

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2023-018 and should be submitted on or before January 18, 2024.

V. Accelerated Approval of Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the **Federal Register**. As noted above, Amendment No. 3 makes no substantive changes to the proposal. Amendment No. 3 provides additional analysis and data to support certain assertions made by the Exchange and provides greater clarity to, and justification for, the proposal.¹⁰⁷ The additional analysis and information in Amendment No. 3 assist the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Act. Amendment No. 3 also raises no new novel issues. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,¹⁰⁸ to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

¹⁰⁷ See *supra* note 12.

¹⁰⁸ 15 U.S.C. 78s(b)(2).

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that proposed rule change SR-CBOE-2023-018, as modified by Amendment No. 3, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁹

Christina Z. Milnor,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99231; File No. SR-NYSEAMER-2023-66]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Modify Rule 900.3NYP

December 22, 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 December 19, 2023, NYSE American LLC ("NYSE American" or "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 modify Rule 900.3NYP (Orders and Modifiers) to adopt electronic Customer Cross Order and Complex Customer Cross Order functionality and to amend Rule 900.2NY (Definitions) to specify the treatment of certain Professional Customer interest. 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.

¹⁰⁹ 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.

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 modify Rule 900.3NYP (Orders and Modifiers) to adopt electronically-entered Customer Cross ("C2C") Orders and Complex Customer Cross ("Complex C2C") Orders (collectively, "Customer Cross Orders"). The Exchange also proposes to amend the definition of Professional Customer (Rule 900.2NY) to specify that, for purposes of proposed Rule 900.3NYP(g)(2) and Rule 971.1NYP, Professional Customer interest would be treated in the same manner as Broker/Dealers (non-Customers).

Proposed Rule 900.3NYP(g)(2):
Customer Cross Orders

Rule 934NY(a) describes Customer-to-Customer Cross orders on the Trading Floor wherein "[a] Floor Broker who holds a Customer order to buy and a Customer order to sell the same option contract may cross such orders," provided that the Floor Broker proceeds in the manner set forth in paragraphs (1)–(3) of Rule 934NY(a).⁴ The Exchange proposes to adopt rules governing electronically-entered Customer Cross Orders, which allow ATP Holders to conduct this type of crossing transaction electronically and without having to utilize a Floor Broker. Although the proposed Customer Cross Orders are conceptually the same as the existing Customer-to-Customer Cross, the latter order type differs in that it must adhere

⁴ As discussed *infra*, Professional Customer volume is not eligible to be included on a Customer-to-Customer Cross submitted pursuant to Rule 934NY(a). See Rule 900.2NY (providing in relevant part that, for purposes of Rule 934NY (Crossing), Professional Customers are treated as Broker/Dealers).

to Floor-specific open outcry rules.⁵ The Exchange notes that the proposed Customer Cross Order types are consistent with customer crossing functionality available on another options exchange.⁶

Proposed Rule 900.3NYP(g)(2) would describe Customer Cross Orders. Proposed Rule 900.3NYP(g)(2)(A) would provide that a C2C Order and a Complex C2C Order must be comprised of a Customer (but not a Professional Customer) order to buy and a Customer (but not a Professional Customer) order to sell at the same price and for the same quantity. The proposal to limit eligible interest to Customer but not Professional Customer interest is consistent with the rules of another options exchange.⁷ In addition, as proposed, a C2C Order or Complex C2C Order that is not rejected on arrival would immediately trade in full at its limit price.⁸ Further, proposed Rule 900.3NYP(g)(2)(A) would provide that C2C Orders and Complex C2C Orders would not route and may be entered with a Minimum Price Variation (“MPV”) of \$0.01 regardless of the MPV of the options series.⁹ Finally, the proposed Rule would specify that Commentary .01 to Rule 935NY would apply to Customer Cross Orders, which means that ATP Holders may not utilize Customer Cross Orders to increase their economic gain without first giving other trading interest on the Exchange an opportunity to participate in the trade or to trade at the transaction price when the ATP Holder was already bidding or offering at that price.¹⁰ This proposed handling would align with at least one

⁵ See, e.g., Rule 934NY(a)(3)(A) and (C) (each of which require that the Customer-to-Customer Cross comply with the other Exchange open outcry rules).

