

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85584; File No. SR-NYSEAMER-2019-10]

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

April 10, 2019.

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 April 1, 2019, NYSE American LLC (the “Exchange” or “NYSE American”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective April 1, 2019. The proposed rule 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 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 expand the types of transactions that may be included in the Firm Monthly Fee Cap for ATP Holders that achieve a certain increase in Complex CUBE Auction volume.⁴

Currently, Section I.I. of the Fee Schedule sets forth a Firm Monthly Fee Cap (“Fee Cap”) that limits, or caps, at \$100,000 per month the fees incurred by Firms trading through a Floor Broker in open outcry (*i.e.*, manual transactions).⁵ The Fee Cap may be lower than \$100,000 for ATP Holders that achieve Tier 2 or higher of the American Customer Engagement (“ACE”) Program.⁶ Once a Firm has reached the Fee Cap, an incremental service fee of \$0.01 per contract for Firm Manual transactions will apply, except for the execution of QCC orders, which are not subject to the incremental service fee.⁷

The Exchange proposes to include a broader range of Exchange activity under the Fee Cap for any ATP Holder that achieves an increase over January 2019 Initiating Complex CUBE volume by at least 0.20% of TCADV (the “Complex CUBE Cap Incentive”). ATP Holders that qualify for the Complex CUBE Cap Incentive will continue to be eligible for a reduced Monthly Fee Cap based on ACE Tier achieved,⁸ but will also be able to aggregate the following transactions with their Firm Manual and Firm QCC transactions:

- Broker Dealer Manual transactions; and

⁴ See Rule 971.2NY (describing Complex CUBE Auction, which offers price improvement opportunities to Complex Orders); *see also* Fee Schedule, Section I.G, CUBE Auction Fees & Credits, *infra* note 5.

⁵ See Fee Schedule, Section I. I. (Firm Monthly Fee Cap), available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf (providing that an ATP Holder that achieves Tier 2, 3, 4 or 5 of the ACE Program is entitled to a Fee Cap of \$85,000, \$75,000, \$70,000 or \$65,000, respectively). The Fee Cap excludes volumes associated with Strategy Executions described in Section I.J., (*e.g.*, reversal and conversion, box spread, short stock interest spread, merger spread and jelly roll) and Firm Manual Facilitation trades (which are always free). Royalty Fees described in Section I. K. still apply to applicable transactions even once Fee Cap is reached. *See id.*

⁶ See Fee Schedule, Section I.E. (describing ACE Program), *supra* note 5.

⁷ *See supra* note 5.

⁸ *See supra* note 5 (regarding reduced Fee Caps associated with ACE Tiers 2-5).

- Broker Dealer QCC transactions.⁹

As proposed, ATP Holders that qualify for the Complex CUBE Cap Incentive and attain the Firm Fee Cap would not be assessed transaction fees on Firm or Broker Dealer Manual volume, including QCC transactions. Further, an incremental service fee of \$0.01 per contract would apply to Broker Dealer Manual transactions¹⁰ and for Broker Dealer QCC Transactions in excess of 25,000 contracts ADV, an incremental service fee of \$0.10 per contract would apply.¹¹

For example, an ATP Holder that executed 6,000 contracts per day ADV via Complex CUBE during the month of January 2019 would have to execute over 18,000 contracts a day ADV via Complex CUBE in April 2019 if the TCADV in April 2019 is 6 million contracts (*i.e.*, 6,000 + (0.2% * 6 million) = (6,000 + 12,000)). Thus, the qualifying ATP Holder would be able to aggregate its Broker Dealer QCC transactions and Manual transactions (together with its Firm QCC transactions and Manual transactions) under the Fee Cap.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹³ 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 believes that the proposed Complex CUBE Cap Incentive is reasonable, equitable and not unfairly discriminatory for a number of reasons. First, the proposal is based on the amount of business transacted on the Exchange and ATP Holders can opt to try to achieve the Incentive or not. Second, the proposal is designed to encourage ATP Holders to utilize (if they have not done so) or increase volume sent to the Complex CUBE Auction, which was adopted earlier this year. Further, ATP Holders that seek to or do achieve the Complex CUBE Incentive likewise would be incented to increase its Broker Dealer volume in Manual and QCC transaction in an effort

⁹ See proposed Fee Schedule, Section I. I. (Firm Monthly Fee Cap).

¹⁰ *See supra* note 5 (regarding incremental service fee applicable to Firm Manual transactions).

¹¹ *See* proposed Fee Schedule, Section I. I. (Firm Monthly Fee Cap).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

to meet the Fee Cap, which may, in turn, encourage more business to be brought to the Floor, which may extend beyond Manual and QCC transactions. To the extent that the proposed change attracts more Broker Dealer Manual and 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.

Further, the proposed ten cent fee on Broker Dealer QCC transactions over 25,000 contracts ADV is likewise reasonable, equitable and not unfairly discriminatory. The Exchange assesses a QCC Transaction fee of \$0.20 per contract on Broker Dealer and Firm volume.¹⁴ Today, Firms that achieve the Fee Cap are charged \$0.00 for Firm QCC volume beyond the Fee Cap, but are still charged \$0.20 per contract for Broker Dealer QCC volume. As proposed, Firms that achieve the Complex CUBE Cap Incentive would more easily achieve the Fee Cap because the proposal allows Broker Dealer Manual and QCC volume (together with Firm Manual and QCC volume) to count towards the Fee Cap. For Firms that achieve the Complex CUBE Incentive Cap and the Fee Cap, Firm QCC volume beyond the Fee Cap will continue to be charged at \$0.00 and the rate for Broker Dealer QCC volume will be reduced to \$0.00 per contract for up to 25,000 contracts ADV and to \$0.10 per contract with the proposed service fee for volume in excess of 25,000 contracts ADV. The proposed service fee is not unreasonable because it would apply to all similarly-situated firms. Moreover, the Exchange believes the proposed service fee is reasonable given that it is still a reduction in cost for Broker Dealer QCC volume (once the Complex CUBE Cap Incentive and Fee Cap are achieved) and should encourage more such volume to be directed to and executed on the Exchange.

Finally, the Exchange believes the proposed changes are consistent with the Act because to the extent the modifications permit the Exchange to continue to attract greater volume and liquidity (to the Floor or otherwise), the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants.

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 Complex CUBE Cap Incentive is pro-competitive as it is designed to incentivize increased volume and liquidity to the Exchange—for both Complex CUBE and Manual and QCC transactions—which would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery.

Given the robust competition for volume among options markets, many of which offer the same (or similar) products, implementing programs to attract order flow, such as the proposed Complex CUBE Cap Incentive, are consistent with the above-mentioned goals of the Act.

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)¹⁵ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁶ 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)¹⁷ 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 email to rule-comments@sec.gov. Please include File No. SR-NYSEAMER-2019-10 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-2019-10. This file number should be included on the subject line if email 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-2019-10, and should be submitted on or before May 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Eduardo A. Aleman,

Deputy Secretary.

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¹⁴ See Fee Schedule, Section I. F. (QCC Fees & Credits) (setting forth transaction fees for market participants, including Non-Customers that are not Professional Customers or Specialists, *i.e.*, Firms and Broker Dealers).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ 15 U.S.C. 78s(b)(2)(B).

¹⁸ 17 CFR 200.30-3(a)(12).