

Required fields are shown with yellow backgrounds and asterisks.

|                |  |   |
|----------------|--|---|
| Page 1 of * 46 | SECURITIES AND EXCHANGE COMMISSION<br>WASHINGTON, D.C. 20549<br>Form 19b-4 | File No.* SR - 2019 - * 38<br>Amendment No. (req. for Amendments *) 1 |
|----------------|--|---|

Filing by NYSE American LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

|  |  |  |   |   |   |
|--|--|--|---|---|---|
| Initial *<br><input type="checkbox"/>  | Amendment *<br><input checked="" type="checkbox"/> | Withdrawal<br><input type="checkbox"/> | Section 19(b)(2) *<br><input checked="" type="checkbox"/>   | Section 19(b)(3)(A) *<br><input type="checkbox"/> | Section 19(b)(3)(B) *<br><input type="checkbox"/> |
| Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/> |  |  | Rule<br><input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4)<br><input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5)<br><input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6) |   |   |

|  |   |
|--|---|
| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010<br>Section 806(e)(1) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/> | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934<br>Section 3C(b)(2) * <input type="checkbox"/> |
|--|---|

|   |   |
|---|---|
| Exhibit 2 Sent As Paper Document <input type="checkbox"/> | Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
|---|---|

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to amend Rules 903G and 906G related to Flexible Exchange Options

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Samir Last Name \* Patel  
 Title \* Senior Counsel, NYSE Group Inc.  
 E-mail \* Samir.Patel@theice.com  
 Telephone \* (212) 656-2030 Fax (212) 656-8101

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*) Senior Counsel

Date 02/04/2020  
 By David De Gregorio (Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

David De Gregorio,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NYSE American LLC ("NYSE American" or the "Exchange") proposes to amend Rules 903G and 906G related to Flexible Exchange ("FLEX") Options.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange's governing documents. Therefore, the Exchange's internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Samir M. Patel  
Senior Counsel  
NYSE Group, Inc.  
(212) 656-2030

Christopher Twomey  
Director, Options  
NYSE Group, Inc.  
(212) 656-5005

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

- (a) Purpose

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

This Amendment No. 1 amends and replaces in its entirety the original proposal

---

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

<sup>2</sup> 17 CFR 240.19b-4.

filed by the Exchange on October 17, 2019.<sup>3</sup> The Exchange submits this Amendment No.1 to modify the original proposal by (1) limiting cash settlement as a contract term for FLEX Equity Options whose underlying security is an Exchange-Traded Fund (“FLEX ETF Options”), (2) aggregating positions in cash-settled FLEX ETF Options with positions in physically-settled ETF options on the same underlying security, (3) proposing a cap on the number of underlying ETFs permitted to have cash settlement as a contract term, (4) providing the Securities and Exchange Commission an annual report that includes analysis and recommendations, if any, regarding the trading of cash-settled FLEX ETF Options under the proposed rule, and (5) making other clarifications to the proposed rule change.

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 where the underlying security is an Exchange-Traded Fund would be permitted to be settled by delivery in cash if the underlying security meets prescribed criteria.

To permit cash settlement of certain FLEX ETF 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 a FLEX ETF Option may be by physical delivery of the underlying ETF 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>

---

<sup>3</sup> See Securities Exchange Act Release No. 87444 (November 1, 2019), 84 FR 60120 (November 7, 2019) (Notice of Filing of Proposed Rule Change to Allow Certain Flexible Exchange Equity Options To Be Cash Settled) (SR-NYSEAmer-2019-38).

<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).

The Exchange also proposes new sub-paragraph (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> The proposed rule would further provide that the Exchange will permit cash settlement as a contract term on no more than 50 underlying ETFs that meet the criteria in Rule 903G(c)(3)(ii), and that if more than 50 underlying ETFs satisfy the notional value and trading volume requirements, the Exchange would select the top 50 ETFs that have the highest average daily volume.<sup>9</sup>

Proposed new sub-paragraph (B) to Rule 903(c)(3)(ii) would further provide that if the Exchange determines pursuant to the bi-annual review that an underlying ETF ceases to satisfy the requirements under Rule 903G(c)(3)(ii), any new position overlying such ETF entered into will be required to have exercise settlement by physical delivery and any open cash-settled FLEX ETF Option positions may be traded only to close the position.<sup>10</sup>

The Exchange believes it is appropriate to introduce cash settlement as an alternative contract term to the select group of ETFs because they are among 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 the ETFs identified by the Exchange as meeting the criteria mitigate against historic concerns regarding susceptibility to manipulation.

#### Characteristics of ETFs

---

<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 and any new securities that qualify would be permitted to have cash settlement as a contract term beginning on February 1 and August 1 of each year.

<sup>9</sup> See proposed Rule 903G(c)(3)(ii)(A).

<sup>10</sup> See proposed Rule 903G(c)(3)(ii)(B). 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 in option series that are restricted to closing-only transactions. See <https://www.nyse.com/publicdocs/nyse/markets/arca-options/rule-interpretations/2017/NYSE%20Arca%20Options%20RB%2017-01.pdf>. Consistent with a Market Maker's duty to maintain fair and orderly markets under Rule 920NY, the Exchange will provide guidance to reflect that an ATP Holder acting as a Market Maker in cash-settled FLEX ETF Options can enter into an opening transaction to facilitate closing only transactions of another market participant in cash-settled FLEX ETF Option series that are restricted to closing-only transactions.