⁶ See Cboe Exchange, Inc. (“Cboe”) Rules 5.37(f) and 5.38(f) (providing the requirements for Customer-to-Customer AIM/C-AIM Immediate Crosses to bypass Cboe’s Automated Improvement Mechanism (AIM)/Complex Automated Improvement Mechanism (C-AIM), respectively, and immediately execute).

⁷ See Cboe Rule 5.37(f) and Rule 5.38(f) (providing that each side of a “Customer-to-Customer Immediate Cross,” for single-leg and complex orders, respectively, must be for the account of a “Priority Customer”). Cboe defines a Priority Customer as “a person or entity that is a Public Customer and is not a Professional.” See Cboe Rule 1.1.

⁸ See proposed Rule 900.3NYP(g)(2)(A) (providing, in relevant part, that “[a] C2C Order or Complex C2C Order that is not rejected per Rule 900.3NYP(g)(2)(B) [Execution of C2C Orders] or (C) [Execution of Complex C2C Orders], respectively, will immediately trade in full at its price”).

⁹ Rule 900.2NY defines “Minimum Price Variation” or “MPV” as the price variations established by the Exchange, which for quoting and trading options traded on the Exchange are set forth in Rule 960NY.

¹⁰ See proposed Rule 900.3NYP(g)(2)(A). See also Rule 935NY, Commentary .01.

other options exchange that offers customer crossing orders.¹¹

Proposed Rule 900.3NYP(g)(2)(B) provides that a C2C Order that has one option leg would be rejected if received when the NBBO is crossed or if the C2C would trade at a price that (i) is at the same price as a displayed Customer order on the Consolidated Book and (ii) is not at or between the NBBO and the Exchange BBO. The Exchange believes that the proposal would provide for the efficient entry and execution of C2C Orders while continuing to protect same-priced, displayed Customer interest (*i.e.*, by ensuring that the C2C Order does not trade ahead of displayed Customer interest resting in the Consolidated Book). As noted above, the proposed C2C Orders would operate in a manner that is consistent with the handling of single-leg customer cross orders on another options exchange.¹²

Proposed Rule 900.3NYP(g)(2)(C) would describe the Exchange’s pricing requirements for a Complex C2C Order. To validate the price of a Complex C2C Order, the Exchange would rely on the Derived BBO (“DBBO”) as described in Rule 980NYP(a)(5).¹³ If the Exchange is not able to calculate the DBBO for a complex strategy because of one of the circumstances described in Rule 980NYP(a)(5)(B)–(C), the Exchange will not execute an order for that strategy until the circumstance is resolved.¹⁴

¹¹ See Cboe Interpretation and Policy .03 to Rules 5.37 and 5.38 (providing an identical prohibition in each Cboe rule—which prohibition is identical to Rule 935NY, Commentary .01 and prevents order-senders from using the customer crossing mechanism to increase economic gain without first providing an opportunity of eligible interest to trade at the transaction price of the cross order).

¹² See Cboe Rule 5.37(f) (stating that Customer-to-Customer Immediate Cross comprised of “Priority Customer” orders will immediately execute provided that the execution (i) is “at or between the BBO and the NBBO” and (ii) “is not at the same price as any Priority Customer Order resting on the Book.”).

¹³ The DBBO provides for the establishment of a derived (theoretical) bid or offer for a particular complex strategy. See Rule 980NYP(a)(5) (defining the DBBO and providing that the bid (offer) price used to calculate the DBBO on each leg will be the Exchange BB (BO) (if available), bound by the maximum allowable Away Market Deviation). The Away Market Deviation, as defined in Rule 980NYP(a)(1), ensures that an ECO does not execute too far away from the prevailing market. Rule 980NYP(a)(5) also provides for the establishment of the DBBO in the absence of an Exchange BB (BO), or ABB(ABO), or both.

