

## OMB APPROVAL

OMB Number: 3235-0045  
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 hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 23

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No.\* SR - 2020 - \* 71  
 Amendment No. (req. for Amendments \*)

Filing by NYSE American LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 806(e)(1) \* ☐

Section 806(e)(2) \* ☐

Section 3C(b)(2) \* ☐

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



### Description

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

Proposed rule change to adopt temporary Commentary .10 under NYSE American Rule 2.1210

### 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 \*)

Date 09/25/2020

By Clare Saperstein

(Name \*)

Associate General Counsel

Clare Saperstein,

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.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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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 \***

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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 \***

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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**

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Exhibit Sent As Paper Document

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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**

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Exhibit Sent As Paper Document

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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**

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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**

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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**

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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 the 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”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to adopt temporary Commentary .10 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under NYSE American Rule 2.1210 (Registration Requirements) applicable to member organizations, Equity Trading Permit (“ETP”) Holders and American Trading Permit (“ATP”) Holders.

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 by the Board of Directors or the membership of the Exchange is required. Therefore, the Exchange’s internal procedures with respect to the proposed change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

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

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

- (a) Purpose

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

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

The Exchange proposes to adopt temporary Commentary .10 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under NYSE American Rule 2.1210 (Registration Requirements) applicable to member organizations, ETP Holders and ATP Holders (collectively, “Members”).<sup>3</sup> The proposed rule change would extend the 120-day period that certain individuals can function as a principal without having successfully passed an appropriate qualification examination through December 31, 2020,<sup>4</sup> and would apply only to those individuals who were designated to function as a principal prior to September 3, 2020. This proposed rule change is based on a filing recently submitted by the Financial Regulatory Authority, Inc. (“FINRA”)<sup>5</sup> and is

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<sup>3</sup> The term “member organization” is defined in Rule 24 (Office Rules) as “a partnership, corporation or such other entity as the Exchange may, by Rule, permit to become a member organization, and which meets the qualifications specified in the Rules.” The term “member organization” is defined in Rule 2(b)(i) (Equities Rules) as a registered broker or dealer (unless exempt pursuant to the Securities Exchange Act of 1934) (the “Act”) that is a member of the Financial Industry Regulatory Authority, Inc. (“FINRA”) or another registered securities exchange. Member organizations that transact business with public customers or conduct business on the Floor of the Exchange shall at all times be members of FINRA. A registered broker or dealer must also be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof.” The term “member organization” also includes any registered broker or dealer that is a member of FINRA or a registered securities exchange, consistent with the requirements of section 2(b)(i) of this Rule, which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate.” See Rule 2(a)(ii) (Equities Rules). The term “ETP Holder” means a member organization that has been issued an ETP. An ETP Holder will agree to be bound by the Rules of the Exchange, and by all applicable rules and regulations of the Securities and Exchange Commission. See Rule 1.1E(n). References to “member organization” as used in Exchange rules include ATP Holders, which are registered brokers or dealers approved to effect transactions on the Exchange’s options marketplace. Under the Exchange’s rules, an ATP Holder has the status as a “member” of the Exchange as that term is defined in Section 3 of the Act. See Rule 900.2NY(4) & (5).

<sup>4</sup> If NYSE American seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond December 31, 2020, NYSE American will submit a separate rule filing to further extend the temporary extension of time.

<sup>5</sup> See Securities Exchange Act Release No. 89732 (September 1, 2020), 85 FR 55535 (September 8, 2020) (SR-FINRA-2020-026) (the “FINRA Filing”). The Exchange notes that the FINRA Filing also provides temporary relief to

intended to harmonize the Exchange's registration rules with those of FINRA so as to promote uniform standards across the securities industry.

In response to COVID-19, earlier this year FINRA began providing temporary relief by way of frequently asked questions ("FAQs")<sup>6</sup> to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that have significantly limited the ability of individuals to sit for examinations due to Prometric test center capacity issues.<sup>7</sup>

FINRA published the first FAQ on March 20, 2020, providing that individuals who were designated to function as principals under FINRA Rule 1210.04<sup>8</sup> prior to February 2, 2020, would be given until May 31, 2020, to pass the appropriate principal qualification examination.<sup>9</sup> On May 19, 2020, FINRA extended the relief to pass the appropriate examination until June 30, 2020. Most recently, on June 29, 2020, FINRA again extended the temporary relief providing that individuals who were designated to function as principals under FINRA Rule 1210.04 prior to May 4, 2020, would be given until August 31, 2020, to pass the appropriate principal qualification examination.

