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**Brent J. Fields,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82027; File No. SR-NYSEAMER-2017-15]

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE American Rule 980NY To Clarify the Priority of Electronic Complex Orders and To Modify Aspects of the Complex Order Auction Process

November 7, 2017.

#### I. Introduction

On September 8, 2017, NYSE American LLC (the “Exchange” or “NYSE American”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE American Rule 980NY to clarify and provide greater specificity to its rules governing the trading of Electronic Complex Orders (“ECOs”), and to correct inaccuracies in those rules.<sup>3</sup> The proposed rule change was published for comment in the *Federal Register* on September 27, 2017.<sup>4</sup> The Commission received no comment letters regarding the proposal. On October 26, 2017, NYSE American filed Amendment No. 1 to the proposal, which supersedes the original filing in

its entirety.<sup>6</sup> The Commission is publishing this notice to solicit comment on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of the Proposed Rule Change

NYSE American Rule 980NY governs the trading of ECOs in the Exchange’s Complex Matching Engine (“CME”). As described more fully in the Notice, NYSE American proposes to amend NYSE American Rule 980NY to provide additional specificity, transparency, and clarity to its processing of ECOs. The proposal also corrects inaccuracies in NYSE American Rule 980NY.

##### *Execution of ECOs During Core Trading Hours*

The proposal amends NYSE American Rule 980NY(c), “Execution of Complex Orders,” to indicate that ECOs may be executed not only without consideration of prices of the same complex order that might be available on other exchanges, as the rule currently provides, but also without consideration of the prices of single-legged orders that might be available on other exchanges. In addition, the proposal revises and reorganizes current NYSE American

Rule 980NY(c) by replacing current text and adding new paragraphs (ii), “Execution of Electronic Complex Orders During Core Trading,” and (iii), “Electronic Complex Orders in the Consolidated Book.”<sup>7</sup> The changes to NYSE American Rules 980NY(c)(ii) and (iii) are designed to describe the processing of ECOs during Core Trading in a more concise and logical manner, with NYSE American Rule 980NY(c)(ii) governing the execution of ECOs that are marketable on arrival and NYSE American Rule 980NY(c)(iii) governing how ECOs would be ranked in the Consolidated Book and executed as resting interest on the Consolidated Book.<sup>8</sup> New NYSE American Rule 980NY(c)(ii) indicates that the CME would accept an incoming marketable ECO and automatically execute it against the best-priced contra-side interest resting in the Consolidated Book.<sup>9</sup> If, at a price, the leg markets can trade against an incoming ECO in full (or in a permissible ratio), and each leg includes Customer interest, the leg markets—including both Customer and non-Customer interest—would have first priority at that price to trade with the incoming ECO pursuant to NYSE American Rule 964NY(b), followed by resting ECOs in price/time priority.<sup>10</sup>

<sup>7</sup> The title of NYSE American Rule 980NY(c)(ii) remains unchanged, except for the addition of the word “Electronic” prior to “Complex Orders.” NYSE American Rule 900.2NY(15) defines Core Trading Hours as “the regular trading hours for business set forth in the rules of the primary markets underlying those option classes listed on the Exchange; provided, however, that transactions may be effected on the Exchange until the regular time set for the normal close of trading in the primary markets with respect to equity option classes and ETF option classes, and 15 minutes after the regular time set for the normal close of trading in the primary markets with respect to index option classes, or such other hours as may be determined by the Exchange from time to time.”

<sup>8</sup> See Notice, 82 FR at 45086.

<sup>9</sup> See *id.* NYSE American Rule 980NY(c)(ii) states that “The CME will accept an incoming marketable Electronic Complex Order and automatically execute it against the best-priced contra-side interest resting in the Consolidated Book. If, at a price, the leg markets can execute against an incoming Electronic Complex Order in full (or in a permissible ratio), and each leg includes Customer interest, the leg markets (Customer and non-Customer interest) will have first priority at that price and will trade with the incoming Electronic Complex Order pursuant to Rule 964NY(b) before Electronic Complex Orders resting in the Consolidated Book can trade at that price.” See Amendment No. 1.

<sup>10</sup> See Amendment No. 1. See also Notice, 82 FR at 45087. The proposal amends NYSE American Rule 980NY(a) to add a defined term, “leg markets,” to refer to individual quotes and orders in the Consolidated Book. In addition, the proposal revises NYSE American Rule 980NY(c) to add the word “strategy” following the term “complex order,” and to add references to “Electronic” Complex Orders to the titles of NYSE American

<sup>6</sup> Amendment No. 1 modifies the original filing to (1) add specificity to NYSE American Rule 980NY(c)(ii) by indicating that both Customer and non-Customer leg market interest will have first priority to trade with an incoming ECO when the leg markets can execute against an incoming ECO in full (or in a permissible ratio), and each leg includes Customer interest; (2) clarify the provision in NYSE American Rule 980NY(e)(2) indicating that a Complex Order Auction (“COA”)—eligible order may trade immediately in full (or in a permissible ratio) with a resting ECO priced equal to the contra-side Complex BBO, unless each leg of the contra-side Complex BBO includes Customer interest; (3) add a provision to NYSE American Rule 980NY(e)(7)(A) indicating that ECOs on behalf of Customers will have priority over same-priced ECOs for non-Customers when allocating orders at the conclusion of a COA; (4) clarify the requirement NYSE American Rule 980NY, Commentary .02 to provide price improvement on at least one leg of the ECO when each leg of the contra-side Complex BBO for the components of the ECO includes Customer interest; (5) remove a superfluous reference in Commentary .02 to Commentary .01; and (6) delete language in the description section indicating that the proposal removes references to Customer ECO priority. To promote transparency of its proposed amendment, when NYSE American filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its Web site and placed in the public comment file for SR-NYSEAMER-2017-15 (available at <https://www.sec.gov/comments/sr-nyseamer-2017-15/nyseamer201715-2656362-161384.pdf>). The Exchange also posted a copy of its Amendment No. 1 on its Web site (available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-american/rule-filings/filings/2017/NYSEAmer-2017-15,%20Am.%201.pdf>).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> For purposes of NYSE American Rule 980NY, an Electronic Complex Order is any Complex Order, as defined in NYSE American Rule 900.3NY(e) that is entered into the Exchange System. See NYSE American Rule 980NY. The Exchange System (“System”) is the Exchange’s electronic order delivery, execution and reporting system for designated option issues through which orders and quotes of Users are consolidated for execution and/or display. Market Makers must submit quotes to the System in their appointed classes electronically. See NYSE American Rule 900.2NY(48). A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. See NYSE American Rule 900.3NY(e).

<sup>5</sup> See Securities Exchange Act Release No. 81676 (September 21, 2017), 82 FR 45085 (“Notice”).

