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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-86391; File No. SR-NYSEAMER-2019-27]

July 16, 2019

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

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 July 2, 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") by revising the Options Regulatory Fee ("ORF"), effective August 1, 2019. 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

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

2 15 U.S.C. 78a.

3 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 Exchange proposes to amend the Fee Schedule to revise the amount of the ORF, effective August 1, 2019. Specifically, to respond to increased options transaction volumes in 2018, which reverted (in part) in the first half of 2019, the Exchange proposes to lower the ORF to $0.0054 (from $0.0055) per contract side for the remainder of 2019.

Background

As a general matter, the Exchange may only use regulatory funds such as ORF "to fund the legal, regulatory, and surveillance operations" of the Exchange.[4] More specifically, the ORF is designed to recover a material portion, but not all, of the Exchange's regulatory costs for the supervision and regulation of ATP Holders (the "ATP Regulatory Costs"). The majority of the ATP Regulatory Costs are direct expenses, such as the costs related to in-house staff, third-party service providers, and technology. The direct expenses support the day-to-day regulatory work relating to the ATP Holders, including surveillance, investigation, examinations and enforcement. Such direct expenses represent approximately 91% of the Exchange's total ATP Regulatory Costs. The indirect expenses include human resources and other administrative costs.

The ORF is assessed on ATP Holders for options transactions that are cleared by the ATP Holder through the Options Clearing Corporation ("OCC") in the Customer range regardless of

[4] The Exchange considers surveillance operations part of regulatory operations. The limitation on the use of regulatory funds also provides that they shall not be distributed. See Twelfth Amended and Restated Operating Agreement of NYSE American LLC, Article IV, Section 4.05 and Securities Exchange Act Release No. 79114 (October 18, 2016), 81 FR 73117 (October 24, 2016) (SR-NYSEMKT-2013-93).

the exchange on which the transaction occurs.[5] All options transactions must clear via a clearing firm and such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, i.e., the entering firms. Because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American,[6] the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders. In addition, the Exchange notes that the regulatory costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the regulatory costs associated with ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs.[7] As a result, the costs associated with administering the customer component of the Exchange's overall

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5 See Fee Schedule, Section VII, Regulatory Fees, Options Regulatory Fee ("ORF"), available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.

6 See id. The Exchange uses reports from OCC when assessing and collecting the ORF. The ORF is not assessed on outbound linkage trades. An ATP Holder is not assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE American. See id.

7 The Exchange notes that many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. See, e.g., Securities Exchange Act Release No. 61588 (February 25, 2010).

regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., ATP Holder proprietary transactions) of its regulatory program.

ORF Revenue and Monitoring of ORF

Exchange rules establish that the Exchange may only increase or decrease the ORF semi-annually, that any such fee change will be effective on the first business day of February or August, and that market participants must be notified of any such change via Trader Update at least 30 calendar days prior to the effective date of the change.[8]

Because the ORF is based on options transactions volume, ORF revenue to the Exchange is variable. For example, if options transactions reported to OCC in a given month increase, the ORF collected from ATP Holders will increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from ATP Holders will decrease as well. Accordingly, the Exchange monitors the amount of revenue collected from the ORF to ensure that this revenue does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the "Commission").

In addition, because Exchange rules establish that ORF may be adjusted only every six months, the Exchange does not believe it is appropriate to adjust ORF based on short-term changes in options transaction volume.[9] For example, if options volume materially increases or decreases during a six-month period, the Exchange believes it is appropriate to wait an additional

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8 See Fee Schedule, supra note 5.

9 In 2013, in response to feedback from participants requesting greater certainty as to when ORF changes may occur, the Exchange modified its Fee Schedule to specify that it may only increase or decrease the ORF semi-annually. See Securities Exchange Act Release No. 70499 (September 25, 2013), 78 FR 60361 (October 1, 2013) (SR-NYSEMKT-2013-76).

six-month period to assess whether such increase or decrease in options volume either continues, is sustained at that level, or reverses in such a way that the average reported options transaction volume in fact has remained stable year over year.

Proposal

The Exchange is proposing to decrease the amount of ORF that will be collected by the Exchange from $0.0055 per contract side to $0.0054 per contract side. The Exchange proposes this change because from 2017 to 2018, options transaction volume increased to a level that if the ORF is not adjusted, the ORF revenue to the Exchange year-over-year could exceed a material portion of the Exchange's regulatory costs.

The last time the Exchange changed the ORF fee was February 2014.[10] Over that time, options transaction volumes fluctuated with a slight increase beginning in 2017. But prior to the 2018 increases in options transaction volume, any prior options transaction volume increases did not result in the ORF revenue to the Exchange increasing to levels such that the Exchange recovered via the ORF more than a material portion of the Exchange's regulatory costs. The Exchange believes that 2018 was a unique year because, from 2017 to 2018, there was a 23.95% year-over-year increase in Total Industry Customer equity and ETF option average daily volume ("TCADV").[11] By contrast, the year-over-year TCADV in prior years was down between 2014 and 2016. For example, TCADV decreased 3.1% from 2014 to 2015 and 2.3% from 2015 to 2016. The year-over-year options volume experienced a slight uptick from 2016 to 2017, when

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10 See Securities Exchange Act Release No. 71410 (January 24, 2014), 79 FR 5506 (January 31, 2014) (SR-NYSEMKT-2014-09).

11 TCADV includes OCC calculated Customer volume of all types, including Complex Order transactions and QCC transactions, in equity and ETF options. The Exchange believes that TCADV is a proxy for how to measure trends in options transaction volume. See supra note 5, Fee Schedule, Key Terms and Definitions.

