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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87902; File No. SR-NYSEAMER-2020-01]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend the NYSE American Options Fee Schedule Regarding Fees Charged Under the Market Maker Sliding Scale

January 7, 2020

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on January 2, 2020, NYSE American LLC ("NYSE American" or "Exchange") filed with the Securities and Exchange Commission ("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") regarding fees charged under the Market Maker Sliding Scale. The Exchange proposes to implement the fee change effective January 2, 2020. 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.

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify certain of the fees charged under the Market Maker Sliding Scale program, as described in more detail below.

Section I.C. of the Fee Schedule sets forth the Sliding Scale of transaction fees charged to NYSE American Options Market Makers (referred to as Market Makers herein), which fees decrease upon the Market Maker trading certain minimum (increasing) monthly volume thresholds as expressed in five tiers (the "MM Sliding Scale").[4] The MM Sliding Scale offers

4 See Fee Schedule, Section I.C., NYSE American Options Market Maker Sliding Scale – Electronic, available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf (excluding any volumes attributable to QCC trades, CUBE Auctions, and Strategy Execution Fee Caps, as these transactions are subject to separate pricing described in Fee Schedule Sections I.F., I.G., and I.J, respectively). The thresholds are based on a Market Makers' volume transacted Electronically as a percentage of total industry Customer equity and Exchange Traded Fund options volumes as reported by the Options Clearing Corporation (the "OCC"). See OCC Monthly Statistics Reports, available here, http://www.theocc.com/webapps/monthly-volume-reports. See also Fee Schedule, Key Terms and Definitions, TCADV (defining TCADV as "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").

different rates depending on whether volume is make or take[5] and offers reduced rates for Market Makers that participate in the Exchange's Prepayment Programs, per Section I.D. of the Fee Schedule.[6] The Exchange proposes to modify (increase) the MM Siding Scale per contract rate in some of the tiers for Market Makers enrolled in the Prepayment Program, but will not be changing any aspect of the Prepayment Program or the volume thresholds required to qualify for each MM Sliding Scale tier.[7]

The Exchange proposes to implement the fee change effective January 2, 2020.

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."[8]

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5 For purposes of the Sliding Scale, "all eligible volume that does not remove liquidity" would be considered non-take volume; whereas any volume that removes liquidity would be considered take volume." See Fee Schedule, Section I.C., note 1. For example, any Market Maker transaction that interacts with resting liquidity is take volume.

6 The Exchange offers Market Makers the opportunity to prepay a portion of certain transactions costs in exchange for reduced rates under the MM Sliding Scale program as well as enabling such Market Makers to qualify their Affiliated OFP or Appointed OFP, if any, to earn enhanced credits under the American Customer Engagement ("ACE") Program per Section I.E. of the Fee Schedule. See Fee Schedule, Section I.D., supra note 4 (describing 1 Year Prepayment Program and Balance of the Year Program). See also Fee Schedule, Section I.E. (setting forth the ACE Program).

7 See proposed Fee Schedule, Section I.C., NYSE American Options Market Maker Sliding Scale – Electronic. See also Fee Schedule, Section I.D. (Prepayment Program).

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

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

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. To respond to this competitive marketplace, the Exchange has already established incentives to encourage Market Makers to provide liquid and active markets on the Exchange, including by offering the MM Sliding Scale and Prepayment Programs. Market Makers that would like to receive a more favorable per contract rate under the MM Sliding Scale have the option to commit to the Exchange's Prepayment Program, which commitment increases liquidity on the Exchange to the benefit of all market participants. The Exchange provides Market Makers with the flexibility to join annually or at various points in the year to encourage broader participation. While the proposed change would increase certain MM Sliding Scale fees for Market Makers that have prepaid, the Exchange nonetheless believes that the (still lower and) reduced MM Sliding Scale fees would

9 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.

10 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 7.86% for the month of September.

continue to encourage Market Makers to increase their participation, thereby improving the quoted markets and attracting more order flow trading volume to the Exchange. To the extent that these incentives succeed, the increased liquidity on the Exchange would result in enhanced market quality for all participants.

