SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88834; File No. SR-NYSEAMER-2020-34)

May 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)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on May 1, 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") regarding the Professional Step-Up Incentive program and rebates for initiating a Customer Best Execution Auction. The Exchange proposes to implement the fee change effective May 1, 2020. 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.

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

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule regarding the Professional Step-Up Incentive program and rebates for initiating a Customer Best Execution ("CUBE") auction, in both Single-Leg and Complex CUBE transactions.

In brief, the proposed changes are designed to encourage ATP Holders to increase their Electronic volume in the "Professional" range as well as to submit initiating CUBE Orders.[4] Specifically, the Exchange proposes to modify the Professional Step-Up Incentive, which offers discounted rates on monthly Professional volume, and to expand the type of volume on which a rebate on initiating CUBE volume would apply (from Customer only to all account types).

The Exchange proposes to implement the rule changes on May 1, 2020.

Background

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

4 For purposes of this filing, "Professional" Electronic volume includes: Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm (the "Professional volume").

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."[5]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[6] Therefore, currently 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.[7]

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.

In response to this competitive environment, the Exchange has established various pricing incentives designed to encourage increased Electronic volume executed on the Exchange, including (but not limited to) the American Customer Engagement ("ACE") Program and the Professional Step-Up Incentive Program. The Exchange also offers an ACE Initiating Participant

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

6 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.

7 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.

Rebate to participants in the ACE Program that initiate CUBE Auctions as well as an alternative to the ACE Initiating Participant Rebate -- the Alternative Initiating Participant Rebate -- that enables non-ACE Program participants to qualify for a rebate on certain initiating CUBE Orders provided they meet certain Professional volume requirements and increase their initiating CUBE volume. The Exchange is proposing to (1) modify the Professional Step-Up Incentive Program to continue to encourage Professional volume and (2) expand the type of volumes to which the "CUBE Initiating Participant Rebates" are applied to encourage participants to increase their initiating CUBE volume.[8] To the extent that these incentives succeed, the increased liquidity on the Exchange would result in enhanced market quality for all participants.

Proposed Rule Change

Professional Step-Up Incentive

Section I.H. of the Fee Schedule sets forth the Professional Step-Up Incentive program (the "Professional Incentive"), which is comprised of Tiers A, B, and C, and offers discounted rates on monthly Professional volume for ATP Holders that increase their Professional volume by specified percentages of Total Industry Customer equity and ETF option average daily volume ("TCADV") over their August 2019 volume -- or, for new ATP Holders that increase such volume by a specified percentages of TCADV above 10,000 contracts ADV (the "Qualifying Volume").[9] Under the current Fee Schedule, ATP Holders that qualify for Tier C of

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8 As described herein, the "CUBE Initiating Participant Rebates" include both the ACE Initiating Participant Rebate and the Alternative Initiating Participant Rebate.

9 See Fee Schedule, Section I.H., Professional Step-Up Incentive, available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf. See also Fee Schedule, Key Terms and Definitions, TCADV (defining TCADV as "Total Industry Customer equity and ETF option average daily volume. TCADV includes OCC calculated Customer volume of all types, including Complex Order transactions and QCC transactions, in equity and ETF options").

the Professional Incentive are also eligible to receive ACE Program, Tier 1 credits.[10]

The Exchange proposes to introduce an additional incentive tier -- new Tier D -- for ATP Holders that increase (or "step up") their Qualifying Volume by 0.15% of TCADV. ATP Holders that execute sufficient volume to qualify for proposed Tier D would receive the more favorable per-contract rate of $0.20 for Penny Pilot issues and $0.50 for non-Penny Pilot issues[11] and would also be eligible to have ACE Program, Tier 1 credits applied to Customer executions.[12] The Exchange also proposes to amend the per contract rate for non-Penny Pilot Issues under Tier C to be $0.55 per contract. In addition, the Exchange proposes an additional incentive for ATP Holders that meet the Tier D requirements and increase Qualifying Volume by 0.20% of TCADV and execute posted Professional volume (i.e., that adds liquidity) of at least 0.10% of TCADV (the "additional incentive"). Specifically, ATP Holders that qualify for the proposed additional incentive would receive a three-cent ($0.03) per contract discount off of the Tier D rates.[13] Based on the proposed Tier D rates (of $0.20 and $0.50 for Penny and non-Penny issues, respectively), an ATP Holder that qualifies would be charged $0.17 and $0.47 for each such contract.

The Exchange cannot predict with certainty whether any ATP Holders would qualify for these additional incentives;, however, assuming historical behavior can be predictive of future

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10 See id., Section I.H. See also Fee Schedule, Section I.E. (describing the ACE Program and associated credits).