¹⁴ See proposed Rule 900.3NYP(g)(2)(C). See also Rule 980NYP(a)(5)(B) (providing that, “[i]f, for a leg of a complex strategy, there is neither an Exchange BBO nor an ABBO, the Exchange will not allow the complex strategy to trade until, for that leg, there is either an Exchange BB or BO, or an ABB or ABO, on at least one side of the market”) and (a)(5)(C) (providing, in relevant part that, “[i]f the best bid and offer prices (when not based solely on the Exchange BBO) for a component leg of the complex strategy are locked or crossed, the Exchange will

Consistent with this handling, the Exchange proposes that it would reject a Complex C2C Order if the Exchange is unable to calculate the DBBO for a leg of the Complex C2C Order per Rule 980NYP(a)(5)(B) or (a)(5)(C).¹⁵

In addition, proposed Rule 900.3NYP(g)(2)(C) provides that no option leg of a Complex C2C Order will trade at a price worse than the Exchange BBO and such order would be rejected if it fails to meet the following requirements:

- the transaction price must be at or between the DBBO and may not equal the DBBO if the DBBO is calculated using the Exchange BBO and the Exchange BBO of any component of the complex strategy on either side of the market includes displayed Customer interest. If the DBB (DBO) includes a displayed Customer interest on the Exchange, the transaction price must improve the DBB (DBO) by at least one cent (\$0.01). This proposed requirement is consistent with price parameters applied to complex customer cross orders on another options exchange;¹⁶ and

- the transaction price must be at or between the best-priced Complex Orders to buy and sell in the complex strategy and may not equal the price of a resting Customer Complex Order, which proposed requirement is consistent with price parameters required for complex customer cross orders on another options exchange.¹⁷

The Exchange also proposes a conforming change to Rule 980NYP(b)(1) to include Complex Customer Cross Orders among the type of Electronic Complex Orders available for trading on the Exchange, which change would add clarity, transparency, and internal consistency to Exchange rules.¹⁸

not allow an ECO for that strategy to execute against another ECO until this condition resolves”).

¹⁵ See proposed Rule 900.3NYP(g)(2)(B).

¹⁶ See Cboe Rule 5.38(f)(i) (providing, in relevant part, that the transaction price of a Complex Customer Cross Order must be “at or between the SBBO [Synthetic Bid or Offer] and may not equal either side of the SBBO if the BBO of any component of the complex strategy represents a Priority Customer”). Cboe’s concept of the SBBO is analogous to the Exchange’s concept of the DBBO. See Cboe Rule 5.33.

¹⁷ See Cboe Rule 5.38(f)(ii) (providing, in relevant part, that the transaction price of a Complex Customer Cross Order must be “at or between the best-priced complex orders in the complex strategy” on Cboe “and may not equal the price of a Priority Customer complex order” resting on either side of the COB”).

¹⁸ See proposed Rule 980NYP(b)(1) (providing that Electronic Complex Orders “may be entered as Limit Orders, Limit Orders designated as Complex Only Orders, Complex QCCs, or as Complex Customer Cross Orders) (emphasis added).

Rule 900.2NY: Definitions of Customer and Professional Customer

Rule 900.2NY defines a “Customer” as “an individual or organization that is not a Broker/Dealer; when not capitalized, ‘customer’ refers to any individual or organization whose order is being represented, including a Broker/Dealer.” Rule 900.2NY defines a “Professional Customer” as “an individual or organization that (i) is not a Broker/Dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).”¹⁹ Included in the definition of Professional Customer is a list of Exchange Rules, including Rule 934NY (Crossing), for purposes of which Professional Customers are treated in the same manner as Broker/Dealers (or non-Customers).²⁰ Accordingly, Professional Customers are treated as Broker/Dealers (or non-Customers) for purposes of Crossing Orders executed pursuant to Rule 934NY. As such, Professional Customer volume is not eligible to be executed as part of a Customer-to-Customer Cross executed on the Trading Floor per Rule 934NY(a).

