

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87444; File No. SR–NYSEAMER–2019–38]

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change To Allow Certain Flexible Exchange Equity Options To Be Cash Settled

November 1, 2019.

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 October 17, 2019, NYSE American LLC (“NYSE American” or the “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 Exchange. 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 903G and 906G related to Flexible Exchange (“FLEX”) Options. 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Rules 903G and 906G related to FLEX Options.

FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options. The Exchange proposes to amend NYSE American Rule 903G(c) to allow for cash settlement of certain FLEX Equity Options.<sup>4</sup> Generally, FLEX Equity Options are settled by physical delivery of the underlying security,<sup>5</sup> while all FLEX Index Options are currently settled by delivery in cash.<sup>6</sup> As proposed, FLEX Equity Options would be permitted to be settled by delivery in cash if the underlying security meets prescribed criteria.

To permit cash settlement of certain FLEX Equity Options, the Exchange proposes new paragraph (c)(3)(ii) to Rule 903G. Proposed Rule 903G(c)(3)(ii) would provide that the exercise settlement for FLEX Equity Options may be by physical delivery of the underlying security or by delivery in cash if the underlying security, measured over the prior six-month period, has an average daily notional value of \$500 Million or more and a national average daily volume (ADV) of at least 4,680,000 shares.<sup>7</sup>

The Exchange also proposes new subparagraph (A) to Rule 903G(c)(3)(ii), which would provide that the Exchange will determine bi-annually the underlying securities that satisfy the notional value and trading volume requirements in Rule 903G(c)(3)(ii) by using trading statistics for the previous six-months.<sup>8</sup> Proposed new subparagraph (B) to Rule 903G(c)(3)(ii) would further provide that if the Exchange determines pursuant to the bi-annual review that an underlying security ceases to satisfy the requirements under Rule 903G(c)(3)(ii), any new FLEX Equity Options overlying such security entered into will be required to have exercise settlement by physical delivery and any open positions in cash-settled FLEX Equity Options overlying such

security may be traded to only close the position.<sup>9</sup>

The Exchange believes it is appropriate to introduce cash settlement as an alternative contract term to the select group of equity securities because they are the most highly liquid and actively-traded securities. As described more fully below, the Exchange believes that the deep liquidity and robust trading activity in securities identified by the Exchange as meeting the criteria mitigate against historic concerns regarding susceptibility to manipulation.

The Exchange believes that average daily notional value is an appropriate proxy for selecting underlying securities that are not readily susceptible to manipulation for purposes of establishing a settlement price. Average daily notional value takes into account both the trading activity and the price of an underlying security. As a general matter, the more expensive an underlying security’s price, the less cost-effective manipulation could become. Further, manipulation of the price of a security encounters greater difficulty the more volume that is traded. To calculate average daily notional value (provided in the table below), the Exchange summed the notional value of each trade for each symbol (*i.e.*, the number of shares times the price for each execution in the security) and divided that total by the number of trading days in the six-month period (from January 1, 2019 through June 30, 2019) reviewed by the Exchange.

Further, the Exchange proposes that qualifying securities also meet an ADV standard. The purpose for this second criteria is to prevent unusually expensive underlying securities from qualifying under the average daily notional value standard while not being one of the most actively traded securities. The Exchange believes an ADV requirement of 4,680,000 shares a day is appropriate because it represents average trading in the underlying security of 200 shares per second. While no security is immune from all manipulation, the Exchange believes that the combination of average daily

<sup>4</sup> A “FLEX Equity Option” is an option on a specified underlying equity security that is subject to the rules of Section 15. See NYSE American Rule 900G(b)(10).

<sup>5</sup> See Rule 903G(c)(3)(i).

<sup>6</sup> See Rule 903G(b)(2) and (3). Pursuant to Exchange rules, Binary Return Derivatives (“ByRDs”) are also settled in cash. See Rule 900ByRDs(b). As discussed below, cash settlement is also permitted in the over-the-counter (“OTC”) market.

