

Rule 19b-4(f)(6)(iii)¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will implement functionality relating to the opening rotation trigger for equity options that was previously in place on the Exchange. As such, waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as the proposed rule change will implement an opening rotation trigger that was previously in place under an Exchange Rule that is already familiar to market participants. Thus, as represented by the Exchange, the proposed rule change does not introduce any new or novel issues. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.¹⁷

At any time within 60 days of the filing of the 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 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 Number SR-

CboeEDGX-2019-040 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-CboeEDGX-2019-040. 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 Number SR-CboeEDGX-2019-040 and should be submitted on or before July 24, 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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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86212; File No. SR-NYSEAMER-2019-25]

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

June 27, 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 June 12, 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"). The Exchange proposes to implement the fee change effective June 12, 2019.⁴ 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange filed to amend the Fee Schedule for effectiveness on June 3, 2019, (SR-NYSEAMER-2019-23) and withdrew such filing on June 12, 2019.

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12).

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

1. Purpose

The purpose of this filing is to encourage ATP holders that are not currently NYSE American Options Market Makers (each a "Market Maker") to register as a Market Maker on the Exchange (each a "Newly Enrolled MM"). The Exchange proposal would modify the Fee Schedule to reduce rates on certain fixed costs for a Newly Enrolled MM. The Exchange proposes to implement the fee change effective June 12, 2019.

Background

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."⁵

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.⁶ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the first quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.⁷ 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.

Proposed Fee Change

The Exchange currently charges Market Makers certain fixed costs related to their market-making business on the Exchange, including monthly ATP Fees and Premium Product Fees. Monthly ATP Fees are charged to all ATP Holders and are differentiated based on the role of the ATP Holder on the Exchange. Market Makers are charged a range of monthly ATP Fees that are based on the number of ATPs that are required by a Market Maker in creating their appointment for those option classes for which they want to submit electronic quotations to the Exchange.⁸

The Exchange also charges a Premium Product Fee, which levies a monthly fee to any Market Maker in the ten options with the highest trading volume on the Exchange (*i.e.*, SPY, AAPL, IWM, QQQ, BABA, BAC, EEM, FB, USO, and VXX).⁹ For purposes of this filing, the Exchange proposes to collectively refer to both the monthly ATP Fees applicable to Market Makers and the Premium Product Fee as the "Covered Fees."

The Exchange proposes to offer introductory, reduced pricing to a Newly Enrolled MM on its Covered Fees for up to six months. The proposed reduced fees would be available beginning the first month that a Newly Enrolled MM registers as such on the Exchange.

This proposed fee change is targeted at potential Market Makers and relates only to the Covered Fees, which are fixed monthly costs. Market Makers serve a crucial role in the options markets by providing liquidity to facilitate market efficiency and functioning. The Exchange's fees are constrained by intermarket competition, as Market Makers can register on any or all of the 16 options exchanges. Thus, ATP Holders that are also members of other exchanges have a choice of where they register as Market Makers.

⁸ See Fee Schedule, III.A., Monthly Trading Permit, Rights, Floor Access and Premium Product Fees (describing monthly ATP Fees, which are priced based on a sliding scale where the cost per ATP decreases as the number of ATPs increases—*i.e.*, ranging from \$8,000 for the first ATP down to \$500 for the tenth ATP or ATP in excess of ten), available here: https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.

⁹ See *id.*, Fee Schedule, III.D., Monthly Trading Permit, Rights, Floor Access and Premium Product Fees (describing Premium Products Fees, which subjects each Market Maker that transact in these issues to a fee of \$1,000 per product traded with a monthly cap of \$7,000 for each Market Maker firm).

An ATP Holder that seeks to become a Market Maker must incur a number of additional costs that are unique to their role as a Market Maker, including developing market-making trading strategies, risk monitoring, and surveillance programs to monitor their own compliance with applicable market-making requirements. When an ATP Holder first begins trading in the capacity of a Market Maker, the success of its strategies may not yet be known and it can take time before such strategies are fully realized.

