

to determine whether the proposed rule 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2018-44 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2018-44. 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-NYSEArca-2018-44 and should be submitted on or before July 9, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83417; File No. SR-NYSEAMER-2018-26]

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Commentary .07 to Rule 904

June 12, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on June 8, 2018, NYSE American LLC (the "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 Commentary .07 to Rule 904 to amend the position limits for options on SPDR S&P 500 ETF ("SPY"). 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 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Rule 904 (Position Limits) establishes position limits for aggregate positions in option contracts traded on the Exchange. Commentary .07 to Rule 904 lists specific position limits for certain select underlying securities. SPY is among the certain select underlying securities listed in the Rule. Currently, Rule 904 provides that there are no position limits on options overlying SPY pursuant to a pilot program, which is scheduled to expire on July 12, 2018 ("SPY Pilot Program").<sup>4</sup>

The Exchange proposes to amend Rule 904, Commentary .07, to allow the SPY Pilot Program to terminate on July 12, 2018, the current expiration date of the SPY Pilot Program. In lieu of extending the SPY Pilot Program, the Exchange proposes to allow the SPY Pilot Program to terminate and to establish position limits of 1,800,000 contracts, for options on SPY, with such change becoming operative on July 12, 2018, so that there is no lapse in time between termination of the SPY Pilot Program and the establishment of the new limits.<sup>5</sup> Furthermore, as a result of the termination of the SPY Pilot Program, the Exchange does not believe it is necessary to submit a SPY Pilot Program Report at the end of the SPY Pilot Program. Based on the prior SPY Pilot Program Reports provided to the Commission,<sup>6</sup> the Exchange believes it is appropriate to terminate the SPY Pilot Program and establish permanent position limits for SPY.

Position limits are designed to address potential manipulative schemes and adverse market impact surrounding the use of options, such as disrupting the market in the security underlying the options. The potential manipulative schemes and adverse market impact are balanced against the potential of setting the limits so low as to discourage

<sup>4</sup> See Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012). The SPY Pilot Program was subsequently extended. See Securities Exchange Release Nos. 70734 (October 22, 2013), 78 FR 64255 (October 28, 2013); 73847 (December 16, 2014), 79 FR 76426 (December 22, 2014); 75416 (July 9, 2015), 80 FR 41521 (July 15, 2015); 78241 (July 7, 2016), 81 FR 45325 (July 13, 2016); and 81130 (July 12, 2017), 82 FR 32906 (July 18, 2017).

<sup>5</sup> Pursuant to Rule 905, the exercise limit for options on SPY is equivalent to the position limit for SPY options and would also be amended pursuant to this proposal.

<sup>6</sup> See *supra*, note 4.

<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.

<sup>23</sup> 17 CFR 200.30-3(a)(12).

participation in the options market. The level of those position limits must be balanced between curtailing potential manipulation and the cost of preventing potential hedging activity that could be used for legitimate economic purposes.

The SPY Pilot Program was established in 2012 in order to eliminate position and exercise limits for physically-settled SPY options.<sup>7</sup> In 2005, the position limits for SPY options were increased from 75,000 contracts to 300,000 contracts on the same side of the market.<sup>8</sup> In July 2011, the position limit for these options was again increased from 300,000 contracts to 900,000 contracts on the same side of the market.<sup>9</sup> Then, in 2012, the position limits for SPY options were eliminated as part of the SPY Pilot Program.<sup>10</sup>

The underlying SPY tracks the performance of the S&P 500 Index and the Exchange notes that the SPY and SPY options have deep, liquid markets that reduce concerns regarding manipulation and disruption in the underlying markets. In support of this proposed rule change, the Exchange has collected the following trading statistics for SPY and SPY Options: (1) The average daily volume (“ADV”) (as of May 15, 2018) for SPY is 108.32 million shares; (2) the ADV in 2018 for SPY options is 3.9 million contracts per day; (3) the total shares outstanding for SPY are 965.43 million; and (4) the fund market cap for SPY is 261.65 billion. The Exchange represents further that there is tremendous liquidity in the securities that make up the S&P 500 Index.

Accordingly, the Exchange proposes to amend Commentary .07 to Rule 904 to set forth that the position limit for options on SPY would be 1,800,000 contracts on the same side of the market. This position limit equals the current position limit for options on the PowerShares QQQ Trust (“QQQ”), which the Commission previously approved to be increased from 900,000 contracts on the same side of the market, to 1,800,000 contracts on the same side of the market.<sup>11</sup> The Exchange

also notes that SPY is more liquid than QQQ.<sup>12</sup> The Exchange believes that establishing position limits for SPY options in the amount of 1,800,000 contracts on the same side of the market would allow for the maintenance of the liquid and competitive market environment for these options, which will benefit customers interested in these products. Under the proposal, the reporting requirement for SPY options would be unchanged.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<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, 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 establishing permanent position limits for SPY options will encourage Market Makers to continue to provide sufficient liquidity in SPY options on the Exchange, which will enhance the process of price discovery conducted on the Exchange. The proposal will also benefit institutional investors as well as retail traders, and public customers, by continuing to provide them with an effective trading and hedging vehicle. In addition, the Exchange believes that the structure of SPY options and the considerable liquidity of the market for those options diminishes the opportunity to manipulate this product and disrupt the underlying market that a lower position limit may protect against.