<sup>7</sup> See proposed Rule 903G(c)(3)(ii). The Exchange also proposes a non-substantive amendment to Rule 903G to renumber current Rule 903G(c)(3)(ii) as new Rule 903G(c)(3)(iii).

<sup>8</sup> See proposed Rule 903G(c)(3)(ii)(A). The Exchange plans to conduct the bi-annual review on January 1 and July 1 of each year. The results of the bi-annual review will be announced via a Trader Update.

<sup>9</sup> See proposed Rule 903G(c)(3)(ii)(B). Pursuant to Rule 920NY, an ATP Holder that is acting as a Market Maker may enter into an opening transaction in order to facilitate closing transactions of another market participant. See <https://www.nyse.com/publicdocs/nyse/markets/arca-options/rule-interpretations/2017/NYSE%20Arca%20Options%20RB%202017-01.pdf>. The Exchange will revise its guidance to reflect that an ATP Holder acting as a Market Maker in cash-settled FLEX Equity Options can enter into an opening transaction to facilitate closing only transactions of another market participant.

<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.

notional value and ADV as prerequisite requirements would limit cash settlement of FLEX Options to those underlying securities that would be less susceptible to manipulation in order to establish a settlement price.

The Exchange believes that the proposed objective criteria would ensure that only the most robustly

traded and deeply liquid securities would qualify to have cash settlement as a contract term. As provided in the table below, as of June 30, 2019, the Exchange would be able to provide cash settlement as a contract term for FLEX Equity Options on only 84 underlying securities,<sup>10</sup> as only this group of securities would currently meet the

requirement of \$500 Million or more average daily notional value and a minimum ADV of 4,680,000 shares. The table below provides the list of the 84 securities that, as of June 30, 2019, would be eligible to have cash settlement as a FLEX Equity option contract term.

