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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89049; File No. SR-NYSEAMER-2020-44]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying the NYSE American Options Fee Schedule June 11, 2020.

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 June 5, 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 modify the NYSE American Options Fee Schedule (“Fee Schedule”) to extend through June 2020 certain fee changes implemented for April and May 2020. The Exchange proposes to implement the fee change effective June 5, 2020.<sup>4</sup> 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

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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.

<sup>4</sup> The Exchange originally filed to amend the Fee Schedule on May 28, 2020 (SR-NYSEAMER-2020-42) and withdrew such filing on June 5, 2020.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of this filing is to modify the Fee Schedule to extend through June 2020 certain fee changes implemented for April and May 2020, as described below. The Exchange proposes to implement the fee change effective May 28, 2020.

On March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective Monday, March 23, 2020, as a precautionary measure to prevent the potential spread of COVID-19. Following the temporary closure of the Trading Floor, the Exchange temporarily modified certain fees for April and May 2020.<sup>5</sup> Although the Trading Floor partially reopened on May 26, 2020 and normal open outcry activity is now supported, because the Trading Floor remained closed for a longer period than expected—including seven business days in March, all of April and the first three weeks of May and will continue to operate with reduced

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<sup>5</sup> See Securities Exchange Act Release Nos. 88595 (April 8, 2020), 85 FR 20737 (April 14, 2020) (SR-NYSEAMER-2020-25) (waiving Floor-based fixed fees); 88682 (April 8, 2020), 85 FR 20799 (April 14, 2020) (SR-NYSEAMER-2020-26) (raising Floor Broker QCC Rebate Cap); 88682 (April 17, 2020), 85 FR 22772 (April 23, 2020) (SR-NYSEAMER-2020-31) (including reversals and conversions in Strategy Execution Fee Cap). See also Securities Exchange Act Release No. 88840 (May 8, 2020), 85 FR 28992 (May 14, 2020) (SR-NYSEAMER-2020-37) (extending April 2020 fee changes through May 2020).

capacity due to COVID-19 considerations, the Exchange proposes to extend the fee waiver through June 2020.

#### Waiver of Floor-Based Fixed Fees

First, the Exchange proposes to extend through June 2020 the waiver of the following Floor-based fix fees, which relate directly to Floor operations, are charged only to Floor participants and do not apply to participants that conduct business off-Floor:

- Floor Access Fee;
- Floor Broker Handheld
- Transport Charges
- Floor Market Maker Podia;
- Booth Premises; and
- Wire Services.<sup>6</sup>

This proposed extension of the fee waiver would reduce monthly costs for Floor participants whose operations continue to be disrupted, despite the fact that the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would allow affected participants to reallocate funds to assist with the cost of shifting and maintaining their prior fully-staffed on-Floor operations to off-Floor (and now staffing back on-Floor) and recoup losses as a result of the unanticipated Floor closure and partial reopening. Absent this change, such participants may experience an unexpected increase in the cost of doing business on the

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<sup>6</sup> See proposed Fee Schedule, Section III.B, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, and IV. Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees. The Exchange notes that it will correct a typographical error, that states “for April 2020 and May only,” which adds clarity and transparency to the Fee Schedule. See proposed Fee Schedule, Section IV. Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees (providing that certain fees are waived, “[f]or April, May and June 2020 only ...”).

Exchange.<sup>7</sup> The Exchange believes that all ATP Holders that conduct business on the Trading Floor would benefit from this proposed fee change.

#### Floor Broker QCC Cap

Second, the Exchange proposes to extend through June 2020 the increase in the maximum allowable Floor Broker credit, which is typically \$425,000 up to \$625,000 per month per Floor Broker (the “FB QCC Cap”).<sup>8</sup> Following the temporary closure of the Trading Floor, the Exchange experienced an unanticipated surge in QCC trades. Despite the fact that the Floor has partially reopened, the Exchange believes that extending this fee change would allow incentives to operate as intended and encourage Floor Brokers (particularly those whose operations continue to be disrupted during the partial reopening of the Floor) to execute volume on the Exchange and to continue to execute all—and increase the number of—QCC transactions on the Exchange.