New NYSE American Rule 980NY(c)(iii), which incorporates existing paragraphs (c)(ii)(B) and (C) and rennumbers them as (iii)(A) and (B), addresses incoming ECOs that are not marketable. New NYSE American Rule 980NY(c)(iii)(A) makes clear that an ECO, or portion thereof, that is not executed on arrival will be ranked in the Consolidated Book and that any incoming orders and quotes that can trade with a resting ECO would execute according to NYSE American Rule 980NY(c)(ii).<sup>11</sup> New NYSE American Rule 980NY(c)(iii)(B) clarifies that orders that trade against ECOs in the Consolidated Book will be allocated pursuant to NYSE American Rule 964NY(b), rather than pursuant to NYSE American Rule 964NY.<sup>12</sup>

#### *Electronic Complex Order Auction Rules*

Because of the number of modifications to current NYSE American Rule 980NY(e), “Electronic Complex Order Auction (“COA”) Process,” the proposal deletes the existing rule in its entirety and replaces it with new NYSE American Rule 980NY(e), which is designed to describe the COA process more clearly, accurately, and logically.<sup>13</sup> New NYSE American Rule 980NY(e) indicates that, upon entry into the System, an ECO may be executed immediately in full, or in a permissible ratio, as provided in NYSE American Rule 980NY(e)(2), or may be subject to a COA.<sup>14</sup> New NYSE American Rule 980NY(e)(1) defines a “COA-eligible order” to mean an ECO that is entered in a class designated by the Exchange and is (i) designated by the ATP Holder as COA-eligible; and (ii) received during Core Trading Hours.<sup>15</sup> New NYSE American Rule 980NY(e)(1) preserves existing provisions in current NYSE American Rule 980NY(e)(1) and

(2) that allow the Exchange to determine COA eligibility on a class-by-class basis and require an ATP Holder to provide direction that an auction be initiated.<sup>16</sup> The proposal eliminates from the new definition of COA-eligible order several features of ECOs that are included in the current definition of COA-eligible order, but that, according to the Exchange, are not determinative of COA eligibility on NYSE American, including the “size, number of series, and complex order origin types (*i.e.*, Customers, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange).”<sup>17</sup>

New NYSE American Rule 980NY(e)(2) provides that, upon entry into the System, a COA-eligible order will trade immediately, in full or in a permissible ratio, with any ECOs resting in the Consolidated Book that are priced better than the contra-side Complex BBO.<sup>18</sup> A COA-eligible order may trade with any ECOs resting in the Consolidated Book priced equal to the contra-side Complex BBO, unless each leg of the contra-side Complex BBO includes Customer interest.<sup>19</sup> Any portion of a COA-eligible order that does not trade immediately upon entry into the System may start a COA.<sup>20</sup> A COA-eligible order that does not trade immediately upon entry into the System will start a COA, provided that the limit price of the COA-eligible order to buy (sell) is: (i) Higher (lower) than the best-priced, same side interest in both the leg markets and any ECOs resting in the Consolidated Book; and (ii) within a given number of ticks away from the current, contra-side market, as determined by the Exchange.<sup>21</sup> NYSE American notes that, because a COA-eligible order may be a certain number of ticks away from the current contra-side market, it is possible that a COA

could be initiated even if the limit price of the COA-eligible order is not at or within the NYSE American best bid/offer for each leg of the order.<sup>22</sup> NYSE American notes, however, that a COA-eligible order must execute at a price that is at or within the NYSE American best bid/offer for each leg of the order, consistent with NYSE American Rule 980NY(c).<sup>23</sup> A COA-eligible order will reside on the Consolidated Book until it meets the requirements of NYSE American Rule 980NY(e)(3)(i) and (ii) and can initiate a COA.<sup>24</sup>

New NYSE American Rule 980NY(e)(3) provides that NYSE American will initiate a COA by sending a request for response (“RFR”) message to all ATP Holders that subscribe to RFR messages. RFR messages will identify the component series, the size and side of the market of the order and any contingencies.<sup>25</sup> These provisions are consistent with current NYSE American Rule 980NY(e)(2). New NYSE American Rule 980NY(e)(3) further provides that only one COA may be conducted at a time for any given complex order strategy.<sup>26</sup> Finally, new NYSE American Rule 980NY(e)(3) states that, at the time the COA is initiated, NYSE American will record the Complex BBO (the “initial Complex BBO”) for purposes of determining whether the COA should end early pursuant to new NYSE American Rule 980NY(e)(6). As discussed more fully below, NYSE American believes that the use of the initial Complex BBO ensures that the COA respects the leg markets and the principles of price-time priority.<sup>27</sup>

New NYSE American Rule 980NY(e)(4) defines the “Response Time Interval” (“RTI”) as the period of time during which RFR Responses may be entered. The rule further provides that NYSE American will determine the length of the RTI, provided, however, that the duration will not be less than 500 milliseconds and will not exceed one second. These provisions are consistent with current NYSE American Rule 980NY(e)(3). Finally, new NYSE American Rule 980NY(e)(4) indicates

Rules 980NY(c)(i) and (ii). *See id.*, 82 FR at 45086, n. 7.

<sup>11</sup> *See* Notice, 82 FR at 45087.

<sup>12</sup> *See id.*

<sup>13</sup> *See id.* NYSE American notes that it is not proposing to modify the functionality of the COA. *See id.*

<sup>14</sup> *See id.* Current NYSE American Rule 980NY(e) states that “Upon entry into the System, eligible Electronic Complex Orders may be subject to an automated request for responses (“RFR”) auction.”

<sup>15</sup> Core Trading Hours are “the regular trading hours for business set forth in the rules of the primary markets underlying those option classes listed on the Exchange; provided, however, that transactions may be effected on the Exchange until the regular time set for the normal close of trading in the primary markets with respect to equity option classes and ETF option classes, and 15 minutes after the regular time set for the normal close of trading in the primary markets with respect to index option classes, or such other hours as may be determined by the Exchange from time to time.” *See* NYSE American Rule 900.2NY(15).

<sup>16</sup> *See* Notice, 82 FR at 45087. Current NYSE American Rule 980NY(e)(1) defines COA-eligible order as “an Electronic Complex Order that, as determined by the Exchange on a class-by-class basis, is eligible for a COA considering the order’s marketability (defined as a number of ticks away from the current market), size, number of series, and complex order origin types (*i.e.*, Customers, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange).” NYSE American currently allows COA-eligible orders to be entered in every class. *See* Notice, 82 FR at 45087, n. 24.

<sup>17</sup> *See id.*

<sup>18</sup> The Complex BBO is “the BBO for a given complex order strategy as derived from the best bid on OX and the best offer on OX for each individual component series of a Complex Order.” *See* NYSE American Rule 900.2NY(7)(b).

