For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81928; File No. SR–NYSEAMER–2017–23]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 964.2NY Regarding the Participation Entitlement Formula for Specialists and e-Specialists

October 24, 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 October 10, 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 modify Rule 964.2NY regarding the participation entitlement formula for Specialists and e-Specialists. The proposed rule change is available on the Exchange's Web site 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 the filing is to modify Rule 964.2NY regarding the participation entitlement of Specialists and e-Specialists.[4]

Rule 964NY sets forth the priority for the allocation of incoming orders to resting interest at a particular price in the System,[5] which includes the allocation to the Specialist Pool.[6] Rule 964.2NY sets forth the participant entitlement formula applicable to the Specialist Pool and provides that, on a quarterly basis, the Exchange will determine a Primary Specialist from among the Specialists e-Specialists [sic] in each option class.

Generally, the Specialist Pool is entitled to 40% of the remaining balance of an order after any orders on behalf of Customers in the Consolidated Book are satisfied.[7] Rule 964.2NY(b)(3)(A) provides that Specialists and e-Specialists quoting at the NBBO will share in the Specialist Pool participation entitlement on a size pro rata basis and provides that the Primary Specialist's size pro rata participation will receive additional weighting, as determined by the Exchange and announced by Trader Update (the ''Additional Weighting''). Pursuant to the current Rule, this Additional Weighting afforded to the Primary Specialist is capped at 66⅔% if there is only one e-Specialist, and at 50% if there are two or more e-Specialists (the ''Cap'').[8]

Currently, the Exchange applies the Additional Weighting as follows: When an inbound order is allocated against the Specialist Pool, the Primary Specialist's quoted size is treated as if it were double (*i.e.,* two (2) times the number of contracts being quoted) and this doubled size is then used in the calculation (as shown in the examples below) to determine the allocation to both the Primary Specialist as well as the other participants in the Specialist Pool.[9] When there is only one e-Specialist and both the Specialist and e-Specialist are quoting the same size, this Additional Weighting will not be greater than 66⅔%. When there is more than one e-Specialist and the Specialist and e-Specialists are all quoting the same size, this Additional Weighting will not be greater than 50%.

Because current Rule 964.2NY(b)(3)(A) does not specify the circumstances under which the Primary Specialist's allocation in the Specialist Pool is subject to the Cap, the Exchange proposes to make clear that the Cap only applies if ''all participants in the Specialist Pool are quoting the same size.'' [10] When all participants in the Specialist Pool are not quoting the same size, the Primary Specialist may receive up to the entirety of the Specialist Pool's participation allocation. However, for this scenario to occur, the Primary Specialist's quoted size would need to be disproportionately larger than the other participants in the Specialist Pool such that the allocation to which the other participant(s) in the Specialist Pool is entitled is less than one contract (*i.e.,* a fractional share). For example, if the Primary Specialist is quoting 300 contracts and the other eSpecialist in

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Specialist is ''an individual or entity that has been deemed qualified by the Exchange for the purpose of making transactions on the Exchange in accordance with the provisions of Rule 920NY [Market Makers], and who meets the qualification requirements of Rule 927NY(b) [Specialists]. Each Specialist must be registered with the Exchange as a Market Maker. Any ATP Holder registered as a Market Maker with the Exchange is eligible to be qualified as a Specialist. *See* Rule 900.2NY(76). Rule 923NY(b) also provides that ''[t]he Exchange may designate e-Specialists in an option class in accordance with Rule 927.4NY [e-Specialists].'' *See* Rule 923NY(b).

[5] The term ''System'' refers to the Exchange's electronic order delivery, execution and reporting system through which orders and quotes for listed options are consolidated for execution and/or display. *See* Rule 900.2NY (48) (defining ''Exchange System'' or ''System'').

[6] The Specialist Pool refers to the aggregated size of the best bid and best offer, in a given series, amongst the Specialist and e-Specialists that match in price. *See* Rule 900.2NY(75).

[7] *See* Rule 964.2NY(b)(2).

[8] *See* Rule 964.2NY(b)(3)(A).

