This document is scheduled to be published in the
Federal Register on 09/16/2019 and available online at
https://federalregister.gov/d/2019-19905, and on govinfo.gov

8011-01p
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-86917; File No. SR-NYSEAMER-2019-36]

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

September 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 September 3, 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 September 3, 2019. 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

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 modify the Strategy Execution Fee Cap ("Strategy Cap"), as set forth below.

Currently, Section I.J. of the Fee Schedule provides that transaction fees for ATP Holders are limited or capped at $750 for certain options strategy executions "on the same trading day in the same option class" and such fees are further capped at $25,000 per month per initiating firm.[4] Strategy executions that qualify for the Strategy Cap are (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls, which are described in detail in the Fee Schedule (the "Strategy Executions").[5]

The Exchange proposes to increase the daily Strategy Cap from $750 to $1,000 and to include in the Cap all Strategy Executions traded in the same day (i.e., to eliminate the Cap requirement that strategies be in the same option class). In connection with this change, the Exchange proposes to eliminate the $25,000 monthly Strategy Cap. The Exchange believes that the proposed Strategy Cap would encourage ATP Holders to execute more Strategy Executions, particularly those that would not individually qualify for inclusion in the Cap because of the current per-symbol limitation, as such strategies would become more economically feasible (and

4 See Fee Schedule, Section I. J. (Strategy Execution Fee Cap), available here: https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.

5 See id. Any qualifying Strategy Execution executed as a QCC order will not be eligible for this fee cap. See id.

thus more attractive), when combined under the proposed Cap with all of an ATP Holder's Strategy Executions on the same trading day.

The Exchange proposes to implement the rule change on September 3, 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."[6]

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.[7] 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.[8]

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

---

6 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) ("Reg NMS Adopting Release").

7 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.

8 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.

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, such as the Strategy Cap, to encourage ATP Holders to participate in certain large volume options strategies that capture potentially small profits by capping the fees paid for such transactions.

As noted above, the current Strategy Cap limits or caps at $750 transaction fees for options Strategy Executions "on the same trading day in the same option class" and further caps such fees at $25,000 per month.[9]

Proposed Rule Change

The Exchange proposes to modify the Strategy Cap by eliminating the requirement that Strategy Executions on the same trading day all be in the same symbol for inclusion in the Cap. Specifically, as proposed, the daily Strategy Cap on transaction fees for options Strategy Executions would be changed from $750 to $1,000 and would apply to all Strategy Executions by an ATP Holder on the same trading day (regardless of option class/symbol). In addition, given the proposal to cap an ATP Holder's fee for all Strategy Executions in a given trading day at $1,000, the Exchange proposed to eliminate the $25,000 per month Strategy Cap as unnecessary.

For example, per the current Fee Schedule, an ATP Holder that executes the following Strategy Executions on the same trading day would be charged as follows:

- A Jelly Roll in ABC for $800 in fees, capped at $750;
- A Reversal Conversion in DEF for $500 in fees; and

---

[9] See Fee Schedule, Section I. J. (Strategy Execution Fee Cap), supra note 4.

- A Merger Spread in XYZ for $600.

The total fees for these Strategy Executions under the current Fee Schedule would be $1,850. Under the proposed Strategy Cap, the same trades would be billed as follows:

- A Jelly Roll in ABC for $800 in fees;
- A Reversal Conversion in DEF for $500 in fees; and
- A Merger Spread in XYZ for $600.

The total fees for these Strategy Executions under the proposed Fee Schedule would be $1,000. Thus, although the amount of the Cap would be increased, the number of eligible Strategy Executions would also be increased, making it easier to meet the Strategy Cap.

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 similar Strategy Fee Caps.[10] Thus, ATP Holders have a choice of where they direct their order flow. This proposed change is designed to incent ATP Holders to increase their Strategy Execution volumes by executing (often smaller) strategies that are not necessarily economically viable on a per symbol basis, but which may be profitable when fees on Strategy Executions -- regardless of symbol -- are capped for the trading day. The Exchange notes that all market participants stand to benefit from increased volume, which promotes market depth, facilitates tighter spreads and

