

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83073; File No. SR-NYSEAMER-2018-15)

April 20, 2018

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE American Options Fee Schedule

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 April 12, 2018, NYSE American LLC (the “Exchange” or “NYSE American”) 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective April 12, 2018.<sup>4</sup> The proposed change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

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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.

<sup>4</sup> The Exchange originally filed to amend the Fee Schedule on April 2, 2018 (SR-NYSEAmer-2018-12) and withdrew and re-filed on April 3, 2018 (SR-NYSEAmer-2018-13).

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule to adopt a prepayment incentive program for Floor Broker organizations (each a "Floor Broker").

Currently, Floor Brokers that operate on the Exchange incur certain monthly fixed costs that rarely change from month-to-month (and, in some cases, year-to-year). Floor Brokers receive an invoice from the Exchange each month for the fixed cost incurred the prior month. The Exchange proposes to offer Floor Brokers a 10% discount on their "Eligible Fixed Costs" (described in the table below) if Floor Brokers prepay such costs for the remaining nine months of 2018 –i.e., April through December (the "FB Prepay Program" or "Program").<sup>5</sup>

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<sup>5</sup> To participate in the FB Prepay Program, Floor Broker organizations would have to notify the Exchange in writing by emailing [optionsbilling@nyse.com](mailto:optionsbilling@nyse.com), indicating a commitment to submit prepayment, by no later than April 13, 2018. The email to enroll in the Program would have to originate from an officer of the Floor Broker organization and, except as provided for below, represents a binding commitment through the end of 2018. To participate in the Program, pre-payment for the balance of the year must be received by the close of business on April 30, 2018. See proposed Fee Schedule, Section III.E., Floor Broker Fixed Cost Prepayment Incentive Program (the "FB Prepay Program").

<b>ELIGIBLE FIXED COSTS</b>
Section III.A. Monthly ATP Fees
Section III.B. Floor Access Fee
Section IV. Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees as listed below: Login Transport Charges Booth Premises Telephone Service Cellular Phones Booth Telephone System - Line Charge Booth Telephone System - Single line phone jack and data jack Wire Services

A Floor Broker that commits to the proposed Program would be invoiced in April 2018 for its estimated Eligible Fixed Costs, through the end of 2018, less 10%. The estimated Eligible Fixed Costs for April through December 2018 for each participating Floor Broker would be based on that Floor Broker's February 2018 invoice for such costs. For example, if a participating Floor Broker incurred \$6,000 in Eligible Fixed Costs in February 2018, that Floor Broker would be invoiced in April 2018 in the amount of \$48,600 to prepay such costs for the balance of the year (i.e., \$54,000 (to pre-pay Eligible Fixed Costs for April through December) minus \$5,400 (10% discount) equals \$48,600).

The Exchange also proposes to offer participants in the FB Prepay Program the opportunity to qualify for larger discounts (i.e., more than 10% of the remaining of 2018 Eligible Fixed Costs) through the Percentage Growth Incentive (the "Incentive"), which is designed to encourage Floor Brokers to increase their average daily volume ("ADV") in billable manual contract sides by certain percentages (correlated with Tiers) as measured against one of two

benchmarks.<sup>6</sup> Specifically, to qualify for the Incentive, a participating Floor Broker must increase its manual billable ADV in contract sides during the final nine months of 2018 (i.e., April through December) by percentages (set forth below) above the greater of:

- i. 10,000 contract sides in billable manual ADV; or
- ii. The Floor Broker's total billable manual ADV in contract sides during the second half of 2017 – i.e., July through December 2017.

As proposed, a participating Floor Broker would qualify for the proposed Incentive by executing, in the final nine months of 2018, ADV growth in manual billable contract sides that is 30%, 65%, or 100% over the greater of (i) 10,000 contract sides ADV; or (ii) their ADV during the second half of 2017 (i.e., June through December). For example, a Floor Broker that is new to the Exchange (or one that did not execute at least 10,000 contract sides in billable manual ADV in the second half of 2017) would have the ability to qualify for the Incentive by executing at least 10,000 contract sides in manual billable ADV increased by the specified percentages. Such a Floor Broker would qualify for each Tier, respectively, by executing billable manual ADV in contract sides of 13,000 (Tier 1), 16,500 (Tier 2), and 20,000 (Tier 3) during April through December 2018.

Similarly, a Floor Broker that executed 50,000 billable manual ADV in the second half of 2017, would qualify for each Tier, respectively, by executing ADV in contracts sides of 65,000 (Tier 1), 82,500 (Tier 2), and 100,000 (Tier 3) during April through December 2018.