Symbol	Security name	Average daily notional value (1/1/19–6/30/19)	Average daily volume (1/1/19–6/30/19)
SPY	SPDR S&P 500 ETF Trust	\$21,297,533,471	76,562,281
QQQ	Invesco QQQ Trust	6,226,236,315	35,419,606
AAPL	Apple Inc.	5,411,433,661	29,938,826
FB	Facebook, Inc. Class A	3,167,063,717	18,656,551
IWM	iShares Russell 2000 ETF	3,138,717,375	20,697,570
MSFT	Microsoft Corporation	3,081,463,649	26,298,765
EEM	iShares MSCI Emerging Markets ETF	2,986,071,029	70,901,336
NFLX	Netflix, Inc.	2,817,672,156	8,073,403
BABA	Alibaba Group Holding Ltd. Sponsored ADR	2,742,711,789	16,314,223
TSLA	Tesla Inc.	2,592,804,463	10,051,182
BA	Boeing Company	2,268,537,891	6,044,214
NVDA	NVIDIA Corporation	2,219,441,287	13,960,292
AMD	Advanced Micro Devices, Inc.	1,978,829,372	77,758,854
HYG	iShares iBoxx High Yield Corporate Bond ETF	1,847,494,422	21,622,743
EFA	iShares MSCI EAFE ETF	1,716,385,479	26,804,412
BAC	Bank of America Corp	1,638,846,503	57,551,084
DIS	Walt Disney Company	1,392,946,023	11,366,690
JPM	JPMorgan Chase & Co.	1,360,283,575	12,813,819
XLF	Financial Select Sector SPDR Fund	1,347,599,180	51,114,805
LLY	Eli Lilly and Company	1,327,459,452	10,818,852
EWZ	iShares MSCI Brazil ETF	1,257,290,585	29,953,519
V	Visa Inc. Class A	1,232,449,824	8,048,719
FXI	iShares China Large-Cap ETF	1,227,285,973	28,755,070
QCOM	QUALCOMM Incorporated	1,211,880,121	18,122,059
INTC	Intel Corporation	1,198,554,195	24,128,671
UNH	UnitedHealth Group Incorporated	1,193,149,098	4,912,081
LQD	iShares iBoxx Investment Grade Corporate Bond ETF	1,168,122,337	9,875,174
MU	Micron Technology, Inc.	1,160,129,353	30,258,968
CSCO	Cisco Systems, Inc.	1,132,706,882	21,792,441
TLT	iShares 20+ Year Treasury Bond ETF	1,065,481,174	8,544,169
XLV	Health Care Select Sector SPDR Fund	1,032,614,044	11,541,565
WFC	Wells Fargo & Company	1,013,529,161	21,121,609
PFE	Pfizer Inc.	1,006,294,983	24,005,060
C	Citigroup Inc.	982,855,307	15,366,407
GLD	SPDR Gold Trust	976,890,275	7,874,831
XLK	Technology Select Sector SPDR Fund	969,785,314	13,386,498
XLU	Utilities Select Sector SPDR Fund	967,875,035	16,964,325
GDV	VanEck Vectors Gold Miners ETF	960,166,813	43,153,879
QQQ	ProShares UltraPro QQQ	958,273,952	18,016,817
JNJ	Johnson & Johnson	948,157,843	6,979,483
T	AT&T Inc.	934,843,776	30,151,377
XOM	Exxon Mobil Corporation	912,399,075	11,897,796
XLI	Industrial Select Sector SPDR Fund	909,904,734	12,333,853
CRM	salesforce.com, Inc.	892,331,750	5,755,675
XLE	Energy Select Sector SPDR Fund	890,001,122	13,936,008
MRK	Merck & Co., Inc.	873,282,259	11,076,401
ROKU	Roku, Inc. Class A	862,649,855	13,145,273
CVX	Chevron Corporation	855,496,380	7,162,794
BMJ	Bristol-Myers Squibb Company	844,047,840	17,505,197
PG	Procter & Gamble Company	833,084,059	8,233,044
IEMG	iShares Core MSCI Emerging Markets ETF	830,706,450	16,373,454
VZ	Verizon Communications Inc.	815,667,485	14,307,832
CELG	Celgene Corporation	810,028,905	9,035,758
SQ	Square, Inc. Class A	789,909,124	11,168,998
GE	General Electric Company	787,956,324	80,931,248
ORCL	Oracle Corporation	765,161,710	14,549,748
CMCSA	Comcast Corporation Class A	764,325,100	19,255,694
XLP	Consumer Staples Select Sector SPDR Fund	750,217,134	13,589,124

<sup>10</sup> The Exchange notes that TVIX (VelocityShares Daily 2x VIX Short-Term ETN) would qualify under the proposed standards. However, options on TVIX are not currently available for trading.

