

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-87404; File No. SR-NYSEAMER-2019-43)

October 28, 2019

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 October 15, 2019, 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”). The Exchange proposes to implement the fee change effective October 15, 2019. 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 it received on the proposed rule change. The text of those statements may be examined at the places

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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.

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 modify the Fee Schedule to introduce two incentive programs that are designed to encourage increased Manual and Electronic order flow to the Exchange to the benefit of all market participants.

In brief, and as described further below, the first proposed change is designed to encourage Manual transactions by NYSE American Options Market Makers and Specialists/e-Specialists by offering these participants discounted rates on any portion of their monthly Manual volume (excluding Strategy Executions and QCC Transactions) that exceeds, by a specified percentage of Total Industry Customer equity and ETF option average daily volume (“TCADV”),<sup>4</sup> either the participants’ August 2019 volume or, in the case of a new NYSE American Options Market Makers or and Specialists/e-Specialists, a base level of 15,000 ADV. The second proposed change is designed to encourage ATP Holders to increase their Electronic volume in the “Professional” range.<sup>5</sup> Specifically, the Exchange proposes to offer discounted rates on monthly Professional volume as well as certain credits on Customer Electronic volume, including for initiating CUBE volume, to ATP Holders that increase their Professional volume

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<sup>4</sup> The term “TCADV” is defined in the Key Terms and Definitions Section of the Preface of the Fee Schedule, see infra note 8 [sic]. TCADV includes Options Clearing Corporation (“OCC”) calculated Customer volume of all types, including Complex Order transactions and QCC transactions, in equity and ETF options.

<sup>5</sup> For purposes of this filing, “Professional” Electronic volume includes: Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm.

(excluding Strategy Executions, CUBE Auctions, and QCC Transactions) by specified percentages of TCADV over their August 2019 volume, or in the case of new ATP Holders, above a base level of 10,000 ADV. The Exchange believes that the baselines of 15,000 ADV Manual volumes for new NYSE American Options Market Makers and/or Specialists/e-Specialists and 10,000 ADV Professional volumes for new ATP Holders are appropriate because these volumes are comparable to trading volumes in August 2019 of active firms on the Exchange in the respective categories.

The Exchange proposes to implement the rule changes on October 15, 2019.

### **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 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>6</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 has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>7</sup> Therefore, no exchange possesses significant pricing power in the execution of

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<sup>6</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>7</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>.

multiply-listed equity & ETF options order flow. More specifically, in the first quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.<sup>8</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, competitive forces constrain options exchange transaction fees.

In response to this competitive environment, the Exchange has established various pricing incentives designed to encourage increased Manual and Electronic volume executed on the Exchange, including (but not limited to) the American Customer Engagement (“ACE”) Program. While the ACE Program is limited to Electronic Customer volume, the Exchange proposes two new pricing incentives that focus on encouraging additional Manual volume and Professional Electronic volume. 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

##### *Manual Volume Incentive for MMs and Specialists*

The Exchange proposes to offer NYSE American Options Market Makers (“MMs”) and Specialists/e-Specialists (“Specialists”) discounted rates on Manual transactions that exceed a specified volume threshold. Currently, Manual transactions in both Penny and Non-Penny Pilot

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<sup>8</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 to 8.84% for the month of April.

issues are subject to a per contract rate of \$0.25 for MMs and \$0.18 for Specialists.<sup>9</sup> As proposed, MMs or Specialists that increase their monthly Manual volumes by a specified percentage of TCADV over their August 2019 volume or, for new MMs or Specialists, that increase Manual volume by a specified percentage of TCADV above a base level of 15,000 ADV (“Increased Manual Volume”) are eligible to receive a discounted rate solely on the Increased Manual Volume as set forth below. The Exchange will exclude any volumes attributable to QCC trades or Strategy Execution from monthly calculations of base level or Increased Manual Volume, as these transactions are subject to separate pricing described in Fee Schedule, Sections I.F., I.G. and I.J., respectively. As proposed:

- MMs with Increased Manual Volume of at least 0.15% TCADV will be charged \$0.18 per contract for the Increased Manual Volume. (Specialists currently pay \$0.18 per contract for all Manual transactions); and
- MMs and Specialists with an Increased Manual Volume of at least 0.30% TCADV will be charged \$0.12 per contract for the Increased Manual Volume.<sup>10</sup>

For example, assume a MM executed 18,000 ADV Manual Volume in August, 2019. In October, the TCADV is 17,200,000. An increase of 0.15% of TCADV would be equal to 25,800 contracts. An increase of 0.30% of TCADV would be equal to 51,600 contracts.

Thus, if the MM executed 44,500 ADV in October, the MM would qualify for \$0.18

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<sup>9</sup> See Fee Schedule, Section I.A. (Options Transaction Fees and Credits, Rates for Options transactions), 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).

