

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="26"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2019"/> - * <input type="text" value="50"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by NYSE Arca, Inc.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
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"/>
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**Description**

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

Proposal to adopt a new Rule 9.21-O based on NYSE American Rule 991, delete current Rules 9.21-O through 9.25-O, and amend Rule 10.9551 to add references to proposed Rule 9.21-O

**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 * <input type="text" value="David"/>	Last Name * <input type="text" value="De Gregorio"/>
Title * <input type="text" value="Senior Counsel, NYSE Group Inc."/>	
E-mail * <input type="text" value="David.DeGregorio@theice.com"/>	
Telephone * <input type="text" value="(212) 656-4166"/>	Fax <input type="text" value="(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 <input type="text" value="07/09/2019"/>	<input type="text" value="Associate General Counsel"/>
By <input type="text" value="Clare Saperstein"/>	<input type="text" value="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 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 \***

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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**

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**

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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**

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**

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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 Arca, Inc. (“NYSE Arca” or the “Exchange”) proposes to (1) adopt a new Rule 9.21-O (Communications with the Public) based on NYSE American Rule 991, (2) delete current Rules 9.21-O through 9.25-O, and (3) amend Rule 10.9551 to add references to proposed Rule 9.21-O.

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

David De Gregorio  
Senior Counsel  
NYSE Group, Inc.  
(212) 656-4166

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

(a) Purpose

The Exchange proposes to (1) adopt a new Rule 9.21-O (Communications with the Public) based on NYSE American Rule 991 (Options Communications), (2) delete Rules 9.21-O through 9.25-O, and (3) amend Rule 10.9551 to add references to proposed Rule 9.21-O.

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

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

## Background and Proposed Rule Filing

The Exchange recently adopted a new set of rules governing investigations, discipline of ETP Holders, OTP Holders, OTP Firms, and covered persons, sanctions, cease and desist authority, and other procedural rules modeled on the rules of the Exchange's affiliates, New York Stock Exchange LLC ("NYSE") and NYSE American LLC ("NYSE American"), as well as those of the Financial Industry Regulatory Authority, Inc. ("FINRA").<sup>3</sup> The new disciplinary rules became effective on May 27, 2019.<sup>4</sup>

In that filing, the Exchange adopted Rule 10.9551 (Failure to Comply with Public Communication Standards), which permits the Exchange's regulatory staff to issue a written notice requiring an ETP Holder, OTP Holder or OTP Firm to file communications with FINRA's Advertising Regulation Department at least 10 days prior to use if the staff determined that the ETP Holder had departed from the standards of Rule 9.21-E (Communications with the Public) and "any applicable options rule."<sup>5</sup> As the filing noted, the Exchange did not have a rule comparable to Rule 9.21-E for the options market and undertook to submit a rule filing to adopt a new Rule 9.21-O based on NYSE American Rule 991 and to amend Rule 10.9551.<sup>6</sup>

The Exchange accordingly proposes to adopt a new Rule 9.21-O titled "Communications with the Public." Except for references to OTP Firm and OTP Holder, proposed Rule 9.21-O is substantially the same as NYSE American Rule 991, which was in turn based on FINRA Rule 2220.<sup>7</sup> The Exchange proposes to delete its current Rules 9.21-O through 9.25-O governing communications with the public as obsolete.

The Exchange proposes non-substantive conforming changes in Rule 10.9551(a) and (d) to replace the phrase "and any applicable options rule" following

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<sup>3</sup> See Securities Exchange Act Release No. 34-85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR-NYSEARCA-2019-15) (Notice) ("Disciplinary Rules Adoption").

<sup>4</sup> See NYSE Arca Options Regulatory Bulletin 19-02 (April 26, 2019), available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/rule-interpretations/2019/Regulatory%20Bulletin%20re%20Arca%20Disciplinary%20Rules.%20revised%2004.25.19%20V2.pdf>.

<sup>5</sup> See Disciplinary Rules Adoption, 84 FR at 16370.

<sup>6</sup> See *id.*, at n. 62.

