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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-85023; File No. SR-NYSEAMER-2018-58]**

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

January 31, 2019

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 December 21, 2018, 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 the Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective January 1, 2019. 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

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

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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.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule, effective January 1, 2019, to provide an incentive for Market Makers to provide more competitive prices and deeper liquidity in the NYSE FANG+ Index (“NYSE FANG+”), which trades under the symbol FAANG. The Exchange also proposes to eliminate the FAANG Rebate that it currently offers Floor Brokers as it failed to achieve its intended goal of encouraging Floor Brokers to bring FAANG business to the Trading Floor.

The Exchange introduced fees and rebates for transactions in FAANG in June 2018.<sup>4</sup> Currently, the Exchange charges \$0.35 per contract, per side for non-Customer and Professional Customer FAANG transactions, whether executed manually or electronically.<sup>5</sup> However, the Exchange does not charge a fee for any FAANG transactions (i) on behalf of Customers or (ii) by Market Makers with an appointment in NYSE FANG+.<sup>6</sup> Thus, Market Makers that do not have an appointment in NYSE FANG+ are currently subject to the same fee of \$0.35 per contract, per side for non-Customer and Professional Customer FAANG transactions. The

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<sup>4</sup> See Securities Exchange Act Release No. 83553 (June 28, 2018), 83 FR 31431 (July 5, 2018) (SR-NYSEAMER-2018-34).

<sup>5</sup> See Fee Schedule, Section I.A., Options Transaction Fees and Credits, Rates for Options Transactions, note 7 (Options on NYSE FANG+ Index (“FAANG”) transactions), available here: [https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE\\_American\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf).

<sup>6</sup> See id. The term Market Maker, as used herein, includes NYSE American Options Market Makers, Specialists, e-Specialists and Directed Order Market Makers (or DOMMs).

Exchange proposes to remove the requirement that a Market Maker have an appointment in FAANG to be able to transact in FAANG for free. The Exchange believes that removing this limitation would encourage Market Makers to trade in FAANG.

Concurrent with this change, the Exchange proposes to introduce credits for Market Maker organizations -- specifically, NYSE American Options Market Makers, Specialists, e-Specialists or DOMMs -- that execute at least 500 total monthly contract sides that open a position on the Exchange (the “MM FAANG Credit” or “Credit”).<sup>7</sup> Only those FAANG transactions marked as “open” would be eligible to be counted towards the MM FAANG Credit. As proposed, firms that meet the minimum volume threshold would receive a MM FAANG Credit of \$5,000; provided, however, that if more than ten firms qualify for a MM FAANG Credit in a calendar month, the Credit for each qualifying firm would be a pro rata share of \$50,000. The Exchange believes the proposed MM FAANG Credit would further the Exchange’s goal of encouraging trading in this new index product. In particular, the Exchange seeks to spur Market Makers to provide increased liquidity in tighter markets, which would create greater trading opportunities for all market participants.

Finally, the Exchange proposes to eliminate the FAANG Rebate that it currently offers Floor Brokers as it failed to achieve its intended goal of encouraging Floor Brokers to bring FAANG business to the Trading Floor.<sup>8</sup>

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<sup>7</sup> See proposed Fee Schedule, Section I.A., Options Transaction Fees and Credits, Rates for Options Transactions, note 7 (Options on NYSE FANG+ Index (“FAANG”) transactions).

<sup>8</sup> See Securities Exchange Act Release No. 83617 (July 10, 2018), 83 FR 32930, 32930 (July 16, 2018) (SR-NYSEAMER-2018-36) (adopting the FAANG Rebate for Floor Brokers to “encourage[e] Floor Brokers to bring business to the Trading Floor, which would in turn, benefit all market participants through increased liquidity and more opportunities to trade”).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act, 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 the proposal to remove the restriction that Market Makers must have an appointment in FAANG to avoid transactions fees in this product is reasonable, equitable and not unfairly discriminatory because this proposal would encourage Market Makers to provide liquidity in FAANG, a product that was only introduced in June 2018. In addition, the proposed FAANG transaction fee change would apply equally to all Market Maker organizations that transact in FAANG.

The Exchange believes the proposal to introduce a MM FAANG Credit for executing a certain number of options contract sides on FAANG is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the proposed Credit would apply equally to all Market Maker organizations that transact in FAANG. Second, the proposed Credit would encourage Market Maker organizations to increase trading activity in FAANG. The Exchange anticipates that Market Makers seeking to reach the proposed 500 contract threshold will provide additional liquidity and trading opportunities for all market participants. The Exchange believes the proposed MM FAANG Credit is reasonable, equitable and not unfairly discriminatory because it is designed to further the Exchange's goal of encouraging transactions in FAANG, a new index product.

Finally, the Exchange believes the proposal to eliminate the FAANG Rebate that is

currently offered to Floor Brokers is reasonable, equitable and not unfairly discriminatory because it would apply equally to all Floor Brokers. Further, the proposal would encourage the fair and efficient use of Exchange resources given that this incentive program failed to meet its stated goal of encouraging Floor Brokers to bring FAANG business to the Trading Floor.

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 the proposed MM FAANG Credit for Market Maker organizations would not place an unfair burden on competition as it would apply to all similarly situated Market Makers. The Exchange also believes the proposed Credit is procompetitive as it would further the Exchange's goal of introducing new products to the marketplace and encouraging Market Makers to provide liquidity in these products, which would in turn, benefit all market participants. Market participants that do not wish to trade in FAANG are not obliged to do so.

To the extent that there is an additional competitive burden on market participants that are not eligible for the MM FAANG Credit (i.e., non-Market Maker organizations), the Exchange believes that this is appropriate because the proposal would incent Market Makers to provide increased liquidity in tighter markets, which would create greater trading opportunities for all market participants. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

The proposed elimination of the FAANG Rebate currently available to Floor Brokers

likewise does not impose an unfair burden on competition as it failed to achieve its intended goal of encouraging Floor Brokers to bring FAANG business to the Trading Floor and applies equally to all similarly situated Floor Brokers.

The Exchange does not believe that the proposed change will impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. Further, the proposed Rebate would be applied to all similarly situated participants (i.e., Market Maker organizations), and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants.

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>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</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>11</sup> of the Act to determine

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

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-2018-58 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-2018-58. 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 such 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-2018-58, and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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

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