Proposed Rule Change

The Exchange proposes to modify the per contract rate for Market Makers enrolled in the Prepayment Program and that qualify for tiers 2, 3 or 4, as shown in the table below (with current rates in brackets and proposed rates underscored), but will not be changing tiers 1 or 5, nor the volume thresholds required to qualify for any MM Sliding Scale tier:[11]

Tier	**Market Maker Electronic ADV as a % of TCADV**	**Prepayment Program Participant Rates**	
		Rate per Contract for Non-Take Volume	**Rate per Contract for Take Volume**
1	0.00% to 0.20%	$0.22	$0.24
2	> 0.20% to 0.65%	[$0.17] <u>$0.18</u>	[$0.20] <u>$0.22</u>
3	> 0.65% to 1.40%	[$0.08] <u>$0.09</u>	[$0.11] <u>$0.13</u>
4	> 1.40% to 2.00%	[$0.05] <u>$0.06</u>	[$0.08] <u>$0.10</u>
5	> 2.00%	$0.03	$0.06

The Exchange believes that the modified rates (while increased) still reflect a significant reduction in overall transaction rates for participants in one of the Prepayment Programs. Thus,

11 The Exchange notes that this table does not include the tiered MM Sliding Scale rates for participants that are not enrolled in a Prepayment Program. <u>See</u> Fee Schedule, Section I.C. (setting forth the rate per contract for non-take and take volume for non-Prepayment participants, based on tier).

the Exchange believes that the (still lower and) reduced MM Sliding Scale fees would continue to encourage Market Makers to increase their participation, thereby improving the quoted markets and attracting more order flow trading volume to the Exchange. To the extent that these incentives succeed, the increased liquidity on the Exchange would result in enhanced market quality for all participants. The Exchange notes that it is not modifying the rates for Tiers 1 or 5 because it believes those rates are appropriate and should continue to attract liquidity to the Exchange. In particular, Tier 1 has no minimum volume threshold and thus operates as a base tier, which any Market Maker doing business on the Exchange can achieve; whereas Tier 5 is the highest MM Sliding Scale tier and the Exchange wants to keep the rate the same so as to continue to encourage those Market Makers that already qualify for the tier to continue to execute sufficient volume to achieve this highest perk (i.e., lower per contract pricing).

The Exchange believes that the Market Makers that would like to receive a more favorable per contract rate under the MM Sliding Scale have the option to commit the Exchange's Prepayment Program, which commitment increases liquidity on the Exchange to the benefit of all market participants. The Exchange notes that Market Makers serve a crucial role in the options markets by providing liquidity to facilitate market efficiency and functioning. The Exchange provides Market Makers with the flexibility to join annually or at various points in the year to encourage broader participation. The proposed fees, although increased, are still less expensive for participants in the Prepayment Program and therefore the Exchange believes that the Prepayment Program and MM Sliding Scale would continue to encourage Market Makers to commit to directing their order flow to the Exchange in exchange for reduced rates, which would increase volume and liquidity, to the benefit of all market participants by providing more trading opportunities and tighter spreads.

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 and operate as Market Makers. The proposed fees, although increased, are still less expensive for participants in the Prepayment Program and therefore the Exchange believes that the Prepayment Program and MM Sliding Scale would continue to encourage Market Makers to commit to directing their order flow to the Exchange in exchange for reduced rates, which would increase volume and liquidity, to the benefit of all market participants by providing more trading opportunities and tighter spreads. The Exchange notes that all market participants stand to benefit from increased transaction volume, which promotes market depth, facilitates tighter spreads and 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 Market Makers would avail themselves of this proposed fee change, particularly because the deadline for Market Makers to sign up for the Prepayment Program for 2020 is not until the end of 2019. Moreover, Market Makers may be registered on other options exchanges and may choose to post orders and quotes to those exchanges based on available incentives.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

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12 15 U.S.C. 78f(b).

13 15 U.S.C. 78f(b)(4) and (5).

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."[14]

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

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

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14 See Reg NMS Adopting Release, supra note 8, at 37499.

15 See supra note 9.

16 Based on OCC data, see supra note 10, in 2019, the Exchange's market share in equity-based options declined from 9.82% for the month of January to 7.86% for the month of September.