ETFs are funds that have their value derived from assets owned. The net asset value (“NAV”) of an ETF is a daily calculation that is based off the most recent closing prices of the assets in the fund and an actual accounting of the total cash in the fund at the time of calculation. The NAV of an ETF is calculated by taking the sum of the assets in the fund, including any securities and cash, subtracting out any liabilities, and dividing that by the number of shares outstanding.

Additionally, each ETF is subject to a creation and redemption mechanism to ensure the price of the ETF does not fluctuate too far away from its NAV -- which mechanisms reduce the potential for manipulative activity. Each business day, ETFs are required to make publicly available a portfolio composition file that describes the makeup of their creation and redemption “baskets” (i.e., a specific list of names and quantities of securities or other assets designed to track the performance of the portfolio as a whole). ETF shares are created when an Authorized Participant, typically a market maker or other large institutional investor, deposits the daily creation basket or cash with the ETF issuer. In return for the creation basket or cash (or both), the ETF issues to the Authorized Participant a “creation unit” that consists of a specified number of ETF shares. For instance, IWM is designed to track the performance of the Russell 2000 Index. An Authorized Participant will purchase all the Russell 2000 constituent securities in the exact same weight as the index prescribes, then deliver those shares to the ETF issuer. In exchange, the ETF issuer gives the Authorized Participant a block of equally valued ETF shares, on a one-for-one fair value basis. This process can also work in reverse. A redemption is achieved when the Authorized Participant accumulates a sufficient number of shares of the ETF to constitute a creation unit and then exchanges these ETF shares with the ETF issuer, thereby decreasing the supply of ETF shares in the market.

The principal, and perhaps most important, feature of ETFs is their reliance on an “arbitrage function” performed by market participants that influences the supply and demand of ETF shares and, thus, trading prices relative to NAV. As noted above, new ETF shares can be created and existing shares redeemed based on investor demand; thus, ETF supply is open-ended. This arbitrage function helps to keep an ETF’s price in line with the value of its underlying portfolio, i.e., it minimizes deviation from NAV. Generally, in the Exchange’s view, the higher the liquidity and trading volume of an ETF, the more likely the price of the ETF will not deviate from the value of its underlying portfolio, making such ETFs less susceptible to price manipulation.

#### Trading Data for the ETFs Proposed for Cash Settlement

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 considers 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 July 1, 2019 through December 31, 2019) reviewed by the Exchange.

Further, the Exchange proposes that qualifying ETFs 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 ETF of 200 shares per second. While no security is immune from all manipulation, the Exchange believes that the combination of average daily notional value and ADV as prerequisite requirements would limit cash settlement of FLEX ETF Options to those underlying ETFs 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 ETFs would qualify to have cash settlement as a contract term. As provided in the table below, as of December 31, 2019, the Exchange would be able to provide cash settlement as a contract term for FLEX ETF Options on only 26 underlying ETFs, 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 26 ETFs that, as of December 31, 2019, would be eligible to have cash settlement as a contract term.

| <b>Symbol</b> | <b>Security Name</b>                              | <b>Average Daily Notional Value (in dollars) (7/1/19 - 12/31/19)</b> | <b>Average Daily Volume (in shares) (7/1/19 - 12/31/19)</b> |
|---------------|---|--|---|
| SPY           | SPDR S&P 500 ETF Trust                            | \$19,348,446,943   | 64,473,579  |
| GDX           | VanEck Vectors Gold Miners ETF                    | \$1,642,832,369  | 59,224,665  |
| EEM           | iShares MSCI Emerging Markets ETF                 | \$2,452,054,515  | 58,392,976  |
| XLF           | Financial Select Sector SPDR Fund                 | \$1,326,369,702  | 51,114,805  |
| VXX           | iPath Series B S&P 500 VIX Short-Term Futures ETN | \$771,760,803  | 34,481,358  |
| XOP           | SPDR S&P Oil & Gas Exploration & Production ETF   | \$634,221,618  | 28,045,372  |
| QQQ           | Invesco QQQ Trust                                 | \$4,881,991,635  | 25,290,206  |
| EWZ           | iShares MSCI Brazil ETF                           | \$1,021,953,287  | 23,573,072  |
| EFA           | iShares MSCI EAFE ETF                             | \$1,547,095,600  | 23,547,995  |
| FXI           | iShares China Large-Cap ETF                       | \$962,138,508  | 23,499,870  |
| IWM           | iShares Russell 2000 ETF                          | \$2,850,264,638  | 18,418,308  |

|      |  |                 |            |
|------|--|-----------------|------------|
| HYG  | iShares iBoxx \$ High Yield Corporate Bond ETF       | \$1,596,947,580 | 18,385,570 |
| GDXJ | VanEck Vectors Junior Gold Miners ETF                | \$644,620,425   | 16,792,343 |
| TQQQ | ProShares UltraPro QQQ                               | \$1,107,279,835 | 16,739,207 |
| XLU  | Utilities Select Sector SPDR Fund                    | \$1,037,188,333 | 16,587,526 |
| XLE  | Energy Select Sector SPDR Fund                       | \$857,120,647   | 14,338,385 |
| IEMG | iShares Core MSCI Emerging Markets ETF               | \$690,635,496   | 13,711,914 |
| XLP  | Consumer Staples Select Sector SPDR Fund             | \$740,499,207   | 12,203,155 |
| TLT  | iShares 20+ Year Treasury Bond ETF                   | \$1,482,683,513 | 10,608,009 |
| XLK  | Technology Select Sector SPDR Fund                   | \$846,007,077   | 10,319,276 |
| XLI  | Industrial Select Sector SPDR Fund                   | \$771,117,183   | 9,884,799  |
| LQD  | iShares iBoxx \$ Investment Grade Corporate Bond ETF | \$1,215,543,560 | 9,602,402  |
| GLD  | SPDR Gold Trust                                      | \$1,335,356,112 | 9,569,458  |
| XLV  | Health Care Select Sector SPDR Fund                  | \$776,822,924   | 8,333,845  |
| IYR  | iShares U.S. Real Estate ETF                         | \$641,445,902   | 6,981,265  |
| JNK  | SPDR Bloomberg Barclays High Yield Bond ETF          | \$632,969,484   | 5,845,332  |

