to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: August 15, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17936 Filed 8–19–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86657; File No. SR–NYSEAMER–2019–33]

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

August 14, 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 August 9, 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 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 NYSE American Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective August 9, 2019.[3] 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.

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 amend the Fee Schedule to reduce the amount of Initiating Complex CUBE volume required for an ATP Holder to qualify for the Complex CUBE Cap Incentive (''Incentive'') from 0.20% of Total Industry Customer equity and ETF option average daily volume (''TCADV'')[4] to 0.15% of TCADV.[5] [6] The Exchange believes that by [sic] making it easier for ATP Holders to qualify for the Incentive should encourage more Complex CUBE volume, which would inure to the benefit of all market participants who would benefit from increased opportunities for price improvement.

The Exchange proposes to implement the rule change on August 9, 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.''[7]

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.[8] 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.[9]

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.

In response to this competitive environment, the Exchange has established incentives to encourage ATP Holders to participate in liquid and active markets on the Exchange, including the Incentive, which works in conjunction with the Firm Monthly Fee Cap (''Fee Cap'').

Section I.I. of the Fee Schedule sets forth a Fee Cap that limits, or caps, at $100,000 per month the fees incurred by Firms trading though a Floor Broker in open outcry (*i.e.,* manual transactions).[10] [11] The Incentive allows

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

[2] 17 CFR 240.19b–4.

[3] The Exchange filed to amend the Fee Schedule for effectiveness on August 1, 2019 (SR–NYSEAmer–2019–29) and withdrew such filing on August 9, 2019 and replaced it with this filing. The Exchange separately filed to amend its Fee Schedule on August 8, 2019 (SR–NYSEAmer–2019–32).

[4] The term ''TCADV'' is defined in the Key Terms and Definitions Section of the Preface of the Fee Schedule, *available here: https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.* TCADV includes Options Clearing Corporation (''OCC'') calculated Customer volume of all types, including Complex Order transactions and QCC transactions, in equity and ETF options.

[5] *See id.,* Fee Schedule, Section I. I. (Firm Monthly Fee Cap) (describing the Incentive, which allows ATP Holders that qualify for this Incentive to include a broader range of Exchange activity to be counted in the Firm Monthly Fee Cap calculation such that it should be easier for firms to have certain of their transactions fees capped).

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

[7] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[8] 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.*

[9] 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.

[10] *See supra* note 5, Fee Schedule, Section I. I. (Firm Monthly Fee Cap) (providing that an ATP Holder that achieves Tier 2, 3, 4 or 5 of the American Customer Engagement ''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.* 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 Qualified Contingent Cross (''QCC'') orders, which are not subject to the incremental service fee. *See id.*

Continued

ATP Holders that increase their monthly Initiating Complex CUBE (''ICC'') volume by at least 0.20% of TCADV over their January 2019 ICC volume to aggregate the following transactions with their Firm Manual and Firm QCC transactions to achieve the Fee Cap:

- Broker Dealer Manual transactions; and
- Broker Dealer QCC transactions.[12]

ATP Holders that qualify for the Incentive and attain the Firm Fee Cap are not assessed transaction fees on Firm or Broker Dealer Manual volume, including QCC transactions. Further, an incremental service fee of $0.01 per contract applies to Broker Dealer Manual transactions [13] and for Broker Dealer QCC Transactions in excess of 25,000 contracts ADV, an incremental service fee of $0.10 per contract applies.[14]

The Exchange proposes to reduce the ICC volume requirement to qualify for the Incentive.

Proposed Rule Change

The Exchange proposes to reduce the monthly ICC volume that an ATP Holder needs to increase over its January 2019 ICC volume to qualify for the Incentive from 0.20% of TCADV to 0.15% of TCADV.

For example, if an ATP Holder executed ICC volume of 6,000 contracts during the month of January 2019 and the TCADV in a billing month is 6 million contracts, that ATP Holder would have to execute over 15,000 contracts of ICC volume in that billing month to qualify for the Incentive because 15,000 contracts equals (6,000 (the January 2019 Base) + 9,000 (0.15% times the 6 million TCADV)). If an ATP Holder had more than 15,000 contracts of ICC volume in a billing month, it 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.

If an ATP Holder did not send any ICC volume to the Exchange in January 2019, it could qualify for the Incentive in the billing month where the TCADV is 6 million contracts if it sends at least 9,000 contracts of ICC volume in that billing month because 9,000 contracts equals an increase of 0.15% of TCADV over January 2019 ICC volume (0 (the January 2019 Base) + 9,000 (0.15% times the 6 million TCADV)).

As noted above, the Exchange operates in a competitive environment. This proposed change is designed to incent ATP Holders to increase their ICC volume to qualify for the Incentive, which may, in turn, encourage firms to qualify for the Fee Cap (which should increase Manual and QCC volume directed to the Exchange). The Exchange notes that all market participants stand to benefit from increased volume, which facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange's fees are constrained by intermarket competition, as ATP Holders may direct their order flow to any of the 16 options exchanges, including those with complex price improve auctions similar to the Complex CUBE Auction. Thus, ATP Holders have a choice of where they direct their order flow. The proposed rule change is designed to incent ATP Holders to direct liquidity to the Exchange—in particular ICC volume, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.