The Exchange proposes to amend Rule 900.2NY to include proposed Rule 900.3NYP(g)(2) in the list of Exchange Rules pursuant to which Professional Customers are treated in the same manner as Broker/Dealers (or non-Customers).²¹ This proposed handling of non-Customer interest for purposes of the proposed Customer Cross Orders would align with the handling of such interest for purposes of Customer-to-Customer Cross Orders executed on the Trading Floor per Rule 934NY(a) and would therefore promote internal consistency in Exchange rules. In addition, excluding Professional Customer orders from being eligible to trade as part of the proposed Customer Cross Orders would put the Exchange on equal footing with at least one other options exchange that likewise disallows such Professional interest from being executed as part of customer cross orders.²²

¹⁹ See Rule 900.2NY (defining a Professional Customer).

²⁰ See *supra* note 4 (citing Rule 900.2NY, which specifies that for purposes Rule 934NY(Crossing) Professional Customer interest will be treated in the same manner as a Broker/Dealer (or non-Customer) interest). See *id.* (defining Professional Customer).

²¹ See proposed Rule 900.2NY (including proposed Rule 900.3NYP(g)(2) (Customer Cross Orders and Complex Customer Cross Orders) among the list of Exchange Rule pursuant to which Professional Customer interest is treated in the same manner as a Broker/Dealer (or non-Customer) interest).

²² As noted *supra*, only “Priority Customers” on Cboe may participate in “Customer-to-Customer

Finally, the Exchange believes this proposed change would add clarity, transparency, and internal consistency to Exchange rules.

Professional Customers in the Customer Best Execution (“CUBE”) Auctions

As noted above, Rule 900.2NY defines “Professional Customer” as “an individual or organization that (i) is not a Broker/Dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).”²³ Included in the definition of Professional Customer is a list of Exchange Rules pursuant to which Professional Customers are treated in the same manner as Broker/Dealers (or non-Customers). Among the rules on this list is Rule 971.1NY, which means that for purposes of single-leg CUBE Auctions, Professional Customer interest is treated as Broker/Dealer (non-Customer) interest.²⁴ The Exchange recently migrated to the Pillar trading platform and Rule 971.1NY no longer applies to CUBE Auctions; instead, CUBE Auctions on Pillar are governed by Rule 971.1NYP (“the Pillar CUBE Rule”).²⁵

The Exchange proposes to amend Rule 900.2NY to treat Professional Customer interest submitted to CUBE Auctions pursuant to the Pillar CUBE Rule in the same manner as such interest was handled when submitted to CUBE Auctions pursuant to Rule 971.1NY.²⁶ The Exchange believes that this proposal would ensure consistent handling of Professional Customer interest in the CUBE Auction prior to and after the Exchange’s migration to Pillar and would continue to afford Customer interest priority over non-Customer interest for purposes of the Exchange’s price improvement auction. The Exchange notes that at least one other options exchange likewise treats Professional Customer interest as

Immediate Cross.” See Cboe Rules 5.37(f) and Rule 5.38(f).

²³ See Rule 900.2NY (defining a Professional Customer).

²⁴ See Trader Update, NYSE American Options: NYSE Pillar Final Migration Tranche, dated October 30, 2023, available here: <https://www.nyse.com/trader-update/history#110000748137> (announcing the last phrase of the Pillar migration).

²⁵ Compare Rule 971.1NY with the Pillar CUBE Rule. See also Securities Exchange Act Release No. 97938 (July 18, 2023), 88 FR 47536 (July 24, 2023) (NYSEAmer–2023–35) (adopting Pillar Rule 971.1NYP (Single-Leg Electronic Cross Transactions) on an immediately effective basis).

²⁶ See proposed Rule 900.2NY (providing in relevant part, that for purposes of Rule 971.1NYP (Single-Leg Electronic Cross Transactions), “[a] Professional Customer will be treated in the same manner as a Broker/Dealer (or non-Customer) in securities”) (emphasis added).