[9] The Exchange may modify how it calculates the Additional Weighting, which calculation would be announced by Trader Update. *See* Rule 964.2NY(b)(3)(A). *See, e.g.,* September 27, 2012 Trader Update, *available here, https://www.nyse.com/publicdocs/nyse/notifications/trader-update/NYSE%20AMEX%20OPTIONS%20Trader%20Update%20Primary%20Specialist%20Implementation%209-27-12%20FINALtw.pdf;* and December 21, 2012 Trader Update, *available here, https://www.nyse.com/publicdocs/nyse/notifications/trader-update/NYSE%20AMEX%20OPTIONS%20Trader%20Update%20Primary%20Specialist%20Implementation%20010213%20%20%20.pdf.*

[10] *See* proposed Rule 964.2NY(b)(3)(A) (providing, in part, that the ''Primary Specialist's size pro-rata participation in the Specialist Pool will receive additional weighting, as determined by the Exchange, and announced via Trader Update; provided, however, that if all participants in the Specialist Pool are quoting the same size, this additional weighting will be no greater than 66⅔% if there is only one e-Specialist, and no greater than 50% if there are two or more e-Specialists''). The Exchange also proposes to capitalize the ''s'' in the defined term ''e-Specialist.'' *See id.*

the Specialist Pool is quoting 1 contract [sic].

Pursuant to Rule 964.2NY(b)(1)(iv), each participant in the Specialist Pool would ''be allocated a number of contracts equal to the *greater of* their share in the Specialist Pool guaranteed participation or their 'size pro rata' allocation as provided in Rule 964NY(b)(3), but in either case, no greater than the size of the Specialist's disseminated size.'' [11] Thus, it may be possible that the Primary Specialist receives its allocation based on its share of the Specialist Pool, while other participants in the Pool receive a pro rata allocation, because the latter allocation is more favorable to that participant (*i.e.,* provides a ''greater share'') to that participant. In this regard, because the Exchange maximizes the allocation to each participant in the Specialist Pool, certain non-Specialist participants (at the same price) may be allocated fewer contracts than their pro rata share.[12]

Below are examples of how the Exchange applies the Additional Weighting in circumstances where the Specialist Pool participation guarantee entitles each participant to a more favorable allocation than size pro rata: [13]

Example 1 to illustrate application of 66⅔% cap:

Primary Specialist quoting 60 contracts
Only one other participant in the Specialist Pool also quoting 60 contracts
Other non-customer interest resting on the Consolidated Book for 500 contracts
An inbound order arrives for 200 contracts

Allocation Results:

The Specialist Pool is entitled to a 40% allocation of the inbound order (80 contracts).
The Primary Specialist is entitled to an allocation of $(2 \times 60)/[60 + (2 \times 60)]$ = 66⅔% of the 80 contracts allocated to the Specialist Pool. The Primary Specialist will receive 53 contracts.
The other participant in the Specialist Pool is entitled to an allocation of $60/[60 + (2 \times 60)]$ = 33 ⅓% of the 80 contracts allocated to the Specialist Pool. The e-Specialist will receive 27 contracts.

Example 2 to illustrate application of 50% cap:

Primary Specialist quoting 60 contracts
Two other participants in the Specialist Pool each quoting 60 contracts
Other non-customer interest resting on the Consolidated Book for 500 contracts
An inbound order arrives for 200 contracts

Allocation Results:

The Specialist Pool is entitled to a 40% allocation of the inbound order (80 contracts).
The Primary Specialist is entitled to an allocation of $(2 \times 60)/[60 + 60 + (2 \times 60)]$ = 50% of the 80 contracts allocated to the Specialist Pool. The Primary Specialist will receive 40 contracts.
Each other participant in the Specialist Pool is entitled to an allocation of $60/[60 + 60 + (2 \times 60)]$ = 25% of the 80 contracts allocated to the Specialist Pool. Each other participant in the Specialist Pool will receive 20 contracts.