<sup>10</sup> See proposed Fee Schedule, Section I.A. (Options Transaction Fees and Credits, Rates for Options transactions), note 8 [sic].

per contract on the MM's volume above the 18,000 ADV (i.e., the Increased Volume Amount of 26,500 contracts). The MM's billing would reflect \$0.25 per contract on the MM's base amount of 18,000 ADV, and \$0.18 per contract on the Increased Manual Volume of 26,500 ADV.

If the same MM executed 74,000 ADV in October, the MM would qualify for \$0.12 per contract on the MM's volume above the 18,000 ADV (i.e., the Increased Volume Amount of 56,000 contracts). The MM's billing would reflect \$0.25 per contract on the MM's base amount of 18,000 ADV, and \$0.12 per contract on the Increased Manual Volume of 56,000 ADV.

The Exchange believes this proposed incentive pricing is appropriate because Market Makers (Specialists) serve a crucial role in the options markets by providing liquidity to facilitate market efficiency and functioning. The Exchange's fees are constrained by intermarket competition, as Market Makers can register on any or all of the 16 options exchanges. Thus, ATP Holders that are also members of other exchanges have a choice of where they register and operate as Market Makers. The proposed pricing incentive for MMs and Specialists is therefore designed to encourage these participants to (continue to) conduct Manual (open outcry) trading on the Floor of the Exchange. The Exchange notes that all market participants stand to benefit from increased Manual transaction volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in (Manual or Electronic) order flow from other market participants.

The Exchange cannot predict with certainty whether any ATP Holders would avail themselves of this proposed fee change, particularly because the proposed pricing incentive is new. Assuming historical behavior can be predictive of future behavior, however, the Exchange

believes that at present participation rates, between two and four firms may be able to qualify for discounted Manual rates.

*Professional Step-Up Incentive*

The Exchange also proposes to introduce an incentive for ATP Holders to increase (or “step up”) their Electronic Professional<sup>11</sup> volume by offering lower rates and credits based on volume growth (i.e., Tier A, Tier B, and Tier C). Specifically, an ATP Holder may qualify for discounted rates on its monthly Electronic Professional volume and receive credits on certain Electronic Customer volume, including initiating CUBE volume, provided the ATP Holder increases its monthly Electronic Professional volume by specified percentages of TCADV over their August 2019 volume or, for new ATP Holders, that increase Electronic Professional volume by a specified percentages of TCADV above a base level of 10,000 contracts ADV (the “Qualifying Volume”), as set forth in the table below. The Exchange will exclude any volumes attributable to QCC trades, CUBE Auctions, or Strategy Execution from monthly calculations of base level or Qualifying Volume, as these transactions are subject to separate pricing described

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<sup>11</sup> See supra note 5 (defining Professional volume).

in Fee Schedule Sections I.F., I.G. and I.J., respectively.

Professional Step-Up Incentive				
	Qualifying Volume as a % of TCADV	Per Contract Penny Pilot Rate	Per Contract Non-Penny Pilot Rate	ACE Benefits
Tier A	0.04%	\$0.42	\$0.65	N/A
Tier B	0.07%	\$0.35	\$0.55	Tier 1 Customer Credits only (per Section I.E.)
Tier C	0.09%	\$0.25	\$0.50	Tier 1 Customer Credits (per Section I.E.), plus ACE Initiating Participant Rebate – All issues (per Section I.G.)

As shown in the table above, the greater the increase in Qualifying Volume, the more benefits that accrue to the ATP Holder. To put in context, assume an ATP Holder executed Electronic Professional volume in August 2019 totaling 9,000 ADV and, in October, the TCADV is 17,200,000. To qualify for the Professional Step-Up Incentive program, that ATP Holder would need to execute Electronic Professional volume above its August 2019 that is at least 6,880 (i.e., 0.04% of TCADV) for Tier A; 12,040 (i.e., 0.07% of TCADV) for Tier B; or 15,480 (i.e., 0.09% of TCADV) for Tier C. If that same ATP Holder did not have August 2019 volume, it would have to execute at least this much volume above the 10,000 ADV base level.

