

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89338; File No. SR-NYSEAMER-2020-55)

July 17, 2020

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

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 July 10, 2020, 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 modify the NYSE American Options Fee Schedule (“Fee Schedule”) regarding certain limits or caps on transactions fee and credits. The Exchange proposes to implement the fee change effective July 10, 2020.⁴ The proposed change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on June 26, 2020, effective July 1, 2020 (SR-NYSEAMER-2020-48), and withdrew such filing on July 10, 2020.

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 modify the Fee Schedule regarding certain limits or caps on transactions fee and credits. The Exchange proposes to implement the fee change effective July 10, 2020.

Background

On March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective Monday, March 23, 2020, as a precautionary measure to prevent the potential spread of COVID-19. Following the temporary closure of the Trading Floor, the Exchange modified certain fees for April and May 2020 and, after the Floor partially reopened, the Exchange extended those changes through June 2020.⁵ The aforementioned changes -- applicable April, May and June 2020 only -- included (i) raising the Floor Broker QCC Cap from \$425,000

⁵ See Securities Exchange Act Release Nos. 88595 (April 8, 2020), 85 FR 20737 (April 14, 2020) (SR-NYSEAMER-2020-25) (waiving Floor-based fixed fees); 88594 (April 8, 2020), 85 FR 20799 (April 14, 2020) (SR-NYSEAMER-2020-26) (raising the regular FB QCC Rebate Cap); 88682 (April 17, 2020), 85 FR 22772 (April 23, 2020) (SR-NYSEAMER-2020-31) (including reversals and conversions in Strategy Execution Fee Cap). See also Securities Exchange Act Release Nos. 88840 (May 8, 2020), 85 FR 28992 (May 14, 2020) (SR-NYSEAMER-2020-37) (extending April 2020 fee changes through May 2020); and 89049 (June 11, 2020), 85 FR 36649 (June 17, 2020) (SR-NYSEAMER-2020-44) (extending April and May fee changes through June 2020).

to \$625,000 and (ii) modifying the \$1,000 daily Strategy Execution Cap to allow the inclusion of reversal and conversion strategies executed as QCCs in such Cap.

The Exchange proposes to (i) indefinitely increase the Floor Broker QCC Cap to from \$425,000 to \$525,000, and (ii) continue to allow reversal and conversion strategies executed as QCCs to be included in the Strategy Execution Cap.

Floor Broker QCC Cap

Currently, Floor Brokers earn a credit for executed QCC orders of \$0.07 per contract up to 300,000 contracts or \$0.10 per contract above 300,000.⁶ The Exchange currently limits the maximum Floor Broker credit to \$425,000 per month per Floor Broker firm (the “regular FB QCC Cap”). As noted above, during the months of April through June, when the Trading Floor was either temporarily closed or reopened with limited capacity, the Exchange experienced a surge in QCC trades and increased the regular FB QCC Cap up to \$625,000 per month per Floor Broker (the “temporary FB QCC Cap”).⁷

The temporary FB QCC Cap increase, which expires at the end of June, was designed to accommodate the unanticipated and unprecedented Floor closure resulting from the COVID-19 pandemic. However, even with the partial reopening of the Trading Floor, the Exchange has continued to receive increased volumes of QCC trades. Accordingly, the Exchange proposes to raise the regular FB QCC Cap of \$425,000 to \$525,000, which reduces the temporary FB QCC Cap as the Floor is no longer closed, but still increases the regular FB QCC Cap to accommodate

⁶ See Fee Schedule, Section I.F., QCC Fees & Credits, n. 1, available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf. QCC executions in which a Customer or Professional Customer is on both sides of the QCC trade are not eligible for the Floor Broker credit.

⁷ See id.

the level of QCC trading on the Exchange.⁸ This proposed change -- to increase by \$100,000 the regular FB QCC Cap -- is designed to continue to encourage ATP Holders acting as Floor Brokers to execute QCCs on the Exchange, particularly given the increase in QCC transactions on the Exchange over the last several months. The Exchange believes that \$525,000 is a reasonable increase and remains competitive with similar incentives offered on other options markets.⁹

Strategy Fee Execution Cap

Currently, the Exchange offers a \$1,000 daily Strategy Execution Cap (the “Strategy Cap”) for certain strategy executions, including (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”).¹⁰ Any qualifying Strategy Execution executed as a QCC order is not eligible for this fee cap. As noted above, during the months of April through June, when the Trading Floor was either temporarily closed or reopened with limited capacity, in response to the increase of reversals and conversions executed as QCCs

⁸ See proposed Fee Schedule, Section I.F., QCC Fees & Credits, n. 1 (setting forth available credits to Floor Brokers and providing that “[t]he maximum Floor Broker credit paid shall not exceed \$525,000 per month per Floor Broker firm” and deleting the following, now obsolete, text: “(the ‘Cap’), except that for the months of April, May and June 2020, the Cap would be \$625,000 per Floor Broker firm”).