11 See Fee Schedule, Section I. A., supra note 9 (setting forth options transactions rates for Electronic Professional volume of $0.50 and $0.75 for Penny and Non-Penny issues respectively; except that Firm execution in Penny issues are charged $0.47 per contract).

12 See proposed Fee Schedule, Section I.H., Professional Step-Up Incentive. The Exchange also proposes to remove an errant open parentheses from the preamble of this section, which would add clarity and transparency to the Fee Schedule. See id.

13 See id., note 1.

behavior, the Exchange believes that at present participation rates, between two and four firms may be able to qualify for Tier D, and that qualification for the additional $0.03 reduction is achievable.

CUBE Auction Fees & Credits: CUBE Initiating Participant Rebates

Section I.G. of the Fee Schedule sets forth the rates for per contract fees and credits for executions associated with Single-Leg and Complex CUBE Auctions. To encourage participants to utilize CUBE Auctions, the Exchange offers rebates on certain initiating CUBE volume in the Customer range. The ACE Initiating Participant Rebate is available to ATP Holders that qualify for Tiers 1-5 of the ACE Program and applies to the each of the first 5,000 Customer contracts per Singe-Leg CUBE Order executed or to each of the first 1,000 Customer contracts per leg of a Complex CUBE Order executed.[14] The Exchange also offers an Alternative Initiating Participant Rebate, which similarly applies to the each of the first 5,000 Customer contracts per Singe-Leg CUBE Order for those participants that do not qualify for the ACE Program.[15] To qualify for the Alternative Initiating Participant Rebate, an ATP Holder must execute a minimum of 10,000 contracts ADV in the Professional range and increase their Initiating CUBE Orders by the greater of 20% over their August 2019 volume or 10,000 contracts ADV.[16] An ATP Holder that qualifies for both the ACE Initiating Participant Rebate (which is ($0.12)) and the Alternative Initiating Participant Rebate (which is ($0.10)) would be entitled only to the greater of the two rebates (i.e., the ACE Initiating Participant Rebate).[17]

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14 See Fee Schedule, see supra note 9, Section I.G., CUBE Auction Fees & Credits, note 2 to each table (the ACE Initiating Participant Rebate is ($0.12) and ($0.10) for Single- Leg and Complex CUBE Auctions, respectively).

15 See id. (the Alternative Initiating Participant Rebate is ($0.10) per contract).

16 See id.

17 See id.

The Exchange proposes to modify the ACE Initiating Participant Rebate and Alternative Initiating Participant Rebate (collectively, the "CUBE Initiating Rebates"; each a "Rebate") to remove the limitation of application to "Customer" contracts. As proposed, the CUBE Initiating Rebates would apply to the same number of executed CUBE Order contracts regardless of account type.[18] The Exchange is not proposing to alter the qualifying standards for, or the amount of, either Rebate at this time. This proposed change is designed to encourage a variety of account types to use the CUBE Auctions and to incent an increase in order flow.

The Exchange cannot predict with certainty whether any ATP Holders would qualify for the CUBE Initiating Rebates; however, assuming historical behavior can be predictive of future behavior, the Exchange believes that at present participation rates, between two and four firms may be able to qualify for expanded CUBE Initiating Rebates.

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 incentive programs.[19] Thus, ATP Holders have a choice of where they direct their order flow. The proposed modifications to the Professional Incentive program is designed to encourage ATP Holders to increase the amount of Professional volume directed to and executed on the

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18 See proposed Fee Schedule, Section I.G., CUBE Auction Fees & Credits, note 2 to each table. The Exchange also proposes to correct a typographical error (i.e., $(0.45)) that appears in note 1 to the Complex CUBE Auction pricing table to the correct ($0.45), which would add clarity and transparency to the Fee Schedule. See proposed Fee Schedule, Section I.G., CUBE Auction Fees & Credits, note 1.

19 See e.g., MIAX Options fee schedule, Section 1.a.iv, Professional Rebate Program, available here, https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_04012019.pdf (setting forth per contract credits on volume submitted for the account of Public Customers that are not Priority Customers, Non-MIAX Market Makers, Non-Member Broker Dealers, and Firms (collectively, Professional for purposes of MIAX program), provided the Member achieves certain Professional volume increase percentage thresholds (set forth in the schedule) in the month relative to the fourth quarter of 2015).