Broker/Dealer (non-Customer) interest for purposes of their price improvement auction.²⁷

Implementation

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, is anticipated to be in the first quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,²⁸ in general, and furthers the objectives of Section 6(b)(5),²⁹ in particular, because 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.

The Exchange believes that the proposed Customer Cross Orders (for single-leg and complex interest) would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rules would allow market participants to electronically trade these types of crossing orders on the Exchange. The proposed functionality would benefit investors and the public interest because it would enhance and automate each order entry firms’ ability to submit two-sided Customer orders—*i.e.*, Customer Cross Orders (both single-leg and complex). As such, the proposed rule change would provide market participants with an efficient means of executing their Customer orders. In addition, the proposed Customer Cross Orders would remove impediments to and perfect the mechanism of a free and open market and a national market system because market participants would be given an additional way to execute single-leg and Complex Orders on the Exchange. As noted herein, at least one other competing options exchange—Cboe—offers substantially similar customer crossing orders for single-leg and complex trading

²⁷ See Cboe Rule 5.38(e) (providing that “Priority Customer” interest executes first with the Agency Order submitted to the price improvement auction, followed by non-Priority Customer interest).

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

interest.³⁰ With this proposal, market participants would likewise have an additional venue on which to execute two-sided Customer orders electronically—*i.e.*, Customer Cross Orders. As such, the proposed order types may attract additional Customer order flow (both two-sided and single-sided) to the Exchange, which may, in turn, result in greater liquidity available for trading on the Exchange.

Regarding the proposed single-leg C2C Order type, the Exchange believes that the adoption of this order type would provide for the efficient entry and execution of C2C Orders while continuing to protect same-priced, displayed Customer interest (*i.e.*, by ensuring that the C2C Order does not trade ahead of displayed Customer interest resting in the Consolidated Book). Further, as noted herein, the proposed order type is not new or novel because each C2C Order would operate in a manner that is consistent with single-leg customer cross orders that are available on another options exchange.³¹

The proposed Complex C2C Order would protect investors and the public interest by assuring that these orders comply with the existing priority and allocation rules applicable to the processing and execution of Complex Orders per Rule 980NYP. In particular, the proposed Complex C2C Orders would continue to protect same-priced, displayed Customer interest and would ensure that Complex C2C Orders do not trade ahead of such displayed Customer interest, whether in the leg markets or as Customer Complex Orders. The Exchange believes the proposed Complex C2C Orders would promote just and equitable principles of trade because (as discussed herein) the proposed orders—which are not new or novel—would operate in a manner that is consistent with complex customer cross orders that are available on another options exchange.³²

Finally, the proposed change to the definition of Professional Customer to make clear that Professional Customers are treated as Broker/Dealers (or non-Customers) for purposes of the proposed Customer Crosses Orders and Single-Leg Electronic Cross Transactions, per Rule 971.1NYP would remove impediments

to and perfect the mechanism of a free and open market and a national market system and would protect investors and the public interest because such changes would ensure consistent handling of Professional Customer interest in the CUBE Auction prior to and after the Exchange's migration to Pillar and would align Exchange rules with the rules of another options exchange that likewise differentiates the treatment of Professional Customer interest from Customer interest for purposes of customer crossing orders and for price improvement auctions, where Customers (but not Professional Customers) are afforded first priority to trade in the auction.³³

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's proposal to adopt a new electronically-entered crossing order type (*i.e.*, the Customer Cross Order) would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change would not impose a burden on intramarket competition because the proposed order types would provide all market participants on the Exchange with the option of utilizing another means of executing two-side Customer interest—both single-leg and Complex Orders on the Exchange. The proposed change would also benefit investors by providing another venue (*i.e.*, in addition to Cboe) on which Customer Cross Orders may be submitted electronically.