The Exchange believes that permitting cash settlement as a contract term for FLEX ETF Options for the ETFs 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 as well as the risk of an adverse movement in the price of the underlying security. The Exchange notes that other options exchanges have



previously received approval that allow for the trading of cash-settled options.<sup>11</sup>

With respect to position and exercise limits, cash-settled FLEX ETF 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 a position in FLEX Equity Options where the underlying security is an ETF and that is settled in cash pursuant to Rule 903G(c)(3)(ii) would be subject to the position limits set forth in Rule 904, and subject to the exercise limits set forth in Rule 905. The proposed rule further states that positions in such cash-settled FLEX Equity Options shall be aggregated with positions in physically-settled options on the same underlying ETF for the purpose of calculating the position limits set forth in Rule 904, and the exercise limits set forth in Rule 905.<sup>12</sup> Given that each of the underlying ETFs 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 26 underlying securities that would currently be eligible to have cash settlement as a contract term, 18 would have a position limit of 250,000 contracts pursuant to Rule 904, Commentary .07(a).<sup>13</sup> Further, pursuant to Rule 904,

---

<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).

<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. 18 of the 26 underlying ETFs currently meet the requirements under Commentary .07(a).

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>

The Exchange understands that cash-settled FLEX ETF 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 ETF Options. The Exchange also believes that the trading of cash-settled FLEX ETF 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.

In the Exchange's view, cash-settled FLEX ETF 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 ETF 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 ETF 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 ETF Options. The Exchange believes any additional traffic that would be generated from the introduction of cash-settled FLEX ETF 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.

---

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

The Exchange has an adequate surveillance program in place for cash-settled FLEX ETF 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 ETF Options using means that include its surveillance for manipulation. The Exchange believes that manipulating the settlement price of cash-settled FLEX ETF 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 underlying ETF in the table above is sufficiently active to alleviate concerns about potential manipulative activity. Further, in the Exchange's view, the vast liquidity in the 26 underlying ETFs ensures a multitude of market participants at any given time. Moreover, given the high level of participation among market participants that enter quotes and/or orders in physically-settled options on these ETFs, the Exchange believes it would be very difficult for a single participant to alter the price of the underlying ETF or options overlying such ETF 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 ETF or options overlying such ETF would also be cost prohibitive. As a result, the Exchange believes there is significant participation among market participants to prevent manipulation of cash-settled FLEX ETF Options.

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 ETFs and subsequent trading of options on those securities on the Exchange, including cash-settled FLEX ETF Options.<sup>15</sup>

---

<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.

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 ETF 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 ETF 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 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 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 ETF 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 ETF 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 market 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, would 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 ETF 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 (and the aggregation of cash-settled positions with physically-settled positions), exercise limits (and the aggregation of cash-settled positions with physically-settled positions), and reporting requirements—would continue to apply.

Given the novel characteristics of cash-settled FLEX ETF Options, the Exchange will conduct a review of the trading in cash-settled FLEX ETF Options over an initial five-year period. The Exchange will furnish five reports to the SEC based on this review, the first of which would be provided within 60 days after the first anniversary of the initial listing date of the first cash-settled FLEX ETF Option under the proposed rule and each subsequent annual report to be provided within 60 days after the second, third, fourth and fifth anniversary of such initial listing. At a minimum, each report will provide a comparison between the trading volume of all cash-settled FLEX ETF Options listed under the proposed rule and physically-settled options on the same underlying security, the liquidity of the market for such options products and the underlying ETF, and any manipulation concerns arising in connection with the trading of cash-settled FLEX ETF Options under the proposed rule. The reports will also discuss any recommendations the Exchange may have for enhancements to the listing standards based on its review.

(b) 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 ETF 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

---

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

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

impediments to and perfect the mechanism of a free and open market as cash-settled FLEX ETF 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 proposed bi-annual review to determine eligibility for an underlying ETF to have cash settlement as a contract term would remove impediments to and perfect the mechanism of a free and open market as it would permit the Exchange to select only those underlying ETFs that are actively traded and have robust liquidity as each qualifying ETF would be required to meet the average daily notional value and average daily volume requirements.

The Exchange believes that the data provided by the Exchange supports the supposition that permitting cash settlement as a FLEX term for the 26 underlying ETFs 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 other exchanges have previously received approval that allow for the trading of cash-settled options.<sup>18</sup> The proposed rule change therefore should not raise issues for the Commission that have not been previously addressed.

The proposed rule change to permit cash settlement as a contract term for options on the 26 underlying ETFs is designed to promote just and equitable principles of

---

<sup>18</sup>

See supra note 11.

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.

