

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88405; File No. SR-NYSEAMER-2020-16)

March 17, 2020

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

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 10, 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 raise the existing cap on the available credit for certain Qualified Contingent Cross (“QCC”) transactions. The Exchange proposes to implement the fee change effective March 10, 2020. 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

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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.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of this filing is to modify the existing cap on the available credit to Floor Brokers that execute a specified number of Qualified Contingent Cross (“QCC”) transactions.

Currently, Floor Brokers earn a credit for executed QCC orders of \$0.07 per contact up to 300,000 contracts or \$0.10 per contract above 300,000.<sup>4</sup> QCC executions in which a Customer or Professional Customer is on both sides of the QCC trade are not eligible for the Floor Broker credit.<sup>5</sup> The Exchange currently limits the maximum Floor Broker credit to \$375,000 per month per Floor Broker firm.<sup>6</sup> The Exchange proposes to increase this limit to \$425,000. The Exchange believes the proposed increase would continue to incent ATP Holders acting as Floor Brokers to achieve the highest credit possible.

The Exchange proposes to implement the fee change effective March 10, 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

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<sup>4</sup> See Fee Schedule, Section I.F., QCC Fees & Credits, n. 1, available [here](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf), [https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE\\_American\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf).

<sup>5</sup> See *id.*, note 1.

<sup>6</sup> See *id.* (providing that “[t]he maximum Floor Broker credit paid shall not exceed \$375,000 per month per Floor Broker firm”).

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>7</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>8</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the fourth quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.<sup>9</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 incentives, including the credits for QCC transactions provided to ATP Holders acting as Floor Brokers, to encourage such ATP Holders to execute QCCs on the Exchange.

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<sup>7</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>8</sup> The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

<sup>9</sup> Based on OCC data, see id., 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.

As noted above, the Exchange currently limits the maximum Floor Broker rebate for QCCs to \$375,000 per month per Floor Broker firm. The Exchange proposes to increase this amount to \$425,000.<sup>10</sup> The Exchange believes the proposed increase would continue to incent ATP Holders acting as Floor Brokers to achieve the highest rebate possible.

#### Proposed Rule Change

Floor Brokers currently earn a rebate for executed QCC orders of \$0.07 per contact up to 300,000 contracts or \$0.10 per contract above 300,000, provided that a Customer or Professional Customer (collectively, “Customer”) is not on both sides of the QCC trade.<sup>11</sup> The Exchange currently limits the maximum Floor Broker rebate to \$375,000 per month per Floor Broker firm.<sup>12</sup> The Exchange proposes to increase this to \$425,000.

The Exchange’s fees are constrained by intermarket competition, as ATP Holders acting as Floor Brokers may direct their order flow to any of the 16 options exchanges, including those with similar QCC rebate programs and associated caps on same.<sup>13</sup> Thus, ATP Holders have a choice of where they direct their order flow. This proposed change -- which increases the maximum available credit -- is designed to incent ATP Holders acting as Floor Brokers to increase their QCC volumes on the Exchange. The Exchange notes that all market participants stand to benefit from increased volume, which promotes market depth, facilitates tighter spreads

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<sup>10</sup> See Fee Schedule, Section I.F., QCC Fees & Credits, n. 1,

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

<sup>13</sup> See, e.g., NASDAQ PHLX, Options 7 Pricing Schedule, Section 4. Multiply Listed Options Fees, QCC Rebate Schedule, [available here](http://nasdaqphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F3%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2DIlcrules%2F), <http://nasdaqphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F3%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2DIlcrules%2F> (providing that “[t]he maximum QCC Rebate to be paid in a given month will not exceed \$550,000”).

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 acting as Floor Brokers would avail themselves of this proposed fee change. Assuming historical behavior can be predictive of future behavior, the Exchange estimates that at least three firms may benefit from this fee change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>15</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

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>16</sup>

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<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> See Reg NMS Adopting Release, supra note 7, 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.<sup>17</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the fourth quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.<sup>18</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 exchange transaction fees and credits can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed modification to increase the allowable cap on the Floor Broker credit for QCC transactions is designed to incent ATP Holders acting as Floor Brokers to increase the number QCC transactions executed on the Exchange. The proposal caps fees on all similar (QCC) transactions, regardless of size and similarly-situated ATP Holders can opt to try to achieve the modified (and increased) credit. The proposal is designed to encourage ATP Holders acting as Floor Brokers to execute all QCC transactions on Exchange. To the extent that the proposed change attracts more QCC trades to the Exchange Trading Floor, this

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<sup>17</sup> See supra note 8.

<sup>18</sup> Based on OCC data, see supra note 9, 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.

increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

Finally, to the extent the proposed change continues to attract greater volume and liquidity (to the Floor or otherwise), the Exchange believes the proposed change 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 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 OTP Holders may direct their order flow to any of the 16 options exchanges, including those with similar QCC credit programs and associated caps on same.<sup>19</sup> Thus, ATP Holders have a choice of where they direct their order flow -- including their QCC transactions. The proposed rule change is designed to incent OTP Holders to direct liquidity to the Exchange -- in particular QCC transactions, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.

The Exchange cannot predict with certainty whether any ATP Holders acting as Floor Brokers would avail themselves of this proposed fee change. Assuming historical behavior can be predictive of future behavior, the Exchange estimates that at least three firms may benefit from this fee change.

#### 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

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<sup>19</sup> See supra note 13 (regarding NASDAQ PHLX's \$550,000 monthly cap on QCC rebate).

credits. The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders acting as Floor Brokers can opt to avail themselves of the modified cap on QCC transaction credits (i.e., by executing more QCC transactions) or not. As the proposal is designed to encourage Floor Brokers to execute QCC transactions on the Exchange, any resulting increase in 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.

#### The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to modify the maximum allowable credit on QCC transactions to Floor Brokers 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 acting as Floor Brokers are not obligated to try to achieve the modified cap. Rather, the proposal is designed encourage ATP Holders acting as Floor Brokers to utilize the Exchange as a primary trading venue for QCC transactions (if they have not done so previously) or increase volume sent to the Exchange. To the extent that the proposed change attracts more QCC transactions 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 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."<sup>20</sup>

*Intramarket Competition.* The proposed change is designed to attract additional order flow (particularly QCC trades) to the Exchange. The Exchange believes that the proposed increased QCC Floor Broker credit would incent market participants to direct their QCC 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 increased cap would be available to all similarly-situated market

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<sup>20</sup> See Reg NMS Adopting Release, supra note 7, at 37499.

participants that execute QCC transactions, and, as such, the proposed change would not impose a disparate burden on competition among market participants 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 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 fourth 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 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 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 QCC credits

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<sup>21</sup> See supra note 8.

<sup>22</sup> Based on OCC data, supra note 9, 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.

and caps thereon, by encouraging additional orders to be sent to the Exchange for execution.<sup>23</sup>

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

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>24</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>25</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>26</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>23</sup> See supra note 13.

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 240.19b-4(f)(2).

<sup>26</sup> 15 U.S.C. 78s(b)(2)(B).

#### 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-2020-16 on the subject line.

##### 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-2020-16. 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-2020-16, 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>27</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).