<sup>7</sup> See Securities Exchange Act Release No. 61499 (February 4, 2010), 75 FR 6738 (February 10, 2010) (SR-NYSEAmex-2010-04); Securities Exchange Act Release No. 82402 (December 26, 2017), 83 FR 179 (January 2, 2018) (SR-NYSEAmex-2017-39).

“Pursuant to Rule 9.21-E(c)(5)(B)” with “Rule 9.21-O(c)(2).”

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed changes will provide greater harmonization among SROs resulting in less burdensome and more efficient regulatory compliance for common members of the Exchange, the Exchange’s affiliates, and FINRA. As previously noted, the proposed rule text is substantially the same as NYSE American Rule 991, which was in turn modeled on FINRA rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange further believes that adopting NYSE American’s rule governing options communications with the public will provide its permit holders with a clearer, consistent, and more comprehensive regulatory scheme by harmonizing the Exchange’s rule concerning options communications with NYSE American’s rule and the FINRA rule in the same subject matter. The proposed rule change would continue to ensure a uniform regulatory approach and would reduce any potential risks or inefficiencies in rules. The Exchange further notes that the changes proposed herein are neither novel nor controversial and are modeled on existing FINRA rules.

The Exchange also believes that the proposal to use the terms “OTP Firm” and “OTP Holder” instead of “ATP Holder” would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed change would reflect the Exchange’s membership and terminology used in the Exchange’s rulebook, thereby reducing any potential ambiguity and providing clarity to the Exchange’s rules. The proposed use of the terms “OTP Firm” and “OTP Holder” would be consistent with the NYSE American term “ATP Holder.”

The Exchange believes that deleting the Exchange’s current options communications with the public as obsolete would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because it would

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

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

eliminate rules that are now obsolete or that do not have any substantive content. Eliminating obsolete rules would reduce potential confusion and add transparency and clarity to the Exchange's rules, thereby ensuring that members, regulators, and the public can more easily navigate and understand the Exchange's rulebook.

Finally, the Exchange believes that the proposed conforming changes to Rule 10.9551(a) would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules, thereby reducing potential investor or market participant confusion.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues. Rather, the proposed change is designed to further harmonize the Exchange's rule regarding options communications with the comparable rule of the Exchange's affiliate NYSE American and to make conforming changes to the Exchange's disciplinary rules.

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

Not applicable.

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 proposal qualifies for immediate effectiveness upon filing as a "non-controversial" rule change in accordance with Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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 after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as the Commission may designate.

The Exchange believes that this filing is non-controversial because it raises no novel issues because the Exchange proposes adopting a rule for communications with the public for its options members based on rules already in place at its affiliate and FINRA with changes to reflect the Exchange's membership and rulebook. The Exchange proposes to adopt the rule change in substantially the form that it was adopted by NYSE American. To the extent the Exchange proposes additional changes that differ from the NYSE American version of the proposed rule, such changes are technical and conforming in nature to reflect the Exchange's options membership and do not change the substance of the proposed Exchange rule.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4.<sup>12</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 NYSE American Rule 991 and FINRA Rule 2220.

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>12</sup> 17 CFR 240.19b-4(f)(6).

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NYSEARCA-2019-50)

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New Rule 9.21-O, Delete Current Rules 9.21-O through 9.25-O, and Amend Rule 10.9551

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 July 9, 2019, NYSE Arca, Inc. (“NYSE Arca” 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 (1) adopt a new Rule 9.21-O (Communications with the Public) based on NYSE American Rule 991, (2) delete current Rules 9.21-O through 9.25-O, and (3) amend Rule 10.9551 to add references to proposed Rule 9.21-O. 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 (1) adopt a new Rule 9.21-O (Communications with the Public) based on NYSE American Rule 991 (Options Communications), (2) delete Rules 9.21-O through 9.25-O, and (3) amend Rule 10.9551 to add references to proposed Rule 9.21-O.