The Exchange proposes to amend the Fee Schedule by adding the following note after both the chart describing ATP Fees (Section III.A) and the chart describing the Premium Products Fees (Section III.D). As proposed, the new text would provide:

An ATP Holder that is not currently an NYSE American Options Market Maker ("Market Maker") and enrolls to operate as a Market Maker on the Exchange may be entitled to introductory pricing on its [ATP Fees/Premium Products Fees] for up to six months, beginning the first month in which it registers (each a "Newly Enrolled MM"). For the first three months (*i.e.*, months 1–3), the Exchange will waive the [ATP Fees/Premium Product Fees] for a Newly Enrolled MM. For latter three months (*i.e.*, months 4–6), the Exchange will discount such [ATP Fees/Premium Product Fees] by 50%, unless the Newly Enrolled MM achieves a monthly ADV¹⁰ equal to at least 0.05% of TCADV, at which time the Exchange would charge the Newly Enrolled MM 100% of its [ATP Fees/Premium Product Fees] for the remaining months, regardless of the Newly Enrolled MM's monthly ADV in subsequent months. An ATP Holder may qualify for this introductory pricing only once in a 24-month period, which period begins in the first month the ATP Holder registers on the Exchange.

As described above, for the first three months (*i.e.*, months 1–3), the Exchange would waive the Covered Fees for a Newly Enrolled MM. For the latter three months (*i.e.*, months 4–6), the Exchange would discount the Covered Fees by 50%. However, if in any of the months 4–6, the Newly Enrolled MM is trading 0.05% or more a month of TCADV,¹¹ the Newly Enrolled MM would no longer be eligible for the 50% discount of the Covered Fees.¹² In such case, the Newly Enrolled MM would be charged the

¹⁰ The term "ADV" means average daily volume.

¹¹ The term "TCADV" refers to Total Industry Customer equity and ETF option average daily volume. TCADV includes OCC calculated Customer volume of all types, including Complex Order transactions and QCC transactions, in equity and ETF options.

¹² Throughout the Fee Schedule, the Exchange uses percentage of TCADV as a proxy for measuring an ATP Holder's relative volume contribution to the Exchange.

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

⁶ The Options Clearing Corporation ("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>.

⁷ Based on OCC data, *see id.*, the Exchange's market share in equity-based options declined from 9.82% for the month of January to 8.84% for the month of April.

applicable Covered Fees without a discount going forward, if its subsequent monthly volumes (*i.e.*, in months 5 and/or 6) fall below this threshold). In other words, once this threshold is achieved, the Newly Enrolled MM would no longer be eligible for the reduced fees even if subsequent monthly volumes fall below the 0.05% threshold. The Exchange believes that if a Newly Enrolled MM achieves trading volumes equal to 0.05% or more of TCADV, such Newly Enrolled MM would be trading at a level consistent with more established Market Makers and therefore has likely realized the potential of its market-making strategies and no longer merits a discount relative to longer established Market Makers.

An ATP Holder may qualify for this introductory pricing for its Covered Fees only once in a 24-month period, which period begins in the first month the ATP Holder registers on the Exchange. In other words, an ATP Holder may not be considered a Newly Enrolled MM more than once every 24 months. For example, if a Newly Enrolled MM registers in June 2019, that ATP Holder would not be eligible for the introductory pricing for a Newly Enrolled MM before June 2021. The Exchange has found that it is not uncommon for a trading team to separate from a particular firm or for a firm to cease a market making strategy and for the separated group or firm to seek to re-enter/re-enroll as Market Makers on the Exchange. Thus, the limit is designed to acknowledge that certain firms may cease operating as a Market Maker on the Exchange for legitimate reasons only to return at a later date, while at the same time reducing improper gaming of the discounted pricing by a single ATP Holder firm.

The Exchange believes the proposed reduced Covered Fees would benefit Newly Enrolled MMs by reducing (for a limited time) some of the fixed, start-up costs associated with establishing a market making strategy. By encouraging such new entrants, the Exchange would attract more liquidity to the Exchange. The Exchange does not believe Market Makers that are already operating on the Exchange would be disadvantaged by this proposal because the proposed fee discount is temporary and would end after three months if a Newly Enrolled MM meets specified volume thresholds.

In addition, existing Market Makers (as well as non-Market Makers) stand to benefit from an increase in liquidity on the Exchange that would result from additional Market Makers on the Exchange, which, in turn, facilitates tighter spreads and enhances price

discovery, which may lead to a corresponding increase in order flow from other market participants. Market Makers add additional value beyond other market participants through continuous quoting and the commitment of capital. Because Market Makers have obligations and regulatory requirements that are not applicable to other market participants, the Exchange believes that offering the proposed reduced Covered Fees to each Newly Enrolled MM is equitable and not unfairly discriminatory in light of their obligations and the costs associated therewith.