10 See e.g., BOX Options Market LLC ("BOX") fee schedule, Section II.D (Strategy QOO Order Fee Cap and Rebate). BOX caps fees for each participants at $1,000 for the following strategies executed on the same trading day: short stock interest, [sic], reversal, conversion, jelly roll, and box spread strategies. BOX also caps participant fees at $1,000 for all dividend strategies executed on the same trading day in the same options class. BOX also offers a $500 rebate to floor brokers for presenting certain Strategy QOO Orders on the BOX trading floor, which is applied "once the $1,000 fee cap for all dividend, short stock interest, merger, reversal, conversion, jelly roll, and box spread strategies is met." See id. The Exchange does not include dividend strategies in the Strategy Cap, nor does the Exchange does not offer a similar rebate.

enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange cannot predict with certainty whether any ATP Holders would avail themselves of this proposed fee change. At present, whether or when an ATP Holder qualifies for the current daily Strategy Cap (of $750) varies day-to-day in a given month. Thus, the Exchange cannot predict with any certainty the number of ATP Holders that may qualify for the modified Strategy Cap, but believes that ATP Holders would be encourage to take advantage of the modified Cap. The Exchange believes the proposed Strategy Cap, which applies to all qualifying strategies executed on the same trading day, regardless of symbol, would provide an incentive for ATP Holders to submit these types of strategy orders to the Exchange Trading Floor, which brings increased liquidity and order flow for the benefit of all market participants.

2. Statutory Basis

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

11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(4) and (5).

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."[13]

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.[14] 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.[15]

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 to the Strategy Cap is designed to incent ATP Holders to increase the number and type of Strategy Executions sent to the Exchange. In addition, the proposal caps fees on all similar transactions, regardless of size and

---

13 See Reg NMS Adopting Release, supra note 6, at 37499.

14 See supra note 7.

15 Based on OCC data, see supra note 8, 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.

similarly-situated ATP Holders can opt to try to achieve the modified Strategy Cap. The proposal is designed to encourage ATP Holders to send all Strategy Executions to the Exchange regardless of size or type. To the extent that the proposed change attracts more Strategy Executions to the Exchange Trading Floor, 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. 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 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 similar Strategy Fee Caps.[16] Thus, ATP Holders have a choice of where they direct their order flow -- including their Strategy Executions. The proposed rule change is designed to incent ATP Holders to direct liquidity to the Exchange -- in particular Strategy Executions, 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, whether or when an ATP Holder qualifies for the current daily Strategy Cap (of $750) varies day-to-day in a given month. Thus, the

---

16 See supra note 10 (regarding BOX Strategy Cap).

Exchange cannot predict with any certainty the number of ATP Holders that may qualify for the modified Strategy Cap, but believes that ATP Holders would be encourage to take advantage of the modified Cap. The Exchange believes the proposed Strategy Cap, which applies to all qualifying strategies executed on the same trading day, regardless of symbol, would provide an incentive for ATP Holders to submit these types of strategy orders to the Exchange Trading Floor, which brings increased liquidity and order flow for the benefit of all market participants.

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 and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of the Strategy Cap or not. Moreover, the proposal is designed to encourage ATP Holders to aggregate all Strategy Executions at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Strategy Executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, 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 modify the Strategy Cap 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 and type of business transacted on the Exchange and ATP Holders are not obligated to try to achieve the Strategy Cap. Rather, the proposal is designed encourage ATP Holders to utilize the Exchange as a primary trading venue for Strategy Executions (if they have not done so previously) or increase volume sent to the Exchange. To the extent that the proposed change attracts more Strategy Executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, 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."[17]

Intramarket Competition. The proposed change is designed to attract additional order flow (particularly Strategy Executions) to the Exchange. The Exchange believes that the proposed Strategy Cap would incent market participants to direct their Strategy Execution volume to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Strategy Executions would increase opportunities for execution of other trading interest. The proposed Strategy Cap would be available to all similarly-situated market participants that incur transaction fees on Strategy Executions, 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 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.[18] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the first

---

17 See Reg NMS Adopting Release, supra note 6, at 37499.

18 See supra note 7.

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 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 Strategy Executions) 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 Strategy Caps, 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)[20] of the Act and subparagraph (f)(2) of Rule 19b-4[21] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

---

19 Based on OCC data, supra note 8, 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.

20 15 U.S.C. 78s(b)(3)(A).

21 17 CFR 240.19b-4(f)(2).

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)[22] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NYSEAMER-2019-36 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File No. SR-NYSEAMER-2019-36. 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

22 15 U.S.C. 78s(b)(2)(B).

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, D.C. 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-2019-36, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Jill M. Peterson
Assistant Secretary

---

[23] 17 CFR 200.30-3(a)(12).

[FR Doc. 2019-19905 Filed: 9/13/2019 8:45 am; Publication Date: 9/16/2019]