

Exchange's rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

#### *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 proposed rule change is not intended to address competitive issues but is rather concerned with making non-substantive conforming changes to the Exchange rules. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

under Section 19(b)(2)(B)<sup>10</sup> of the Act to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2021-72 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-NYSE-2021-72. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2021-72 and should be submitted on or before January 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-93803; File No. SR-NYSEAMER-2021-46]

### **Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Historical Market Data Product To Be Known as the NYSE Options Open-Close Volume Summary**

December 16, 2021.

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 December 14, 2021, 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 adopt a new historical market data product to be known as the NYSE Options Open-Close Volume Summary. 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,

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>11</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.

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 adopt a new historical market data product to be known as the NYSE Options Open-Close Volume Summary, which will be available to all subscribers. The proposed NYSE Options Open-Close Volume Summary is based on market data products currently available on most other options exchanges.<sup>4</sup>

The Exchange proposes to offer the NYSE Options Open-Close Volume Summary, which will be a volume summary of trading activity on the Exchange at the option level by origin (Customer, Professional Customer, Firm, Broker-Dealer, and Market Maker<sup>5</sup>), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The Customer, Professional Customer, Firm, Broker-Dealer, and Market Maker volume will be further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The NYSE Options Open-Close Volume Summary is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed.

<sup>4</sup> See Securities Exchange Act Release Nos. 89497 (August 6, 2020), 85 FR 48747 (August 12, 2020) (SR–ChoeBZX–2020–059); 89498 (August 6, 2020), 85 FR 48735 (August 12, 2020) (SR–Choe–EDGX–2020–36); 85817 (May 9, 2019), 84 FR 21863 (May 15, 2019) (SR–CBOE–2019–026); 89496 (August 6, 2020), 85 FR 48743 (August 12, 2020) (SR–C2–2020–010); 89586 (August 17, 2020), 85 FR 51833 (August 21, 2020) (SR–C2–2020–012); 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR–Phlx–2010–121); 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR–NASDAQ–2011–144); 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR–ISE–2009–103); 81632 (September 15, 2017), 82 FR 44235 (September 21, 2017) (SR–GEMX–2017–42); 91963 (May 21, 2021), 86 FR 28662 (May 27, 2021) (SR–EMERALD–2021–18); 91964 (May 21, 2012), 86 FR 28667 (May 27, 2021) (SR–PEARL–2021–24); and 91965 (May 21, 2021), 86 FR 28665 (May 27, 2021) (SR–MAX–2021–18). See also Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR–NYSEArca–2021–82) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Historical Market Data Product To Be Known as the NYSE Options Open-Close Volume Summary). The Exchange notes that the NYSE Options Open-Close Volume Summary on NYSE Arca, Inc. (“NYSE Arca”) has not yet been made available for purchase by subscribers.

<sup>5</sup> See Exchange Rule 900.2.NY for the definitions of the terms Customer, Professional Customer, Firm, Broker-Dealer, and Market Maker.

Specifically, the NYSE Options Open-Close Volume Summary would include the following data: Aggregate number of buy and sell transactions in the affected series; aggregate volume traded electronically on the Exchange in the affected series; aggregate number of trades effected on the Exchange to open a position;<sup>6</sup> aggregate number of trades effected on the Exchange to close a position;<sup>7</sup> and origin of the orders and quotes involved in trades on the Exchange in the affected series during a particular trading session, specifically aggregated in the following categories of participants: Customer, Professional Customer, Firm, Broker-Dealer, and Market Maker.

The Exchange anticipates a wide variety of market participants to purchase the NYSE Options Open-Close Volume Summary, including, but not limited to, individual customers, buy-side investors, and investment banks. The NYSE Options Open-Close Volume Summary would provide subscribers data that should enhance their ability to analyze options trade and volume data, and to create and test trading models and analytical strategies. The Exchange believes that NYSE Options Open-Close Volume Summary will be a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular options series. The NYSE Options Open-Close Volume Summary is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so.

The Exchange proposes to offer two versions of the NYSE Options Open-Close Volume Summary: End of Day Volume Summary and Intra-Day Volume Summary. The End of Day Volume Summary will contain historical data from the previous trading day and would be available after the end of each trading day, generally on a T+1 basis. The Intra-Day Volume Summary would include “snapshots” taken every 10 minutes throughout the trading day and would be available within five minutes of the conclusion of each 10-minute period. Each update would represent combined data captured from the current “snapshot” and all previous “snapshots” and thus would provide open-close data on an aggregate basis.

<sup>6</sup> An opening buy is a transaction that creates or increases a long position and an opening sell is a transaction that creates or increases a short position.

<sup>7</sup> A closing buy is a transaction made to close out an existing position and a closing sell is a transaction to reduce or eliminate a long position.

The Exchange will establish monthly subscriber fees for the NYSE Options Open-Close Volume Summary by way of a separate proposed rule change, which the Exchange will submit prior to the launch of the NYSE Options Open-Close Volume Summary. The Exchange plans to introduce the NYSE Options Open-Close Volume Summary in the first quarter of 2022. The Exchange will announce the exact date that the NYSE Options Open-Close Volume Summary will become available through a NYSE Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>9</sup> of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the NYSE Options Open-Close Volume Summary options data product proposed herein is precisely the sort of market data product evolutions that the Commission envisioned when it adopted Regulation NMS. The proposed rule change would benefit investors by providing access to the NYSE Options Open-Close Volume Summary, which contains information regarding opening and closing activity across different options series during the trading day that would provide investor sentiment and thereby allow market participants to make informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze options trade and volume data and create and test trading models and analytical strategies. The Exchange believes the NYSE Options

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

Open-Close Volume Summary would provide a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading.

Moreover, other exchanges also offer a substantially identical data product.<sup>10</sup> Specifically, NASDAQ OMX PHLX (“PHLX”) and the NASDAQ Stock Market LLC (“NASDAQ”) offer the PHLX Options Trade Outline (“PHOTO”) and NASDAQ Options Trade Outline (“NOTO”), respectively. The Cboe Exchange, Inc. (“Cboe”), Cboe C2 Exchange, Inc. (“C2”), Cboe BZX Exchange, Inc. (“BZX”), Cboe EDGX Exchange, Inc. (“EDGX”) all offer the market data products called the End of Day and Intraday Open-Close Data. Additionally, Miami International Securities Exchange, LLC (“MIAX”), MIAX Emerald, LLC (“Emerald”) and MIAX PEARL, LLC (“PEARL”) all offer an End of Day Open-Close Report and an Intra-Day Open-Close Report. And as noted above, NYSE Arca has also established the NYSE Options Open-Close Volume Summary that it intends to introduce to the marketplace. The Phlx, Nasdaq, Cboe, C2, BZX, EDGX, MIAX, Emerald, PEARL and NYSE Arca products provide substantially the same information as that included in the proposed NYSE Options Open-Close Volume Summary. Like the proposed product, the data is provided to subscribers in the other exchange’s market data products after the end of the trading day and cumulatively every 10 minutes and provided within five minutes of the conclusion of each 10-minute period.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>11</sup> 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. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to offer a data product similar to those offered by other competitor options exchanges.<sup>12</sup> The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually

limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. The proposed introduction of the NYSE Options Open-Close Volume Summary is the Exchange’s response to the many competing products available in the marketplace today. The Exchange believes the proposed rule change would contribute to the robust competition among national securities exchanges.

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

#### *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-2021-46 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-2021-46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2021-46 and should be submitted on or before January 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>10</sup> See *supra* note 4.

<sup>11</sup> 15 U.S.C. 78f(b)(8).

<sup>12</sup> See *supra* note 4.