The Exchange cannot predict with certainty whether any ATP Holder that is not currently a Market Maker is planning to register as a Market Maker and thus would avail themselves of this proposed fee change. Decisions about how to operate an ATP Holder are under the control of such ATP Holder. However, based on feedback from more than one ATP Holder that has expressed an interest in registering as a Market Maker on the Exchange, the Exchange believes that the proposed fee change would reduce the upfront financial risk for such ATP Holders as they work to develop profitable Market Making strategies on the Exchange.

The Exchange further notes that while the proposed fee change would result in different Covered Fees being charged to Newly Enrolled MMs as compared to existing Market Makers, the proposed fee change has been designed to mitigate any differences in treatment. As discussed above, if in the second three months, the Newly Enrolled MM meets specified thresholds, *i.e.*, functions as a Market Maker at levels similar to existing Market Makers, the proposed fee reductions would end. In addition, the proposed reduction in Covered Fees ends, at the latest, after the first six months of operation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁴ 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 offer the proposed discounts on Covered Fees for a period of up to six months to Newly Enrolled

MMs provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. First, 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.”¹⁵

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.¹⁶ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the first quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.¹⁷ 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.

Second, the Exchange believes that the proposed rule change is an equitable allocation of reasonable dues and fees because the proposal to waive the Covered Fees for the first three months and to discount such fees in the latter three months is designed to reduce the initial cost of entry for ATP Holders to register as Market Makers on the Exchange. Market Makers serve a crucial role in financial markets by providing liquidity to facilitate market efficiency and price discovery.

The Exchange is constrained by intermarket competition, as Market Makers are free to register on any one of the 16 option exchanges. The

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁶ See *supra* note 6.

¹⁷ Based on OCC data, see *supra* note 6, in 2019, the Exchange’s market share in equity-based options declined from 9.82% for the month of January to 8.84% for the month of April.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

Exchange believes that the proposed reduced Covered Fees, which are targeted at potential Market Makers not currently operating on the Exchange, would benefit Newly Enrolled MMs by reducing (for a limited time) some of the start-up costs associated with establishing a market making strategy. Specifically, the proposed fee change would provide Newly Enrolled MMs an opportunity to gather data as to whether their market making strategy is profitable. By encouraging such new entrants, the Exchange would attract more liquidity to the Exchange.

Third, the Exchange believes that the proposed rule change would be an equitable allocation of reasonable dues and fees. The proposed change is designed to attract potential Market Makers to become Newly Enrolled Market Makers by offering limited fees for a reduced time. The Exchange believes that this would be an equitable allocation of fees among Market Makers because the proposed fee reduction is temporary and designed to apply only to Newly Enrolled MMs that would be incurring costs to start a market-making business on the Exchange, including implementing new strategies and ensuring compliance with the Exchange's market making regulatory obligations. Accordingly, Market Makers already operating on the Exchange would not be disadvantaged by this allocation of fees. Based on the Exchange's experience with new entrants to the Exchange that have commenced business as Market Makers, the Exchange believes that it could take up to six months for a Newly Enrolled MM to begin functioning at the same level as established Market Makers. The Exchange proposes to begin charging discounted Covered Fees in months four-six of a Newly Enrolled MM in recognition that such market-making strategies should be implemented after three months of operations, but may not yet be fully realized in terms of profitability. However, if by the fourth, fifth, or sixth month of trading, a Newly Enrolled MM achieves a minimum threshold of trading volume (a monthly ADV equal to at least 0.05% of TCADV), the 50% discount on Covered Fees would no longer be available (even if subsequent monthly volumes fell below this threshold) because such Newly Enrolled MM would no longer be in the early/introductory build phase of their strategy and would be functioning on the same level as established Market Makers. The Exchange believes this temporary discount to Newly Enrolled Market Makers is equitable to encourage new entrants that would direct liquidity

to the Exchange to the benefit of all market participants, including established Market Makers.

Further, the Exchange believes that the proposed rule change would not permit unfair discrimination between Market Makers. The Exchange does not believe that Market Makers that are already operating on the Exchange would be unfairly disadvantaged by this proposed disparate treatment because the proposed fee reduction is temporary and designed to apply only to Newly Enrolled MMs that would be incurring costs to start a market-making business on the Exchange, including implementing new strategies and ensuring compliance with the Exchange's market making regulatory obligations. Based on the Exchange's experience with new entrants to the Exchange that have commenced business as Market Makers, the Exchange believes that it could take up to six months for a Newly Enrolled MM to begin functioning at the same level as established Market Makers. The Exchange proposes to begin charging discounted Covered Fees in months four-six of a Newly Enrolled MM in recognition that such market-making strategies should be implemented after three months of operations, but may not yet be fully realized in terms of profitability. However, if by the fourth, fifth, or sixth month of trading, a Newly Enrolled MM achieves a minimum threshold of trading volume (a monthly ADV equal to at least 0.05% of TCADV), the 50% discount on Covered Fees would no longer be available (even if subsequent volumes fell below this threshold) because such Newly Enrolled MM would no longer be in the early/introductory build phase of their strategy and would be functioning on the same level as established Market Makers. The Exchange believes this temporary discount to Newly Enrolled Market Makers is equitable to encourage new entrants that would direct liquidity to the Exchange to the benefit of all market participants, including established Market Makers.

