEAPs series to no earlier than the Monday prior to the September expiration would reduce marketplace confusion about available January LEAPs series. Where previously January LEAPs series for options classes on the February or March expiration cycles would not have been available as early as January LEAPs series for options classes on the January expiration cycle, under the proposed change, all January LEAPs series will be available concurrently.

Accordingly, to conform to this change, the Exchange proposes to modify Commentary .03(b) to Rule 903 to reflect that new January LEAPs series on equity options classes, options on ETFs, or options on TIRs, may not be added on a currently listed and traded option class earlier than the Monday prior to the September expiration (which is 28 months before the expiration).<sup>7</sup>

Addition of Equity, ETF, and TIR Option Series After Regular Trading Hours

Second, the OLPP has been amended to allow equity, ETF, and TIR option series to be added based on trading after regular trading hours (i.e., after-market). As noted in the OLPP Notice, the prior version of the OLPP did not allow for option series to be added based on trading following regular trading hours.<sup>8</sup> As such, the Exchange Participants were are [sic]

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<sup>6</sup> See supra n. 4, 82 FR 49249, at 49249.

<sup>7</sup> See proposed Commentary .03(b) to Rule 903.

<sup>8</sup> See supra n. 4, 82 FR 49249, at 49250.

unable to add new option series that may result from trading following regular trading hours until the next morning, depending on the range of prices in pre-market trading, which is significant because events that occur after regular trading hours, such as earnings releases, often have an important impact on the price of an underlying security. In addition, there are operational difficulties for market participants throughout the industry adding series after system startup. To avoid the potential burden that would result from the inability to add series as a result of trading following regular trading hours, the OLPP was amended to allow an additional category by which the price of an underlying security may be measured. Specifically, to conform to the amended OLPP, the Exchange proposes to add paragraph (b)(i)(4) to Rule 903A to provide that “for option series to be added based on trading following regular trading hours,” the price of the underlying security is measured by “the most recent share price reported by all national securities exchanges between 4:15 p.m. and 6:00 p.m. Eastern Time.”<sup>9</sup>

#### Technical Changes

The Exchange proposes to modify the description of LEAPs in Commentary .03(a) to Rule 903 to clarify the application of rules regarding LEAPs. The Exchange proposes to explicitly state that a LEAP is a series “that expire[s] twelve (12) to thirty-nine (39) months from the time they are opened for trading, and stock index options that expire twelve (12) to thirty-six (36) months from the time they are opened for trading” and that there may up to six “extended far term” expiration months “for any index, Exchange-Trade Fund Share, or equity option class.”

<sup>10</sup> Currently, the Exchange rules do not set forth the minimum amount of time to expiration for consideration of an expiration month as a LEAP, nor do the rules explicate that there may only

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<sup>9</sup> See proposed Rule 903A(b)(i)(4). The Exchange proposes to relocate “and” from paragraph (2) to (3) to conform to the change. See proposed Rule 903A(b)(i)(2),(3).

<sup>10</sup> See proposed Commentary .03(a) to Rule 903.

be six LEAP expiration months for any index, Exchange Traded Fund Share, or equity option class. The Exchange also does not currently specify that the potential additional expirations months are “extended far term” expirations months. The Exchange believes this proposed change would add clarity and transparency to Exchange rules and is consistent with analogous rules of other exchanges.<sup>11</sup>

The Exchange proposes to modify Commentary .03(a) to Rule 903 to delete now obsolete operational language, which dates back to when LEAPs were first adopted. The language in question provides that:

Further, such option series will open for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations need to be posted for such option series until they are opened for trading.

The Exchange proposes to delete this language because when this language was adopted LEAPs were not opened for trading until late in the trading day unless there was buying or selling interest.<sup>12</sup> Today, however, technological improvements allow the Exchange to open all LEAP series at the same time as all other series in an option class.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>13</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,

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<sup>11</sup> See, e.g., NYSE Arca Rule 6.4-O(d), (e).

<sup>12</sup> See proposed Commentary .03(a) to Rule 903.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the proposed rule change, which conforms to the recently adopted provisions of the OLPP, as amended, allows the Exchange to continue to list extended far term option series that have been viewed as beneficial to traders, investors and public customers. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to list all January, 2021 expiration series on the Monday prior to the September, 2018 expiration. Moreover, this change would simplify the process for adding new January LEAP options series and reduce potential for investor confusion because all new January LEAP options would be made available beginning at the same time, consistent with the amended OLPP. The Exchange notes that this proposal does not propose any new provisions that have not already been approved by the Commission in the amended OLPP, but instead maintains series listing rules that conform to the amended OLPP.

The proposal to permit series to be added based on after-market trading is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by allowing the Exchange to make series available for trading with reduced operational difficulties. The Exchange notes that this proposed change, which is consistent with the amended OLPP should provide market participants with earlier notice regarding what options series will be available for trading the following day, and should help to enhance investors' ability to plan their options trading.

The Exchange also believes that the proposed technical changes, including adopting language to conform the rule text to clarify the operation of LEAPs, promotes just and equitable principles of trade (which aligns with approved rules of other options exchanges (see supra n. 11), foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

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. Specifically, the Exchange believes that by conforming Exchange rules to the amended OLPP, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Exchange believes that adopting rules, which it anticipates will likewise be adopted by Participant Exchanges, would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues.

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<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup> Because the proposed rule change does not: (i)

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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>17</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>18</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 Commission notes that the Exchange's proposal would conform the Exchange's rules to the amended OLPP, which the Commission previously approved.<sup>19</sup> Accordingly, the Commission believes that the proposal raises no new or novel regulatory issues and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.<sup>20</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

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

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> See OLPP Notice, supra note 4.

<sup>20</sup> 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)<sup>21</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2018-40 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-2018-40. 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

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<sup>21</sup> 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-2018-40 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

**Robert W. Errett,**  
*Deputy Secretary.*

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<sup>22</sup> 17 CFR 200.30-3(a)(12).

[FR Doc. 2018-17829 Filed: 8/17/2018 8:45 am; Publication Date: 8/20/2018]