Symbol	Security name	Average daily notional value (1/1/19–6/30/19)	Average daily volume (1/1/19–6/30/19)
SMH .....	VanEck Vectors Semiconductor ETF .....	743,322,164	7,153,365
WMT .....	Walmart Inc. ....	691,395,239	6,908,002
CVS .....	CVS Health Corporation .....	690,109,969	11,982,610
PYPL .....	PayPal Holdings Inc. ....	688,906,111	6,810,430
KO .....	Coca-Cola Company .....	686,132,671	14,420,676
IYR .....	iShares U.S. Real Estate ETF .....	685,454,820	8,098,239
SBUX .....	Starbucks Corporation .....	680,679,995	9,382,107
XOP .....	SPDR S&P Oil & Gas Exploration & Production ETF.	631,231,318	21,460,429
JNK .....	SPDR Bloomberg Barclays High Yield Bond ETF	618,600,709	12,555,596
VVO .....	Vanguard FTSE Emerging Markets ETF .....	612,134,544	14,761,429
APC .....	Anadarko Petroleum Corporation .....	584,576,356	9,450,731
PEP .....	PepsiCo, Inc. ....	583,005,057	4,850,035
ABBV .....	AbbVie, Inc. ....	570,266,307	7,293,122
TXN .....	Texas Instruments Incorporated .....	568,173,321	5,315,649
TWTR .....	Twitter, Inc. ....	567,732,862	16,636,561
NKE .....	NIKE, Inc. Class B .....	555,303,367	6,684,500
EA .....	Electronic Arts Inc. ....	548,493,648	5,757,202
XLY .....	Consumer Discretionary Select Sector SPDR Fund.	529,385,536	4,721,216
MO .....	Altria Group Inc. ....	529,141,650	10,327,466
IEFA .....	iShares Core MSCI EAFE ETF .....	524,284,734	8,762,457
MDT .....	Medtronic Plc .....	519,945,258	5,773,585
VNQ .....	Vanguard Real Estate ETF .....	517,290,726	6,129,594
EMB .....	iShares JP Morgan USD Emerging Markets Bond ETF.	516,226,468	4,739,195
AGG .....	iShares Core U.S. Aggregate Bond ETF .....	513,543,324	4,749,278
DWDP .....	DuPont de Nemours, Inc. ....	510,133,624	11,183,061
IEF .....	iShares 7–10 Year Treasury Bond ETF .....	506,548,585	4,785,984

The Exchange believes that permitting cash settlement as a contract term for FLEX Equity Options for the securities in the above table would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where settlement restrictions do not apply.

Today, generally equity options are settled physically at The Options Clearing Corporation (“OCC”), *i.e.*, upon exercise, shares of the underlying security must be assumed or delivered. Physical settlement possesses certain risks with respect to volatility and movement of the underlying security at expiration that market participants may need to hedge against. Cash settlement may be preferable to physical delivery in some circumstances as it does not present the same risk. If an issue with the delivery of the underlying security arises, it may become more expensive (and time consuming) to reverse the delivery because the price of the underlying security would almost certainly have changed. Reversing a cash payment, on the other hand, would not involve any such issue because reversing a cash delivery would simply involve the exchange of cash. Additionally, with physical settlement, market participants that have a need to generate cash would have to sell the underlying security while incurring the

costs associated with liquidating their position in the underlying security as well as the risk of an adverse movement in the price of the underlying security. The Exchange notes that cash settlement for options is not a unique feature and other options exchanges have previously received approval that allow for the trading of cash-settled options.<sup>11</sup>

With respect to position limits, cash-settled FLEX Equity Options would be subject to the position limits set forth in Rule 906G. Accordingly, the Exchange proposes new Rule 906G(b)(ii) which would provide that positions for FLEX Equity Options settled in cash pursuant to Rule 903G(c)(3)(ii) would be subject to the limits set forth in Rule 904, and the exercise limits set forth in Rule

<sup>11</sup> See *e.g.* PHLX FX Options traded on Nasdaq PHLX and S&P 500® Index Options traded on Cboe Options Exchange. More recently, the Commission approved, on a pilot basis, the listing and trading of RealDay™ Options on the SPDR S&P 500 Trust on the BOX Options Exchange LLC (“BOX”). See Securities Exchange Act Release No. 79936 (February 2, 2017), 82 FR 9886 (February 8, 2017) (“RealDay Pilot Program”). The RealDay Pilot Program was extended until February 2, 2019. See Securities Exchange Act Release No. 82414 (December 28, 2017), 83 FR 577 (January 4, 2018) (SR–BOX–2017–38). The RealDay Pilot Program was never implemented by BOX. See also Securities Exchange Act Release Nos. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (SR–Amex–2004–27) (Order approving listing of cash-settled Fixed Return Options (“FROs”)); and 71957 (April 16, 2014), 79 FR 22563 (April 22, 2014) (SR–NYSEMKT–2014–06) (Order approving name change from FROs to ByRDs and re-launch of these products, with certain modifications).

