

NYSE Rule 8.600–E(c)(2)) will be made available to all market participants at the same time.⁴¹ In addition, the Exchange states that on a daily basis, the Fund discloses on its website the Disclosed Portfolio of the Fund that forms the basis for the Fund's NAV calculation.⁴² Trading in the Shares also will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of a fund may be halted. Further, trading in the Shares may be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached, because of market conditions, or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.⁴³

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.⁴⁴ Additionally, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.⁴⁵

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.⁴⁶ In support of its proposal, the Exchange has made the following representations:

(1) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.⁴⁷

(2) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.⁴⁸

(3) The Exchange or FINRA, on behalf of the Exchange, or both, (1) will communicate as needed regarding trading in the Shares, ETFs, certain exchange-traded options and certain

futures with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”); and (2) may obtain trading information regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures from such markets and other entities.⁴⁹ The Exchange is able to access from FINRA, as needed, trade information for certain Fixed Income Securities held by the Fund reported to TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to certain municipal bond trading activity for surveillance purposes in connection with trading in the Shares.⁵⁰

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.⁵¹

(5) The Fund will be in compliance with Rule 10A–3 under the Act,⁵² as provided by NYSE Arca Rule 5.3–E for initial and continued listing of shares.⁵³

(6) All statements and representations made in the proposed rule change regarding the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5(m)–E.⁵⁴

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendments No. 1 and No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Act⁵⁵ the rules and regulations

thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵⁶ that the proposed rule change (SR–NYSEArca–2019–38), as modified by Amendments No. 1 and No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

Jill M. Peterson,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

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

Extension:

Rule 302, SEC File No. 270–453, OMB Control No. 3235–0510.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for approval of extension of the previously approved collection of information provided for in Rule 302 (17 CFR 242.302) of Regulation ATS (17 CFR 242.300 *et seq.*) under the Securities and Exchange Act of 1934 (“Act”) (15 U.S.C. 78a *et seq.*).

Regulation ATS sets forth a regulatory regime for “alternative trading systems” (“ATSs”). An entity that meets the definition of an exchange must register, pursuant to Section 5 of the Exchange Act, as a national securities exchange under Section 6 of the Exchange Act¹ or operate pursuant to an appropriate exemption.² One of the available exemptions is for ATSs.³ Exchange Act

⁵⁶ 15 U.S.C. 78s(b)(2).

⁵⁷ 17 CFR 200.30–3(a)(12).

¹ See 15 U.S.C. 78e and 78f. A “national securities exchange” is an exchange registered as such under Section 6 of the Exchange Act.

² 15 U.S.C. 78a *et seq.*

³ Rule 300(a) of Regulation ATS provides that an ATS is “any organization, association, person, group of persons, or system: (1) [t]hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange

⁴¹ See Amendment No. 1, *supra* note 4, at 20.

⁴² See *id.* at 18.

⁴³ These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. See *id.*

⁴⁴ See *id.* at 20.

⁴⁵ See NYSE Arca Rule 8.600(d)(2)(B)(ii). The term “Reporting Authority” is defined in NYSE Arca Rule 8.600(c)(4).

⁴⁶ See Amendment No. 1, *supra* note 4, at 20.

⁴⁷ See *id.*

⁴⁸ See *id.*

⁴⁹ In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures from such markets and other entities that are members of the ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement. See Amendment No. 2, *supra* note 5.

⁵⁰ See *id.* at 22.

⁵¹ See *id.* at 20.

⁵² 17 CFR 240.10A–3.

⁵³ See Amendment No. 1, *supra* note 4, at 20.

⁵⁴ See *id.* at 21.

⁵⁵ 15 U.S.C. 78f(b)(5).

Rule 3a1-1(a)(2) exempts from the definition of “exchange” under Section 3(a)(1) an organization, association, or group of persons that complies with Regulation ATS.⁴ Regulation ATS requires an ATS to, among other things, register as a broker-dealer with the Securities and Exchange Commission (“SEC”), file a Form ATS with the Commission to notice its operations, and establish written safeguards and procedures to protect subscribers’ confidential trading information. An ATS that complies with Regulation ATS and operates pursuant to the Rule 3a1-1(a)(2) exemption would not be required by Section 5 to register as a national securities exchange. Rule 302 of Regulation ATS (17 CFR 242.302) describes the recordkeeping requirements for ATSs. Under Rule 302, ATSs are required to make a record of subscribers to the ATS, daily summaries of trading in the ATS, and time-sequenced records of order information in the ATS.