One of the impacts of COVID-19 continues to be serious interruptions in the administration of FINRA qualification examinations at Prometric test centers and

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individuals registered with FINRA as Operations Professionals under FINRA Rule 1220. The Exchange does not have a registration category for Operations Professionals and therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing.

<sup>6</sup> See <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#qe>.

<sup>7</sup> At the outset of the COVID-19 pandemic, all FINRA qualification examinations were administered at test centers operated by Prometric. Based on the health and welfare concerns resulting from COVID-19, in March Prometric closed all of its test centers in the United States and Canada and began to slowly reopen some of them at limited capacity in May. At this time, not all of these Prometric test centers have reopened at full capacity.

<sup>8</sup> NYSE American Rule 2.1210.03 is the corresponding rule to FINRA Rule 1210.04.

<sup>9</sup> FINRA Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) allows a member firm to designate certain individuals to function in a principal capacity for 120 calendar days before having to pass an appropriate principal qualification examination. NYSE American Rule 2.1210.03 provides the same allowance to Members.

the limited ability of individuals to sit for the examinations.<sup>10</sup> Although Prometric has begun reopening test centers, Prometric's safety practices mean that currently not all test centers are open, some of the open test centers are at limited capacity, and some open test centers are delivering only certain examinations that have been deemed essential by the local government.<sup>11</sup> Furthermore, Prometric has had to close some reopened test centers due to incidents of COVID-19 cases. The initial nationwide closure in March along with the inability to fully reopen all Prometric test centers due to COVID-19 have led to a significant backlog of individuals who are waiting to sit for FINRA examinations.<sup>12</sup>

In addition, firms are continuing to experience operational challenges with much of their personnel working from home due to shelter-in-place orders, restrictions on businesses and social activity imposed in various states, and adherence to other social distancing guidelines consistent with the recommendations of public health officials.<sup>13</sup> As a result, firms continue to face potentially significant disruptions to their normal business operations that may include a limitation of in-person activities and staff absenteeism as a result of the health and welfare concerns stemming from COVID-19. Such potential disruptions may be further exacerbated and may even affect client services if firms cannot continue to keep principal positions filled as they may have difficulty finding other qualified individuals to transition into these roles or may need to reallocate employee time and resources away from other critical responsibilities at the firm.

These ongoing, extenuating circumstances make it impracticable for Members to ensure that the individuals whom they have designated to function in a principal capacity, as set forth in NYSE American Rule 2.1210.03, are able to successfully sit for and pass an appropriate qualification examination within the 120-calendar day period required under the rule, or to find other qualified staff to fill this position. The ongoing circumstances also require individuals to be exposed to the health risks associated with taking an in-person examination, because the General Securities Principal examination is not available online. Therefore, NYSE

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<sup>10</sup> Information about the continued impact of COVID-19 on FINRA-administered examinations is available at <https://www.finra.org/rules-guidance/keytopics/covid-19/exams>.

<sup>11</sup> Information from Prometric about its safety practices and the impact of COVID-19 on its operations is available at <https://www.prometric.com/coronavirusupdate>. See also *supra* note 10.

<sup>12</sup> Although an online test delivery service has been launched to help address the backlog, the General Securities Principal Exam (Series 24) is not available online. See *supra* note 10.

<sup>13</sup> See, e.g., Centers for Disease Control and Prevention, How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-gettingsick/prevention.html>.

American is proposing to continue the temporary relief provided through the FINRA FAQs by adopting Rule 2.1210.10 to extend the 120-day period during which an individual can function as a principal before having to pass an applicable qualification examination until December 31, 2020.<sup>14</sup> The proposed rule change would apply only to those individuals who were designated to function as a principal prior to September 3, 2020. Any individuals designated to function as a principal on or after September 3, 2020, would need to successfully pass an appropriate qualification examination within 120 days.