<sup>19</sup> *See* new NYSE American Rule 980NY(e)(2) and Amendment No. 1.

<sup>20</sup> *See* new NYSE American Rule 980NY(e)(2).

<sup>21</sup> *See* new NYSE American Rule 980NY(e)(3).

<sup>22</sup> *See* Notice, 82 FR 45088.

<sup>23</sup> *See id.*

<sup>24</sup> *See* new NYSE American Rule 980NY(e)(3).

<sup>25</sup> *See id.*

<sup>26</sup> The Exchange believes that this provision can be inferred from current NYSE American Rule 980NY(e)(8), which describes the impact of COA-eligible orders that arrive during a COA. *See* Notice, 82 FR at 45088, n. 29. The Commission notes that current NYSE American Rule 980NY(e)(8)(D) states that incoming COA-eligible orders received during the Response Time Interval that are on the same side of the market and priced better than the initiating order will cause the auction to end.

<sup>27</sup> *See* Notice, 82 FR at 45088.

that, at the end of the RTI, the COA-eligible order will be allocated pursuant to new NYSE American Rule 980NY(e)(7).

New NYSE American Rule 980NY(e)(5), which describes the characteristics of RFR Responses, retains some provisions of current NYSE American Rules 980NY(e)(4) and (e)(7) and modifies other aspects of those rules. Specifically, new NYSE American Rule 980NY(e)(5) retains the following provisions in current NYSE American Rules 980NY(e)(4) and (7): Any ATP Holder may submit RFR Responses during the RTI;<sup>28</sup> RFR Responses are ECOs with a time-in-force contingency for the duration of the COA and will expire at the end of the COA;<sup>29</sup> RFR Responses may be submitted in \$0.01 increments and may be modified during the RTI;<sup>30</sup> RFR Responses must be on the opposite side of the COA-eligible order, while RFR Responses on the same side as the COA-eligible order will be rejected;<sup>31</sup> and RFR Responses will not be ranked or displayed in the Consolidated Book.<sup>32</sup> New NYSE American Rule 980NY(e)(5)(A) adds new detail by indicating that an RFR Response must specify the price, size, and side of the market. Current NYSE American Rule 980NY(e)(7) states that RFR Response may not be withdrawn prior to the end of the RTI. New NYSE American Rule 980NY(e)(5)(C), however, indicates that RFR Responses may be cancelled during the RTI, which NYSE American states is consistent with its current functionality.<sup>33</sup>

#### *Impact of Incoming Trading Interest on the COA Process*

New NYSE American Rules 980NY(e)(6)(A) and (B) replace existing NYSE American Rule 980NY(e)(8), and new NYSE American Rule 980NY(e)(6)(C) replaces existing NYSE American Rule 980NY(e)(9). As noted above, the new rules introduce and incorporate the concept of the initial Complex BBO—the BBO for a given complex order strategy derived from the best bid (“BB”) and best offer (“BO”) for each individual component series of a complex order as recorded at the start of the RTI—as a benchmark against which incoming interest is measured to

determine whether a COA should end early.<sup>34</sup> New NYSE American Rules 980NY(e)(6)(A) and (B) address the impact on the COA of incoming ECOs and COA-eligible orders. New NYSE American Rule 980NY(e)(6)(C) addresses the impact of leg market updates on the COA. New NYSE American Rule 980NY(e)(6)(B) provides that when a COA ends early, or at the end of the RTI, the initiating COA-eligible order will execute pursuant to new NYSE American Rule 980NY(e)(7) ahead of any interest that arrived during the COA.

New NYSE American Rule 980NY(e)(6)(A)(i) provides that incoming opposite-side ECOs or COA-eligible orders that lock or cross the initial Complex BBO will cause the COA to end early. If the incoming ECO or COA-eligible order is also executable against the limit price of the initiating COA-eligible order, it will be ranked with RFR Responses to execute with the COA-eligible order pursuant to new NYSE American Rule 980NY(e)(7).<sup>35</sup> NYSE American believes that ending the COA early under these circumstances would allow an initiating COA-eligible order to execute (ahead of the incoming order) against any RFR Responses or ECOs received during the RTI until that point, while preserving the priority of the incoming order to trade with the resting leg markets.<sup>36</sup> NYSE American also states that early conclusion of the COA would avoid disturbing priority in the Consolidated Book and allow the Exchange to appropriately handle the incoming orders.<sup>37</sup>

New NYSE American Rule 980NY(e)(A)(ii) provides that incoming opposite-side ECOs or COA-eligible orders that are executable against the limit price of the COA-eligible order, but do not lock or cross the initial Complex BBO, will not cause the COA to end early and will be ranked with RFR Responses to execute with the COA-eligible order pursuant to NYSE American Rule 980NY(e)(7). NYSE American Rule 980NY(e)(6)(A)(iii) provides that incoming opposite-side ECOs or COA-eligible orders that are either not executable on arrival against the limit price of the initiating COA-eligible order or do not lock or cross the initial Complex BBO will not cause the COA to end early.

New NYSE American Rules 980NY(e)(6)(A)(iv) and (v) describe the treatment of incoming opposite-side ECOs and COA-eligible orders that do not execute with the initiating COA-eligible order or were not executable on arrival. An incoming opposite-side ECO that did not execute against the initiating COA-eligible order or was not executable on arrival will trade pursuant to NYSE American Rule 980NY(c)(ii) or (iii).<sup>38</sup> An incoming opposite-side COA-eligible order(s) that did not execute against the initiating COA-eligible order or was not executable on arrival will initiate subsequent COA(s) in price-time priority.<sup>39</sup>

New NYSE American Rule 980NY(e)(6)(B)(i) indicates that an incoming ECO or COA-eligible order on the same side of the market as the initiating COA-eligible order that is priced higher (lower) than the initiating COA-eligible order to buy (sell) will cause the COA to end early.<sup>40</sup> In addition, new NYSE American Rule 980NY(e)(6)(B)(ii) states that an incoming same-side ECO or COA-eligible order that is priced equal to or lower (higher) than the initiating COA-eligible order to buy (sell), and that also locks or crosses the contra-side initial Complex BBO, will cause the COA to end early. NYSE American believes that ending the COA early under the circumstances would ensure that the COA interacts seamlessly with the Consolidated Book, and would allow the COA-eligible order to execute (ahead of the incoming order) against any RFR Responses or ECOs received during the RTI until that point, while preserving the priority of the incoming order to trade with the resting leg markets.<sup>41</sup> New NYSE American Rule 980NY(e)(6)(B)(ii) also helps to correct an inaccuracy in current NYSE American Rules 980NY(e)(8)(B) and (C), which indicate that incoming same-side COA-eligible orders received during the RTI that are priced equal to or worse than the initiating COA-eligible order will join the COA. Instead, an incoming

<sup>28</sup> See new NYSE American Rule 980NY(e)(5). ATP Holders also may submit RFR Responses on behalf of Customers. See Notice, 82 FR at 45088, n. 31.