Background and Proposed Rule Filing

The Exchange recently adopted a new set of rules governing investigations, discipline of ETP Holders, OTP Holders, OTP Firms, and covered persons, sanctions, cease and desist authority, and other procedural rules modeled on the rules of the Exchange’s affiliates, New York Stock Exchange LLC (“NYSE”) and NYSE American LLC (“NYSE American”), as well as those of the Financial Industry Regulatory Authority, Inc. (“FINRA”).<sup>4</sup> The new disciplinary rules became effective on May 27,

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<sup>4</sup> See Securities Exchange Act Release No. 34-85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR-NYSEARCA-2019-15) (Notice) (“Disciplinary Rules Adoption”).

2019.<sup>5</sup>

In that filing, the Exchange adopted Rule 10.9551 (Failure to Comply with Public Communication Standards), which permits the Exchange’s regulatory staff to issue a written notice requiring an ETP Holder, OTP Holder or OTP Firm to file communications with FINRA’s Advertising Regulation Department at least 10 days prior to use if the staff determined that the ETP Holder had departed from the standards of Rule 9.21-E (Communications with the Public) and “any applicable options rule.”<sup>6</sup> As the filing noted, the Exchange did not have a rule comparable to Rule 9.21-E for the options market and undertook to submit a rule filing to adopt a new Rule 9.21-O based on NYSE American Rule 991 and to amend Rule 10.9551.<sup>7</sup>

The Exchange accordingly proposes to adopt a new Rule 9.21-O titled “Communications with the Public.” Except for references to OTP Firm and OTP Holder, proposed Rule 9.21-O is substantially the same as NYSE American Rule 991, which was in turn based on FINRA Rule 2220.<sup>8</sup> The Exchange proposes to delete its current Rules 9.21-O through 9.25-O governing communications with the public as obsolete.

The Exchange proposes non-substantive conforming changes in Rule 10.9551(a) and (d) to replace the phrase “and any applicable options rule” following “Pursuant to

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<sup>5</sup> See NYSE Arca Options Regulatory Bulletin 19-02 (April 26, 2019), available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/rule-interpretations/2019/Regulatory%20Bulletin%20re%20Arca%20Disciplinary%20Rules.%20revised%2004.25.19%20V2.pdf>.

<sup>6</sup> See Disciplinary Rules Adoption, 84 FR at 16370.

<sup>7</sup> See *id.*, at n. 62.

<sup>8</sup> See Securities Exchange Act Release No. 61499 (February 4, 2010), 75 FR 6738 (February 10, 2010) (SR-NYSEAmex-2010-04); Securities Exchange Act Release No. 82402 (December 26, 2017), 83 FR 179 (January 2, 2018) (SR-NYSEAmex-2017-39).

Rule 9.21-E(c)(5)(B)” with “Rule 9.21-O(c)(2).”

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed changes will provide greater harmonization among SROs resulting in less burdensome and more efficient regulatory compliance for common members of the Exchange, the Exchange’s affiliates, and FINRA. As previously noted, the proposed rule text is substantially the same as NYSE American Rule 991, which was in turn modeled on FINRA rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange further believes that adopting NYSE American’s rule governing options communications with the public will provide its permit holders with a clearer, consistent, and more comprehensive regulatory scheme by harmonizing the Exchange’s rule concerning options communications with NYSE American’s rule and the FINRA rule in the same subject matter. The proposed rule change would continue to ensure a uniform regulatory approach and would reduce any potential risks or inefficiencies in rules. The Exchange further notes that the changes proposed herein are

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

neither novel nor controversial and are modeled on existing FINRA rules.

The Exchange also believes that the proposal to use the terms “OTP Firm” and “OTP Holder” instead of “ATP Holder” would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed change would reflect the Exchange’s membership and terminology used in the Exchange’s rulebook, thereby reducing any potential ambiguity and providing clarity to the Exchange’s rules. The proposed use of the terms “OTP Firm” and “OTP Holder” would be consistent with the NYSE American term “ATP Holder.”