NYSE American believes that this proposed continued extension of time is tailored to address the needs and constraints on a Member's operations during the COVID-19 pandemic, without significantly compromising critical investor protection. The proposed extension of time will help to minimize the impact of COVID-19 on Members by providing continued flexibility so that Members can ensure that principal positions remain filled. The potential risks from the proposed extension of the 120-day period are mitigated by the Member's continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as NYSE American rules.

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>16</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change is intended to minimize the impact of COVID-19 on Member operations by extending the 120-day period certain individuals may function as a principal without having successfully passed an appropriate qualification examination under NYSE American Rule 2.1210.03 until December 31, 2020. The proposed rule change does not relieve Members from maintaining, under the circumstances, a reasonably designed system to supervise the activities of their associated persons to achieve compliance with applicable securities laws and regulations, and with applicable NYSE American rules that directly serve investor protection. In a time when faced with unique challenges resulting from

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<sup>14</sup> See supra note 4.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

the COVID-19 pandemic, NYSE American believes that the proposed rule change is a sensible accommodation that will continue to afford Members the ability to ensure that critical positions are filled and client services maintained, while continuing to serve and promote the protection of investors and the public interest in this unique environment.

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 proposed rule change is intended to provide temporary relief given the impacts of the COVID-19 pandemic crisis and to also maintain consistency with the rules of other self-regulatory organizations ("SROs") with respect to the registration requirements applicable to Members and their registered personnel. In that regard, the Exchange believes that any burden on competition would be clearly outweighed by providing Members with temporary relief in this unique environment while also ensuring clear and consistent requirements applicable across SROs and mitigating any risk of SROs implementing different standards in these important areas. In its filing, FINRA provides an abbreviated economic impact assessment maintaining that the changes are necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rule 1210 in response to the impacts of the COVID-19 pandemic that is equally applicable to the changes the Exchange proposes.<sup>17</sup> The Exchange accordingly incorporates FINRA's abbreviated economic impact assessment by reference.

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 any 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)

The Exchange believes that the proposed rule change qualifies for immediate effectiveness upon filing as a "non-controversial" rule change in accordance with Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6)<sup>19</sup> thereunder.

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<sup>17</sup> FINRA Filing, 85 FR at 55537.

<sup>18</sup> 15 U.S.C. § 78s(b)(3)(A).



The Exchange asserts that the proposed rule change: (i) will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition; and (iii) by its terms, will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission.

The Exchange believes that this proposal is non-controversial and eligible to become effective immediately because it promotes uniformity in standards for registration requirements across self-regulatory organizations. The Exchange further believes that the proposed rule change would not significantly affect the protection of investors or the public interest or impose any significant burden on competition because it is based on a recent filing submitted by FINRA.<sup>20</sup>

The Exchange requests that the Commission waive the 30-day operative delay in order to ensure that the proposed rule change may become operative immediately. Waiver of the operative delay would allow the proposed rule change to be in effect on the date of filing to extend the temporary relief to Members during these unique circumstances resulting from the COVID-19 pandemic. The ongoing extenuating circumstances of the COVID-19 pandemic make it impractical to ensure that individuals designated to act as principals are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules. Shelter-in-place orders, quarantining, restrictions on business and social activity and adherence to other social distancing guidelines consistent with the recommendation of public officials remain in place in various states.<sup>21</sup> Further, Prometric test centers have experienced serious interruptions in the administration of FINRA qualification examinations, resulting in a backlog of individuals waiting to take these examinations. Following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local government.<sup>22</sup> While FINRA has launched an online test delivery service to help address this backlog, the General Securities Principal (Series 24) Examination is not available online. The Exchange notes that the temporary proposed rule change will provide needed flexibility to ensure that principal positions remain filled and is tailored to address the constraints on

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<sup>19</sup> 17 C.F.R. § 240.19b-4(f)(6).

<sup>20</sup> See supra note 5.

<sup>21</sup> See supra note 13.

<sup>22</sup> See supra notes 10 and 11.