<sup>29</sup> See new NYSE American Rules 980NY(e)(5)(A) and (C).

<sup>30</sup> See *id.*

<sup>31</sup> See new NYSE American Rule 980NY(e)(5)(B).

<sup>32</sup> See new NYSE American Rule 980NY(e)(5)(C).

<sup>33</sup> See Notice, 82 FR at 45089. NYSE American notes that all orders may be cancelled. See *id.*

<sup>34</sup> See Notice, 82 FR at 45089 and new NYSE American Rule 980NY(e)(3). See also note 28, *supra*, and accompanying text.

<sup>35</sup> See new NYSE American Rule 980NY(e)(6)(A)(i).

<sup>36</sup> See Notice, 82 FR at 45090.

<sup>37</sup> See *id.*

<sup>38</sup> See new NYSE American Rule 980NY(e)(6)(A)(iv). NYSE American notes that this provision is consistent with current NYSE American 980NY(e)(8)(A), but provides additional detail regarding the ability for any balance of the incoming opposite-side ECO to trade with the best-priced resting contra-side interest before, or instead of, being ranked in the Consolidated Book. See Notice, 82 FR at 45089–90.

<sup>39</sup> See new NYSE American Rule 980NY(e)(6)(A)(v).

<sup>40</sup> Current NYSE American Rule 980NY(e)(8)(D) also provides that an incoming same-side, better-priced COA-eligible order will cause the COA to end.

<sup>41</sup> See Notice, 82 FR at 45091.

same-side equal-priced or worse-priced COA-eligible order that locks or crosses the contra-side initial Complex BBO would not execute during the COA in progress, as the current rules suggest, but could trade with RFR Responses or ECOs that do not execute in the COA and, if any balance remains, would initiate a new COA.<sup>42</sup> An incoming same-side equal-priced or worse-priced ECO that locks or crosses the contra-side initial Complex BBO could trade with RFR Responses or ECOs that do not execute in the COA and, if any balance remains, would trade pursuant to NYSE American Rule 980NY(c)(ii) or (iii).<sup>43</sup> New NYSE American Rule 980NY(e)(6)(B)(iii) states that an incoming same-side ECO or COA-eligible order that is priced equal to, or lower (higher) than the initiating COA-eligible order to buy (sell), but does not lock or cross the contra-side initial Complex BBO, will not cause the COA to end early.

New NYSE American Rule 980NY(e)(6)(C)(i) provides that updates to the leg markets that cause the same-side Complex BBO to lock or cross any RFR Response(s) and/or ECOs received during the RTI, or ECOs resting in the Consolidated Book, will cause the COA to end early.<sup>44</sup> The Exchange believes that providing for a COA to terminate early under these circumstances would allow a COA-eligible order to trade against any RFR Responses or ECOs received during the RTI up until that point, while preserving the priority of the updated leg markets to trade with any eligible contra-side interest, including any ECOs resting in the Consolidated Book.<sup>45</sup> Updates to the leg markets that cause the same-side Complex BBO to be priced higher

(lower) than the COA-eligible order to buy (sell), but do not lock or cross any RFR Response(s) and/or Electronic Complex Order(s) received during the RTI, or ECOs resting in the Consolidated Book, will not cause the COA to end early.<sup>46</sup> Updates to the leg markets that cause the contra-side Complex BBO to lock or cross the same-side initial Complex BBO will cause the COA to end early.<sup>47</sup> Updates to the leg markets that cause the contra-side Complex BBO to improve (*i.e.*, become higher (lower)), but do not lock or cross the same-side initial Complex BBO, will not cause the COA to end early.<sup>48</sup> NYSE American believes that new NYSE American Rules 980NY(e)(6)(C)(i)–(iv) respect the COA process while maintaining the priority of orders and quotes on the Consolidated Book as they update.<sup>49</sup> NYSE American notes that new NYSE American Rule 980NY(e)(6)(C) is based in part on current NYSE American Rules 980NY(e)(9)(A) and (B).<sup>50</sup> NYSE American states that the new rule provides additional clarity and transparency by indicating on which side the leg markets have updated.<sup>51</sup>

New NYSE American Rule 980NY(e)(7), which describes the allocation of COA-eligible orders at the conclusion of a COA, will replace current NYSE American Rule 980NY(e)(6) in its entirety.<sup>52</sup> New NYSE American Rule 980NY(e)(7)(A) provides that RFR Responses and ECOs to buy (sell) that are priced higher (lower) than the initial Complex BBO will be eligible to trade first with the COA-eligible order, beginning with the highest (lowest) at each price point, on a Size Pro Rata basis, as defined in NYSE American Rule 964(b)(3), provided that ECOs on behalf of Customers will have priority over same-priced ECOs for non-Customers.<sup>53</sup> After COA allocations pursuant to NYSE American Rule 980NY(e)(7)(A), the COA-eligible order will trade with best-priced contra-side interest pursuant to NYSE American Rule 980NY(c)(ii) or (iii).<sup>54</sup> Thus, after the COA-eligible order trades with price-improving interest received during the RTI, any remainder of the COA-

eligible order will follow NYSE American's regular allocation rules for an incoming marketable ECO.<sup>55</sup> NYSE American believes that this provision makes clear that a COA-eligible order would trade against the leg markets only after any auction allocations have been made.<sup>56</sup> Any unexecuted portion of the COA-eligible order will be ranked in the Consolidated Book.<sup>57</sup>

NYSE American also proposes to modify Commentary .02 to NYSE American Rule 980NY to make clear that the price improvement requirement provided in Commentary .02 applies if each leg of the contra-side Complex BBO for the components of the ECO includes Customer interest.<sup>58</sup> NYSE American believes that these changes add clarity and internal consistency to its rules.<sup>59</sup>

### III. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Amendment No. 1, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>60</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>61</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the proposed rules are substantially similar to rules recently adopted by NYSE Arca, Inc., except that NYSE American's rules reflect its Customer priority allocation model.<sup>62</sup>

#### *Execution of Complex Orders During Core Trading Hours*

NYSE American Rule 980NY(c) currently provides that ECOs submitted

<sup>42</sup> See new NYSE American Rules 980NY(e)(6)(B)(iv) and (vi). See also Notice, 82 FR at 45091, n. 48 and accompanying text. New NYSE American Rule 980NY(e)(6)(B)(iv) provides that an incoming ECO or COA-eligible order that caused a COA to end early, if executable, will trade against any RFR Responses and/or ECOs received during the RTI that did not trade with the initiating COA-eligible order. New NYSE American Rule 980NY(e)(6)(B)(vi) provides that the remaining balance of any incoming COA-eligible order(s) that does not trade against any remaining RFR Responses or ECOs will initiate new COA(s) in price-time priority.