The Exchange believes that deleting the Exchange’s current options communications with the public as obsolete would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because it would eliminate rules that are now obsolete or that do not have any substantive content. Eliminating obsolete rules would reduce potential confusion and add transparency and clarity to the Exchange's rules, thereby ensuring that members, regulators, and the public can more easily navigate and understand the Exchange's rulebook.

Finally, the Exchange believes that the proposed conforming changes to Rule 10.9551(a) would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules, thereby reducing potential investor or market participant confusion.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues. Rather, the proposed change is designed to further harmonize the Exchange's rule regarding options communications with the comparable rule of the Exchange's affiliate NYSE American and to make conforming changes to the Exchange's disciplinary rules.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</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.

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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

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>13</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-NYSEARCA-2019-50 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-NYSEARCA-2019-50. 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

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<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

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-NYSEARCA-2019-50 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>14</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

Additions underlined

Deletions [bracketed]

Rules of NYSE Arca, Inc.

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**RULE 9-O CONDUCTING BUSINESS WITH THE PUBLIC— OPTIONS**

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**Section 2. Advertising And Sales Literature**

**Rule 9.21-O[(a)]. [Policy**

It shall be considered conduct inconsistent with just and equitable principals of trade for an OTP Firm or OTP Holder, directly or indirectly, to publish, circulate or distribute any advertisement, sales literature or market letter that the OTP Firm or OTP Holder knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

**Rule 9.21-O(b). Exemptions**

The following rules shall apply to all OTP Firms and OTP Holders of the Exchange unless the OTP Firm or OTP Holder is subject to the jurisdiction of another national securities exchange or association designated by the Board as having comparable standards.]**Communications with the Public**

(a) Definitions

For purposes of this Rule and any interpretation thereof:

(1) "Options communications" consist of:

(A) "Correspondence" means any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.

(B) "Institutional Communication" is defined in FINRA Rule 2210(a)(3).

(C) "Retail Communication" means any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period including worksheet templates.



- (2) "Retail investor" means any person other than an institutional investor, regardless of whether the person has an account with an OTP Firm or OTP Holder.
- (3) "Standardized option" means any option contract issued, or subject to issuance, by The Options Clearing Corporation, that has standardized terms for the strike price, expiration date, and amount of the underlying security, and is traded on a national securities exchange registered pursuant to section 6(a) of the Act.
- (4) "Options" means any put, call, straddle or other option or privilege, which is a "security" as defined in Section 2(1) of the Securities Act of 1933, as amended, but shall not include any tender offer, registered warrant, right, convertible security or any other option in respect to which the writer is the issuer of the security which may be purchased or sold upon the exercise of the option.
- (5) "Options disclosure document" shall mean those documents filed with the SEC, prepared by one or more options markets and meeting the requirements of SEC Rule 9b-1 under the Act. They shall contain general explanatory information relating to the mechanics of buying, writing and exercising options; the risks involved, the uses of and market for the options; transaction costs and applicable margin requirements; tax consequences of trading options; identification of the options issuer and the instrument underlying the options class; and the availability of the prospectus and the information in Part II of the registration statement.

(b) Approval by a Registered Options Principal and Recordkeeping

- (1) Retail Communications. All Retail Communications (except completed worksheets) issued by an OTP Firm or OTP Holder concerning options shall be approved in advance by a Registered Options Principal designated by the OTP Firm's or OTP Holder's written supervisory procedures.
- (2) Correspondence. Correspondence need not be approved by a Registered Options Principal prior to use. All correspondence is subject to the supervision and review requirements of FINRA Rules 3110(b) and 3110.06 through .09.
- (3) Institutional Communications. Each OTP Firm or OTP Holder shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by a Registered Options Principal of Institutional Communications used by the OTP Firm or OTP Holder and its registered representatives as described in FINRA Rule 2210(b)(3).
- (4) Copies of the options communications shall be retained by the OTP Firm or OTP Holder in accordance with SEC Rule 17a-4 of the Act. The names of the persons who prepared the options communications, the names of the persons who approved the options communications and, the source of any recommendations contained therein, shall be retained by the OTP Firm or OTP Holder and be kept in the form

and for the time period required for options communications by SEC Rule 17a-4 of the Act.