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<sup>6</sup> The Percentage Growth Incentive would exclude Customer volume, Firm Facilitation trades, and QCCs. Any volume calculated to achieve the Firm Monthly Fee Cap and the Strategy Execution Fee Cap, regardless of whether either of these caps is achieved, will likewise be excluded from the Percentage Growth Incentive because fees on such volume are already capped and therefore such volume does not increase billable manual volume. See id.

The total rebate available for achieving each Tier is the same regardless of whether the Floor Broker relied on its second half of 2017 volume or the minimum 10,000 ADV contract sides as the benchmark. As proposed, Floor Brokers that earn the Percentage Growth Incentive would receive their 2018 rebate in January 2019.<sup>7</sup>

The Exchange proposes to specify the proposed Incentive on the Fee Schedule with the following table:

FB Prepayment Program Incentives (based on ADV in contract sides between April 1 - December 31, 2018)		
Tier	Percentage Growth Incentive	Total Percentage Reduction of Eligible Fixed Costs for April through December 2018
Tier 1	30%	40%
Tier 2	65%	75%
Tier 3	100%	100% <sup>8</sup>

The Exchange is not proposing any other changes to the Fee Schedule at this time.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>10</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

<sup>7</sup> The Exchange would not issue any refunds in the event that a Floor Broker's prepaid Eligible Fixed Costs exceeds such actual costs for the nine month period. See id.

<sup>8</sup> Participants in the FB Prepay Program that qualify for Tier 3 (i.e., increased 2018 volume (from April through December) by 100% over the Floor Broker's volume from the second half of 2017, or the 10,0000 ADV in contract sides) would be rebated the greater of 100% of their pre-paid Eligible Fixed Costs, or \$10,000/month for April through December 2018. See id.

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

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

The proposal to introduce the FB Prepayment Program is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the Program is optional and Floor Brokers can elect to participate (or elect not to participate). In addition, the Exchange is offering two alternative means to achieve the same enhanced discount to ensure that Floor Brokers that are new to the Exchange (or Floor Brokers that did not execute more than 10,000 ADV in contract sides) could nonetheless participate in the Program. The Exchange believes that 10,000 ADV is a reasonable minimum threshold above which a participating Floor Broker would need to increase volume in order to realize the proposed Incentive (on a similar playing field with Floor Brokers that exceeded this volume requirement in 2017). For Floor Brokers that exceeded the 10,000 ADV in the second half of 2017, the Exchange believes it is reasonable to use each Floor Broker's historical volume as a benchmark against which to measure future growth to achieve the proposed Incentive.

Moreover, the Exchange notes that prepayment programs such as the FB Prepay Program are not new or novel as other options exchanges provide incentives to other specific market participants for prepayment of certain Exchange fees/costs - including the prepayment program offered to market makers on the Chicago Board of Options Exchange (Cboe).<sup>11</sup> Although the Cboe market maker prepay program applies to transaction costs as opposed to fixed costs, the Exchange believes the proposed program would similarly incent Floor Brokers to increase their billable volume executed in open outcry on the Exchange, which would benefit all market participants by expanding liquidity and providing more trading opportunities, even to those market participants that have not committed to the Program. Regardless of which benchmark a participating Floor Broker's growth is measured against, all Floor Broker's [sic] that opt to

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<sup>11</sup> See Cboe fee schedule, Liquidity Provider Sliding Scale, [available here](http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf), <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>.

participate would be required to increase volume executed on the Exchange in order to receive the enhanced discount. Thus, the Exchange believes the proposed Program, is reasonable, equitable and not unfairly discriminatory to others.

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

In accordance with Section 6(b)(8) of the Act, 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 Exchange believes that the proposed FB Prepayment Program may increase both inter-market and intra-market competition by incenting participants to direct their orders to the Exchange, which would enhance the quality of quoting and may increase the volume of contracts traded on the Exchange. To the extent that there is an additional competitive burden on non-Exchange participants, the Exchange believes that this is appropriate because the proposal should incent market participants to direct additional order flow to the Exchange, and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange would benefit all market participants and improve competition on the Exchange.

Given the robust competition for volume among options markets, many of which offer the same products, implementing programs to attract order flow, such as the proposed FB Prepayment Program, are consistent with the above-mentioned goals of the Act.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must

continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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>14</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:

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).



- 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-2018-15 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2018-15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NYSEAMER-2018-15, 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>15</sup>

Eduardo A. Aleman  
Assistant Secretary

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