<sup>43</sup> See new NYSE American Rules 980NY(e)(6)(B)(iv) and (v). NYSE American Rule 980NY(e)(6)(B)(v) provides that any incoming same-side ECO, or the remaining balance of such an ECO, that did not trade against any remaining RFR Responses or ECOs will trade pursuant to new NYSE American Rule 980NY(c)(ii) or (iii).

<sup>44</sup> Current NYSE American Rule 980NY(e)(9)(A) similarly provides that leg market interest that causes the derived Complex Best Bid/Offer to be better than the COA-eligible order and to cross the best-priced RFR Response will cause the auction to end.

<sup>45</sup> See Notice, 82 FR at 45091.

<sup>46</sup> See new NYSE American Rule 980NY(e)(6)(C)(ii).

<sup>47</sup> See new NYSE American Rule 980NY(e)(6)(C)(iii).

<sup>48</sup> See new NYSE American Rule 980NY(e)(6)(C)(iv).

<sup>49</sup> See Notice, 82 FR at 45091.

<sup>50</sup> See Notice, 82 FR at 45091–45092.

<sup>51</sup> See Notice, 82 FR at 45092.

<sup>52</sup> See Notice, 82 FR at 45092 and Amendment No. 1.

<sup>53</sup> See Amendment No. 1.

<sup>54</sup> See new NYSE American Rule 980NY(e)(7)(B).

<sup>55</sup> See Notice, 82 FR at 45092.

<sup>56</sup> See *id.*

<sup>57</sup> See new NYSE American Rule 980NY(e)(7).

<sup>58</sup> See Amendment No. 1.

<sup>59</sup> See Notice, 82 FR at 45093.

<sup>60</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>61</sup> 15 U.S.C. 78(b)(5).

<sup>62</sup> See Securities Exchange Act Release No. 80138 (March 1, 2017), 82 FR 12869 (March 7, 2017) (order approving File No. SR–NYSEArca–2016–149).

to NYSE American may be executed without consideration of prices of the same complex order that might be available on other exchanges. The proposal revises NYSE American Rule 980NY(c) to state that ECOs submitted to the Exchange may be executed without consideration not only of the prices of the same complex order strategy that might be available on other exchanges, but also of the prices of other single-legged orders that might be available on other exchanges. The Commission believes that expanding NYSE American Rule 980NY(c) to include single-legged orders on other exchanges is consistent with the rules of other options exchanges.<sup>63</sup> In addition, the Commission notes that this change is consistent with the Options Order Protection and Locked/Crossed Markets Plan, which excepts transactions effected as part of a “complex trade” from the requirement that exchanges establish, maintain, and enforce written policies and procedures reasonably designed to prevent trade-throughs.<sup>64</sup>

The Commission believes that the proposal to add new NYSE American Rules 980NY(c)(ii) and (iii), and the accompanying changes to delete certain existing rule text, will benefit market participants by more clearly describing, respectively, the treatment of incoming marketable ECOs (which are executed immediately) and incoming non-marketable ECOs (which are routed to the Consolidated Book) during Core Trading Hours. In particular, new NYSE American Rule 980NY(c)(ii) specifies that an incoming marketable ECO would trade against the best-priced contra-side interest resting in the Consolidated Book. New NYSE American Rule 980NY(c)(ii) further provides that if, at a price, the leg markets can execute against an incoming ECO in full (or in a permissible ratio), and each leg includes Customer interest, the leg markets (Customer and non-Customer

interest) will have first priority at that price and will trade with the incoming ECO pursuant to NYSE American Rule 964NY(b) before ECOs resting in the Consolidated Book can trade at that price.<sup>65</sup> The Commission believes that new NYSE American Rule 980NY(c)(ii) is consistent with current NYSE American Rule 980NY(c)(ii)(A).<sup>66</sup> The Commission believes that new NYSE American Rule 980NY(c)(iii) adds clarifying detail to NYSE American’s rules by indicating that an ECO or portion of an ECO that is not executed on arrival will be ranked in the Consolidated Book and by providing that resting ECOs will be executed against new interest entered into the Consolidated Book according to NYSE American Rule 980NY(c)(ii), thereby providing market participants with more precise information concerning NYSE American’s handling of these orders.<sup>67</sup> In addition, new NYSE American Rule 980NY(c)(iii)(B) provides additional specificity by indicating that complex trades are allocated among ATP Holders pursuant to NYSE American Rule 964NY(b), rather than pursuant to NYSE American Rule 964NY, as provided in current NYSE American Rule 980NY(c)(ii)(C).

<sup>65</sup> See Amendment No. 1.

<sup>66</sup> Current NYSE American Rule 980NY(c)(ii)(A) states that “The CME will accept an incoming marketable Electronic Complex Order and will automatically execute it against Electronic Complex Orders in the Consolidated Book, or, if not marketable against another Electronic Complex Order, against individual orders or quotes residing in the Consolidated Book, provided the Electronic Complex Order can be executed in full (or in a permissible ratio) by the individual orders or quotes in the Consolidated Book. Notwithstanding the foregoing, if individual Customer orders residing in the Consolidated Book can execute the incoming Electronic Complex Order in full (or in a permissible ratio) at the same total or net debit or credit as an Electronic Complex Order in the Consolidated Book, the individual Customer orders will have priority. The allocation of orders or quotes residing in the Consolidated Book that execute against an Electronic Complex Order shall be done pursuant to Rule 964NY.” NYSE American notes that, under its current rule, the leg markets have first priority to trade against an incoming ECO if (i) there are no better priced ECOs in the Consolidated Book, (ii) the leg markets can trade in full or permissible ratio against an ECO, and (iii) each leg contains Customer interest. See Notice, 82 FR at 45086.

<sup>67</sup> See new NYSE American Rule 980NY(c)(iii)(A). Current NYSE American Rule 980NY(c)(ii)(B) provides that “An Electronic Complex Order that is not marketable will rest in the Consolidated Book. If an Electronic Complex Order is being held in the Consolidated Book, the CME will monitor the bids and offers in the leg markets, and if a new order(s) or quote(s) entered into the Consolidated Book can execute the Electronic Complex Order in full (or in a permissible ratio), the Electronic Complex Order will be executed against such new order(s) or quote(s).”