Members' operations during the COVID-19 pandemic without significantly compromising critical investor protection. Further, as proposed, this proposed rule change would extend the 120-day period that certain individuals can function as principals through December 31, 2020. As noted above, if the Exchange requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020, it would submit a separate rule filing to extend the effectiveness of the temporary relief.

For the foregoing reasons, the rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4.<sup>23</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

The proposed rule change is based on a recent filing submitted by FINRA.<sup>24</sup>

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 5 – Text of Proposed Rule Change

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<sup>23</sup> 17 C.F.R. § 240.19b-4(f)(6).

<sup>24</sup> See supra note 5.

## EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NYSEAMER-2020-71)

[Date]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Temporary Commentary .10 under NYSE American Rule 2.1210

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 September 25, 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 a rule change to adopt temporary Commentary .10 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under NYSE American Rule 2.1210 (Registration Requirements) applicable to member organizations, Equity Trading Permit (“ETP”) Holders and American Trading Permit (“ATP”) Holders. 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.

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<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.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to adopt temporary Commentary .10 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under NYSE American Rule 2.1210 (Registration Requirements) applicable to member organizations, ETP Holders and ATP Holders (collectively, "Members").<sup>4</sup> The proposed

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<sup>4</sup> The term "member organization" is defined in Rule 24 (Office Rules) as "a partnership, corporation or such other entity as the Exchange may, by Rule, permit to become a member organization, and which meets the qualifications specified in the Rules." The term "member organization" is defined in Rule 2(b)(i) (Equities Rules) as a registered broker or dealer (unless exempt pursuant to the Securities Exchange Act of 1934) (the "Act") that is a member of the Financial Industry Regulatory Authority, Inc. ("FINRA") or another registered securities exchange. Member organizations that transact business with public customers or conduct business on the Floor of the Exchange shall at all times be members of FINRA. A registered broker or dealer must also be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof." The term "member organization" also includes any registered broker or dealer that is a member of FINRA or a registered securities exchange, consistent with the requirements of section 2(b)(i) of this Rule, which does not own a trading license

rule change would extend the 120-day period that certain individuals can function as a principal without having successfully passed an appropriate qualification examination through December 31, 2020,<sup>5</sup> and would apply only to those individuals who were designated to function as a principal prior to September 3, 2020. This proposed rule change is based on a filing recently submitted by the Financial Regulatory Authority, Inc. (“FINRA”)<sup>6</sup> and is intended to harmonize the Exchange’s registration rules with those of FINRA so as to promote uniform standards across the securities industry.

In response to COVID-19, earlier this year FINRA began providing temporary relief by way of frequently asked questions (“FAQs”)<sup>7</sup> to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that have significantly limited the ability of individuals to sit for examinations due to Prometric test

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and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate.” See Rule 2(a)(ii) (Equities Rules). The term “ETP Holder” means a member organization that has been issued an ETP. An ETP Holder will agree to be bound by the Rules of the Exchange, and by all applicable rules and regulations of the Securities and Exchange Commission. See Rule 1.1E(n). References to “member organization” as used in Exchange rules include ATP Holders, which are registered brokers or dealers approved to effect transactions on the Exchange’s options marketplace. Under the Exchange’s rules, an ATP Holder has the status as a “member” of the Exchange as that term is defined in Section 3 of the Act. See Rule 900.2NY(4) & (5).

<sup>5</sup> If NYSE American seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond December 31, 2020, NYSE American will submit a separate rule filing to further extend the temporary extension of time.

<sup>6</sup> See Securities Exchange Act Release No. 89732 (September 1, 2020), 85 FR 55535 (September 8, 2020) (SR-FINRA-2020-026) (the “FINRA Filing”). The Exchange notes that the FINRA Filing also provides temporary relief to individuals registered with FINRA as Operations Professionals under FINRA Rule 1220. The Exchange does not have a registration category for Operations Professionals and therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing.

<sup>7</sup> See <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#qe>.

center capacity issues.<sup>8</sup>

FINRA published the first FAQ on March 20, 2020, providing that individuals who were designated to function as principals under FINRA Rule 1210.04<sup>9</sup> prior to February 2, 2020, would be given until May 31, 2020, to pass the appropriate principal qualification examination.<sup>10</sup> On May 19, 2020, FINRA extended the relief to pass the appropriate examination until June 30, 2020. Most recently, on June 29, 2020, FINRA again extended the temporary relief providing that individuals who were designated to function as principals under FINRA Rule 1210.04 prior to May 4, 2020, would be given until August 31, 2020, to pass the appropriate principal qualification examination.

