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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-85553; File No. SR-NYSEAMER-2019-09)

April 8, 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 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 27, 2019, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (“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 April 1, 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 to modify the Fee Schedule to introduce a Floor Broker Volume Rebate Program ("FB Volume Rebate") for Floor Broker organizations (each a "Floor Broker").

The Exchange proposes to offer Floor Brokers the opportunity to qualify for a \$5,000 rebate each month that the Floor Broker increases its Average Daily Volume ("ADV") by a certain percentage over one of two benchmarks. Specifically, a Floor Broker may qualify for the FB Volume Rebate by increasing its contract sides in billable manual ADV by at least 50% over the greater of:

- (i) 20,000 contract sides in billable manual ADV; or
- (ii) The Floor Broker's total billable manual ADV in contract sides during the second half of 2018 - i.e., July through December 2018.

As proposed, the Exchange would exclude Customer volume, Firm Facilitation trades, and QCCs from the calculation of a Floor Broker's billable manual ADV for purposes of the FB Volume Rebate. In addition, the Exchange proposes to exclude from the FB Volume Rebate any volume included in the calculation to achieve the Firm Monthly Fee Cap and the Strategy Execution Fee Cap, regardless of whether either of these caps is achieved, because fees on such volume are already capped and therefore such volume does not increase billable manual volume.

For example, if a Floor Broker achieves 30,000 contract sides (i.e., an increase of 50% over 20,000 -- the minimum volume requirement under the first benchmark), that Floor Broker

would qualify for the monthly \$5,000 FB Volume Rebate. However, if that Floor Broker's billable manual ADV in contract sides during the second half of 2018 was 30,000, that Floor Broker would have to achieve at least 45,000 contract sides (i.e., an increase of 50% over 30,000) to receive the rebate -- as the FB Volume Rebate applies to the "50% over the greater of" the two benchmarks, which in this case would be the Floor Broker's 2018 second half of year volume.

As described above, the Exchange proposes to enumerate which volume would be excluded from the calculation for the FB Rebate Volume. If not specifically enumerated, volume would be eligible to be included in the calculation. For example, Floor Brokers that participate in the Floor Broker Fixed Cost Prepayment Incentive Program (the "FB Prepay Program")<sup>4</sup> may apply the same monthly contract sides in billable ADV to qualify for both the FB Volume Rebate and the Percentage Growth Incentive available via the FB Prepay Program provided the Floor Broker meets the (different) requirements of each incentive program.<sup>5</sup>

The Exchange proposes to amend Section III.E of the Fee Schedule to reflect the FB Volume Rebate by adding a new heading under Section E entitled "Floor Broker Programs,"

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<sup>4</sup> See Fee Schedule, Section III.E (Floor Broker Fixed Cost Prepayment Incentive Program), available here: [https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE\\_American\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf), (providing that the Percentage Growth Incentive allows participating Floor Broker's [sic] to qualify for incrementally larger discounts on prepaid Eligible Fixed Costs by increasing their ADV during 2019 by incrementally increasing percentages (i.e., 30%, 65% or 100%, respectively), above the greater of: (i) 11,000 contract sides in billable manual ADV; or (ii) 110% of the Floor Broker's total billable manual ADV in contract sides during the second half of 2017 – i.e., July through December 2017).

<sup>5</sup> Consistent with the Exchange's practice of applying monthly credits/rebates, the FB Volume Rebate (when achieved) would be paid monthly on a one-month lag (i.e., if a Floor Broker achieves the benchmark in May 2019, the \$5,000 Rebate will be applied in July 2019); whereas the Percentage Growth Incentive earned in 2019 would be paid in January 2020. See, e.g., Fee Schedule, Section III.E (providing that "[p]articipating Floor Broker organizations that qualify for the Percentage Growth Incentive will receive their 2019 rebate in January 2020").

renumbering current Section III.E as Section III.E.1 and adding the proposed FB Volume Rebate as proposed Section III.E.2 to the Fee Schedule.<sup>6</sup> The proposed FB Volume Rebate is designed to encourage Floor Brokers to increase their ADV in billable manual contract sides, regardless of whether the Floor Broker participates in the FB Prepay Programs [sic], as this should encourage more manual volume to be directed to the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>8</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 proposal to introduce the FB Volume Rebate is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the Exchange is offering two alternative means to achieve the same rebate to ensure that Floor Brokers that are new to the Exchange (or Floor Brokers that did not execute more than 20,000 ADV in contract sides in the second half of 2018) could nonetheless be eligible for the FB Volume Rebate. The Exchange believes that 20,000 ADV is a reasonable minimum threshold above which a participating Floor Broker would need to increase volume in order to earn the proposed rebate. For Floor Brokers that exceeded the 20,000 ADV in the second half of 2018, the Exchange believes it is reasonable to use each Floor Broker's historical volume as a benchmark against which to measure future growth to earn the

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<sup>6</sup> The Exchange also proposes to make conforming changes to the Table of Contents. See proposed Fee Schedule, Table of Contents, Preface, Section III.E.,1., 2.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

proposed rebate. Regardless of which benchmark a Floor Broker's growth is measured against, all Floor Brokers that aim to achieve the rebate would be required to increase volume executed on the Exchange. Thus, the proposed change is equitable and not unfairly discriminatory because it applies to qualifying Floor Brokers equally and because Floor Brokers serve an important function in facilitating the execution of orders via open outcry, which as a price-improvement mechanism, the Exchange wishes to encourage and support.

Moreover, offering incentives to encourage Floor Broker executions of manual volume is not new or novel as other options exchanges provide incentives to other specific market participants for achieving volume levels, including the Percentage Growth Incentive on the Exchange for Floor Brokers that participated in the FB Prepay Program.<sup>9</sup> For example, the Cboe Exchange, Inc. ("Cboe") offers a \$9,000 or \$15,000 rebate to Cboe floor brokers that execute an average of 14,000 or 25,000, respectively, "customer and/or professional customer and voluntary professional open-outcry contracts per day over the course of a calendar month in all underlying symbols," with certain enumerated exclusions.<sup>10</sup> Like similar offerings on the Exchange and at other options exchange, the Exchange believes the proposed FB Volume Rebate would similarly incent Floor Brokers to increase their billable volume executed in open outcry on the Exchange, which would benefit all market participants by expanding liquidity and providing more trading opportunities, even to non-Floor Broker market participants.

The Exchange believes that the proposed organizational and non-substantive changes to the rule text to incorporate the proposed FB Volume Rebate under Section III.E of the Fee

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<sup>9</sup> See supra note 4.

<sup>10</sup> See Cboe Fee Schedule, footnote 25 (at p. 19), available here: <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>. The Exchange notes that, unlike Cboe, it excludes Customer executions from qualifying volumes, while Cboe specifies excluded indices and symbols.

Schedule would provide clarity, transparency and internal consistency to the Fee Schedule Exchange rules and would to protect investors and the investing public by making the Exchange rules easier to navigate and comprehend.

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. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because while the proposed change benefits Floor Brokers that reach the qualifying volume thresholds, Floor Brokers serve an important function in facilitating the execution of orders via open outcry, which promotes price discovery on the public markets. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only affects trading on the Exchange. To the extent that the proposed change makes the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Exchange market participants.

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>11</sup> of

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

the Act and subparagraph (f)(2) of Rule 19b-4<sup>12</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.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2019-09 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.

All submissions should refer to File Number SR-NYSEAMER-2019-09. 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

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<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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-2019-09 and should be submitted on or before [INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

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