The Exchange believes that the proposed volume threshold for when Covered Fees would be charged in full to Newly Enrolled MMs is fair and reasonable because that volume level represents the median of percentage of TCADV currently achieved by existing Market Makers. The proposed reduced fees therefore would not be available if a Newly Enrolled MM begins functioning at the same level as an established Market Maker beginning in month four. While there are existing Market Makers that have monthly ADV equal to a lower percentage of TCADV

than required for a Newly Enrolled MM to be subject the full Covered Fees, the Exchange believes that this proposed rule change would not permit unfair discrimination among Market Makers. There are a number of reasons why an established Market Maker may have a lower monthly ADV, including if such ATP Holder chooses to register as a Market Maker in a limited number of appointments. In addition, because the proposed 50% discount would be available for at most, three months, and a Newly Enrolled MM would be charged the full Covered Fees beginning in month seven regardless of how that Newly Enrolled MM is performing, any disparate treatment among Market Makers would by definition, be temporary. In addition, the proposed fee reduction would only be available once during a 24-month period, which is designed to reduce the potential for ATP Holders to game this fee change by continually dropping and then re-registering as a Market Maker.

The Exchange further notes that the proposal would benefit all Market Makers on the Exchange because additional Market Makers mean an increase in liquidity on the Exchange, which, in turn, facilitates tighter spreads and enhances price discovery, which may lead to a corresponding increase in order flow from other market participants that benefits all Market Makers. Market Makers, unlike other market participants, add additional value through continuous quoting and the commitment of capital and have specified obligations and regulatory requirements that are not required of other ATP Holders. The Exchange believes that offering the proposed reduced Covered Fees to each Newly Enrolled MM is equitable and not unfairly discriminatory in light of these unique obligations and related costs associated with operating as a Market Maker on the Exchange.

The Exchange also believes that its proposal would be an equitable allocation of reasonable fees that does not permit unfair discrimination because it would be uniformly applied to all Newly Enrolled MMs for the first three months and in months four through six and would apply equally to those Newly Enrolled MMs that achieve the minimum volume threshold, which is a uniform, objective, quantitative volume amount.

The Exchange notes that this proposal is similar in substance to the reduced pricing that is available to MIAX market makers that execute less volume than a

certain volume threshold in certain of MIAX's Trading Permit Tier levels.¹⁸

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.

Intramarket Competition. The Exchange does not believe that the proposed fee would place other market participants at the Exchange at a relative disadvantage compared to Newly Enrolled MMs, which are the only market participants eligible for the proposed discounted fees. The proposed pricing is designed to attract additional Market Makers (and by extension order flow) to the Exchange and provide them with an opportunity to temporarily reduce their costs while they are establishing their market-making strategies. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and attracting greater participation by Market Makers. Thus, the Exchange does not believe the proposed fee would disadvantage established Market Makers because an increase in the activity of these Market Makers inures to the benefit of all market participants as it increases liquidity on the Exchange, which in turn facilitates tighter spreads and enhances price discovery. The proposed pricing would be available to all similarly-situated participants, and, as such, the proposed change would not impose a disparate burden on competition among this class of market participants and may, in fact, encourage intramarket competition by encouraging ATP Holders to register as Market Makers.

¹⁸ See MIAX Options fee schedule, Section 3(b), Monthly Trading Permit Fee, available here, https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_05012019.pdf (offering reduced fees of \$15,500 (down from \$17,000 or 22,000) to MIAX market makers that execute total monthly volume of less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month). See also Securities Exchange Act Release No. 82868 (February 28, 2018), 83 FR 12063 (March 19, 2018) (SR-MIAX-2018-08) (immediately effective fee filing introducing lower fees for MIAX market makers based on certain executed volume threshold). The Exchange notes that MIAX's program is not limited by time, but solely by level of volume executed by a market maker, which level would tend to favor smaller-sized market making operations. The Exchanges proposed pricing applies to Newly Enrolled MMs of every size for six months, however, those firms that are able to meet the requisite minimum volume after the first three months (whether they be large or small operations) will size out of the program.