The Exchange believes that establishing position limits for cash-settled FLEX ETF Options to be the same as physically-settled options on the same underlying security, and aggregating positions in cash-settled FLEX ETF Options with physically-settled options on the same underlying security for purposes of calculating position limits is reasonable and consistent with the Act. By establishing the same position limits for cash-settled FLEX ETF Options as for physically-settled options on the same underlying security and, importantly, aggregating such positions, the Exchange believes that the position limit requirements for cash-settled FLEX ETF Options should help to ensure that the trading of cash-settled FLEX ETF Options would not increase the potential for manipulation and could help to minimize such incentives. For the same reasons, the Exchange believes the proposed exercise limits are reasonable and consistent with the Act.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in cash-settled FLEX ETF Options and the underlying ETFs. 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 ETFs. The Exchange believes that limiting cash settlement to options on the 26 underlying ETFs 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.

4. 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 ETF 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 ETF Option contracts.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not Applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not Applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not Applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.



11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 4 – Additions and Deletions from Exhibit 5 to SR-NYSEAmer-2019-38  
as filed in Amendment No. 1

Exhibit 5 – Text of Proposed Rule Change

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NYSEAMER-2019-38, Amendment No. 1)

[Date]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change to Amend Rules 903G and 906G related to Flexible Exchange Options

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 4, 2020, NYSE American LLC (“NYSE American” or the “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 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

---

<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.

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.

This Amendment No. 1 amends and replaces in its entirety the original proposal filed by the Exchange on October 17, 2019.<sup>4</sup> The Exchange submits this Amendment No.1 to modify the original proposal by (1) limiting cash settlement as a contract term for FLEX Equity Options whose underlying security is an Exchange-Traded Fund (“FLEX ETF Options”), (2) aggregating positions in cash-settled FLEX ETF Options with positions in physically-settled ETF options on the same underlying security, (3) proposing a cap on the number of underlying ETFs permitted to have cash settlement as a contract term, (4) providing the Securities and Exchange Commission an annual report that includes analysis and recommendations, if any, regarding the trading of cash-settled FLEX ETF Options under the proposed rule, and (5) making other clarifications to the proposed rule change.

---

<sup>4</sup> See Securities Exchange Act Release No. 87444 (November 1, 2019), 84 FR 60120 (November 7, 2019) (Notice of Filing of Proposed Rule Change to Allow Certain Flexible Exchange Equity Options To Be Cash Settled) (SR-NYSEAmer-2019-38).

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>5</sup> Generally, FLEX Equity Options are settled by physical delivery of the underlying security,<sup>6</sup> while all FLEX Index Options are currently settled by delivery in cash.<sup>7</sup> As proposed, FLEX Equity Options where the underlying security is an Exchange-Traded Fund would be permitted to be settled by delivery in cash if the underlying security meets prescribed criteria.

To permit cash settlement of certain FLEX ETF 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 a FLEX ETF Option may be by physical delivery of the underlying ETF 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>8</sup>

The Exchange also proposes new sub-paragraph (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

---

<sup>5</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>6</sup> See Rule 903G(c)(3)(i).

<sup>7</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>8</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).

903G(c)(3)(ii) by using trading statistics for the previous six-months.<sup>9</sup> The proposed rule would further provide that the Exchange will permit cash settlement as a contract term on no more than 50 underlying ETFs that meet the criteria in Rule 903G(c)(3)(ii), and that if more than 50 underlying ETFs satisfy the notional value and trading volume requirements, the Exchange would select the top 50 ETFs that have the highest average daily volume.<sup>10</sup>

Proposed new sub-paragraph (B) to Rule 903(c)(3)(ii) would further provide that if the Exchange determines pursuant to the bi-annual review that an underlying ETF ceases to satisfy the requirements under Rule 903G(c)(3)(ii), any new position overlying such ETF entered into will be required to have exercise settlement by physical delivery and any open cash-settled FLEX ETF Option positions may be traded only to close the position.<sup>11</sup>

---

<sup>9</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 and any new securities that qualify would be permitted to have cash settlement as a contract term beginning on February 1 and August 1 of each year.

<sup>10</sup> See proposed Rule 903G(c)(3)(ii)(A).

<sup>11</sup> See proposed Rule 903G(c)(3)(ii)(B). 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 in option series that are restricted to closing-only transactions. See <https://www.nyse.com/publicdocs/nyse/markets/arca-options/rule-interpretations/2017/NYSE%20Arca%20Options%20RB%2017-01.pdf>. Consistent with a Market Maker's duty to maintain fair and orderly markets under Rule 920NY, the Exchange will provide guidance to reflect that an ATP Holder acting as a Market Maker in cash-settled FLEX ETF Options can enter into an opening transaction to facilitate closing only transactions of another market participant in cash-settled FLEX ETF Option series that are restricted to closing-only transactions.

The Exchange believes it is appropriate to introduce cash settlement as an alternative contract term to the select group of ETFs because they are among 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 the ETFs identified by the Exchange as meeting the criteria mitigate against historic concerns regarding susceptibility to manipulation.

#### Characteristics of ETFs

ETFs are funds that have their value derived from assets owned. The net asset value (“NAV”) of an ETF is a daily calculation that is based off the most recent closing prices of the assets in the fund and an actual accounting of the total cash in the fund at the time of calculation. The NAV of an ETF is calculated by taking the sum of the assets in the fund, including any securities and cash, subtracting out any liabilities, and dividing that by the number of shares outstanding.

