SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88682; File No. SR-NYSEAMER-2020-31)

April 17, 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)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on April 16, 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 Strategy Execution Fee Cap to allow the inclusion of certain Qualified Contingent Cross transactions for the month of April 2020. The Exchange proposes to implement the fee change effective April 16 2020.[4] The proposed change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

4 The Exchange originally filed to amend the Fee Schedule on April 1, 2020 (SR-NYSEAMER-2020-27) and withdrew such filing on April 9, 2020. The Exchange then filed to amend the Fee Schedule on April 9, 2020 (SR-NYSEAMER-2020-30) and withdrew such filing on April 16, 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 amend the Fee Schedule to modify the Strategy Execution Fee Cap (“Strategy Cap”) to allow the inclusion of certain Qualified Contingent Cross (“QCC”) transactions for the month of April 2020, as set forth below. The Exchange proposes to implement the rule change on April 16 2020.

Since March 9, 2020, markets worldwide have been experiencing unprecedented market-wide declines and volatility that has resulted from the ongoing spread of the novel COVID-19 virus. In addition, beginning March 16, 2020, to slow the spread of COVID-19 through social-distancing measures, significant limitations have been placed on large gatherings throughout the country.[5] Shortly thereafter, U.S. options exchanges that operate physical trading floors, such as Cboe, Inc. and NASDAQ PHLX, announced the temporary closure of such floors as a precautionary measure to prevent the potential spread of COVID-19. The Exchange likewise

5 For example, in New York City, which is where the NYSE Trading Floor is located, public and private schools, universities, churches, restaurants, bars, movie theaters, and other commercial establishments where large crowds can gather have been closed.

announced the temporary closure of the Trading Floor, effective March 23, 2020, which meant that Exchange Floor Brokers could not engage in open outcry trading.

Section I.J. of the Fee Schedule currently provides a Strategy Cap that limits to $1,000 the daily fees for certain options strategies execution on the same trading day.[6] Strategy executions that qualify for the Strategy Cap are (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls, which are described in detail in the Fee Schedule.[7] However, the Strategy Cap specifically excludes from the Cap "[a]ny qualifying Strategy Execution executed as a QCC."[8] A QCC is defined as an originating order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, coupled with a contraside order or orders totaling an equal number of contracts.[9] Since reversal and conversions ("RevCons") have a stock component, it is possible for a RevCon to also qualify as a QCC ("RevCon QCCs").[10]

Currently, RevCon QCCs are not eligible for the Strategy Cap (but instead are subject to QCC Fees & Credits).[11] With the temporary closure of the Trading Floor, Floor Brokers are unable to execute RevCons in open outcry. However, Floor Brokers are able to execute RevCon

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6 See Fee Schedule, Section I. J., Strategy Execution Fee Cap, available here: https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.

7 See id.

8 See id.

9 See Rule 900.3NY(y) (defining QCC order type).

10 A RevCon refers to two sides of the same trade. Specifically, the Reversal portion "is established by combining a short security position with a short put and a long call position that shares the same strike and expiration," while contra-side conversion portion "is established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration." See Fee Schedule, Section I.J.a., supra note 6.

11 See Fee Schedule, Section I.F., QCC Fees & Credits, supra note 6.

QCCs electronically via the Exchange systems. The Exchange believes that RevCon QCC volumes would increase on the Exchange if they qualified for the Strategy Cap. Accordingly, the Exchange proposes to amend the Fee Schedule to permit the inclusion of RevCon QCC volumes in the Strategy Cap for the month of April 2020.[12] Although this proposed change was prompted by the (temporary) inability of Floor Brokers to execute RevCon strategies in open outcry, the benefit of this proposed change would inure to any ATP Holders that opted to execute a RevCon as a QCC.[13]

Because RevCon QCC volumes would be eligible for the Strategy Cap, the Exchange proposes to modify the Fee Schedule to make clear that, for April 2020, the RevCon QCC trades that would be included in the revised Strategy Cap would not be eligible for the QCC Floor Broker credit during April 2020, which credit is available only to ATP Holders acting as Floor Brokers.[14]

To illustrate the difference in costs under the current and proposed Fee Schedule, consider the following example where a Floor Broker executes a RevCon QCC strategy on behalf of a non-Customer that is not a Specialist or e-Specialist as a QCC Order on the same day:

- A RevCon QCC in DEF comprised of 3,000 call options against 3,000 put options and 300,000 shares of stock would pay $1,200 in options fees.