#### *Changes Related to the COA Process*

The Commission believes that the introductory language in new NYSE American Rule 980NY(e) is similar to the text of current NYSE American Rule 980NY(e), but provides additional clarity by indicating that an incoming ECO could execute immediately against interest resting in the Consolidated Book pursuant to NYSE American Rule 980NY(c)(ii), or be subject to a COA.<sup>68</sup> The Commission believes that the definition of COA-eligible order in new NYSE American Rule 980NY(e)(1) will make clear that an ECO will be COA-eligible only if it is submitted during Core Trading Hours.<sup>69</sup> The definition of COA-eligible order retains the requirement that the ATP Holder designate the order as COA-eligible.<sup>70</sup> The Commission believes that eliminating the provision in current NYSE American Rule 980NY(e)(1) that allows NYSE American to restrict COA eligibility based on an order’s size, number of series, or order origin type could benefit investors by helping to make more orders eligible for a COA and, therefore, able to receive potential price improvement during a COA.

New NYSE American Rule 980NY(e)(2) provides that, upon entry into the System, a COA-eligible order will trade immediately, in full or in a permissible ratio, with any ECOs resting in the Consolidated Book that are priced better than the contra-side Complex BBO. NYSE American believes that the immediate price improvement opportunity for an incoming COA-eligible order from ECOs resting in the Consolidated Book obviates the need to start a COA.<sup>71</sup> The Commission believes that, under these circumstances, executing a COA-eligible order against resting interest that is priced better than the contra-side Complex BBO will provide the COA-eligible order with an immediate execution at an improved price, and could benefit both the sender of the COA-eligible order and the sender of the resting better-priced ECO. NYSE American Rule 980NY(e)(2) further provides that a COA-eligible order may trade with any ECOs resting in the Consolidated Book that are priced equal to the contra-side Complex BBO, unless each leg of the contra-side Complex

<sup>68</sup> See note 14, *supra*, and accompanying text.

<sup>69</sup> See note 15, *supra*, for the current definition of COA-eligible order.

<sup>70</sup> See new NYSE American Rule 980NY(e)(1)(i). Current NYSE American Rule 980NY(e)(2) provides, in part, that NYSE American will initiate an auction for a COA-eligible order upon direction from the entering ATP Holder that an auction be initiated.

<sup>71</sup> See Notice, 82 FR at 45088.

<sup>63</sup> See, e.g., NYSE Arca Rule 6.91–O(a)(2) (substantively identical to new NYSE American Rule 980NY(c)); ISE Rule 722(b)(3) (stating that complex orders may be executed without consideration of the prices that might be available on other options exchanges trading the same contracts); and Phlx Rules 1098(e)(i)(B) and (f)(iii) (providing that COLA-eligible orders and complex orders in the CBOOK will be executed without consideration of any prices that might be available on other exchanges trading the same contracts).

<sup>64</sup> See Options Order Protection and Locked/Crossed Markets Plan, Section V(b)(viii) (available at [http://www.optionsclearing.com/components/docs/clearing/services/options\\_order\\_protection\\_plan.pdf](http://www.optionsclearing.com/components/docs/clearing/services/options_order_protection_plan.pdf)). The proposal also revises NYSE American Rule 980NY(a) to add the defined term “leg markets” to refer to individual quotes and orders in the Consolidated Book. The Commission believes that adding this defined term could help to enhance the clarity and readability of NYSE American Rule 980NY.

BBO includes Customer interest.<sup>72</sup> The Commission believes that this provision is consistent with new NYSE American Rule 980NY(c)(ii), which, as described above, gives contra-side leg market interest first priority to trade with an incoming ECO only if, at a price, the contra-side leg market interest includes Customer interest for each component leg of the ECO.

The Commission believes that new NYSE American Rule 980NY(e)(3)(i) could enhance competition by encouraging market participants to submit aggressively priced COA-eligible orders because only COA-eligible orders priced better than the same-side leg market and ECO interest would be able to initiate a COA. The Commission believes that new NYSE American Rule 980NY(e)(3)(ii) will provide NYSE American with flexibility to determine when the price of a COA-eligible order, based on the number of ticks away from the current contra-side market, warrants the initiation of a COA. The Commission believes that permitting only one COA at a time for any complex order strategy will help to provide for the orderly processing of trading interest on NYSE American.<sup>73</sup> The Commission notes that although a COA could be initiated even if the limit price of the COA-eligible order is not at or within the NYSE American best bid/offer for each leg of the order, the COA-eligible order must execute at a price that is at or within the NYSE American best bid/offer for each leg of the order, consistent with NYSE American Rule 980NY(c).<sup>74</sup>

As noted above,<sup>75</sup> the definition of RTI in new NYSE American Rule 980NY(e)(4) is based on current NYSE American Rule 980NY(e)(3), with the addition of new rule text providing that, at the end of an RTI, a COA-eligible order would be allocated pursuant to new NYSE American Rule 980NY(e)(7). The Commission believes that the new rule text will benefit market investors by clarifying how these two provisions interact with one another.

As discussed more fully above, new NYSE American Rule 980NY(e)(5), which describes the characteristics of RFR Responses, retains features of the current provisions addressing RFR Responses,<sup>76</sup> but adds new detail by indicating that an RFR Response must specify the price, size, and side of the market.<sup>77</sup> The Commission believes that

this change will make clear to market participants the information that they must include in an RFR Response. In addition, new NYSE American Rule 980NY(e)(5)(C) indicates that RFR Responses may be cancelled during the RTI, replacing language in current NYSE American Rule 980NY(e)(7) that states that RFR Responses may not be withdrawn prior to the end of the RTI. The Commission believes that new NYSE American Rule 980NY(e)(5)(C) will correct an inaccuracy in NYSE American's current rules and make clear to ATP Holders that they may cancel their RFR Responses during the RTI. The Commission notes that two other options exchanges also permit the withdrawal or cancellation of RFR Responses during the RTI.<sup>78</sup>

#### *Impact of Incoming Trading Interest on the COA Process*

New NYSE American Rule 980NY(e)(6)(A)(i) provides that incoming opposite-side ECOs or COA-eligible orders that lock or cross the initial Complex BBO will cause the COA to end early.<sup>79</sup> NYSE American believes that ending the COA early under these circumstances will allow an initiating COA-eligible order to execute, ahead of the incoming order, against RFR Responses or ECOs received during the RTI until that point, while preserving the priority of the incoming order to trade with the resting leg markets.<sup>80</sup> NYSE American also believes that the early conclusion of the COA would avoid disturbing the priority in the Consolidated Book.<sup>81</sup> The Commission believes that ending the COA early when an incoming contra-side ECO or COA-eligible order locks or crosses the initial Complex BBO will allow NYSE American to maximize order executions and provide for the orderly processing of trading interest on NYSE American. The early termination of the COA will allow the COA-eligible order to execute against trading interest received during the RTI, including the order that caused the COA to end early,

while preserving the ability of the resting leg market orders that comprise the initial Complex BBO to trade with the incoming interest that locked or crossed the initial Complex BBO.

