

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88574; File No. SR-NYSEAMER-2020-24)

April 7, 2020

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed 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 March 31, 2020, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (“Fee Schedule”) to modify the calculations for certain aspects of the Floor Broker Prepayment Program to account for the recent closure of the Trading Floor. The Exchange proposes to implement the fee change effective March 31, 2020.<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.

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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 March 24, 2020 (SR-NYSEAMER-2020-21) and withdrew such filing on March 31, 2020.

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 purpose of this filing is to modify the Fee Schedule to modify the calculations for certain aspects of the Floor Broker Prepayment Program to account for the recent closure of the Trading Floor. The Exchange proposes to implement the fee change effective March 31, 2020.

On March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective Monday, March 23, 2020, as a precautionary measure to prevent the potential spread of COVID-19. Because the Trading Floor is closed, Floor Brokers cannot engage in open outcry trading, which impacts their ability to qualify for certain pricing incentives tied to manual volume.

Specifically, participants in the Floor Broker Prepayment Program (the “FB Prepay Program” or “Program”)<sup>5</sup> may qualify for the Percentage Growth Incentive portion of that

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<sup>5</sup> See Fee Schedule, Section III.E., Floor Broker Fixed Cost Prepayment Incentive Program (the “FB Prepay Program”), available [here](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf), [https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE\\_American\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf) (providing that participants may prepay their Eligible Fixed Costs for a 10% discount, which costs include: Section III.A. Monthly ATP Fees; Section III.B. Floor Access Fee; and Section IV. Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees, specifically: Login,

program (the “Growth Incentive”) by increasing their average daily volume (“ADV”) in billable manual contract sides by certain percentages (correlated with Tiers) as measured against (the greater of) one of two benchmarks.<sup>6</sup> Per the Fee Schedule, to qualify for the Growth Incentive, a participating Floor Broker organization must increase their ADV for the calendar year, above the greater of 20,000 contract sides in billable manual ADV; or 105% of the Floor Broker’s total billable manual ADV in contract sides during the second half of 2017—i.e., July through December 2017.

Current Floor Broker participants have already prepaid into the Program as of the end of 2019 and could not have anticipated at that time that the Trading Floor would have been closed in 2020, which will impact their ability to increase their billable manual contract sides to qualify for the Growth Incentive. Thus, the Exchange proposes to modify the FB Prepay Program to provide that “[w]hen calculating the increase in a Floor Broker organization’s ADV, the Exchange may exclude any trading day when open outcry on the Trading Floor is unavailable for a full day.”<sup>7</sup> The Exchange believes this change would allow Exchange incentives to operate as intended and would also facilitate fair and orderly markets, particularly given that participants in the Program could not have foreseen that the Trading Floor would have been temporarily closed.

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Transport Charges, Booth Premises, Telephone Service, Cellular Phones, Booth Telephone System - Line Charge, Booth Telephone System - Single line phone jack and data jack, and Wire Services).

<sup>6</sup> The Percentage Growth Incentive excludes Customer volume, Firm Facilitation trades and QCCs. Any volume calculated to achieve the Firm and Broker Dealer Monthly Fee Cap and the Limit of Fees on Options Strategy Executions, are likewise excluded from the Percentage Growth Incentive because fees on such volume is already capped and therefore does not increase billable manual volume. See id.

<sup>7</sup> See proposed Fee Schedule, Section III.E., Floor Broker Fixed Cost Prepayment Incentive Program (the “FB Prepay Program”).

Absent the proposed change, participating Floor Brokers could experience an unintended increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its Floor Brokers participating in the Program. The Exchange believes that excluding trading days when the Trading Floor is unavailable would provide member organizations with greater certainty as to their monthly costs and diminish the likelihood of an effective increase in the cost of trading. Further, the Exchange’s proposal is consistent with the provision in the Fee Schedule that allows the Exchange to exclude from its monthly calculations of contract volume any day that (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours” (i.e., the “System Disruption exclusion”).<sup>8</sup>

The Exchange cannot predict with certainty whether any Floor Brokers would qualify for a higher Growth Incentive tier (and this [sic] a higher credit) as a result of this proposed fee change. However, without this proposed change, all participants in the Program would be impacted as the Floor Closure prevents them from engaging in any open outcry trading.