In addition, the proposed disparate fees for Newly Enrolled MMs are designed to be temporary and would end either after the first six months of operating as a Market Maker or earlier if such Newly Enrolled MM achieves specified levels of trading. The Exchange therefore believes that the proposed fee change is designed to treat Newly Enrolled MMs differently only for the period when they are not functioning at the same level as established Market Makers and are still realizing their market-making strategies. After such temporary period, a Newly Enrolled MM would be subject to the same Covered Fees as all other Market Makers on the Exchange and the proposed disparity in fees would end.

The Exchange further notes that Market Makers, unlike other market participants, add additional value through continuous quoting and the commitment of capital and are subject to unique regulatory obligations. Because other market participants do not need to incur the same costs to begin trading on the Exchange, the Exchange believes that offering the proposed reduced Covered Fees only to Newly Enrolled MM would not create an undue burden on non-Market Makers.

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. 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.¹⁹ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the first quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.²⁰ 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.

In addition, market participants are not required to register as a Market Maker, and if they do, they are not required to register on more than one exchange. 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. The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees (for a limited time) in a manner designed to encourage market participants to register as Market Makers on 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 liquidity.

The Exchange further believes that the proposed pricing changes would increase both intermarket and intramarket competition by attracting new entrants to the Exchange at a lower fee for a limited time. By offering the reduced Covered Fees, the Exchange believes that it would retain and attract Market Makers, which participants are an integral component of the option industry marketplace. Further, the incentive would be available to all similarly-situated participants, and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants and may, in fact, encourage intermarket competition.

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)²¹ of the Act and subparagraph (f)(2) of Rule 19b-4²² 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)²³ of the Act to determine whether the proposed rule

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(2).

²³ 15 U.S.C. 78s(b)(2)(B).

¹⁹ See *supra* note 6.

²⁰ See *supra* note 17.

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 Number SR-NYSEAMER-2019-25 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-2019-25. 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 Number SR-NYSEAMER-2019-25 and should be submitted on or before July 24, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No 34-86213; File No. SR-CboeBZX-2019-058]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Cboe BZX Exchange, Inc.

June 27, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 14, 2019, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 fee schedule applicable to its equities trading platform ("BZX Equities") to replace the rebates applicable to Lead Market Makers ("LMMs") in BZX-listed securities with daily incentives that are directly tied to meeting market quality metrics without regard to transactions executed.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, 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 Exchange 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 these 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 aspects of such statements.

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

1. Purpose

The Exchange proposes to amend the fee schedule applicable to its equities trading platform ("BZX Equities") to replace the rebates applicable to Lead Market Makers ("LMMs") in BZX-listed securities with daily incentives that are directly tied to meeting market quality metrics without regard to transactions executed. The Exchange believes that these changes would encourage LMMs to maintain better market quality in BZX-listed securities, and, in particular, in lower volume securities where transaction-based compensation (*i.e.*, rebates) may not be sufficient.

The Exchange currently offers an LMM Incentive Program in which it provides LMMs in securities for which the LMM is a Qualified LMM³ ("Qualified ETPs") with enhanced rebates,⁴ reduced fees,⁵ and free transactions in closing auctions⁶ in its Qualified ETPs. In addition, the

³ As defined in the fee schedule, the term "Qualified LMM" means an LMM that meets the Minimum Performance Standards, as defined in Rule 11.8(e)(1)(D). As defined in Rule 11.8(e)(1)(D), the term "Minimum Performance Standards" means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) Percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. The Exchange will share the details of the Minimum Performance Standards with the Commission prior to implementation of the amendments proposed herein and further will provide the Commission with updates as any of the Minimum Performance Standards are changed.

⁴ Currently, the Exchange's fee schedule provides that, unless an LMM otherwise qualifies for a higher rebate, they will receive the following rebates for securities in which they are a Qualified LMM, based on the ETP's consolidated average daily volume ("CADV"): where the CADV is less than 1 million, \$0.0045 per share; where the CADV is 1 million to 5 million, \$0.0040 per share; and where the CADV is greater than 5 million, \$0.0035 per share.

⁵ Currently, the Exchange's fee schedule provides that LMMs will pay \$0.0025 per share to remove liquidity in securities for which they are a Qualified LMM.

⁶ Currently, the Exchange's fee schedule provides that LMMs will receive free transactions in closing auctions in ETPs for which they are a Qualified LMM.

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.