New NYSE American Rule 980NY(e)(6)(A)(ii) provides that incoming opposite-side ECO or COA-eligible orders that are executable against the limit price of the COA-eligible order, but do not lock or cross the initial Complex BBO, will not cause the COA to end early and will be ranked with RFR Responses to execute with the COA-eligible order pursuant to NYSE American Rule 980NY(e)(7). The Commission believes that allowing the COA to continue under these circumstances could provide the potential for the COA-eligible order to receive price improvement as the auction continues. The Commission notes that, in this case, the incoming contra-side interest does not raise leg market priority concerns that would require an early termination of the COA because the incoming contra-side interest does not lock or cross the initial Complex BBO.

NYSE American Rule 980NY(e)(6)(A)(iii) provides that incoming opposite-side ECOs or COA-eligible orders that are either not executable on arrival against the limit price of the initiating COA-eligible order or do not lock or cross the initial Complex BBO will not cause the COA to end early. The Commission believes that because the incoming contra-side interest does not lock or cross the initial Complex BBO, it is not necessary to end the COA early to protect the priority of interest in the leg market under these circumstances.

New NYSE American Rules 980NY(e)(6)(A)(iv) and (v) describe the treatment of incoming opposite-side ECOs and COA-eligible orders that did not execute with the initiating COA-eligible order or were not executable on arrival. Such an incoming opposite-side ECO would trade pursuant to NYSE American Rule 980NY(c)(ii) or (iii), and an incoming opposite-side COA-eligible order would initiate a subsequent COA. The Commission believes that allowing these incoming ECOs and COA-eligible orders to trade with interest resting in the Consolidated Book, or to initiate a new COA, as applicable, will allow NYSE American to provide additional execution opportunities for these orders. In addition, the Commission believes that new NYSE American Rules 980NY(e)(6)(A)(iv) and (v) will enhance the transparency of NYSE American's rules by providing additional detail regarding the treatment of incoming opposite-side ECOs and COA-eligible

<sup>72</sup> See NYSE Arca Rule 6.91–O(c)(5)(C) (stating that RFR Responses may be modified or cancelled during the RTI); and CBOE Rule 6.53C(d)(vii) (stating that RFR Responses represent non-firm interest that can be modified or withdrawn at any time prior to the end of the RTI).

<sup>73</sup> If the incoming opposite-side ECO or COA-eligible order is also executable against the limit price of the initiating COA-eligible order, it will be ranked with RFR Responses to execute with the COA-eligible order. See new NYSE American Rule 980NY(e)(6)(A)(i).

<sup>74</sup> See Notice, 82 FR at 45090. If no RFRs are received during the RTI, the COA-eligible order will execute against the best-priced contra-side interest, including the order that caused the COA to terminate early. See *id.*

<sup>75</sup> See *id.*

<sup>72</sup> See Amendment No. 1.

<sup>73</sup> See NYSE American Rule 980NY(e)(3).

<sup>74</sup> See Notice, 82 FR at 45088.

<sup>75</sup> See note 29, *supra*, and accompanying text.

<sup>76</sup> See notes 30–36, *supra*, and accompanying text.

<sup>77</sup> See new NYSE American Rule 980NY(e)(5)(A).

orders that did not trade with the initiating COA-eligible order or were not executable on arrival.

New NYSE American Rule 980NY(e)(6)(B) states that when a COA ends early, or at the end of the RTI, the initiating COA-eligible order will execute pursuant to new NYSE American Rule 980NY(e)(7) ahead of any interest that arrived during the COA. The Commission believes that this provision establishes the priority of the initiating COA-eligible order to trade before trading interest that arrives during the auction. The Commission notes that the rules of two other options exchanges similarly establish the priority of the auctioned order to trade prior to interest that arrives during the auction.<sup>82</sup>

New NYSE American Rule 980NY(e)(6)(B)(i) indicates that an incoming ECO or COA-eligible order on the same side of the market as the initiating COA-eligible order that is priced higher (lower) than the initiating COA-eligible order to buy (sell) will cause the COA to end early.<sup>83</sup> The Commission believes that ending the COA early under these circumstances provides a means to maximize execution opportunities by allowing the COA-eligible order to execute against interest received during the auction and allowing the incoming better-priced ECO or COA-eligible order to trade with interest resting in the Consolidated Book (in the case of an ECO), or to initiate a new auction (in the case of a COA-eligible order).

New NYSE American Rule 980NY(e)(6)(B)(ii) provides that an incoming same-side ECO or COA-eligible order that is priced equal to or lower (higher) than the initiating COA-eligible order to buy (sell), and that also locks or crosses the contra-side initial Complex BBO, will cause the COA to end early. NYSE American states that ending the COA early under these circumstances will allow the COA-

eligible order to execute, ahead of the incoming order, against RFR Responses or ECOs received during the RTI until the point, while preserving the priority of the incoming order to trade with the resting leg markets.<sup>84</sup> The Commission believes that ending the COA early under these circumstances is designed to maximize execution opportunities and provide for the orderly processing of trading interest on NYSE American by allowing the COA-eligible order to execute against trading interest received during the RTI, while preserving the ability of the resting leg market orders that comprise the initial Complex BBO to trade with the incoming interest that locked or crossed the initial Complex BBO.

New NYSE American Rules 980NY(e)(6)(B)(iv), (v), and (vi) further describe the treatment of incoming same-side COA-eligible orders or ECOs received during the RTI. An incoming same-side ECO or COA-eligible order that caused a COA to end early, if executable, will trade against any RFR Responses and/or ECOs received during the RTI that did not trade with the initiating COA-eligible order.<sup>85</sup> Any incoming same-side ECO, or the remaining balance of such an ECO, that did not trade against any remaining RFR Responses or ECOs will trade pursuant to new NYSE American Rule 980NY(c)(ii) or (iii).<sup>86</sup> The balance of any incoming COA-eligible order(s) that did not trade against any remaining RFR Responses or ECOs will initiate new COA(s) in price-time priority.<sup>87</sup> The Commission believes that these provisions could benefit investors by potentially maximizing the execution opportunities for incoming same-side ECOs and COA-eligible orders, which may execute against remaining RFR Responses or ECOs, execute against interest resting in the Consolidated Book (in the case of an ECO), or initiate a new COA (in the case of a COA-eligible order).

New NYSE American Rule 980NY(e)(6)(B)(iii) states that an incoming same-side ECO or COA-eligible order that is priced equal to, or lower (higher) than the initiating COA-eligible order to buy (sell), but does not lock or cross the contra-side initial Complex BBO, will not cause the COA to end early. The Commission believes that, under these circumstances, the incoming same-side interest does not

raise leg market priority concerns that would require an early termination of the COA because the incoming interest does not lock or cross the contra-side initial Complex BBO.