The Exchange believes that the proposed change would enhance intermarket competition by enabling the Exchange to compete for this type of order flow with at least one other options exchange that has similar rules and functionalities in place (*i.e.*, Cboe).³⁴ The Exchange believes that adopting Customer Cross Orders would promote competition as it would afford market participants another venue on which to execute two-sided Customer orders for single-leg and complex

trading interest. Further, the Exchange anticipates that this proposal will create new opportunities for the Exchange to attract new business to the Exchange. As such, the Exchange believes that this proposal does not create an undue burden on intermarket competition. Rather, the Exchange believes that the proposed rule would bolster intermarket competition by promoting fair competition among individual markets.

The Exchange does not believe the proposed amendment to the definition of Professional Customer to include proposed Rule 900.3NYP(g)(2) among the rules pursuant to which Professional Customer interest is treated as Broker/Dealer (non-Customer) interest would impose any undue burden on intramarket or intermarket competition as all market participants on the Exchange would be subject to the updated definition. In addition, the proposal to limit the availability of Customer Cross Orders to interest submitted on behalf of Customers would align the Exchange with at least one other options exchange that had adopted a similar limitation.³⁵

Similarly, the proposal to treat Professional Customer interest as Broker/Dealer (non-Customer) interest for purposes of the Pillar CUBE Rule would not impose any undue burden on intramarket or intermarket competition as use of the CUBE Auction, per the Pillar CUBE Rule, is optional. For those market participants that choose to utilize CUBE Auctions on Pillar (per Pillar Rule 971.1NYP), the proposed definition applies equally to all similarly-situated investors. In addition, all investors that opt to use the CUBE Auction would be subject to the same (amended) definition—which is consistent with the definition that applied to pre-Pillar Rule 971.1NY—and would also align the Exchange with at least one other options exchange that likewise affords priority in price improvement auctions to "Priority Customers" but not to Professional Customers.³⁶

In addition, the proposed conforming change to include Complex Customer Cross Orders among the list of available Electronic Complex Orders set forth in Rule 980NYP(b)(1) would not impose an undue burden on intramarket or intermarket competition but would instead add clarity, transparency, and

³⁰ See Cboe Rules 5.37(f) and 5.38(f) (describing the analogous requirements for Cboe's single-leg and Complex Customer-to-Customer Immediate Crosses, respectively).

³¹ See Cboe Rule 5.37(f) (describing the analogous requirements for Cboe's single-leg Customer-to-Customer Immediate Cross).

³² See Cboe Rule 5.38(f) (describing the analogous requirements for Cboe's Complex Customer-to-Customer Immediate Cross).

³³ See Cboe Rule 5.37(e)–(f) and 5.38(e)–(f) (regarding the handling of Priority Customer interest for purposes of priority and allocation in Cboe's C-AIM Auction and for inclusion on customer crossing orders).

³⁴ See Cboe Rules 5.37(f) and 5.38(f) (describing the analogous requirements for Cboe's single-leg and Complex Customer-to-Customer Immediate Crosses, respectively).

³⁵ See *id.*

³⁶ See Cboe Rule 5.37(e)–(f) and 5.38(e)–(f) (regarding the handling of Priority Customer interest for purposes of priority and allocation in Cboe's C-AIM Auction).

internal consistency to Exchange rules.³⁷

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

Pursuant to Section 19(b)(3)(A) of the Act³⁸ and Rule 19b-4(f)(6)³⁹ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.⁴⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)⁴¹ 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. Exchange Rule 934NY(a) currently provides for the trading of Customer-to-Customer Cross orders on the floor of the Exchange. The Exchange proposes to adopt Exchange Rule 900.3NYP(g)(2) to provide for the electronic trading of C2C and Complex C2C Orders. The proposed C2C and Complex C2C Orders, which must be comprised of a Customer (but not a Professional Customer) order to buy and a Customer (but not a Professional Customer) order to sell at the same price and for the same quantity, will trade immediately in full at their limit prices,

³⁷ See proposed Rule 980NYP(b)(1) (providing that Electronic Complex Orders (ECOs) "may be entered as Limit Orders, Limit Orders designated as Complex Only Orders, Complex QCCs, or as Complex Customer Cross Orders) (emphasis added).