Additionally, each ETF is subject to a creation and redemption mechanism to ensure the price of the ETF does not fluctuate too far away from its NAV -- which mechanisms reduce the potential for manipulative activity. Each business day, ETFs are required to make publicly available a portfolio composition file that describes the makeup of their creation and redemption “baskets” (i.e., a specific list of names and quantities of securities or other assets designed to track the performance of the portfolio as a whole). ETF shares are created when an Authorized Participant, typically a market maker or other large institutional investor, deposits the daily creation basket or cash with the ETF issuer. In return for the creation basket or cash (or both), the ETF issues to the Authorized Participant a “creation unit” that consists of a specified number of ETF shares. For

instance, IWM is designed to track the performance of the Russell 2000 Index. An Authorized Participant will purchase all the Russell 2000 constituent securities in the exact same weight as the index prescribes, then deliver those shares to the ETF issuer. In exchange, the ETF issuer gives the Authorized Participant a block of equally valued ETF shares, on a one-for-one fair value basis. This process can also work in reverse. A redemption is achieved when the Authorized Participant accumulates a sufficient number of shares of the ETF to constitute a creation unit and then exchanges these ETF shares with the ETF issuer, thereby decreasing the supply of ETF shares in the market.

The principal, and perhaps most important, feature of ETFs is their reliance on an “arbitrage function” performed by market participants that influences the supply and demand of ETF shares and, thus, trading prices relative to NAV. As noted above, new ETF shares can be created and existing shares redeemed based on investor demand; thus, ETF supply is open-ended. This arbitrage function helps to keep an ETF’s price in line with the value of its underlying portfolio, i.e., it minimizes deviation from NAV. Generally, in the Exchange’s view, the higher the liquidity and trading volume of an ETF, the more likely the price of the ETF will not deviate from the value of its underlying portfolio, making such ETFs less susceptible to price manipulation.

#### Trading Data for the ETFs Proposed for Cash Settlement

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 considers 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 July 1, 2019 through December 31, 2019) reviewed by the Exchange.

Further, the Exchange proposes that qualifying ETFs 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 ETF of 200 shares per second. While no security is immune from all manipulation, the Exchange believes that the combination of average daily notional value and ADV as prerequisite requirements would limit cash settlement of FLEX ETF Options to those underlying ETFs 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 ETFs would qualify to have cash settlement as a contract term. As provided in the table below, as of December 31, 2019, the Exchange would be able to provide cash settlement as a contract term for FLEX ETF Options on only 26 underlying ETFs, 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 26 ETFs that, as of



December 31, 2019, would be eligible to have cash settlement as a contract term.

| <b>Symbol</b> | <b>Security Name</b>                                 | <b>Average Daily Notional Value (in dollars) (7/1/19 - 12/31/19)</b> | <b>Average Daily Volume (in shares) (7/1/19 - 12/31/19)</b> |
|---------------|--|--|---|
| SPY           | SPDR S&P 500 ETF Trust                               | \$19,348,446,943   | 64,473,579  |
| GDX           | VanEck Vectors Gold Miners ETF                       | \$1,642,832,369  | 59,224,665  |
| EEM           | iShares MSCI Emerging Markets ETF                    | \$2,452,054,515  | 58,392,976  |
| XLF           | Financial Select Sector SPDR Fund                    | \$1,326,369,702  | 51,114,805  |
| VXX           | iPath Series B S&P 500 VIX Short-Term Futures ETN    | \$771,760,803  | 34,481,358  |
| XOP           | SPDR S&P Oil & Gas Exploration & Production ETF      | \$634,221,618  | 28,045,372  |
| QQQ           | Invesco QQQ Trust                                    | \$4,881,991,635  | 25,290,206  |
| EWZ           | iShares MSCI Brazil ETF                              | \$1,021,953,287  | 23,573,072  |
| EFA           | iShares MSCI EAFE ETF                                | \$1,547,095,600  | 23,547,995  |
| FXI           | iShares China Large-Cap ETF                          | \$962,138,508  | 23,499,870  |
| IWM           | iShares Russell 2000 ETF                             | \$2,850,264,638  | 18,418,308  |
| HYG           | iShares iBoxx \$ High Yield Corporate Bond ETF       | \$1,596,947,580  | 18,385,570  |
| GDXJ          | VanEck Vectors Junior Gold Miners ETF                | \$644,620,425  | 16,792,343  |
| TQQQ          | ProShares UltraPro QQQ                               | \$1,107,279,835  | 16,739,207  |
| XLU           | Utilities Select Sector SPDR Fund                    | \$1,037,188,333  | 16,587,526  |
| XLE           | Energy Select Sector SPDR Fund                       | \$857,120,647  | 14,338,385  |
| IEMG          | iShares Core MSCI Emerging Markets ETF               | \$690,635,496  | 13,711,914  |
| XLP           | Consumer Staples Select Sector SPDR Fund             | \$740,499,207  | 12,203,155  |
| TLT           | iShares 20+ Year Treasury Bond ETF                   | \$1,482,683,513  | 10,608,009  |
| XLK           | Technology Select Sector SPDR Fund                   | \$846,007,077  | 10,319,276  |
| XLI           | Industrial Select Sector SPDR Fund                   | \$771,117,183  | 9,884,799   |
| LQD           | iShares iBoxx \$ Investment Grade Corporate Bond ETF | \$1,215,543,560  | 9,602,402   |
| GLD           | SPDR Gold Trust                                      | \$1,335,356,112  | 9,569,458   |
| XLV           | Health Care Select Sector SPDR Fund                  | \$776,822,924  | 8,333,845   |
| IYR           | iShares U.S. Real Estate ETF                         | \$641,445,902  | 6,981,265   |
| JNK           | SPDR Bloomberg Barclays High Yield Bond ETF          | \$632,969,484  | 5,845,332   |