The Commission believes that new NYSE American Rule 980NY(e)(6)(C) will provide greater clarity and specificity regarding the impact of leg market updates on the COA. The Commission believes that providing for an early end to the COA when the leg market updates cause the same-side Complex BBO to lock or cross RFR Responses or ECOs received during the RTI, or ECOs resting in the Consolidated Book,<sup>88</sup> or cause the contra-side Complex BBO to lock or cross the same-side initial Complex BBO,<sup>89</sup> will allow the COA-eligible order to execute against interest received during the auction and permit the updated leg markets to execute against available trading interest, thereby maximizing execution opportunities for trading interest in the COA and in the leg markets, and providing for the orderly processing of trading interest on NYSE American. The Commission believes that allowing the COA to continue when leg market updates do not result in an execution opportunity—*i.e.*, when leg market updates cause the same-side Complex BBO to be priced higher (lower) than the COA-eligible order to buy (sell), but do not lock or cross any RFR Responses or ECOs received during the RTI, or ECOs resting in the Consolidated Book,<sup>90</sup> or when leg market updates cause the contra-side Complex BB (BO) to improve, but do not lock or cross the same-side initial Complex BBO<sup>91</sup>—will allow for the submission of additional trading interest that might result in an execution or price improvement for the COA-eligible order.

New NYSE American Rule 980NY(e)(7), which describes the allocation of COA-eligible orders at the conclusion of a COA, will replace current NYSE American Rule 980NY(e)(6) in its entirety.<sup>92</sup> The Commission believes that new NYSE American Rule 980NY(e)(7)(A) protects leg market interest resting in the Consolidated Book at the beginning of the COA by providing that the COA-eligible order will be eligible to trade first with RFR Responses and ECOs priced better than the initial Complex BBO. In addition, new NYSE American Rule 980NY(e)(7)(A) clarifies the

<sup>82</sup> See NYSE Arca Rule 6.91–O(c)(6)(B) (substantively identical to new NYSE American Rule 980NY(e)(6)(B)); and Phlx Rule 1098(e)(viii)(B) (stating, in part, with respect to the Phlx's Complex Order Live Auction ("COLA"): "Incoming Complex Orders that were received during the COLA Timer for the same Complex Order Strategy as the COLA-eligible order that are on the same side of the market will join the COLA. The original COLA-eligible order has priority at all price points (*i.e.*, multiple COLA Sweep Prices) over the incoming Complex Order(s), regardless of the price of the incoming Complex Order. The incoming Complex Order shall not be eligible for execution against interest on the opposite side of the market from the COLA-eligible order until the COLA-eligible order is executed to the fullest extent possible").

<sup>83</sup> The Commission notes that current NYSE American Rule 980NY(e)(8)(D) also provides that an incoming same-side, better-priced COA-eligible order will cause the COA to end.

<sup>84</sup> See Notice, 82 FR at 45091.

<sup>85</sup> See new NYSE American Rule 980NY(e)(6)(B)(iv).

<sup>86</sup> See new NYSE American Rule 980NY(e)(6)(B)(v).

<sup>87</sup> See new NYSE American Rule 980NY(e)(6)(B)(vi).

<sup>88</sup> See NYSE American Rule 980NY(e)(6)(C)(i).

<sup>89</sup> See NYSE American Rule 980NY(e)(6)(C)(iii).

<sup>90</sup> See NYSE American Rule 980NY(e)(6)(C)(ii).

<sup>91</sup> See NYSE American Rule 980NY(e)(6)(C)(iv).

<sup>92</sup> See Notice, 82 FR at 45092.

allocation priority of Customer orders by indicating that ECOs on behalf of Customers will have priority over same-priced ECOs for non-Customers.<sup>93</sup> New NYSE American Rule 980NY(e)(7)(B) provides that, after allocations pursuant to NYSE American Rule 980NY(e)(7)(A), a COA-eligible order will trade with best-priced contra-side interest pursuant to NYSE American Rule 980NY(c)(ii) or (iii). NYSE American Rule 980NY(e)(7) states that any unexecuted portion of a COA-eligible order will be ranked in the Consolidated Book. The Commission believes that these provisions establish additional execution opportunities for a COA-eligible order, or portion of a COA-eligible order, that does not execute during the COA, and provide clarity regarding the handling of these orders.

The Commission believes that the proposed changes to Commentary .02 to NYSE American Rule 980NY clarify the circumstances under which an ECO that executes against another ECO must trade at a price that is better than leg market interest. Specifically, Commentary .02 indicates that the ECOs must trade at an improved price when each leg of the contra-side Complex BBO for the components of the ECO includes Customer interest.<sup>94</sup> The Commission notes that Commentary .02 is consistent with the Customer priority provisions of new NYSE American Rules 980NY(c)(ii) and (e)(2).<sup>95</sup>

#### IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 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-2017-15 on the subject line.

<sup>93</sup> See Amendment No. 1.

<sup>94</sup> See *id.*

<sup>95</sup> As described more fully above, new NYSE American Rule 980NY(c)(ii) provides the leg markets first priority to trade against an incoming marketable ECO only when the contra-side leg market interest for each component leg of the ECO includes Customer interest. New NYSE American Rule 980NY(e)(2) provides that a COA-eligible order may execute against ECOs resting in the Consolidated Book that are priced equal to the contra-side Complex BBO, unless each leg of the contra-side Complex BBO includes Customer interest.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEAMER-2017-15. 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 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-2017-15, and should be submitted on or before December 5, 2017.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of the notice of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, NYSE American revises its original proposal to make the changes discussed in detail above.<sup>96</sup> Notably, in Amendment No. 1, NYSE American revises its proposal to provide additional clarity to the Customer priority provisions of the proposed rules. In this regard, Amendment No. 1 makes clear that when allocating orders at the conclusion of a COA, ECOs on

<sup>96</sup> See footnote 6, *supra*.

behalf of Customers have priority over same-priced ECOs for non-Customers. In addition, Amendment No. 1 indicates that a COA-eligible order may trade immediately in full (or in a permissible ratio) with a resting ECO priced equal to the contra-side Complex BBO, unless each leg of the contra-side Complex BBO includes Customer interest. Amendment No. 1 also clarifies the circumstances under which ECOs that execute against each other must trade at a price that is better than the corresponding leg market interest. The Commission believes that Amendment No. 1 does not raise any novel regulatory issues and instead provides additional clarity in the rule text. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>97</sup> that the proposed rule change (File No. SR-NYSEAMER-2017-15), as modified by Amendment No. 1, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>98</sup>

**Eduardo A. Aleman**,  
*Assistant Secretary*.

[FR Doc. 2017-24576 Filed 11-13-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32898; File No. 812-14775]

### Meeder Funds Trust, et al.

November 8, 2017.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act.

The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies that are outside of the same group of investment companies as the acquiring investment companies, in

<sup>97</sup> 15 U.S.C. 78s(b)(2).

<sup>98</sup> 17 CFR 200.30-3(a)(12).