³⁸ 15 U.S.C. 78s(b)(3)(A).

³⁹ 17 CFR 240.19b-4(f)(6).

⁴⁰ 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.

⁴¹ 17 CFR 240.19b-4(f)(6)(iii).

provided that they satisfy the requirements in proposed Exchange Rule 900.3NYP(g)(2)(B) or (C), as applicable.⁴² The Exchange states that the proposed C2C and Complex C2C Orders would allow the Exchange to make available to market participants without delay an additional and more efficient means of executing Customer orders on the Exchange, and an additional venue for electronically trading two-sided Customer single-leg and complex orders.

As discussed above, the proposed C2C and Complex C2C Orders are consistent with the customer-to-customer immediate cross and complex customer-to-customer immediate cross functionality available on another options exchange and do not raise new or novel regulatory issues.⁴³ Waiver of the operative delay will allow the Exchange to immediately provide market participants with an additional venue for electronically trading single-leg and complex customer cross orders. The proposal to amend Exchange Rule 900.2NY to add proposed Exchange Rule 900.3NYP(g)(2) to the list of Exchange rules pursuant to which Professional Customers are treated as Broker/Dealers (or non-Customers) will help to align the Exchange's rules with the rules of at least one other options exchange that limits its customer cross functionality to Priority Customer orders.⁴⁴ In addition, the definition of Professional Customer in Exchange Rule 900.2NY currently includes the CUBE Auction provided in Exchange Rule 971.1NY. The proposal to add the CUBE Auction in Exchange Rule 971.1NYP to the definition of Professional Customer will provide for consistent treatment of Professional Customer orders in the CUBE Auctions prior to and after the Exchange's migration to the Pillar trading platform. The proposal to add Complex Customer Cross Orders to

⁴² See proposed Exchange Rule 900.3NYP(g)(2)(A). Proposed Exchange Rule 900.3NYP(g)(2)(B) provides, among other things, that a C2C Order will be rejected if it would trade at a price that is (i) at the same price as displayed Customer interest on the Consolidated Book; or (ii) not at or between the NBBO and the Exchange BBO. Proposed Exchange Rule 900.3NYP(g)(2)(C) provides, among other things, that no option leg of a Complex C2C Order will trade at a price that is worse than the Exchange BBO and that the transaction price must be at or between the DBBO and may not equal the DBBO if the DBBO is calculated using the Exchange BBO and the Exchange BBO for any component of the complex strategy on either side of the market includes displayed Customer interest.

⁴³ See Cboe Rules 5.37(f) and 5.38(f).

⁴⁴ See *id.* As discussed above, Professional Customers also are treated as Broker/Dealers (or non-Customers) for purposes of the Customer-to-Customer Cross orders traded on the Exchange's floor pursuant to Exchange Rule 934NY(a).

Exchange Rule 980NYP(b)(1) will help to ensure that Exchange Rule 980NYP(b)(1) provides a complete and accurate list of the ECOs available on the Exchange. For these reasons, the Commission hereby waives the operative delay and designates the proposal operative upon filing.⁴⁵

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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2023-66 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-2023-66. 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 (<https://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

⁴⁵ 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).

Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2023-66 and should be submitted on or before January 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Christina Z. Milnor,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99225; File No. SR-NYSE-2023-09]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the NYSE Listed Company Manual To Adopt Listing Standards for Natural Asset Companies

December 21, 2023.