One of the impacts of COVID-19 continues to be serious interruptions in the administration of FINRA qualification examinations at Prometric test centers and the limited ability of individuals to sit for the examinations.<sup>11</sup> Although Prometric has begun reopening test centers, Prometric's safety practices mean that currently not all test centers are open, some of the open test centers are at limited capacity, and some open test centers

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<sup>8</sup> At the outset of the COVID-19 pandemic, all FINRA qualification examinations were administered at test centers operated by Prometric. Based on the health and welfare concerns resulting from COVID-19, in March Prometric closed all of its test centers in the United States and Canada and began to slowly reopen some of them at limited capacity in May. At this time, not all of these Prometric test centers have reopened at full capacity.

<sup>9</sup> NYSE American Rule 2.1210.03 is the corresponding rule to FINRA Rule 1210.04.

<sup>10</sup> FINRA Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) allows a member firm to designate certain individuals to function in a principal capacity for 120 calendar days before having to pass an appropriate principal qualification examination. NYSE American Rule 2.1210.03 provides the same allowance to Members.

<sup>11</sup> Information about the continued impact of COVID-19 on FINRA-administered examinations is available at <https://www.finra.org/rules-guidance/keytopics/covid-19/exams>.

are delivering only certain examinations that have been deemed essential by the local government.<sup>12</sup> Furthermore, Prometric has had to close some reopened test centers due to incidents of COVID-19 cases. The initial nationwide closure in March along with the inability to fully reopen all Prometric test centers due to COVID-19 have led to a significant backlog of individuals who are waiting to sit for FINRA examinations.<sup>13</sup>

In addition, firms are continuing to experience operational challenges with much of their personnel working from home due to shelter-in-place orders, restrictions on businesses and social activity imposed in various states, and adherence to other social distancing guidelines consistent with the recommendations of public health officials.<sup>14</sup> As a result, firms continue to face potentially significant disruptions to their normal business operations that may include a limitation of in-person activities and staff absenteeism as a result of the health and welfare concerns stemming from COVID-19. Such potential disruptions may be further exacerbated and may even affect client services if firms cannot continue to keep principal positions filled as they may have difficulty finding other qualified individuals to transition into these roles or may need to reallocate employee time and resources away from other critical responsibilities at the firm.

These ongoing, extenuating circumstances make it impracticable for Members to

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<sup>12</sup> Information from Prometric about its safety practices and the impact of COVID-19 on its operations is available at <https://www.prometric.com/corona-virusupdate>. See also *supra* note 11.

<sup>13</sup> Although an online test delivery service has been launched to help address the backlog, the General Securities Principal Exam (Series 24) is not available online. See *supra* note 11.

<sup>14</sup> See, e.g., Centers for Disease Control and Prevention, How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-gettingsick/prevention.html>.

ensure that the individuals whom they have designated to function in a principal capacity, as set forth in NYSE American Rule 2.1210.03, are able to successfully sit for and pass an appropriate qualification examination within the 120-calendar day period required under the rule, or to find other qualified staff to fill this position. The ongoing circumstances also require individuals to be exposed to the health risks associated with taking an in-person examination, because the General Securities Principal examination is not available online. Therefore, NYSE American is proposing to continue the temporary relief provided through the FINRA FAQs by adopting Rule 2.1210.10 to extend the 120-day period during which an individual can function as a principal before having to pass an applicable qualification examination until December 31, 2020.<sup>15</sup> The proposed rule change would apply only to those individuals who were designated to function as a principal prior to September 3, 2020. Any individuals designated to function as a principal on or after September 3, 2020, would need to successfully pass an appropriate qualification examination within 120 days.