905.<sup>12</sup> Given that each of the underlying securities that would currently be eligible to have cash-settlement as a contract term have established position and exercise limits applicable to physically-settled options, the Exchange believes it is appropriate for the same position and exercise limits to also apply to cash-settled options.

Accordingly, of the 84 underlying securities that would currently be eligible to have cash settlement as a contract term, 76 would have a position limit of 250,000 contracts pursuant to Rule 904, Commentary .07(a).<sup>13</sup> Further, pursuant to Rule 904, Commentary .07(f), the position limit for the other eight underlying securities would be as follows: For QQQ and SPY, 1,800,000 contracts; for IWM and EEM, 1,000,000 contracts; and for FXI, EFA, EWZ and TLT, 500,000 contracts.<sup>14</sup>

<sup>12</sup> See proposed Rule 906G(b)(ii). The Exchange also proposes a non-substantive amendment to Rule 906G to renumber current Rule 906G(b)(ii) as new Rule 906G(b)(iii).

<sup>13</sup> Rule 904, Commentary .07(a) provides that the position limit shall be 250,000 contracts for options: (i) On an underlying security that had trading volume of at least 100,000,000 shares during the most recent six-month trading period; or (ii) on an underlying security that had trading volume of at least 75,000,000 shares during the most recent six-month trading period and has at least 300,000,000 shares currently outstanding. 76 of the 84 underlying securities currently meet the requirements under Commentary .07(a).

<sup>14</sup> See Rule 904, Commentary .07(f).

The Exchange understands that cash-settled FLEX Equity Options are currently traded in the OTC market by a variety of market participants, *e.g.*, hedge funds, proprietary trading firms, and pension funds. The Exchange believes some of these market participants would prefer to trade these instruments on an exchange, where they would be cleared and settled through a regulated clearing agency. The Exchange expects that users of these OTC products would be among the primary users of exchange-traded cash-settled FLEX Equity Options. The Exchange also believes that the trading of cash-settled FLEX Equity Options would allow these same market participants to better manage the risk associated with the volatility of underlying equity positions given the enhanced liquidity that an exchange-traded product would bring.

Cash-settled FLEX Equity Options traded on the Exchange would have three important advantages over the contracts that are traded in the OTC market. First, as a result of greater standardization of contract terms, exchange-traded contracts should develop more liquidity.

Second, counter-party credit risk would be mitigated by the fact that the contracts are issued and guaranteed by OCC. Finally, the price discovery and dissemination provided by the Exchange and its members would lead to more transparent markets. The Exchange believes that its ability to offer cash-settled FLEX Equity Options would aid it in competing with the OTC market and at the same time expand the universe of products available to interested market participants. The Exchange believes that an exchange-traded alternative may provide a useful risk management and trading vehicle for market participants and their customers.

The Exchange notes that cash-settled FLEX Equity Options would not be available for trading until OCC represents to the Exchange that it is fully able to clear and settle such options. The Exchange has also analyzed its capacity and represents that it and The Options Price Reporting Authority (OPRA) have the necessary systems capacity to handle the additional traffic associated with the listing of cash-settled FLEX Equity Options. The Exchange believes any additional traffic that would be generated from the introduction of cash-settled FLEX Equity Options would be manageable. The Exchange represents that ATP Holders will not have a capacity issue as a result of this proposed rule change. The Exchange also represents that it does not believe

this proposed rule change will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