Absent the proposed change, participating Floor Brokers—whose operations were disrupted by the unanticipated Floor closure and now partial reopening—could experience an unintended increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its Floor Brokers trading QCCs. The Exchange believes that extending the increase in the FB QCC Cap through June would provide Floor Brokers with

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<sup>7</sup> The Exchange will refund participants of the Floor Broker Prepayment Program for any prepaid June 2020 fees that are waived. See proposed Fee Schedule, Section III.E (providing that “the Exchange will refund certain of the prepaid Eligible Fixed costs that were waived for April, May and June 2020, per Sections III.B and IV”).

<sup>8</sup> See proposed Fee Schedule, Section I.F., QCC Fees & Credits, n. 1 (setting forth available credits to Floor Brokers and providing that “[t]he maximum Floor Broker credit paid shall not exceed \$425,000 per month per Floor Broker firm (the “Cap”), except that for the months of April, May and June 2020, the Cap would be \$625,000 per Floor Broker firm”).

greater certainty as to their monthly costs and diminish the likelihood of an effective increase in the cost of trading.

The Exchange cannot predict with certainty whether any Floor Brokers would benefit from this proposed fee change. However, the Exchange believes the proposed change is necessary to prevent Floor Brokers from diverting QCC order flow from the Exchange if and when they hit the Cap, particularly those Floor Brokers whose operations may continue to be disrupted as the Floor has only partially reopened.

#### Strategy Fee Execution Cap

Finally, the Exchange proposes to extend through June 2020 the inclusion of reversals and conversions executed as QCCs (“RevCon QCCs”) in the \$1,000 daily Strategy Execution Cap (the “Strategy Cap”).<sup>9</sup> Absent this change, RevCon QCCs are not eligible for the Strategy Cap (but instead are subject to QCC Fees & Credits).<sup>10</sup> With the temporary closure of the Trading Floor, which continued longer than anticipated, Floor Brokers were unable to execute RevCons in open outcry. Floor Brokers, however, were able to execute RevCon QCCs electronically via the Exchange systems. Although the Floor has reopened with limited capacity due to COVID-19 considerations, the Exchange believes the proposed inclusion of RevCon QCCs in the Strategy Cap, which is available to all ATP Holders, would encourage ATP Holders (including those acting as Floor Brokers) to execute their RevCon QCC volume on the Exchange, particularly given that the Floor has reopened only in a limited capacity, and to continue to increase the number of such RevCon QCC transactions during the month of June.

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<sup>9</sup> See proposed Fee Schedule, Sections I.J., Strategy Execution Fee Cap (including RevCon QCCs in the Strategy Cap during April, May and June 2020) and Section I.F., QCC Fees & Credits, n. 1 (providing that “[the Floor Broker credit will not apply to any QCC trades that qualify for the Strategy Cap during the months of April, May and June 2020 (per Section I.J.)”).

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

The Exchange cannot predict with certainty whether any ATP Holders would benefit from this proposed fee change. At present, whether or when an ATP Holder qualifies for the Strategy Cap varies day-to-day, month-to-month. That said, the Exchange believes that ATP Holders would be encouraged to take advantage of the modified Cap. In addition, the Exchange believes the proposed change is necessary to prevent ATP Holders from diverting RevCon QCC order flow from the Exchange to a more economical venue.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>12</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 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>13</sup>

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>13</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”).

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>14</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.<sup>15</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 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 ATP Holders—whose operations may have been and may continue to be (unintentionally) disrupted by the unanticipated temporary closure of the Floor and subsequent reopening in a limited capacity—may direct their order flow to any of the 16 options exchanges.

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<sup>14</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>15</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 2019 to 8.08% for the month of January 2020.

### Waiver of Floor-Based Fixed Fees

This proposed extension of the fee waiver is reasonable, equitable, and not unfairly discriminatory because it would reduce monthly costs for Floor participants whose operations have been disrupted by the unanticipated Floor closure for approximately two months. In reducing this monthly financial burden, the proposed change would allow affected participants to reallocate funds to assist with the cost of shifting and maintaining their prior fully-staffed on-Floor operations to off-Floor (and now staffing back on-Floor) and recoup losses as a result of the unanticipated Floor closure and partial reopening. Absent this change, such participants may experience an unexpected increase in the cost of doing business on the Exchange.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits as it merely continues the fee waiver granted in April and May 2020, which impacts fees charged only to Floor participants whose operations continue to be disrupted by the partial reopening of the Floor and do not apply to participants that conduct business off-Floor.

The Exchange believes that the proposal is not unfairly discriminatory because the proposed continuation of the fee waiver would affect all similarly-situated market participants on an equal and non-discriminatory basis.