(c) Exchange Approval Requirements and Review Procedures

(1) In addition to the approval required by paragraph (b) of this Rule, all Retail Communications issued by an OTP Firm or OTP Holder concerning standardized options used prior to delivery of the applicable current options disclosure document or prospectus shall be submitted to the Advertising Regulation Department of FINRA (the "Department") at least ten calendar days prior to use (or such shorter period as the Department may allow in particular instances) for approval and, if changed or expressly disapproved by the Department, shall be withheld from circulation until any changes specified by the Department have been made or, in the event of disapproval, until such options communication has been resubmitted for, and has received, Department approval.

(2)(A) Notwithstanding the foregoing provision, the Department, upon review of an OTP Firm's or OTP Holder's options communications, and after determining that the OTP Firm or OTP Holder has departed from the standards of this Rule, may require that such OTP Firm or OTP Holder file some or all options communications or the portions of such OTP Firm's or OTP Holder's communications that are related to options with the Department, at least ten calendar days prior to use.

(B) The Department shall notify the OTP Firm or OTP Holder in writing of the types of options communications to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year and shall not take effect until 21 calendar days after service of the written notice, during which time the OTP Firm or OTP Holder may request a hearing pursuant to Rules 10.9551 and 10.9559.

(3) In addition to the foregoing requirements, every OTP Firm's or OTP Holder's options communications shall be subject to a routine spot-check procedure. Upon written request from the Department, each OTP Firm or OTP Holder shall promptly submit the communications requested. An OTP Firm or OTP Holder will not be required to submit communications under this procedure that have been previously submitted pursuant to one of the foregoing requirements.

(4) The requirements of this paragraph (c) shall not be applicable to:

(A) options communications submitted to another self-regulatory organization having comparable standards pertaining to such communications;

(B) communications in which the only reference to options is contained in a listing of the services of the OTP Firm or OTP Holder;

(C) the options disclosure document; and

(D) the prospectus.

(d) Standards Applicable to Communications

(1) Communications Regarding Standardized Options used Prior to Delivery of Options Disclosure Document

(A) Options communications regarding standardized options exempted under SEC Rule 238 under the Securities Act of 1933 used prior to options disclosure document delivery:

(i) must be limited to general descriptions of the options being discussed. The text may also contain a brief description of options, including a statement that identifies registered clearing agencies for options and a brief description of the general attributes and method of operation of the exchanges on which such options are traded, including a discussion of how an option is priced;

(ii) must contain contact information for obtaining a copy of the options disclosure document;

(iii) must not contain recommendations or past or projected performance figures, including annualized rates of return, or names of specific securities;

(iv) may include any statement required by any state law or administrative authority;

(v) may include advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics, provided such material is not misleading; and

(B) Options communications regarding options not exempted under SEC Rule 238 under the Securities Act of 1933 used prior to delivery of a prospectus that meets the requirements of Section 10(a) of said Act must conform to SEC Rule 134 or 134a under said Act, as applicable.

(2) General Standards

(A) No OTP Firm or OTP Holder or associated person of an OTP Firm or OTP Holder shall use any options communications which:

(i) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

(ii) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;

(iii) contains cautionary statements or caveats that are not legible, are misleading, or are inconsistent with the content of the material;

(iv) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act;

(v) contains statements suggesting the certain availability of a secondary market for options;

(vi) fails to reflect the risks attendant to options transactions and the complexities of certain options investment strategies;

(vii) fails to include a warning to the effect that options are not suitable for all investors or contains suggestions to the contrary; or

(viii) fails to include a statement that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparison, recommendations, statistics, or other technical data, will be supplied upon request.

(B) Subparagraphs (vii) and (viii) above shall not apply to Institutional Communications as defined in paragraph (a) of this Rule.

(C) Any statement in any options communications referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities must be avoided.