The Exchange believes that permitting cash settlement as a contract term for FLEX ETF Options for the ETFs 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 as well as the risk of an adverse movement in the price of the underlying security. The Exchange notes that other options exchanges have previously received approval that allow for the trading of cash-settled options.<sup>12</sup>

---

<sup>12</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)

With respect to position and exercise limits, cash-settled FLEX ETF 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 a position in FLEX Equity Options where the underlying security is an ETF and that is settled in cash pursuant to Rule 903G(c)(3)(ii) would be subject to the position limits set forth in Rule 904, and subject to the exercise limits set forth in Rule 905. The proposed rule further states that positions in such cash-settled FLEX Equity Options shall be aggregated with positions in physically-settled options on the same underlying ETF for the purpose of calculating the position limits set forth in Rule 904, and the exercise limits set forth in Rule 905.<sup>13</sup> Given that each of the underlying ETFs 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 26 underlying securities that would currently be eligible to have cash settlement as a contract term, 18 would have a position limit of 250,000 contracts pursuant to Rule 904, Commentary .07(a).<sup>14</sup> Further, pursuant to Rule 904, Commentary .07(f), the position

---

(SR-NYSEMKT-2014-06) (Order approving name change from FROs to ByRDs and re-launch of these products, with certain modifications).

<sup>13</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>14</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. 18 of the 26 underlying ETFs currently meet the requirements under Commentary .07(a).

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>15</sup>

The Exchange understands that cash-settled FLEX ETF 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 ETF Options. The Exchange also believes that the trading of cash-settled FLEX ETF 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.

In the Exchange's view, cash-settled FLEX ETF 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 ETF 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

---

<sup>15</sup> See Rule 904, Commentary .07(f).

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 ETF 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 ETF Options. The Exchange believes any additional traffic that would be generated from the introduction of cash-settled FLEX ETF 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 ETF 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 ETF Options using means that include its surveillance for manipulation. The Exchange believes that manipulating the settlement price of cash-settled FLEX ETF 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 underlying ETF in the table above is sufficiently active to alleviate concerns about potential manipulative activity. Further, in the Exchange's view, the vast liquidity in the 26 underlying ETFs ensures a multitude of market participants at any given time. Moreover, given the high level of participation among market participants that enter quotes and/or orders in physically-settled options on these ETFs, the Exchange believes it would be very difficult for a single participant to alter the price of the underlying ETF or options overlying such ETF 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 ETF or options overlying such ETF would also be cost prohibitive. As a result, the Exchange believes there is significant participation among market participants to prevent manipulation of cash-settled FLEX ETF Options.

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 ETFs and subsequent trading of options on those securities on the Exchange, including cash-settled FLEX ETF Options.<sup>16</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 ETF 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 ETF 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

---

<sup>16</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.

punish attempted manipulative activities. The Exchange therefore believes that the decision of whether 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 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 ETF 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 ETF 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 market 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, would 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 ETF 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 (and the aggregation of cash-settled positions with physically-settled positions), exercise limits (and the aggregation of cash-settled positions with physically-settled positions), and reporting requirements—would continue to apply.

Given the novel characteristics of cash-settled FLEX ETF Options, the Exchange will conduct a review of the trading in cash-settled FLEX ETF Options over an initial five-year period. The Exchange will furnish five reports to the SEC based on this review, the first of which would be provided within 60 days after the first anniversary of the initial listing date of the first cash-settled FLEX ETF Option under the proposed rule and each subsequent annual report to be provided within 60 days after the second, third, fourth and fifth anniversary of such initial listing. At a minimum, each report will provide a comparison between the trading volume of all cash-settled FLEX ETF Options listed under the proposed rule and physically-settled options on the same underlying security, the liquidity of the market for such options products and the underlying ETF, and any manipulation concerns arising in connection with the trading of cash-settled FLEX ETF Options under the proposed rule. The reports will also discuss any recommendations the Exchange may have for enhancements to the listing standards

based on its review.

## 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>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</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 ETF 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 ETF 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-

---

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

<sup>18</sup> 15 U.S.C. 78f(b)(5).

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 proposed bi-annual review to determine eligibility for an underlying ETF to have cash settlement as a contract term would remove impediments to and perfect the mechanism of a free and open market as it would permit the Exchange to select only those underlying ETFs that are actively traded and have robust liquidity as each qualifying ETF would be required to meet the average daily notional value and average daily volume requirements.

The Exchange believes that the data provided by the Exchange supports the supposition that permitting cash settlement as a FLEX term for the 26 underlying ETFs 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 other exchanges have

previously received approval that allow for the trading of cash-settled options.<sup>19</sup> The proposed rule change therefore should not raise issues for the Commission that have not been previously addressed.

The proposed rule change to permit cash settlement as a contract term for options on the 26 underlying ETFs 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.

---

<sup>19</sup> See supra note 12.

The Exchange believes that establishing position limits for cash-settled FLEX ETF Options to be the same as physically-settled options on the same underlying security, and aggregating positions in cash-settled FLEX ETF Options with physically-settled options on the same underlying security for purposes of calculating position limits is reasonable and consistent with the Act. By establishing the same position limits for cash-settled FLEX ETF Options as for physically-settled options on the same underlying security and, importantly, aggregating such positions, the Exchange believes that the position limit requirements for cash-settled FLEX ETF Options should help to ensure that the trading of cash-settled FLEX ETF Options would not increase the potential for manipulation and could help to minimize such incentives. For the same reasons, the Exchange believes the proposed exercise limits are reasonable and consistent with the Act.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in cash-settled FLEX ETF Options and the underlying ETFs. 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 ETFs. The Exchange believes that limiting cash settlement to options on the 26 underlying ETFs 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 ETF 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 ETF 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 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 e-mail 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 e-mail 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-2019-38 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Eduardo A. Aleman  
Deputy Secretary

---

<sup>20</sup> 17 CFR 200.30-3(a)(12).