ATP Holders that qualify for Tier A -- the lowest Professional volume growth threshold, would be charged reduced rates of \$0.42 and \$0.65 on Professional Electronic executions on Penny and Non-Penny issues, respectively.<sup>12</sup> ATP Holders that qualify for Tier B would be

<sup>12</sup> 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).

charged even further reduced rates -- of \$0.35 and \$0.55 on Professional Electronic executions on Penny and Non-Penny issues, respectively,<sup>13</sup> and would also receive credits on Professional Electronic Customer executions that are the same as those available to ATP Holders that achieve Tier 1 of the ACE Program (the “ACE Tier 1 Customer Credits”).<sup>14</sup> However, participants that qualify for Tier B of the Professional Step-Up Incentive do not receive any other benefits that inure to ATP Holders that qualify for ACE Tier 1. Finally, ATP Holders that qualify for Tier C would be charged the most reduced rates -- \$0.25 and \$0.50 on Electronic Professional executions on Penny and Non-Penny issues, respectively;<sup>15</sup> would receive the ACE Tier 1 Customer Credits; and would receive the “ACE Initiating Participant Rebate - All Issues” (or “ACE Rebate”), which applies rebates to certain volume that initiates a Customer Best Execution Auction or “CUBE.”<sup>16</sup>

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.<sup>17</sup> Thus, ATP Holders have a choice of where they direct their order flow. This

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<sup>13</sup> See proposed Fee Schedule, Section I.A. (Options Transaction Fees and Credits, Rates for Options transactions), note 8 [sic].

<sup>14</sup> See id.; see also Fee Schedule, Section I.E. (describing ACE Program).

<sup>15</sup> See id.

<sup>16</sup> See Fee Schedule, Section I.G. (describing CUBE Auctions Fees & Credits, for Single-Leg and Complex CUBE Auctions). In the case of a Single-Leg CUBE Auction, the pricing table (at note 2), states that the ACE Rebate “is applied to each of the first 5,000 Customer contracts of a CUBE Order executed in a [Single-Leg] CUBE Auction,” and is available to participants that qualify for ACE Tier 1. See id. In the case of a Complex CUBE Auction, the pricing table (at note 2), ACE “is applied to each of the first 1,000 Customer contracts per leg of a Complex CUBE Order executed in a Complex CUBE Auction,” and is available to participants that qualify for ACE Tier 1. See id.

<sup>17</sup> 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](https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_04012019.pdf) (setting forth per contract credits on

proposed Professional Step-Up Incentive program is designed to encourage ATP Holders to increase the amount of Electronic Professional volume directed to and executed on the Exchange. The Exchange notes that all market participants stand to benefit from increased Electronic Professional volume, which promotes market depth, facilitates 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 avail themselves of this proposed fee change, particularly because the proposed Professional Step-Up Incentive program is new. Assuming historical behavior can be predictive of future behavior, however, the Exchange believes that at present participation rates, between two and four firms may be able to qualify for Professional Step-Up Incentive program.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>19</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.

### The Proposed Rule Change is Reasonable

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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).

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

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>20</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 has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>21</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the first quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.<sup>22</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, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to

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<sup>20</sup> See Reg NMS Adopting Release, supra note 6, at 37499.

<sup>21</sup> See supra note 7.

<sup>22</sup> Based on OCC data, see supra note 8, in 2019, the Exchange’s market share in equity-based options declined from 9.82% for the month of January to 7.86% for the month of September.

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

#### *Manual Volume Incentive for MMs and Specialists*

The Exchange believes that the proposal to offer reduced rates for MMs and Specialists on Increased Manual Volume is reasonable because it is designed to incent these participants to increase the number and type of Manual executions sent to the Floor of the Exchange. Market Makers (and Specialists) serve a crucial role in the options markets by providing liquidity to facilitate market efficiency and functioning. The Exchange's fees are constrained by intermarket competition, as Market Makers can register on any or all of the 16 options exchanges. ATP Holders that are also members of other exchanges have a choice of where they register as Market Makers. Thus, the Exchange believes that this proposed rule change will provide an incentive for MMs and Specialists to (continue to) conduct (open outcry) Manual trading on the Exchange with increased volume. The Exchange notes that all market participants stand to benefit from increased Manual transaction volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

#### *Professional Step-Up Incentive*

The Exchange believes that the proposed Professional Step-Up Incentive is reasonable because it is designed to incent ATP Holders to increase the amount of Electronic Professional order flow directed to the Exchange. In addition, because the top two tiers (B and C) of this program allow qualifying ATP Holders to also receive credits on Electronic Customer volume (per Tier 1 of the ACE program) and, for Tier C only, to achieve rebates on certain initiating CUBE Auction order flow, the proposed program may encourage ATP Holders to direct both

Professional and Customer Electronic order flow, including initiating CUBE volume to the Exchange. The Exchange notes that all market participants stand to benefit from increased Electronic transaction volume -- whether Professional or Customer, 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 participate in (or qualify for) the Professional Step-Up Incentive program.

The Exchange believes that the baselines of 15,000 ADV Manual volumes for new NYSE American Options Market Makers and/or Specialists/e-Specialists and 10,000 ADV Professional volumes for new ATP Holders are reasonable because these volumes are comparable to trading volumes in August 2019 of active firms on the Exchange in the respective categories.