### (3) Projections

Options communications may contain projected performance figures (including projected annualized rates of return) provided that:

(A) all such communications regarding standardized options are accompanied or preceded by the options disclosure document;

(B) no suggestion of certainty of future performance is made;

(C) parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);

(D) all relevant costs, including commissions, fees, and interest charges (as applicable) are disclosed and reflected in the projections;

(E) such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(F) all material assumptions made in such calculations are clearly identified (e.g., "assume option expires," "assume option unexercised," "assume option exercised," etc.);

(G) the risks involved in the proposed transactions are also disclosed; and

(H) in communications relating to annualized rates of return, that such returns are not based upon any less than a sixty-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

#### (4) Historical Performance

Options communications may feature records and statistics that portray the performance of past recommendations or of actual transactions, provided that:

(A) all such communications regarding standardized options are accompanied or preceded by the options disclosure document;

(B) any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific "universe" that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;

(C) such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request;

(D) all relevant costs, including commissions, fees, and daily margin obligations (as applicable) are disclosed and reflected in the performance;

(E) whenever such communications contain annualized rates of return, all material assumptions used in the process of annualization are disclosed;

(F) an indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;

(G) such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and

(H) a Registered Options Principal determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

(5) Options Programs

In communications regarding an options program (i.e., an investment plan employing the systematic use of one or more options strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.

(6) Violation of Other Rules

Any violation by an OTP Firm or OTP Holder or associated person of any rule or requirement of the SEC or any rule of the Securities Investor Protection Corporation applicable to OTP Firm or OTP Holder communications concerning options will be deemed a violation of this Rule.

**Rule 9.22-O(a). Reserved[Advertisements**

All advertisements prior to publication shall be submitted to the Exchange for approval as to form and presentation, except such routine advertisements as (1) business cards or so-called tombstone ads, (2) announcements that specific securities are bought, sold or quoted, (3) offering literature concerning a specific security or securities, (4) announcements relating to changes in an OTP Firm or OTP Holder, (5) inclusion of an OTP Firm's or OTP Holder's name in an underwriting advertisement, or (6) advertisements complying with any rule or regulations of the Securities and Exchange Commission under the Securities Act of 1933, or Securities Exchange Act of 1934. Copies of all ads should be retained by the OTP Firm or OTP Holder for at least 3 years.]

**Rule 9.22-O(b). Reserved[Refer to NYSE Arca**

Advertisements by OTP Firms and OTP Holders for insertion in local papers or other media should refer to the NYSE Arca, Inc. when reference is made to membership in any securities exchange.]

**Rule 9.23-O. Reserved[Sales Literature—Market Letters**

Each market letter, research report and all sales literature prepared and issued by an OTP Firm or OTP Holder for general distribution to customers or the public shall be approved in advance by a principal of the firm who has been designated such authority. Market letters, research reports and sales literature that refer to the market or to companies or securities, listed or unlisted, must be retained by the issuing OTP Firm or OTP Holder for at least 3 years. The copies retained must contain the name of the individual approving its

issuance and will be subject to delivery upon request to the Exchange and must at all times within the 3 year period be readily available. For purposes of this Rule, scripts that are used for telemarketing calls as described in Rule 9.20-O(b), are deemed to be "sales literature."]

**Rule 9.24-O. Reserved[Radio, Television, Telephone and Other Reports**

OTP Firms and OTP Holders for which the Exchange is the designated examining authority ("DEA") desiring to broadcast Exchange quotations on radio or television programs, or in public telephone market reports, or to make use of radio or television broadcasts for any business purpose, or to make use of the Internet for the purpose of providing market quotations or advertising to the general public, must first obtain the consent of the Exchange by submitting an outline of the program to the Exchange.

The text of all commercials and program material (except lists of market quotations) about securities or investing sponsored by OTP Firms and OTP Holders on radio, television or public telephone market reports, or the Internet, or program material supplied to these media must be sent to the Exchange promptly following the program in which it is used.]