Increased position limits for select actively traded options, such as that proposed herein (increased as compared to the 900,000 limit in place prior to the SPY Pilot Program),<sup>15</sup> is not novel and has been previously approved by the Commission. For example, the Commission has previously approved a rule change permitting the Exchange to double the position and exercise limits for iShares China Large-Cap ETF (“FXI”), iShares MSCI EAFE ETF (“EFA”), iShares MSCI Emerging Markets ETF (“EEM”), iShares Russell

2018), 83 FR 8907 (March 1, 2018) (SR-CBOE-2017-057).

<sup>12</sup> From the beginning of the year, through May 15, 2018, the ADV for SPY was 108.32 million shares while the ADV for QQQ was 46.64 million shares (calculated using data from Yahoo Finance).

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

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

<sup>15</sup> See *supra*, note 9.

2000 ETF (“IWM”), iShares MSCI Brazil Capped ETF (“EWZ”), iShares 20+ Year Treasury Bond Fund ETF (“TLT”), iShares MSCI Japan ETF (“EWJ”) and QQQ.<sup>16</sup> Furthermore, as previously mentioned, the Commission specifically approved a proposal by the Exchange to increase the position and exercise limits for options on QQQ from 900,000 contracts on the same side of the market to 1,800,000 contracts on the same side of the market; similar to the current proposal for options on SPY.<sup>17</sup> The Exchange also notes that SPY is more liquid than QQQ.<sup>18</sup>

Lastly, the Commission expressed the belief that implementing higher position and exercise limits may bring additional depth and liquidity without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.<sup>19</sup> The Exchange’s existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from increasing position limits (increased as compared to the 900,000 limit in place prior to the SPY Pilot Program).<sup>20</sup>

## 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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change promotes competition because it will enable the options exchanges to attract additional order flow from the over-the-counter market, who in turn compete for those orders. The Exchange believes that the proposed rule change will result in continued opportunities to achieve the investment and trading objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish uniform position limits for additional multiply listed option classes.

<sup>16</sup> See *supra*, note 11.

<sup>17</sup> *Id.*

<sup>18</sup> See *supra*, note 12.

<sup>19</sup> See *supra*, note 11.

<sup>20</sup> See *supra*, note 9.

<sup>7</sup> See Securities Exchange Act Release Nos. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR-NYSEAmex-2012-29); and 67937 (September 27, 2012), 77 FR 60489 (October 3, 2012) (SR-CBOE-2012-091).

<sup>8</sup> See Securities Exchange Act Release No. 51041 (January 14, 2005), 70 FR 3408 (January 24, 2005) (SR-CBOE-2005-06).

<sup>9</sup> See Securities Exchange Act Release No. 64928 (July 20, 2011), 76 FR 44633 (July 26, 2011) (SR-CBOE-2011-065).

<sup>10</sup> See *supra*, note 7.

<sup>11</sup> See Securities Exchange Act Release No. 83065 (April 19, 2018), 83 FR 18093 (April 25, 2018) (SR-NYSEAMER-2018-14); See also Securities Exchange Act Release No. 82770 (February 23,

*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 foregoing 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>21</sup> and Rule 19b-4(f)(6)<sup>22</sup> thereunder.

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 otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2018-26 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2018-26. 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-2018-26 and should be submitted on or before July 9, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**Submission for OMB Review; Comment Request**

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

*Reports of Evidence of Material Violations:* SEC File No. 270-514, OMB Control No. 3235-0572

Notice is hereby given that pursuant to the Paperwork Reduction Act (PRA)

of 1995, 44 U.S.C. 3501-3520, the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension.

On February 6, 2003, the Commission published final rules, effective August 5, 2003, entitled "Standards of Professional Conduct for Attorneys Appearing and Practicing Before the Commission in the Representation of an Issuer" (17 CFR 205.1-205.7). The information collection embedded in the rules is necessary to implement the Standards of Professional Conduct for Attorneys prescribed by the rule and required by Section 307 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7245). The rules impose an "up-the-ladder" reporting requirement when attorneys appearing and practicing before the Commission become aware of evidence of a material violation by the issuer or any officer, director, employee, or agent of the issuer. An issuer may choose to establish a qualified legal compliance committee ("QLCC") as an alternative procedure for reporting evidence of a material violation. In the rare cases in which a majority of a QLCC has concluded that an issuer did not act appropriately, the information may be communicated to the Commission. The collection of information is, therefore, an important component of the Commission's program to discourage violations of the federal securities laws and promote ethical behavior of attorneys appearing and practicing before the Commission.

The respondents to this collection of information are attorneys who appear and practice before the Commission and, in certain cases, the issuer, and/or officers, directors and committees of the issuer. We believe that, in providing quality representation to issuers, attorneys report evidence of violations to others within the issuer, including the Chief Legal Officer, the Chief Executive Officer, and, where necessary, the directors. In addition, officers and directors investigate evidence of violations and report within the issuer the results of the investigation and the remedial steps they have taken or sanctions they have imposed. Except as discussed below, we therefore believe that the reporting requirements imposed by the rule are "usual and customary" activities that do not add to the burden that would be imposed by the collection of information.

Certain aspects of the collection of information, however, may impose a burden. For an issuer to establish a

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

<sup>23</sup> 17 CFR 200.30-3(a)(12).