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

Market Makers that would like to receive a more favorable per contract rate under the MM Sliding Scale have the option to commit the Exchange's Prepayment Program, which commitment increases liquidity on the Exchange to the benefit of all market participants. The Exchange provides Market Makers with the flexibility to join annually or at various points in the year to encourage broader participation. The proposed fees, although increased, are still less expensive for participants in the Prepayment Program and therefore the Exchange believes that the Prepayment Program and MM Sliding Scale would continue to encourage Market Makers to commit to directing their order flow to the Exchange in exchange for reduced rates, which would increase volume and liquidity, to the benefit of all market participants by providing more trading opportunities and tighter spreads. Further, the proposed Sliding Scale rates are competitive with fees charged by other exchanges and are designed to attract (and compete for) order flow to the Exchange, which provides a greater opportunity for trading by all market participants.[17]

Finally, to the extent the proposed change continues to attract greater volume and liquidity to the Exchange, 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

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17 See, e.g., Cboe Exchange, Inc. ("Cboe") fee schedule, Liquidity Provider Sliding Scale Prepayment, available here: https://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf. The Exchange further notes that other options exchanges similarly differentiate fees based on maker-taker activity. See, e.g., MIAX Options fee schedule, at p.1, available here: https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_12052019.pdf ("Market Maker Sliding Scale").

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 cannot predict with certainty whether any Market Makers would avail themselves of this proposed fee change, particularly because the deadline for Market Makers to sign up for the Prepayment Program for 2020 is not until the end of 2019. Moreover, Market Makers may be registered on other options exchanges and may choose to post orders and quotes to those exchanges based on available incentives.

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 Market Makers can opt to avail themselves of the Prepayment program or not, and to attempt to trade sufficient monthly volume to achieve one of the MM Sliding Scale tiers, or not. Moreover, the Prepayment Program -- which is tied to the proposed fee changes -- is designed to encourage Market Makers to commit capital to the Exchange as a demonstration of long term participation on the Exchange as a primary execution venue. To the extent that the proposed change continues to attract more participation in the programs of the Exchange, the 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 MM Sliding Scale because the proposed modification would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposed modified MM Sliding Scale rates are not unfairly discriminatory because Market Makers that would like to receive a more favorable per contract rate under the Sliding Scale have the option to commit to one of the Prepayment Programs, which commitment increases liquidity on the Exchange to the benefit of all market participants. Moreover, all Market Makers would be subject to the differing rates depending on whether eligible volume is make or take volume.

The proposal is based on the amount and type of business transacted on the Exchange and Market Maker organizations are not obligated to try to achieve any of the MM Sliding Scale tiers, even if they participate in the Prepayment Program (that latter program also being optional to Market Makers). In addition, Market Maker organizations have increased obligations with respect to trading on the Exchange, and the Exchange believes that the proposed fees, although increased, are still less expensive for participants in the Prepayment Program and therefore the Exchange believes that the Prepayment Program and MM Sliding Scale would continue to encourage Market Makers to commit to directing their order flow to the Exchange in exchange for reduced rates, which would increase volume and liquidity, to the benefit of all market participants by providing more trading opportunities and tighter spreads. To the extent that the proposed change attracts a variety of transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution 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.

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."[18]

Intramarket Competition. The proposed change is designed to continue to attract order flow to the Exchange by offering competitive rates based on increased volumes on the Exchange, which would enhance the quality of quoting and may increase the volumes of contracts trade on the Exchange. To the extent that there is an additional competitive burden on non-NYSE American Market Makers, the Exchange believes that this is appropriate because Market Makers have heightened obligations that other market participants do not and the proposal should incent market participants to direct additional order flow to the Exchange, and thus provide additional

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

liquidity that enhances the quality of its markets and increases the volume of contracts traded here. 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.

Intermarket Competition. The Exchange believes that the proposed change, which is consistent with the goals of the MM Sliding Scale Program by providing reduced per contract rates for Market Makers in the Preypayment [sic] Program, could promote competition between the Exchange and other execution venues, by encouraging additional orders to be sent to the Exchange for execution. The proposed adjustments to the MM Sliding Scale fees are designed to continue to encourage Market Makers to commit to directing their order flow to the Exchange, which would increase volume and liquidity, to the benefit of all market participants by providing more trading opportunities and tighter spreads. Further, the proposed Sliding Scale rates are competitive with fees charged by other exchanges and are designed to attract (and compete for) order flow to the Exchange, which provides a greater opportunity for trading by all market participants.[19]

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.

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[19] See supra note 17 (regarding Cboe's Liquidity Provider Sliding Scale Prepayment).

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.

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 Number SR-NYSEAMER-2020-01 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.

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

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

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

All submissions should refer to File Number SR-NYSEAMER-2020-01. 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 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-2020-01, 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]

J. Matthew DeLesDernier,

Assistant Secretary.

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

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