Regarding both proposed pricing changes, the Exchange cannot predict with certainty whether any participants would avail themselves of the proposed fee changes, particularly because both of the proposed incentives are new. Assuming historical behavior can be predictive of future behavior, however, the Exchange believes that at present participation rates, between two and four firms may be able to qualify for the discounted Manual rates and between two and four firms may be able to qualify for the Professional Step-Up Incentive.<sup>23</sup>

Finally, to the extent the proposed pricing incentives attract greater volume and liquidity (to the Floor or otherwise), 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

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<sup>23</sup> The Exchange notes that the "two and four" firms that may qualify for the different incentives proposed herein are not the same "two and four" firms.

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 both Manual and Electronic executions, similar to other exchange programs with competitive pricing programs,<sup>24</sup> thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.

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 proposals -- both for discounted rates on Increased Manual Volume for MMs and Specialists and the Professional Step-Up Incentive program -- are based on the amount and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of these incentive or not. Moreover, the proposals are designed to encourage MMs, Specialists, and ATP Holders to aggregate their executions -- particularly Manual and Electronic Professional -- at the Exchange as a primary execution venue. To the extent that the proposed changes attract more Manual and (Professional) Electronic volume to the Exchange, 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 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 Exchange believes that the baselines of 15,000 ADV Manual volumes for new NYSE American Options Market Makers and/or Specialists/e-Specialists and 10,000 ADV Professional volumes for new ATP Holders are appropriate because these volumes are

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<sup>24</sup> See, e.g., supra note 17 (regarding MIAX Professional Rebate Program).

comparable to trading volumes in August 2019 of active firms on the Exchange in the respective categories.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes that the proposals -- both for discounted rates on Increased Manual Volume for MMs and Specialists and the Professional Step-Up Incentive program -- are not unfairly discriminatory because the proposed modifications would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The Exchange believes that the baselines of 15,000 ADV Manual volumes for new NYSE American Options Market Makers and/or Specialists/e-Specialists and 10,000 ADV Professional volumes for new ATP Holders are not unfairly discriminatory because these volumes are comparable to trading volumes in August 2019 of active firms on the Exchange in the respective categories.

The proposals are based on the amount and type of business transacted on the Exchange and MMs, Specialists, and ATP Holders are not obligated to try to achieve either of the incentive pricing options. Rather, the proposals are designed to encourage these participants to utilize the Exchange as a primary trading venue (if they have not done so previously) or increase (both Manual and 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, among other things, 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.

With regard to the proposed discount rates on certain increases in Manual volume by MMs and Specialists, the Exchange notes that the Manual rates charged to these participants are already lower than the rates charged to other participants.<sup>25</sup> MMs (and Specialists) serve a crucial role in financial markets by providing liquidity to facilitate market efficiency and functioning. Market Makers, unlike other market participants, add value through continuous quoting and the commitment of capital. Because Market Makers have these obligations and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering the proposed reduced Manual rates is equitable and not unfairly discriminatory in light of their obligations and the costs associated therewith.

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

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<sup>25</sup> See Fee Schedule, Section I.A., supra note 9 (setting forth rates for Manual options transactions: MMs and Specialists are charged \$0.18 per contract, while all other non-Customer participant (save for DOMMs) is charged \$0.25 per contract).

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>26</sup>

*Intramarket Competition.* The proposed changes are designed to attract additional order flow (both Manual and Electronic, particularly Professional volume) to the Exchange. The Exchange believes that the proposed pricing incentives would incent market participants to direct additional volume to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Manual and Electronic Professional volume would increase opportunities for execution of other trading interest. The proposed pricing incentives would be available to all similarly-situated market participants that incur transaction fees on Manual and Electronic executions, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Market Makers, unlike other market participants, add value through continuous quoting and the commitment of capital. Because Market Makers have these obligations and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering the proposed reduced rates, in light of their obligations and the costs associated therewith, does not create an undue burden on non-Market Makers.

*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

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<sup>26</sup> See Reg NMS Adopting Release, supra note 6, at 37499.

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 has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>27</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the first quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.<sup>28</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 encourage ATP Holders to direct trading interest (both Manual and Electronic) 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 pricing incentives, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed change is 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

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<sup>27</sup> See supra note 7.

<sup>28</sup> Based on OCC data, supra note 8, the Exchange's market share in equity-based options declined from 9.82% for the month of January to 8.84% for the month of April.

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>29</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>30</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>31</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 No. SR-NYSEAMER-2019-43 on the subject line.

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<sup>29</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>30</sup> 17 CFR 240.19b-4(f)(2).

<sup>31</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, D.C. 20549-1090.

All submissions should refer to File No. SR-NYSEAMER-2019-43. 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, D.C. 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 No. SR-NYSEAMER-2019-43, 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>32</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>32</sup> 17 CFR 200.30-3(a)(12).