Additions: Underlined  
Additions proposed in Amendment 1: Double-underlined  
Deletion: [Bracketed]  
Deletions proposed in Amendment 1: ~~Strikethrough~~

**NYSE American Rules**

\* \* \* \* \*

**TRADING OF OPTION CONTRACTS**

\* \* \* \* \*

**Section 15. Flexible Exchange (“FLEX”) Options**

**Rule 900G. Applicability and Definitions**

\* \* \* \* \*

**Rule 903G. Terms of FLEX Options**

(a) - (b) No Change.

(c) Special Terms for FLEX Equity Options

(1) Reserved.

(2) Exercise prices and premiums may be stated in terms of (i) a dollar amount; (ii) a method for fixing such a number at the time a FLEX Request for Quote or FLEX Order is traded; or (iii) a percentage of the price of the underlying security at the time of the trade or as of the close of trading on the Exchange on the trade date. Exercise prices may be rounded to the nearest minimum tick or other decimal increment determined by the Exchange on a class-by-class basis that may not be smaller than \$0.01. Premiums will be rounded to the nearest minimum tick. For exercise prices and premiums stated using a percentage-based methodology, such values may be stated in a percentage increment determined by the Exchange on a class-by-class basis that may not be smaller than 0.01% and will be rounded as provided above.

(3) Exercise settlement shall be:

(i) for FLEX Equity Options other than as permitted in paragraphs (ii) and (iii) below [FLEX ByRDs], by physical delivery of the underlying security. [; and]

(ii) for FLEX Equity Options with an underlying security that is an Exchange-Traded Fund (“ETF”) that has an average daily notional value of \$500 Million or more and a national average daily volume of at least 4,680,000 shares, measured over the prior 6-month period, by physical delivery of the underlying security or by delivery in cash.

(A) The Exchange will determine bi-annually the underlying ETFs securities that satisfy the notional value and trading volume requirements in paragraph (c)(3)(ii) of this Rule by using trading statistics for the previous six-month period. The Exchange will permit cash settlement as a contract term on no more than 50 underlying ETFs that meet the criteria in paragraph (c)(3)(ii) of this Rule. If more than 50 ETFs satisfy the notional value and trading volume requirements, the Exchange will select the top 50 ETFs that have the highest average daily volume.

(B) If the Exchange determines pursuant to the review conducted under paragraph (c)(3)(ii)(A) of this Rule that an underlying ETF security ceases to satisfy the criteria in paragraph (c)(3)(ii) of this Rule, any new position overlying such ETF FLEX Equity Options overlying such security entered into will be required to have exercise settlement by physical delivery and any open cash-settled FLEX ETF Option positions in cash-settled FLEX Equity Options overlying such security may be traded to only to close the position.

(iii) for FLEX ByRDs, in the same manner and style as Non-FLEX ByRDs, pursuant to the VWAP settlement provision contained in Rule 910ByRDs and pursuant to the European exercise style, per Rule 900ByRDs(b)(1).

(4) FLEX Equity Options shall be subject to the exercise by exception provisions of Rule 805 of the Options Clearing Corporation.

\* \* \* \* \*

### **Rule 906G. Position Limits**

(a) No Change.

(b) FLEX Equity Options. Except as provided in (i), (ii) and (iii) below, there shall be no position limits for FLEX Equity options. However, each member or member organization (other than a Specialist or Floor Market Maker) that maintains a position on the same side of the market in excess of the level established pursuant to Rule 904 for Non-FLEX Equity options of the same class on behalf of its own account or for the account of a customer shall report information on the FLEX Equity option position, positions in any related instrument, the purpose or strategy for the position and the collateral used by the account. This report shall be in the form and manner prescribed by the Exchange. In addition, whenever the Exchange determines that a higher margin requirement is necessary in light of the risks associated with a FLEX Equity option position in excess of three times the level established for Non-FLEX Equity option of the same class, the

Exchange may impose such higher margin requirement and/or may assess capital charges upon the member organization carrying the account to the extent of any margin deficiency resulting from the higher margin requirement.

- (i) As long as the options positions remain open, positions in FLEX Options that expire on a third Friday-of-the-month expiration day shall be aggregated with positions in Non-FLEX Options on the same underlying ("comparable Non-FLEX Options") and shall be subject to the position limits set forth in Rule 904, and the exercise limits set forth in Rule 905.
- (ii) Position limits for FLEX Equity Options where the underlying security is an Exchange-Traded Fund that is settled in cash pursuant to Rule 903G(c)(3)(ii) shall be subject to the position limits set forth in Rule 904, and subject to the exercise limits set forth in Rule 905. and positions in such cash-settled FLEX Equity Options shall be aggregated with positions in physically-settled options on the same underlying ETF for the purpose of calculating the position limits set forth in Rule 904, and the exercise limits set forth in Rule 905.
- (iii) Position limits for FLEX ByRDs shall be the same as Non-FLEX ByRDs, as set forth in Rule 904ByRDs(a), except that positions in FLEX ByRDs shall be aggregated with positions in Non-FLEX ByRDs on the same or similar underlying ("comparable Non- FLEX ByRDs") for the purpose of calculating position limits. For purposes of the position limits established under this Rule, long positions in "Finish Low" and short positions in "Finish High" Binary Return Derivatives shall be considered to be on the same side of the market; and short positions in "Finish Low" and long positions in "Finish High" Binary Return Derivatives shall be considered to be on the same side of the market.