Example 3 to illustrate allocation (i.e., no cap) when all are not quoting the same size:

Primary Specialist quoting 60 contracts
Only one other participant in the Specialist Pool also quoting 30 contracts
Other non-customer interest resting on the Consolidated Book for 500 contracts
An inbound order arrives for 200 contracts

Allocation Results:

The Specialist Pool is entitled to a 40% allocation of the inbound order (80 contracts).
The Primary Specialist is entitled to an allocation of $(2 \times 60)/[30 + (2 \times 60)]$ = 80% of the 80 contracts allocated to the Specialist Pool. The Primary Specialist is entitled to 64 contracts, which exceeds the size of their quote. Rule 964.2NY(b)(1)(iv), the Primary Specialist will receive no more than 60 contracts, so their allocation does not exceed their quoted size.
The other participant in the Specialist Pool is entitled to an allocation of $30/[30 + (2 \times 60)]$ = 20% of the 80 contracts allocated to the Specialist Pool. The other participant in the Specialist Pool is entitled to 16 contracts and will receive 20 contracts, which represent the remaining of the Specialist Pool allocation. In this case, the other participant in the Specialist Pool is granted the balance of its share in the Specialist Pool guaranteed participation, as it is greater than the contracts to which it is entitled per Rule 964.2NY(1)(iv) [sic].

Example 4 to illustrate allocating each Specialist the ''greater of'' their share in either the Specialist Pool or size pro rata:

Primary Specialist quoting 90 contracts
Other participant in the Specialist Pool quoting 200 contracts
Market Maker quoting 200 contracts
An inbound order arrives for 100 contracts

Allocation Results:

The Specialist Pool is entitled to a 40% allocation of the inbound order (40 contracts).
The Primary Specialist is entitled to an allocation of $(2 \times 90)/[200 + (2 \times 90)]$ = 47.37% of the 40 contracts allocated to the Specialist Pool (19 contracts).
The Primary Specialist pro rata allocation would be 90/(200 + 200 + 90) = 18.37% of the 100 contracts of the inbound order (18 contracts). Since the 19-contract Specialist Pool allocation is greater than the 18-contract pro rata allocation, the Primary Specialist will receive 19 contracts.
The other participant in the Specialist Pool is entitled to an allocation of $200/[200 + (2 \times 90)]$ = 52.63% of the 40 contracts allocated to the Specialist Pool (21 contracts).
The other participant in the Specialist Pool would also be entitled to a pro rata allocation 200/(200 + 200) = 50% of the remaining 81 contracts of the inbound order (41 contracts). Since the 41-contract pro rata allocation of the balance is greater than the 21-contract Specialist Pool allocation, the other participant in the Specialist Pool will receive 41 contracts, pursuant to Rule 964.2NY(1)(iv) [sic].
The Market Maker will receive the remaining 40 contracts.

* * * * *

The Exchange believes the proposed change, which does not alter current functionality, would provide additional specificity regarding how orders are allocated and the circumstances under which the Cap would apply to the Primary Specialist allocation, which adds clarity and transparency to Exchange rules to the benefit of all market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[14] In particular, the proposal is

[11] *See* Rule 964.2NY(b)(1)(iv).

[12] *See generally* Rule 964NY(b).

[13] The Exchange notes that when a participant in the Specialist Pool would fare better based on its pro rata share, rather than its share of the Specialist Pool guaranteed participation, the pro rata share allocation will be applied. *See* Rule 964.2NY(b)(1)(iv).

[14] 15 U.S.C. 78f(b).

consistent with Section 6(b)(5) of the Act [15] because it is designed promote [sic] just and equitable principles of trade, [sic] foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanisms [sic] of, [sic] a free and open market and a national market system.

The proposed rule change would promote just and equitable principles of trade as it is intended to provide additional specificity regarding the circumstances under which the Primary Specialist's allocation would be subject to a Cap, which adds clarity and transparency to Exchange rules regarding order allocation. The Exchange believes that the proposed change promotes just and equitable principles of trade, fosters cooperation and coordination among persons engaged in facilitating securities transactions, and removes impediments to and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate and better understand the Exchange's rulebook.

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 competitive issues. Rather, the proposed change is designed to provide ATP Holders and the investing public with additional specificity and transparency regarding the circumstances under which the Primary Specialist's allocation would be subject to a Cap, which in turn adds clarity and transparency to Exchange 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 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [18] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to 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 believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to immediately provide greater clarity to market participants concerning order allocation on the Exchange. Accordingly, the Commission hereby waives the operative delay and designates the proposal 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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.* Please include File Number SR–NYSEAMER–2017–23 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–2017–23. 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 Web site (*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 Web site 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–2017–23 and should be submitted on or before November 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

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[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 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, 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 satisfied 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).

[21] 17 CFR 200.30–3(a)(12).