The information required to be collected under Rule 302 should increase the abilities of the Commission, state securities regulatory authorities, and the self-regulatory organizations (“SROs”) to ensure that ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. If the information is not collected or collected less frequently, the regulators would be limited in their ability to comply with their statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

Respondents consist of ATSs that choose to operate pursuant to the exemption provided by Regulation ATS from registration as national securities exchanges. There are currently 83 respondents. These respondents will spend approximately 3,735 hours per year (83 respondents at 45 burden hours/respondent) to comply with the recordkeeping requirements of Rule 302. At an average cost per burden hour of \$73, the resultant total related internal cost of compliance for these respondents is \$272,655 per year (3,735 burden hours multiplied by \$73/hour).

Compliance with Rule 302 is mandatory. The information required by Rule 302 is available only for the examination of the Commission staff, state securities authorities, and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C.

522 (“FOIA”), and the Commission’s rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

ATSs are required to preserve, for at least three years, any records made in the process of complying with the requirements set out in Rule 302.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Lindsay.M.Abate@omb.eop.gov; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 3, 2019.

Jill M. Peterson,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86833; File No. SR-NYSEAMER-2019-27]

Self-Regulatory Organizations; NYSE American, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify the Options Regulatory Fee

August 30, 2019.

I. Introduction

On July 2, 2019, NYSE American, LLC (the “Exchange” or “NYSE American”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change (File No. SR-NYSEAMER-2019-27) to modify the amount of its Options Regulatory Fee (“ORF”).³ The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁴ The proposed rule change was published for comment in the **Federal Register** on July 22, 2019.⁵ The Commission received one comment letter on the proposal.⁶ Pursuant to Section 19(b)(3)(C) of the Act,⁷ the Commission is hereby: (1) Temporarily suspending File No. SR-NYSEAMER-2019-27; and (2) instituting proceedings to determine whether to approve or disapprove File No. SR-NYSEAMER-2019-27.

II. Description of the Proposed Rule Change

The Exchange proposes to amend the amount of its ORF from \$0.0055 to \$0.0054 per contract.⁸ The Exchange assesses the ORF on American Trading Permit (“ATP”) Holders for all options transactions that are cleared by those firms through the Options Clearing Corporation (“OCC”) in the Customer range, regardless of the exchange on which the transaction occurs.⁹ The Exchange noted that its ORF “is designed to recover a material portion, but not all, of the Exchange’s regulatory costs for the supervision and regulation of ATP Holders.”¹⁰ Noting that it adjusts the ORF amount periodically to ensure that the revenue from ORF does not exceed its regulatory costs, the Exchange proposed to decrease the ORF because “from 2017 to 2018, options transaction volume increased to a level that if the ORF is not adjusted, the ORF revenue to the Exchange year-over-year

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 86391 (July 16, 2019), 84 FR 35165 (July 22, 2019) (“Notice”).

⁴ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii). Although the proposed rule change was effective upon filing, the Exchange indicated that it would not implement the fee until August 1, 2019. See Notice, *supra* note 3, at 35165.

⁵ See Notice, *supra* note 3, at 35165.

⁶ See Letter to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Securities Industry and Financial Markets Association (“SIFMA”), dated August 27, 2019 (“SIFMA Letter”).

⁷ 15 U.S.C. 78s(b)(3)(C).

⁸ See Notice, *supra* note 3, at 35165.

⁹ See *id.* at 35166.

¹⁰ *Id.* at 35165.

Act Rule 3b-16]; and (2) [t]hat does not: (i) [s]et rules governing the conduct of subscribers other than the conduct of subscribers’ trading on such [ATS]; or (ii) [d]iscipline subscribers other than by exclusion from trading.”

⁴ See 17 CFR 240.3a1-1(a)(2).