The Exchange believes that all ATP Holders that conduct business on the Trading Floor would benefit from this proposed fee change.

### FB QCC Cap

This proposed extension of the increase to the FB QCC Cap through June is reasonable, equitable, and not unfairly discriminatory because it would allow Exchange incentives to operate as intended and continue encourage QCC volume, which saw an uptick in volume on the Exchange following the temporary closure of the Trading Floor.

The proposed change would also facilitate fair and orderly markets by attempting to avoid an unintended increase in the cost of Floor Brokers' QCC trading on the Exchange, given that the Floor has only reopened on a partial basis due to COVID-19 considerations. Absent the proposed change, participating Floor Brokers could experience an unintended increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its Floor Brokers trading QCCs. The Exchange believes that the proposed increase to the Cap for June when the Trading Floor is open, but only in a limited capacity, would provide Floor Brokers with greater certainty as to their monthly costs and diminish the likelihood of an effective increase in the cost of trading. To the extent that the proposed change attracts more QCC trades to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for 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.

The Exchange cannot predict with certainty whether any Floor Brokers would benefit from this proposed fee change. However, Exchange also believes the proposed change is necessary to prevent Floor Brokers from diverting QCC order flow from the Exchange if and when they hit the FB QCC Cap, particularly those Floor Brokers whose operations continue to be disrupted as the Trading Floor has only opened in a limited capacity due to COVID-19 considerations.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits and not unfairly discriminatory because it is based on the amount and type of business transacted on the Exchange during June and Floor Brokers can opt to avail themselves of the modified Cap (i.e., by executing more QCC transactions) or not. The proposed change would

incent Floor Brokers to attract increased QCC order flow to the Exchange that might otherwise go to other options exchanges.

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 (i.e., Floor Brokers) on an equal and non-discriminatory basis.

#### Strategy Cap

This proposed extension of the inclusion of RevCon QCCs in the \$1,000 daily Strategy Cap for June 2020 is reasonable, equitable, and not unfairly discriminatory because it would encourage ATP Holders to execute their RevCon QCC volume on the Exchange, particularly those whose operations continue to be impacted by the partial reopening of the Floor, and to increase the number of such RevCon QCC transactions during the month of June. Further, the proposal is designed to encourage ATP Holders to aggregate all Strategy Executions—including RevCon QCCs—at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Strategy Executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule 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 Exchange believes the proposed rule change is an equitable allocation of its fees and credits and not unfairly discriminatory because it is based on the amount and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of the modified Strategy Cap (i.e., by executing more RevCon QCC transactions) or not.

The Exchange believes it is not unfairly discriminatory to extend the modification of the Strategy Cap through June because the proposed change would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

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. The Exchange believes that the proposed changes would encourage the continued participation of affected ATP Holders, 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>16</sup>

*Intramarket Competition.* The proposed continuation of the April and May 2020 fee changes through June 2020 are designed to reduce monthly costs for Floor participants whose operations continue to be disrupted, despite the fact that the Trading Floor has partially reopened, as well as to avoid an unintended increase in trading costs given that the Floor has only reopened in a limited capacity. In reducing this monthly financial burden, the proposed change would allow Floor participants to reallocate funds to assist with the cost of shifting and maintaining their previously on-Floor operations to off-Floor. In addition, the continuation of the April/May

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<sup>16</sup> See Reg NMS Adopting Release, supra note 13, at 37499.

2020 fee changes is designed to attract additional order flow (particularly QCC trades and RevCon QCCs) to the Exchange. The Exchange believes that the proposed fee waiver would not impose a disparate burden on competition among market participants on the Exchange because off-Floor market participants are not subject to these Floor-based fixed fees.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>17</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.<sup>18</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 reduce monthly costs for Floor participants whose operations have been disrupted by the unanticipated Floor closure and to encourage ATP Holders to direct trading interest (particularly QCCs and RevCon QCCs) 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.

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<sup>17</sup> See supra note 14.

<sup>18</sup> Based on OCC data, supra note 15, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January, 2020.

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>19</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>20</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>21</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 Number SR-NYSEAMER-2020-44 on the subject line.

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(2).

<sup>21</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, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2020-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2020-44, 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>22</sup>

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<sup>22</sup> 17 CFR 200.30-3(a)(12).

J. Matthew DeLesDernier,  
Assistant Secretary.

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