The Exchange cannot predict with certainty whether any ATP Holders would avail themselves of this proposed fee change. At present, no ATP Holder qualifies for the Incentive. Assuming historical behavior can be predictive of future behavior, the Exchange believes that at present participation rates, at least three firms may be able to qualify for the Incentive with the reduced ICC volume requirement. The Exchange believes the proposed lower threshold would provide an incentive for ATP Holders to direct ICC volume to the Exchange to qualify for the Incentive (and thus more easily be able to achieve the Fee Cap).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[16] 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 Proposed Rule Change Is Reasonable

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.'' [17]

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.[18] 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.[19]

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 can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed modification (reduction) to the monthly ICC volume increase over an ATP Holder's January 2019 ICC monthly volume to qualify for the Incentive is designed to incent ATP Holders to increase their ICC volume. In addition, the proposal is based on the amount of business transacted on the Exchange and similarly-situated ATP Holders can opt to try to achieve the Incentive or not. The proposal is

[11] The Fee Cap may be lower than $100,000 for ATP Holders that achieve Tier 2 or higher of the ACE Program. *See supra* note 5, Fee Schedule, Section I.E. (describing ACE Program). 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. *See supra* note 5, Fee Schedule, Section I. I. (Firm Monthly Fee Cap).

[12] *See supra* note 5, Fee Schedule, Section I. I. (Firm Monthly Fee Cap).

[13] *See id.* (regarding incremental service fee applicable to Firm Manual transactions).

[14] *See* Fee Schedule, Section I. I. (Firm Monthly Fee Cap).

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

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

[17] *See* Reg NMS Adopting Release, *supra* note 8, at 37499.

[18] *See supra* note 8.

[19] Based on OCC data, *see supra* note 9, 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.

designed to encourage ATP Holders to utilize (if they have not done so previously) 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 Incentive likewise would be incented to increase their Broker Dealer volume in Manual and QCC transactions in an effort to meet the Fee Cap, which may, in turn, encourage more business to be brought to the Floor. 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, 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.

Finally, to the extent the proposed change continues to attract greater volume and liquidity (to the Floor or otherwise), the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants.

The Exchange cannot predict with certainty whether any ATP Holders would avail themselves of this proposed fee change. At present, no ATP Holders qualifies for the Incentive. Assuming historical behavior can be predictive of future behavior, the Exchange believes that at present participation rates, at least three firms may be able to qualify for the Incentive with the reduced ICC volume requirement. The Exchange believes the proposed lower threshold would provide an incentive for ATP Holders to direct ICC volume to the Exchange to qualify for the Incentive (and thus more easily be able to achieve the Fee Cap).

In the backdrop of the competitive environment in which the Exchange operates, 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 Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. 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. Moreover, the proposal is designed to encourage ATP Holders to utilize (if they have not done so previously) or increase volume sent to the Complex CUBE Auction, which was adopted in 2018. Finally, 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 to meet the Fee Cap, which may, in turn, encourage more business to be brought to the Floor. 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. 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 Proposed Rule Change Is not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to reduce the minimum ICC volume requirement associated with the Incentive as discussed herein because the proposed modification would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposal is based on the amount of business transacted on the Exchange and ATP Holders are not obligated to try to achieve the Incentive. Rather, the proposal is designed [sic] encourage ATP Holders to utilize (if they have not done so previously) or increase volume sent to the Complex CUBE Auction, which was adopted in 2018, as compared to an ATP Holder's own volume levels in January 2019. Finally, ATP Holders that seek to or do achieve the Incentive likewise would be incented to increase its Broker Dealer volume in Manual and QCC transaction in an effort to meet the Fee Cap, which may, in turn, encourage more business to be brought to the Floor. 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. 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 resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, 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." [20]

Intramarket Competition. The proposed change is designed to attract additional order flow (particularly Complex CUBE) to the Exchange. The Exchange believes that the proposed reduced ICC volume threshold would incentivize market participants to direct their ICC volume to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Complex CUBE auction would increase opportunities for price improvement on Complex Orders. The proposed reduced ICC volume threshold would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

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

[20] *See* Reg NMS Adopting Release, *supra* note 8, at 37499.

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 has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[21] 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.[22]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage ATP Holders to direct trading interest (particularly ICC volume) 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.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar price improvement auctions for complex orders and comparable (manual) transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed change is designed to provide the public and investors with a Fee Schedule that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

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)[23] of the Act and subparagraph (f)(2) of Rule 19b–4[24] 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)[25] 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–2019–33 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–2019–33. 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–2019–33, and should be submitted on or before September 10, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17853 Filed 8–19–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Exchange Act Rule 3a71–3; SEC File No. 270–655, OMB Control No. 3235–0717

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 3a71–3 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 3a71–3 is adopted and in effect, but the compliance date for Rule 3a71–3 has not yet passed. The representations contemplated by Rule 3a71–3 will be relied upon by counterparties to determine whether such transaction is a ''transaction conducted through a foreign branch'' of a counterparty, as defined in Rule 3a71–3(a)(3)(i), as well as to verify whether a security-based swap counterparty is a ''U.S. person.'' Counterparties to

[21] 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.*

[22] 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.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(2).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).