The Exchange has an adequate surveillance program in place for cash-settled FLEX Equity Options and intends to apply the same program procedures that it applies to the Exchange's other options products. FLEX options products and their respective symbols are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. As a result, the Exchange believes it would be able to effectively police the trading of cash-settled FLEX Equity Options using means that include its surveillance for manipulation. The Exchange believes that manipulating the settlement price of cash-settled FLEX Equity Options would be difficult based on the size of the market for the securities that are the subject of this proposed rule change. Additionally, the Exchange notes that each cash-settled FLEX Equity Option that is subject to this proposed rule change is sufficiently active so as to alleviate concerns about potential manipulative activity. Further, in the Exchange's view, the vast liquidity of the 84 underlying securities ensures a multitude of market participants at any given time. Given the high level of participation among market participants that enter quotes and/or orders in the options on these securities, the Exchange believes it would be very difficult for a single participant to alter the price of each of the underlying securities in any significant way without exposing the would-be manipulator to regulatory scrutiny. The Exchange further believes any attempt to manipulate the price of the underlying securities would also be cost prohibitive.

With respect to regulatory scrutiny, the Exchange believes its existing surveillance technologies and procedures adequately address potential concerns regarding possible manipulation of the settlement value at or near the close of the market. The Exchange notes that the regulatory program operated by and overseen by NYSE Regulation includes cross-market surveillance designed to identify manipulative and other improper trading, including spoofing, algorithm gaming, marking the close and open, as well as more general, abusive behavior related to front running, wash sales,

quoting/routing, and Reg SHO violations, that may occur on the Exchange and other markets. These cross-market patterns incorporate relevant data from various markets beyond the Exchange and its affiliates and from markets not affiliated with the Exchange. The Exchange represents that its existing trading surveillances are adequate to monitor the trading in the underlying securities and subsequent trading of options on those securities on the Exchange, including cash-settled FLEX Equity Options.<sup>15</sup>

Additionally, for options, the Exchange utilizes an array of patterns that monitor manipulation of options, or manipulation of equity securities (regardless of venue) for the purpose of impacting options prices on the Exchange (*i.e.*, mini-manipulation strategies). That surveillance coverage is initiated once options begin trading on the Exchange. Accordingly, the Exchange believes that the cross-market surveillance performed by the Exchange or FINRA on behalf of the Exchange, coupled with NYSE Regulation's own monitoring for violative activity on the Exchange comprise a comprehensive surveillance program that is adequate to monitor for manipulation of the underlying security and overlying option. Furthermore, the Exchange believes that the existing surveillance procedures at the Exchange are capable of properly identifying unusual and/or illegal trading activity, which the Exchange would utilize to surveil for aberrant trading in cash-settled FLEX Equity Options.

The Exchange does not believe that allowing cash settlement as a contract term would render the marketplace for equity options more susceptible to manipulative practices. In addition to the surveillance procedures and processes described above, improvements in audit trails, recordkeeping practices, and inter-exchange cooperation over the last two decades have greatly increased the Exchange's ability to detect and punish attempted manipulative activities. The Exchange therefore believes that the decision of whether or not to allow cash settlement as a contract term should rest on the ability of the Exchange to monitor and detect manipulative activity, not on any perceived threat of

<sup>15</sup> Such surveillance procedures generally focus on detecting securities trading subject to opening price manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. The Exchange has price movement alerts, unusual market activity and order book alerts active for all trading symbols.

increased attempted manipulative activity.

Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement dated June 20, 1994. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. For surveillance purposes, the Exchange would therefore have access to information regarding trading activity in the pertinent underlying securities.

The proposed rule change is designed to allow investors seeking to effect cash-settled FLEX Equity Options with the opportunity for a different method of settling option contracts at expiration if they choose to do so. As noted above, market participants may choose cash settlement because physical settlement possesses certain risks with respect to volatility and movement of the underlying security at expiration that market participants may need to hedge against. The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to member's evolving needs by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products for reasons that are generally debated in academic literature. The Exchange believes that introducing cash-settled FLEX Equity Options would further broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC markets for customized options, where settlement restrictions do not apply. The proposed rule change is also designed to encourage market makers to shift liquidity from the OTC market onto the Exchange, which, it believes, will enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange also believes that this may open up cash-settled FLEX Equity Options to more retail investors. The Exchange does not believe that this proposed rule change raises any unique regulatory concerns because existing safeguards—such as position limits, exercise limits, and reporting requirements—would continue to apply.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>16</sup> in general, and furthers

the objectives of Section 6(b)(5) of the Act,<sup>17</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. Specifically, the Exchange believes that introducing cash-settled FLEX Equity Options will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk.