⁹ See, e.g., NASDAQ PHLX, Options 7 Pricing Schedule, Section 4. Multiply Listed Options Fees, QCC Rebate Schedule, available here, <http://nasdaqphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F3%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2D11crules%2F> (providing that “[t]he maximum QCC Rebate to be paid in a given month will not exceed \$550,000”); NASDAQ ISE, Options 7 Pricing Schedule, Section 6. Other Options Fees and Rebates, A. QCC and Solicitation Rebate, available here, http://ise.cchwallstreet.com/tools/PlatformViewer.asp?selectednode=chp_1_1_22&manual=/contents/ise/ise-rules/ (providing no cap on the maximum on the amount of QCC rebate to be paid in a given month).

¹⁰ See Fee Schedule, Section I. J. (Strategy Execution Fee Cap), supra note 6.

(“RevCon QCCs”), the Exchange modified the Fee Schedule to include RevCon QCCs in the Strategy Cap (the “temporary Strategy Cap”).

Although the temporary Strategy Cap expires at the end of June, because of the continued increase use of RevCon QCCs, the Exchange proposes to continue to allow the inclusion of RevCon QCCs in the Strategy Cap, and will therefore remove language regarding the time limitation.¹¹ Absent this change, RevCon QCCs would no longer be eligible for the Strategy Cap (but instead revert to being subject to QCC Fees & Credits).¹² Although the Floor has partially reopened and open outcry is supported, the Exchange believes that the proposed continued inclusion of RevCon QCCs in the Strategy Cap, which is available to all ATP Holders, would encourage ATP Holders (including those acting as Floor Brokers) to execute their RevCon QCC volume on the Exchange, and to increase the number of such RevCon QCC transactions. The Exchange believes that proposed change is a reasonable increase and remains competitive with similar incentives offered on other options markets.¹³

The Exchange cannot predict with certainty whether any Floor Brokers would benefit

¹¹ See proposed Fee Schedule, Sections I.J., Strategy Execution Fee Cap (including RevCon QCCs in the Strategy Cap) and Section I.F., QCC Fees & Credits, n. 1 (providing that “[t]he Floor Broker credit will not apply to any QCC trades that are included in the Strategy Cap (per Section I.J.)”).

¹² See Fee Schedule, Section I.F., QCC Fees & Credits, *supra* note 6.

¹³ 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, long stock interest, merger, 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, per customer, for all dividend, short stock interest, long stock interest, merger, reversal, conversion, jelly roll, and box spread strategies is met.” See *id.* The Exchange does not include dividend or long stock interest strategies in the Strategy Cap, nor does the Exchange offer a similar rebate.

from the proposed change to the FB QCC Cap; however, the Exchange believes the proposal would encourage Floor Brokers from diverting QCC order flow from the Exchange if and when they hit the revised (and indefinitely increased) Cap. The Exchange likewise cannot predict with certainty whether any ATP Holders would benefit from the proposed Strategy Cap because, at present, whether or when an ATP Holder qualifies for the Strategy Cap varies day-to-day, month-to-month. That said, the Exchange believes that ATP Holders would be encouraged to take advantage of the modified Strategy Cap. In addition, the Exchange believes the proposed change is necessary to prevent ATP Holders from diverting RevCon QCC order flow from the Exchange to a more economical venue.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁵ 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 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

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶

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.¹⁷ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in June 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.¹⁸

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 and credits can have a direct effect on the ability of an exchange to compete for order flow. 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 (including those who act as Floor Brokers) may direct their order flow to any of the 16 options exchanges.

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), [70 FR 37496](#), 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

¹⁷ 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>.

¹⁸ Based on OCC data, see id., the Exchange’s market share in equity-based options increased slightly from 8.20% for the month of June 2019 to 8.32% for the month of June 2020.