I. Introduction

On September 27, 2023, New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the NYSE Listed Company Manual (“Manual”) to adopt a new listing standard for the listing of Natural Asset Companies (“NAC”). The proposed rule change was published for comment in the **Federal Register** on October 4, 2023.³ On November 7, 2023, pursuant

to section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵

This order institutes proceedings pursuant to section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change⁷

All statements in this Section II regarding the proposed rule change are taken from the description provided by the Exchange in the NAC Proposal.⁸

A. The NAC Proposal

The Exchange proposes to adopt a new subsection of Section 102 of the Manual (to be designated Section 102.09) to permit the listing of common equity securities of NACs. The Exchange proposes that, for purposes of proposed Section 102.09 of the Manual, a NAC is a corporation whose primary purpose is to actively manage, maintain, restore (as applicable), and grow the value of natural assets and their production of ecosystem services.⁹ As proposed, where doing so is consistent with the company’s primary purpose, the NAC would seek to conduct sustainable revenue-generating operations. As proposed, sustainable operations are those activities that do not cause any material adverse impact on the condition of the natural assets under a NAC’s control and that seek to replenish the natural resources being used. As proposed, NACs could also engage in other activities that support community well-being, provided such activities are sustainable.

The Exchange states that its proposal is intended to end the overconsumption

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 98879 (Nov. 7, 2023), 88 FR 78075 (Nov. 14, 2023). The Commission designated January 2, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See, NAC Proposal, *supra* note 3, for a complete description of the proposal as originally filed.

⁸ See, NAC Proposal, *supra* note 3 at 68811-18.

⁹ The Exchange states that for purposes of its proposal, the term “ecosystem” refers to specific entities (structures, functions, and components of the natural world) that produce ecosystem services. The Exchange also states that these and other benefits derived from ecosystems are called ecosystem services, and in aggregate, economists estimate their value at more than US\$100 trillion dollars per year, and that examples of ecosystem services include clean air, water supply, flood protection, productive soils for agriculture, climate stability, and habitat for wildlife, among others. See *id.*

of and underinvestment in nature, which requires bringing natural assets into the mainstream, and that NACs are a new concept pioneered by Intrinsic Exchange Group Inc. (“IEG”). According to the Exchange, IEG is a private company structured as a corporation organized under the laws of the State of Delaware that advises public sector and private landowners on the creation of NAC structures and strategies.

The Exchange proposes that NACs would be corporations that hold the rights to the ecological performance produced by natural or working areas, such as national reserves or large-scale farmlands, and have the authority to manage the areas for conservation, restoration, or sustainable management. The Exchange states that these rights could be licensed like other rights, including “run with the land” rights such as mineral rights, water rights, or air rights, and that NACs would be expected to license these rights from sovereign nations or private landowners.

Under the proposed amendments to the Manual, capital raised through an NYSE-listed NAC’s initial public offering or follow-on offerings must be used to implement the conservation, restoration, or sustainable management plans articulated in its prospectus, fund its ongoing operations, or otherwise fulfill its purpose to maximize ecological performance (*i.e.*, the value of natural assets and the production of ecosystem services). As proposed, while the core purpose of a NAC would be to maximize ecological performance, a NAC would also be required to seek to conduct sustainable revenue-generating operations (*e.g.*, eco-tourism in a natural landscape or production of regenerative food crops in a working landscape) provided that such operations are consistent with the NAC’s charter, do not cause any material adverse impact on the condition of the natural assets under the NAC’s control, and seek to replenish the natural resources being used. Under the proposal, all NACs would be prohibited from directly or indirectly conducting unsustainable activities, such as mining, that lead to the degradation of the ecosystems it is trying to protect. In conducting its revenue-generating operations, a NAC could monetize ecosystem services that have markets (*e.g.*, through the sale of carbon credits). All revenues and expenses would be reported in the financial statements of the NAC prepared under generally accepted accounting principles (“GAAP”) and filed with the SEC as part of the NAC’s required annual report on Form 10-K, 20-F or 40-F, as applicable. As

⁴⁶ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98665 (Sept. 29, 2023), 88 FR 68811 (Oct. 4, 2023) (SR-NYSE-2023-09) (“NAC Proposal”). Comments received on the NAC Proposal are available at <https://www.sec.gov/comments/sr-nyse-2023-09/srnyse202309.htm>.