Exchange. In addition, the proposed expansion of the application of the CUBE Initiating Rebates are designed to encourage the submission of CUBE Orders from all account types, which should maximize price improvement opportunities. Because the CUBE Initiating Rebates are tied to Customer (ACE) and Professional (Alternative) order flow, the Exchange believes all market participants stand to benefit from increased order flow, which promotes market depth, facilitates tighter spreads and enhances price discovery.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[21] 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 promoting market competition in its broader forms that are most important to investors and listed companies."[22]

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20 15 U.S.C. 78f(b).

21 15 U.S.C. 78f(b)(4) and (5).

22 See Reg NMS Adopting Release, supra note 5, at 37499.

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[23] Therefore, currently 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.[24]

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 rebates can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed modifications to the Tier C of Professional Incentive is reasonable because, although the proposed associated fees for non-Penny Pilot contracts would increase, the rates would still be discounted and, as such, would continue to be designed to incent ATP Holders to increase the amount of Professional order flow directed to the Exchange. In addition, that rate would continue to be available under the proposed new Tier D. The Exchange believes that new Tier D as well as the additional incentive are reasonable because they are designed to incent ATP Holders to continue to increase the amount of order

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23 See supra note 6.

24 Based on OCC data, see supra note 7, 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.

flow directed to the Exchange. The Exchange further believes that expanding the application of the CUBE Initiating Rebates may encourage greater use of the CUBE Auctions, which may lead to greater opportunities to trade -- and for price improvement -- for all participants.

The Exchange notes that all market participants stand to benefit from increased transaction volume, as such increase promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants that do not participant in (or qualify for) the Professional Incentive (or the ACE) program.

The Exchange believes the proposed technical changes (see supra notes 12 and 18) would add clarity and transparency to the Fee Schedule making it easier to navigate and comprehend to the benefit of all market participants.

The Exchange cannot predict with certainty whether any participants would qualify for these additional incentives; however, assuming historical behavior can be predictive of future behavior, the Exchange believes that at present participation rates, between two and four firms may be able to qualify for the new Tier D, and that qualification for the additional $0.03 reduction is achievable; and that between two and four firms may qualify for the expanded CUBE Initiating Rebates.

Finally, to the extent the proposed changes attract greater volume and liquidity, the Exchange believes the proposed changes would improve the Exchange’s overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule changes are a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The proposed rule changes are designed to incent ATP Holders to direct liquidity to the Exchange in Electronic executions, similar to other exchange programs with competitive pricing programs, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.[25]

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

The Exchange believes the proposed rule change is an equitable allocation of its fees and rebates. The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of these incentives or not. Moreover, the proposals are designed to encourage ATP Holders to aggregate their executions at the Exchange as a primary execution venue. To the extent that the proposed changes attract more Professional or CUBE volume 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 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 be available to all similarly-situated market participants on an equal and non-discriminatory basis. Regarding the changes to Professional Incentive Tier C, ATP Holders would continue to have the option of availing themselves of the still-reduced rates available under that Tier and new Tier D, and the additional incentive, would increase opportunities to achieve further discounted fees. The Exchange's proposed expansion of the

25 See, e.g., supra note 19 (regarding MIAX Professional Rebate Program).

CUBE Initiating Rebates is designed to encourage greater use of the CUBE Auctions, which may lead to greater opportunities to trade -- and for price improvement -- for all participants.

The proposals are based on the amount and type of business transacted on the Exchange and ATP Holders are not obligated to try to achieve either of the incentive pricing options. Rather, the proposals are designed to encourage participants to utilize the Exchange as a primary trading venue (if they have not done so previously) or increase Electronic volume sent to the Exchange. To the extent that the proposed changes attract more 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 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 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.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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 changes further 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."[26]

Intramarket Competition. The proposed change is designed to continue to attract order flow to the Exchange by offering competitive rates and rebates (via the Professional Incentive program and the CUBE Initiating Rebates) based on increased volumes on the Exchange, which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. 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.

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.[27] Therefore, no exchange currently possesses

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[26] See Reg NMS Adopting Release, supra note 5, at 37499.

[27] See supra note 6.

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.[28]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees and rebates in a manner designed to encourage ATP Holders to direct 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.

The Exchange believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer similar pricing incentives, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed changes are designed to provide the public and investors with a Fee Schedule that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

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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28 Based on OCC data, supra note 7, 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.

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[29] of the Act and subparagraph (f)(2) of Rule 19b-4[30] 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)[31] 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-2020-34 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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29 15 U.S.C. 78s(b)(3)(A).

30 17 CFR 240.19b-4(f)(2).

31 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEAMER-2020-34. 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-2020-34, 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.[32]

J. Matthew DeLesDernier
Assistant Secretary

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[32] 17 CFR 200.30-3(a)(12).