FB QCC Cap

This proposed modification of the regular FB QCC Cap is reasonable, equitable, and not unfairly discriminatory because it would allow Exchange incentives to operate as intended and continue to encourage QCC volume. As noted above, the temporary FB QCC Cap increase (in effect from April through June), was designed to accommodate the unanticipated and unprecedented Floor closure resulting from the COVID-19 pandemic. Given that the Exchange has continued to receive increased volumes of QCC trades even with the partial reopening of the Floor, the Exchange believes the proposed increase of the regular FB QCC Cap by \$100,000 -- from \$425,000 to \$525,000 -- is reasonable to accommodate the level of QCC trading on the Exchange. In addition, this proposed change is designed to continue to encourage ATP Holders acting as Floor Brokers to execute QCCs on the Exchange, particularly given the increase in QCC transactions on the Exchange over the last several months. The Exchange believes that \$525,000 is a reasonable increase and remains competitive with similar incentives offered on other options markets.¹⁹

This proposed change -- which increases indefinitely the maximum available monthly credit for Floor Brokers executing QCCs -- is designed to incent Floor Brokers to increase their QCC volumes on the Exchange. The Exchange notes that all market participants stand to benefit from increased 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.

¹⁹ See supra note 9 (regarding NASDAQ PHLX's \$550,000 monthly cap on QCC rebate and NASDAQ ISE's lack of any such monthly cap of QCC rebate).

To the extent that the proposed change attracts more QCC trades to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for 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.

The Exchange cannot predict with certainty whether any Floor Brokers would benefit from this proposed fee change. However, the Exchange also believes the proposed change is necessary to prevent Floor Brokers from diverting QCC order flow from the Exchange if and when they hit the proposed regular FB QCC Cap.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits and not unfairly discriminatory because it is based on the amount and type of business transacted on the Exchange and Floor Brokers can opt to avail themselves of the modified regular FB QCC Cap (i.e., by executing more QCC transactions) or not. The proposed change would incent Floor Brokers to attract increased QCC order flow to the Exchange that might otherwise go to other options exchanges.

The Exchange believes it is not unfairly discriminatory to modify the maximum allowable credit on QCC transactions to Floor Brokers because the proposed modification would be available to all similarly-situated market participants (i.e., Floor Brokers) on an equal and non-discriminatory basis.

Strategy Cap

This proposed modification to continue to allow the inclusion of RevCon QCCs in the \$1,000 daily Strategy Cap (and remove the month-to-month time limitation) is reasonable, equitable, and not unfairly discriminatory because it would (continue to) encourage ATP Holders

to execute their RevCon QCC volume on the Exchange. Further, the proposal is designed to encourage ATP Holders to aggregate all Strategy Executions -- particularly RevCon QCCs -- at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Strategy Executions (including to the Exchange Trading Floor), this increased order flow would continue to make the Exchange a more competitive venue for 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. 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 Exchange believes the proposed rule change is an equitable allocation of its fees and credits and not unfairly discriminatory because it is based on the amount and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of the modified Strategy Cap (i.e., by executing more RevCon QCC transactions) or not. In addition, the proposal caps fees on all similar transactions, regardless of size and 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.

The Exchange believes the Strategy Cap, as modified, it is not unfairly discriminatory because the proposed change would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

Further, 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.²⁰ 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 RevCon QCCs, 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 benefit from this proposed fee change. At present, whether or when an ATP Holder qualifies for the Strategy Cap varies day-to-day, month-to-month. That said, the Exchange believes that ATP Holders would be encouraged to take advantage of the modified Cap. In addition, the Exchange believes the proposed change is necessary to prevent ATP Holders from diverting RevCon QCC order flow from the Exchange to a more economical venue.

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. The Exchange believes that the proposed

²⁰ See supra note 13 (regarding BOX's Strategy QOO Order Fee Cap and Rebate).

changes would encourage the continued participation of affected ATP Holders, 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."²¹

Intramarket Competition. The proposed fee changes are designed to attract additional order flow (particularly Floor Broker executed QCCs and RevCon QCCs) to the Exchange. The Exchange believes that the proposal would incent market participants to direct their volume to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Floor Broker executed QCCs and RevCon QCCs 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 or credits on QCCs or 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 currently has more than 16% of the market share of executed volume of

²¹ See Reg NMS Adopting Release, supra note 16, at 37499.

multiply-listed equity and ETF options trades.²² Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in June 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.²³

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to be competitive with other options markets and to encourage ATP Holders to direct trading interest (particularly QCCs and RevCon QCCs) 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.

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)²⁴ of the Act and subparagraph (f)(2) of Rule 19b-4²⁵ 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

²² See supra note 17.

²³ Based on OCC data, supra note 18, the Exchange's market share in equity-based options was 8.20% for the month of June 2019 and 8.32% for the month of June 2020.

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(2).

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)²⁶ 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-2020-55 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-2020-55. 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

²⁶ 15 U.S.C. 78s(b)(2)(B).

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-2020-55, 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.²⁷

J. Matthew DeLesDernier
Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12).