**Rule 9.25-O. Reserved[Standards**

The Exchange cannot be responsible for the accuracy and completeness of factual information, nor the opinions of OTP Firms and OTP Holders in advertisements, sales literature or radio or television broadcasts. However, general policy to be followed in written communications with the public should be substantially as follows:

- (a) In making recommendations there should be a reasonable basis for the recommendation and the following facts disclosed:
- (1) The price at time of original recommendation;
  - (2) Whether or not the firm makes a market in the issue;
  - (3) If (2) applies, whether OTP Firm or OTP Holder intends to buy or sell the securities recommended for his own account;
  - (4) Ownership, if any, of options, rights or warrants to purchase any security recommended, unless extent of ownership is merely nominal;
  - (5) Offer to provide or furnish upon request available investment information supporting the recommendations;
  - (6) If material issued refers to past recommendations, all such recommendations as to the same type, kind, grade or classification of securities made by an OTP Firm or OTP Holder within the last year should be set forth. Longer periods of years may be

covered if they are consecutive and include the most recent year. The material must name each security recommended, the date and nature of recommendation (buy or sell), the price at the time, the price range within which to act upon, and if the period was one of generally rising or falling markets;

(7) Material that makes no recommendations, but offers to furnish a list of all recommendations made by an OTP Firm or OTP Holder within the past year or over a longer period of consecutive years shall contain same information as stated in item (6) above.

(b) Claims and opinions must not contain:

- (1) Promises of specific results;
- (2) Exaggerated or unwarranted claims or unwarranted superlatives;
- (3) Opinions with no reasonable basis;
- (4) Forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;
- (5) References to past specific recommendations which state or imply that the recommendations were or would have been profitable and that these are indicative of the general quality of the firm's recommendations.

(c) Testimonials must make clear:

- (1) That with respect to any advice, analysis, report or other investment or related service rendered, such experience is not necessarily indicative of future performance or results obtained by others;
- (2) Whether any compensation has been paid to the maker directly or indirectly;
- (3) The qualifications of the maker of the testimonial if they imply an experienced or specialized opinion.

(d) Offers of free service:

If a statement is made that any report, analysis or other service will be furnished entirely free and without any condition or obligation, such statements must be upheld.

(e) Claims for research:



No claim or implication may be made for research or other facilities beyond those which the OTP Firm or OTP Holder actually possesses or has reasonable capacity to provide.

(f) Hedge clauses:

No hedge clauses may be used if they could mislead the reader or are inconsistent with the content of the material.

(g) Recruiting advertising:

Advertising in connection with recruitment of sale personnel must not contain exaggerated or unwarranted claims or statements about opportunities in the investment banking or securities business.]

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**Rule 10.9551. Failure to Comply with Public Communication Standards**

**(a) Notice of Pre-Use Filing Requirement**

Pursuant to Rule 9.21-E(c)(5)(B) and [any applicable options rule]Rule 9.21-O(c)(2), Regulatory Staff may issue a written notice requiring an ETP Holder, OTP Holder or OTP Firm to file communications with the FINRA's Advertising Regulation Department at least ten days prior to use if Regulatory Staff determines that the ETP Holder, OTP Holder or OTP Firm has departed from the standards of Rule 9.21-E and [any applicable options rule]Rule 9.21-O(c)(2).

**(b) Service of Notice of Pre-Use Filing Requirement**

Except as provided below, Regulatory Staff shall serve the ETP Holder, OTP Holder or OTP Firm (or counsel representing the ETP Holder, OTP Holder or OTP Firm or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the ETP Holder, OTP Holder or OTP Firm) with such notice in accordance with Rule 10.9134 or by email. Papers served on an ETP Holder, OTP Holder or OTP Firm by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on counsel for an ETP Holder, OTP Holder or OTP Firm, or other person authorized to represent others under Rule 10.9141, by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 10.9134. Service is complete upon sending the notice by email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that,

where duplicate service is required, service is complete when the duplicate service is complete.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 10.9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 10.8310(a) and 10.9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Notice of Pre-Use Filing Requirement**

Pursuant to Rule 9.21-E(c)(5)(B) and [any applicable options rule]Rule 9.21-O(c)(2), the pre-use filing requirement referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 10.9559.

**(e) - (g) No Changes**

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