TCADV increased 2.0%, which was followed in 2018 by the 23.95% spike in volume. In 2019, options volume has declined year-over-year by 4.5% -- which is the largest drop in year-over-year options volume since 2011 to 2012. Thus, options volumes for the first five months of 2019 have not sustained the 2018 volume level and have in fact declined from that level.

To determine whether ORF fees should be adjusted, the Exchange has reviewed not only the increase in options transaction volume in 2018, but also options transaction volume in the first five months of 2019. Based on 2019 transaction volumes, which are down by 4.5%, the Exchange projects that for the remainder of 2019, options transaction volume likely will continue to decline from the 2018 high.

The Exchange believes that is has sufficient information based both on the 2018 options transaction volume and the trend in options transaction volume in 2019 to determine how to adjust the ORF for the second half of 2019. Taking into consideration both the increase in options transaction volume in 2018 - which translated to increased ORF revenue to the Exchange - and the reduced options transaction volume in 2019, which results in reduced ORF revenue to the Exchange, the Exchange proposes to decrease the ORF from $0.0055 to $0.0054 per contract side, effective August 1, 2019.[12] The proposed decrease is based on the Exchange's estimated projections for its regulatory costs, balanced with the recent increase in options volumes. The Exchange cannot predict whether options volume will remain at the 2018 level going forward and projections for future regulatory costs are estimated, preliminary and may change. However, the Exchange believes that revenue generated from the ORF (as modified) will continue to cover a material portion, but not all, of the Exchange's regulatory costs.

Consistent with the Fee Schedule, the Exchange has notified ATP Holders of the

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[12] See proposed Fee Schedule, Section VII, Regulatory Fees, ORF. The Exchange proposes to make clear that the current fee would be in effect until the end of July. See id.

proposed change to the ORF via Trader Update at least of the thirty (30) calendar days prior to the proposed operative date, August 1, 2019.[13] The Exchange believes that this will ensure that market participants are prepared to configure their systems to account properly for the revised ORF.

Finally, The Exchange proposes to delete obsolete language in the ORF rule text, regarding Mini Options, which was inadvertently not eliminated when the Exchange filed a "clean up" fee filing to remove all such references.[14]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[15] of the Act, in general, and Section 6(b)(4) and (5)[16] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

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13 See current (and proposed) Fee Schedule, Section VII, Regulatory Fees, ORF. See also Trader Update, dated June 25, 2018, NYSE Options - Options Regulatory Fee (ORF) Modifications, available here: https://www.nyse.com/trader-update/history#110000139057.

14 See id. See also Securities Exchange Act Release No. 84603 (November 14, 2018), 83 FR 58795 (November 21, 2018) (NYSEAmer-2018-48) (filing to eliminate obsolete charges, including removing obsolete references to fees for Mini Options).

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

16 15 U.S.C. 78f(b)(4) and (5).

The Proposal is Reasonable

The Exchange believes the proposed fee change is reasonable because it would help ensure that revenue collected from the ORF does not exceed a material portion of the Exchange's regulatory costs. The Exchange has designed the ORF to generate revenues that would be less than or equal to the Exchange's regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. As noted above, the Exchange may only use regulatory funds such as ORF "to fund the legal, regulatory, and surveillance operations" of the Exchange.[17] In this regard, the ORF is designed to recover a material portion, but not all, of the Exchange's regulatory costs for the supervision and regulation of ATP Regulatory Costs.

To determine whether ORF fees should be adjusted, the Exchange considered not only the increase in options transaction volume in 2018, but also options transaction volume in the first five months of 2019, which is down. Based on 2019 options transaction volume (to date), which is down by 4.5%, and the Exchange's projection that such volumes will remain stable at best and continue to decline at worse, the Exchange believes it is reasonable to decrease the amount of ORF collected by the Exchange from $0.0055 per contract side to $0.0054 per contract side.

The Exchange believes that the proposal deleting outdated reference to products no longer traded (i.e., Mini Options) is reasonable as it would streamline the Fee Schedule by removing superfluous language thereby making the Fee Schedule easier for market participants to navigate.[18]

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17 See supra note 4.

18 See supra note 14.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, i.e., the entering firms. Because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders. In addition, the Exchange notes that the regulatory costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the regulatory costs associated with ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., ATP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes the modified ORF would be equitably allocated in that it is charged to all ATP Holders on all their transactions that clear in the Customer range at the OCC.

The Proposed Fee is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the proposed ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, i.e., the entering firms. Because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders. In addition, the Exchange notes that the regulatory costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the regulatory costs associated with ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., ATP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes the modified ORF is not unfairly discriminatory because it is charged to all ATP Holders on all their transactions that clear in the Customer range at the OCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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 competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes the proposed fee change would not impose an undue burden on competition as it is charged to all ATP Holders on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, i.e., the entering firms. In addition, because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total regulatory revenues do not exceed total regulatory costs.

Finally, the Exchange does not believe that the proposed deletion of obsolete references to Mini Options would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as these changes are not intended to address any

competitive issues and would instead add more specificity, clarity and transparency regarding this functionality.

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)[19] of the Act and subparagraph (f)(2) of Rule 19b-4[20] 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)[21] 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

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19 15 U.S.C. 78s(b)(3)(A).

20 17 CFR 240.19b-4(f)(2).

21 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR- NYSEAMER-2019-27 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 No. SR-NYSEAMER-2019-27. 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 No. SR- NYSEAMER-2019-27, 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.[22]

Jill M. Peterson
Assistant Secretary

[22] 17 CFR 200.30-3(a)(12).

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