The Exchange believes that the proposal to permit cash settlement as a contract term for options on the specified group of equity securities would remove impediments to and perfect the mechanism of a free and open market as cash-settled FLEX Equity Options would enable market participants to receive cash in lieu of shares of the underlying security, which would, in turn provide greater opportunities for market participants to manage risk through the use of a cash-settled product to the benefit of investors and the public interest. The Exchange does not believe that allowing cash settlement as a contract term for options on the specified group of equity securities would render the marketplace for equity options more susceptible to manipulative practices. As illustrated in the table above, each of the qualifying underlying securities is actively traded and highly liquid and thus would not be susceptible to manipulation because, over a six-month period, each security had an average daily notional value of at least \$500 Million and an ADV of at least 4,680,000 shares, which indicates that there is substantial liquidity present in the trading of these securities, and that there is significant depth and breadth of market participants providing liquidity and of investor interest.

The Exchange believes that the data provided by the Exchange supports the supposition that permitting cash settlement as a FLEX term for the 84 underlying securities that would currently qualify to have cash settlement as a contract term would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where settlement restrictions do not apply.

The Exchange believes that the proposal to permit cash settlement would remove impediments to and

perfect the mechanism of a free and open market because the proposed rule change would provide ATP Holders with enhanced methods to manage risk by receiving cash if they choose to do so instead of the underlying security. In addition, this proposal would promote just and equitable principles of trade and protect investors and the general public because cash settlement would provide investors with an additional tool to manage their risk. Further, the Exchange notes that its proposal to introduce cash-settled FLEX Equity Options is not novel in that other exchanges have previously received approval that allow for the trading of cash-settled options. The proposed rule change therefore should not raise issues for the Commission that have not been previously addressed.<sup>18</sup>

The proposed rule change to permit cash settlement as a contract term for options on the 84 underlying securities is designed to promote just and equitable principles of trade in that the availability of cash settlement as a contract term would give market participants an alternative to trading similar products in the OTC market. By trading a product in an exchange-traded environment (that is currently traded in the OTC market), the Exchange would be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it would lead to the migration of options currently trading in the OTC market to trading on the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency. Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of the proposed cash-settled options. Further, the proposed rule change would result in increased competition by permitting the Exchange to offer products that are currently available for trading only in the OTC market.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in cash-settled FLEX Equity Options.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> See *supra* note 11.

Regarding the proposed cash settlement, the Exchange would use the same surveillance procedures currently utilized for the Exchange's other FLEX Options. For surveillance purposes, the Exchange would have access to information regarding trading activity in the pertinent underlying securities. The Exchange believes that limiting cash settlement to options on the 84 underlying securities that would currently be eligible to have cash-settlement as a contract term would minimize the possibility of manipulation due to the robust liquidity in both the equities and options markets.

#### *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. The proposal is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors because it is designed to provide investors seeking to transact in FLEX Equity Options with the opportunity for an alternative method of settling their option contracts at expiration.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change encourages competition amongst market participants to provide tailored cash-settled FLEX Equity Option contracts.

#### *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**

Within 45 days of the date of publication of this notice in the **Federal Register** or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-2019-38 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-2019-38. 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 such 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-2019-38, and should be submitted on or before November 29, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019-24256 Filed 11-6-19; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-87442; File No. SR-NYSEAMER-2019-41]

### **Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change Regarding the Applicability and Functionality of Certain Order Types on the Exchange**

November 1, 2019.

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 October 22, 2019, NYSE American LLC ("Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 its rules to clarify the applicability and functionality of certain order types on the Exchange. 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.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<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.