## 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.

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<sup>8</sup> See Fee Schedule, Preface, System Disruptions, supra note 5.

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

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

### The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>11</sup>

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>12</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades in January 2020.<sup>13</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly,

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<sup>11</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

<sup>12</sup> The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

<sup>13</sup> Based on OCC data, see id., the Exchange’s market share in equity-based options declined from 9.82% for the month of January 2019 to 8.08% for the month of January 2020.

competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that it is reasonable to permit the Exchange to exclude trading days when the Trading Floor is closed from the calculation of a Floor Broker organization's ADV for purposes of the Program because it preserves the Exchange's intent behind adopting volume-based pricing and allows the Growth Incentive to operate as intended. Similarly, the Exchange believes that its proposal is reasonable because it would provide participating Floor Brokers with a greater level of certainty as to their level of rebates and costs for trading in any month where open outcry trading is unavailable, including the current period while the Trading Floor is temporarily closed. The Exchange is not proposing to amend the thresholds that Floor Brokers must achieve to become eligible for, or the dollar value associated with, the tiered rebates or fees. By eliminating the inclusion of a trading day on which open outcry trading was unavailable, the Exchange would be making it more likely for Floor Brokers to meet the minimum or higher tier thresholds and thus incentivizing them to increase their participation on the Exchange in order to meet the next highest tier on days when the Trading Floor is open.

The Exchange further believes that the proposal is reasonable because the proposed exclusion seeks to avoid penalizing Floor Brokers that might otherwise qualify for certain tiered pricing associated with the Growth Incentive but that, because of the unavailability of open outcry trading during the period when the Trading Floor is temporarily closed, would not participate to the extent that they might have otherwise participated.

The Exchange cannot predict with certainty whether any Floor Brokers would qualify for a higher Growth Incentive tier (and this [sic] a higher credit) as a result of this proposed fee

change. However, without this proposed change, all participants in the Program would be impacted as the Floor Closure prevents them from engaging in any open outcry trading.

The Proposed Rule Change is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is designed to account for trading days when open outcry trading is unavailable so as not to penalize Floor Brokers participating in the Program who may opt to avail themselves of the Growth Incentive. Absent the proposed change, participating Floor Brokers could experience an unintended increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its Floor Brokers participating in the Program. Moreover, the proposals are designed to encourage Floor Brokers to continue to aggregate their executions at the Exchange as a primary execution venue. To the extent that the proposed changes attract more Manual volume to the Exchange once the Trading Floor reopens, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange is not proposing any changes to the Program, but rather, is proposing to amend the Fee Schedule to reflect that Floor Brokers would be uniquely impacted by the temporary closing of the Trading Floor because they are not able to engage in open outcry trading during this period. In addition, the methodology for the monthly ADV calculations for

billable manual contract sides would apply equally to all Floor Brokers participating in the Program.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>14</sup>

*Intramarket Competition.* The proposed change is designed to continue to attract Floor Broker order flow to the Exchange by eliminating days when open outcry trading is unavailable for purposes of the Growth Incentive. 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 will benefit all market participants and improve competition on the Exchange. The Exchange notes that the proposed change is likewise consistent with the Exchange's System Disruption exclusion.

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<sup>14</sup> See Reg NMS Adopting Release, supra note 11, at 37499.



*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>15</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.<sup>16</sup>

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to encourage Floor Brokers to direct (open outcry) trading interest to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

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.

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<sup>15</sup> See supra note 12.

<sup>16</sup> Based on OCC data, supra note 13, the Exchange's market share in equity-based options declined from 9.82% for the month of January 2019 to 8.08% for the month of January 2020.

### 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>17</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>18</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>19</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-2020-24 on the subject line.

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

<sup>19</sup> 15 U.S.C. 78s(b)(2)(B).

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-2020-24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-NYSEAMER-2020-24 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

J. Matthew DeLesDernier  
Assistant Secretary

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