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12 See proposed Fee Schedule, Section I.J., Strategy Execution Fee Cap. The Exchange will re-evaluate the time limitations on this change (i.e., whether it will need to apply to May) depending upon how long the Trading Floor remains temporarily closed and would file a separate proposed rule change if an extension is warranted.

13 The Exchange notes that while all Floor Brokers must be ATP Holders, not all ATP Holders act as Floor Brokers.

14 See proposed Fee Schedule, Section I.F., QCC Fees & Credits, n. 1 (providing that "[the Floor Broker credit will not apply to any QCC trades that qualify for the Strategy Cap during the month of April 2020 (per Section I.J.)").

- A RevCon QCC in ABC comprised of 1,000 call options against 1,000 put options and 100,000 shares of stock would pay $400 in options fees.

Under the current Fee Schedule, the total fees for these RevCon QCCs would be $1,600, whereas the proposed change to include these transactions in the Strategy Cap would limit these total RevCon QCC to $1,000.

The Exchange believes the proposed inclusion of RevCon QCCs in the Strategy Cap, which is available to all ATP Holders, would encourage ATP Holders (including those acting as Floor Brokers) to execute their RevCon QCC volume on the Exchange, particularly during the period when open outcry is unavailable and to continue to increase the number of such RevCon QCC transactions during the month of April.

Further, the Exchange's fees are constrained by intermarket competition, as ATP Holders may direct their order flow to any of the 16 options exchanges, including those with similar Strategy Caps.[15] Thus, ATP Holders have a choice of where they direct their order flow. This proposed change -- which allows RevCon QCCs executed by an ATP Holder to be included in the $1,000 daily Strategy Cap for the month of April 2020 -- is designed to incent ATP Holders to increase their RevCon QCC volumes on the Exchange. The Exchange notes that all market participants stand to benefit from increased volume, which promotes market depth, facilitates

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[15] See e.g., BOX Options Market LLC ("BOX") fee schedule, Section II.D (Strategy QOO Order Fee Cap and Rebate). BOX caps fees for each participant at $1,000 per day for the following strategies executed on the same trading day: short stock interest, merger, reversal, conversion, jelly roll, and box spread strategies. BOX also caps participant fees at $1,000 for all dividend strategies executed on the same trading day in the same options class. BOX also offers a $500 rebate to floor brokers for presenting certain Strategy QOO Orders on the BOX trading floor, which is applied "once the $1,000 fee cap for all dividend, short stock interest, merger, reversal, conversion, jelly roll, and box spread strategies is met." See id. The Exchange does not include dividend strategies in the Strategy Cap, nor does the Exchange offer a similar rebate.

tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange cannot predict with certainty whether any ATP Holders would benefit from this proposed fee change. At present, whether or when an ATP Holder qualifies for the Strategy Cap varies day-to-day, month-to-month. That said, the Exchange believes that ATP Holders would be encouraged to take advantage of the modified Cap. In addition, the Exchange believes the proposed change is necessary to prevent ATP Holders from diverting RevCon QCC order flow from the Exchange to a more economical venue.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[17] 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.

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

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16 15 U.S.C. 78f(b).

17 15 U.S.C. 78f(b)(4) and (5).

promoting market competition in its broader forms that are most important to investors and listed companies."[18]

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.[19] Therefore, no exchange currently 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.[20]

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, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and credits can have a direct effect on the ability of an exchange to compete for order flow. The proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as ATP Holders (including those

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18 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) ("Reg NMS Adopting Release").

19 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.