NYSE American believes that this proposed continued extension of time is tailored to address the needs and constraints on a Member's operations during the COVID-19 pandemic, without significantly compromising critical investor protection. The proposed extension of time will help to minimize the impact of COVID-19 on Members by providing continued flexibility so that Members can ensure that principal positions remain filled. The potential risks from the proposed extension of the 120-day period are mitigated by the Member's continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and

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<sup>15</sup>

See supra note 5.



regulations, as well as NYSE American rules.

## 2. Statutory Basis

The proposed rule change 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),<sup>17</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change is intended to minimize the impact of COVID-19 on Member operations by extending the 120-day period certain individuals may function as a principal without having successfully passed an appropriate qualification examination under NYSE American Rule 2.1210.03 until December 31, 2020. The proposed rule change does not relieve Members from maintaining, under the circumstances, a reasonably designed system to supervise the activities of their associated persons to achieve compliance with applicable securities laws and regulations, and with applicable NYSE American rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID-19 pandemic, NYSE American believes that the proposed rule change is a sensible accommodation that will continue to afford Members the ability to ensure that critical positions are filled and client services maintained, while continuing to serve and promote the protection of investors and the

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

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

public interest in this unique environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to provide temporary relief given the impacts of the COVID-19 pandemic crisis and to also maintain consistency with the rules of other self-regulatory organizations (“SROs”) with respect to the registration requirements applicable to Members and their registered personnel. In that regard, the Exchange believes that any burden on competition would be clearly outweighed by providing Members with temporary relief in this unique environment while also ensuring clear and consistent requirements applicable across SROs and mitigating any risk of SROs implementing different standards in these important areas. In its filing, FINRA provides an abbreviated economic impact assessment maintaining that the changes are necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rule 1210 in response to the impacts of the COVID-19 pandemic that is equally applicable to the changes the Exchange proposes.<sup>18</sup> The Exchange accordingly incorporates FINRA’s abbreviated economic impact assessment by reference.

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

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<sup>18</sup> FINRA Filing, 85 FR at 55537.

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>21</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>22</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

Waiver of the operative delay would allow the proposed rule change to be in effect on the date of filing to extend the temporary relief to Members during these unique circumstances resulting from the COVID-19 pandemic. The ongoing extenuating circumstances of the COVID-19 pandemic make it impractical to ensure that individuals designated to act as principals are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules. Shelter-in-

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii).

place orders, quarantining, restrictions on business and social activity and adherence to other social distancing guidelines consistent with the recommendation of public officials remain in place in various states.<sup>23</sup> Further, Prometric test centers have experienced serious interruptions in the administration of FINRA qualification examinations, resulting in a backlog of individuals waiting to take these examinations. Following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local government.<sup>24</sup> While FINRA has launched an online test delivery service to help address this backlog, the General Securities Principal (Series 24) Examination is not available online. The Exchange notes that the temporary proposed rule change will provide needed flexibility to ensure that principal positions remain filled and is tailored to address the constraints on Members' operations during the COVID-19 pandemic without significantly compromising critical investor protection. Further, as proposed, this proposed rule change would extend the 120-day period that certain individuals can function as principals through December 31, 2020. As noted above, if the Exchange requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020, it would submit a separate rule filing to extend the effectiveness of the temporary relief. For the foregoing reasons, the Exchange believes that this proposal is non-controversial and eligible to become effective immediately because it promotes uniformity in standards for registration requirements across SROs

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<sup>23</sup> See supra note 14.

<sup>24</sup> See supra notes 11 and 12.

and because it is based on a recent filing submitted by FINRA.<sup>25</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>26</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### 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-2020-71 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-2020-71. This file

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<sup>25</sup> See supra note 6.

<sup>26</sup> 15 U.S.C. 78s(b)(2)(B).

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-2020-71 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>27</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).

Additions underlined  
Deletions [bracketed]

## Rules of NYSE American LLC

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### Office Rules

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### Section 4A. Registration

#### Rule 2.1210. Registration Requirements

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#### • • • *Commentary:*

.01 -.09 No Change.

**.10 Temporary Extension of the Limited Period for Registered Persons to Function as Principals.** Any person who was designated to function as a principal under Commentary .03 of this Rule prior to September 3, 2020, may continue to function as a principal without having successfully passed an appropriate qualification examination until December 31, 2020.

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