\* \* \* \* \*

Additions underlined

Deletions [bracketed]

## NYSE American Rules

\* \* \* \* \*

### TRADING OF OPTION CONTRACTS

\* \* \* \* \*

#### Section 15. Flexible Exchange (“FLEX”) Options

##### Rule 900G. Applicability and Definitions

\* \* \* \* \*

##### Rule 903G. Terms of FLEX Options

(a) - (b) No Change.

(c) Special Terms for FLEX Equity Options

(1) Reserved.

(2) Exercise prices and premiums may be stated in terms of (i) a dollar amount; (ii) a method for fixing such a number at the time a FLEX Request for Quote or FLEX Order is traded; or (iii) a percentage of the price of the underlying security at the time of the trade or as of the close of trading on the Exchange on the trade date. Exercise prices may be rounded to the nearest minimum tick or other decimal increment determined by the Exchange on a class-by-class basis that may not be smaller than \$0.01. Premiums will be rounded to the nearest minimum tick. For exercise prices and premiums stated using a percentage-based methodology, such values may be stated in a percentage increment determined by the Exchange on a class-by-class basis that may not be smaller than 0.01% and will be rounded as provided above.

(3) Exercise settlement shall be:

(i) for FLEX Equity Options other than as permitted in paragraphs (ii) and (iii) below [FLEX ByRDs], by physical delivery of the underlying security. [; and]

(ii) for FLEX Equity Options with an underlying security that is an Exchange-Traded Fund (“ETF”) that has an average daily notional value of \$500 Million or more and a national average daily volume of at least 4,680,000 shares, measured over the prior

6-month period, by physical delivery of the underlying security or by delivery in cash.

(A) The Exchange will determine bi-annually the underlying ETFs that satisfy the notional value and trading volume requirements in paragraph (c)(3)(ii) of this Rule by using trading statistics for the previous six-month period. The Exchange will permit cash settlement as a contract term on no more than 50 underlying ETFs that meet the criteria in paragraph (c)(3)(ii) of this Rule. If more than 50 ETFs satisfy the notional value and trading volume requirements, the Exchange will select the top 50 ETFs that have the highest average daily volume.

(B) If the Exchange determines pursuant to the review conducted under paragraph (c)(3)(ii)(A) of this Rule that an underlying ETF ceases to satisfy the criteria in paragraph (c)(3)(ii) of this Rule, any new position overlying such ETF entered into will be required to have exercise settlement by physical delivery and any open cash-settled FLEX ETF Option positions may be traded only to close the position.

(iii) for FLEX ByRDs, in the same manner and style as Non-FLEX ByRDs, pursuant to the VWAP settlement provision contained in Rule 910ByRDs and pursuant to the European exercise style, per Rule 900ByRDs(b)(1).

(4) FLEX Equity Options shall be subject to the exercise by exception provisions of Rule 805 of the Options Clearing Corporation.

\* \* \* \* \*

### **Rule 906G. Position Limits**

(a) No Change.

(b) FLEX Equity Options. Except as provided in (i), (ii) and (iii) below, there shall be no position limits for FLEX Equity options. However, each member or member organization (other than a Specialist or Floor Market Maker) that maintains a position on the same side of the market in excess of the level established pursuant to Rule 904 for Non-FLEX Equity options of the same class on behalf of its own account or for the account of a customer shall report information on the FLEX Equity option position, positions in any related instrument, the purpose or strategy for the position and the collateral used by the account. This report shall be in the form and manner prescribed by the Exchange. In addition, whenever the Exchange determines that a higher margin requirement is necessary in light of the risks associated with a FLEX Equity option position in excess of three times the level established for Non-FLEX Equity option of the same class, the Exchange may impose such higher margin requirement and/or may assess capital charges upon the member organization carrying the account to the extent of any margin deficiency resulting from the higher margin requirement.

- (i) As long as the options positions remain open, positions in FLEX Options that expire on a third Friday-of-the-month expiration day shall be aggregated with positions in Non-FLEX Options on the same underlying ("comparable Non-FLEX Options") and shall be subject to the position limits set forth in Rule 904, and the exercise limits set forth in Rule 905.
  
- (ii) Position limits for FLEX Equity Options where the underlying security is an Exchange-Traded Fund that is settled in cash pursuant to Rule 903G(c)(3)(ii) shall be subject to the position limits set forth in Rule 904, and subject to the exercise limits set forth in Rule 905. Positions in such cash-settled FLEX Equity Options shall be aggregated with positions in physically-settled options on the same underlying ETF for the purpose of calculating the position limits set forth in Rule 904, and the exercise limits set forth in Rule 905.
  
- (iii) Position limits for FLEX ByRDs shall be the same as Non-FLEX ByRDs, as set forth in Rule 904ByRDs(a), except that positions in FLEX ByRDs shall be aggregated with positions in Non-FLEX ByRDs on the same or similar underlying ("comparable Non- FLEX ByRDs") for the purpose of calculating position limits. For purposes of the position limits established under this Rule, long positions in "Finish Low" and short positions in "Finish High" Binary Return Derivatives shall be considered to be on the same side of the market; and short positions in "Finish Low" and long positions in "Finish High" Binary Return Derivatives shall be considered to be on the same side of the market.

\* \* \* \* \*