20 Based on OCC data, see id., in 2019, the Exchange's market share in equity-based options was 9.82% for the month of January 2019 and 8.08% for the month of January 2020.

acting as Floor Brokers) may direct their order flow to any of the 16 options exchanges, including those with similar Strategy Caps.[21]

The Exchange believes the proposed change to include RevCon QCCs executed by an ATP Holder in the $1,000 daily Strategy Cap for the month of April 2020 would encourage ATP Holders to execute their RevCon QCC volume on the Exchange, particularly during the period when open outcry is unavailable and to continue to increase the number of such RevCon QCC transactions during the month of April. Further, the proposal is designed to encourage ATP Holders to aggregate all Strategy Executions -- including RevCon QCCs -- at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Strategy Executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change 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.

Similarly, given the inclusion of RevCon QCC trades in the Strategy Cap in April 2020, the Exchange proposes that these trades not be charged the rates for QCC executions. And, because RevCon QCCs would not be subject to QCC fees, the Exchange believes it is reasonable that such trades should not receive the corresponding QCC credits, including the QCC Floor Broker Rebate. This proposed change would also add transparency and internal consistency making the Fee Schedule easier to navigate and comprehend.

The Exchange cannot predict with certainty whether any ATP Holders would benefit from this proposed fee change. At present, whether or when an ATP Holder qualifies for the

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21 See supra note 15 (regarding BOX's Strategy QOO Order Fee Cap and Rebate).

Strategy Cap varies day-to-day, month-to-month. That said, the Exchange believes that ATP Holders would be encouraged to take advantage of the modified Cap. In addition, the Exchange believes the proposed change is necessary to prevent ATP Holders from diverting RevCon QCC order flow from the Exchange to a more economical venue.

<u>The Proposed Rule Change is an Equitable Allocation of Credits and Fees</u>

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of the modified Strategy Cap (i.e., by executing more RevCon QCC transactions) or not. In addition, the proposal is designed to encourage ATP Holders to aggregate all Strategy Executions -- including RevCon QCCs -- at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Strategy Executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change 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.

<u>The Proposed Rule Change is not Unfairly Discriminatory</u>

The Exchange believes it is not unfairly discriminatory to modify the Strategy Cap because the proposed modification would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders are not obligated to try to achieve the Strategy Cap, nor are they obligated to execute RevCon trades as a QCC order. Rather, the proposal is designed to encourage ATP

Holders to utilize the Exchange as a primary trading venue for Strategy Executions (if they have not done so previously) or increase volume sent to the Exchange. To the extent that the proposed change attracts more Strategy Executions to the Exchange, particularly RevCon QCCs, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change 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 resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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."[22]

*Intramarket Competition*. The proposed change is designed to attract additional order flow (particularly RevCon QCC transactions) to the Exchange. The Exchange believes that the proposed modification to the Strategy Cap would incent market participants to direct their Strategy Execution volume to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Strategy Executions would increase opportunities for execution of other trading interest. The proposed expanded Strategy Cap would be available to all similarly-situated market participants that incur transaction fees on Strategy Executions, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. Moreover, the proposal to modify the Fee Schedule to make clear that RevCon QCC trades would neither be charged QCC rates nor receive QCC credits during April 2020, given the inclusion of such trades in the Strategy Cap, would not pose an undue burden on competition but would instead add clarity, transparency and internal consistency to the Fee Schedule regarding the treatment of RevCon QCCs for April 2020.

*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

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[22] See Reg NMS Adopting Release, supra note 18, at 37499.

multiply-listed equity and ETF options trades.[23] Therefore, no exchange currently 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.[24]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage ATP Holders to direct trading interest (particularly RevCon QCC transactions) 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.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar Strategy Caps, by encouraging additional orders to be sent to the Exchange for execution.[25]

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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23 See supra note 19.

24 Based on OCC data, supra note 20, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January, 2020.

25 See supra note 15 (regarding BOX's Strategy QOO Order Fee Cap and Rebate).

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[26] of the Act and subparagraph (f)(2) of Rule 19b-4[27] 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)[28] 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. Please include File Number SR-NYSEAMER-2020-31 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.

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26 15 U.S.C. 78s(b)(3)(A).

27 17 CFR 240.19b-4(f)(2).

28 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEAMER-2020-31. 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-2020-31, 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.[29]

J. Matthew DeLesDernier
Assistant Secretary

[29] 17 CFR 200.30-3(a)(12).