

listed issuers with additional time to ensure that they have adequate compliance systems in place furthers the protection of investors and the public interest because it will enhance investor confidence that listed issuers are complying with Exchange rules.

For these reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that the proposed rule change will facilitate listed issuer ability to monitor and evidence compliance with approved continued listing rules by providing issuers with additional time to develop and test their internal systems and procedures prior to the implementation date.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received a copy of a letter from the Investment Company Institute, on behalf of listed ETP issuers, to the SEC.⁹ As described in Item 3 [sic], above, the Investment Company Institute detailed challenges that listed ETP issuers are facing in developing compliance systems to address the amendments contained in the Proposed Rule Change and have requested that the implementation date for such amendments be extended to July 1, 2018.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be 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 email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2017-081 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-NASDAQ-2017-081*. This file number should be included on the subject line if email 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2017-081 and should be submitted on or before September 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81408; File No. SR-NYSEAMER-2017-04]

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

August 16, 2017.

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 August 1, 2017, NYSE American LLC (the "Exchange" or "NYSE American") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule ("Fee Schedule"). The Exchange proposes to implement the fee change effective August 1, 2017. The proposed change is available on the Exchange's Web site 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 specified in Item IV below. The Exchange has prepared summaries,

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁹ See Footnote 6, *infra*. [sic]

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 amend the Fee Schedule effective August 1, 2017. Specifically, the Exchange proposes to modify the fees for Firm Electronic transactions in Penny Pilot issues, and to offer an incentive for ATP Holders to electronically transact business of Broker-Dealers, Firms, Non-NYSE American Market Makers, and Professional Customers ("Non-Customer/Non Market Maker Interest") on the Exchange.

Currently, the Exchange charges \$0.42 per contract for Electronic executions in Penny Pilot issues that clear in the Firm range. The Exchange proposes to modify that fee to \$0.47, which is similar to transaction charges fees paid on other exchanges.⁴ The Exchange does not propose to alter the per contract fee of \$0.75 for Electronic executions in Non-Penny Pilot issues that clear in the Firm range.

Additionally, the Exchange proposes to offer reduced fees to encourage ATP Holders to transact additional Non-Customer/Non Market Maker Interest on the Exchange.⁵ Specifically, the Exchange proposes to charge a reduced per contract rate on Electronic executions of \$0.36 per contract for Penny Pilot Issues, and \$0.60 per contract for Non-Penny Pilot Issues, to ATP Holders that transact at least 0.05% of TCADV above that ATP Holder's 2nd Quarter 2017 Non-Customer, Non-Market Maker Interest.⁶ However, the Exchange would exclude from this TCADV calculation Electronic executions in the following: CUBE,

⁴ See, e.g., MIAX Options Exchange ("MIAX") fee schedule, available here, https://www.miaxoptions.com/sites/default/files/fee_schedule_files/MIAX_Options_Fee_Schedule_06302017.pdf (charging \$0.47 per contract for electronic executions in Penny Pilot Issues that clear in the Firm range); NASDAQ PHLX LLC ("PHLX") Pricing Schedule, available here, <http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing> (charging \$0.48 per contract for electronic executions in Penny Pilot Issues that clear in the Firm range).

⁵ See proposed note 8 to Section I.A. (Options Transactions and Credits, Rates for Options transactions) of the Fee Schedule. The Exchange notes that executions via the BOLD Mechanism would be included in the TCADV calculation.

⁶ Currently, the Exchange charges ATP Holders transacting Non-Customer/Non-Market Maker Interest (excluding Firms) a per contract rate of \$0.50 per contract for Penny Pilot Issues, and \$0.75 per contract for Non-Penny Pilot Issues. The Exchange does not propose to alter these base rates.

QCC, Strategy Executions, and any "Routed Volume," *i.e.*, any volume attributable to orders routed to another exchange in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY. The Exchange notes that this proposed rate is comparable to pricing incentives offered on other options exchanges, including MIAAX.⁷

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed increased fee for Firm Electronic transactions in Penny Pilot Issues is reasonable as it is competitive with rates changes by other options exchanges for Firm transactions.¹⁰

The Exchange believes that the proposed reduced fees for Non-Customer/Non-Market Maker Interest executed on the Exchange are fair, equitable and not unreasonably discriminatory. The Exchange believes the proposed reduced rates are reasonably designed to encourage ATP Holders that transact Non-Customer/Non-Market Maker Interest to direct this order flow to the Exchange. To the extent this goal is achieved, the Exchange would improve its overall competitiveness and strengthen its market quality for all market participants. The proposed rates are fair and equitable and not unreasonably discriminatory because they apply equally to all ATP Holders that transact Non-Customer/Non-Market Maker Interest. In addition, the proposed changes are equitable and not unfairly discriminatory because, while only

⁷ See *supra* note 4, MIAX fee schedule, Section (1)(a)(iv) (providing a per contract credit for certain orders executed on the exchange, provided the Member achieves certain "Professional" volume increase percentage thresholds in the month relative to a baseline period, which credits result in a per-contract rates [sic] similar to the Exchange's proposal). MIAX similarly excludes from this calculation certain volumes, including executions in price improvement auctions, QCCs, as well as Routed Volume. The following are considered "Professional" interest on MIAX: Public Customers, that are not Priority Customers; non-MIAX Options Market Makers; non-Member Broker-Dealers; or Firms.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

¹⁰ See *supra* note 4.

Non-Customer/Non-Market Maker Interest qualifies for the reduced fees, any increase in this type of order flow would attract greater volume and liquidity of all account type [sic] to the Exchange, which benefit all market participants by providing more trading opportunities and tighter spreads.

Finally, the Exchange believes that the proposed reduced rates are not unfairly discriminatory to Market Makers or Customers. The Exchange offers separate incentives to Market Makers, which incentives take into account the distinct obligations of Market Makers [sic]. Further, the Exchange does not impose any fee on Electronic executions of Customer interest.

For these 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,¹¹ 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 proposed fee increase for Electronic executions in Penny Pilot Issues that clear in the Firm range are competitive with rates charged by other options exchanges, and therefore do not impose any undue burden on competition.¹² In addition, the Exchange believes that the proposed reduced rates for Non-Customer/Non-Market Maker Interest executed on the Exchange rule change would increase both intermarket and intramarket competition by incenting ATP Holders to direct this type of interest to the Exchange, which would enhance the quality of the Exchange's markets and increase the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants would benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The proposed changes are intended to promote competition and better improve the Exchange's competitive position and make the Exchange a more attractive marketplace in order to encourage market participants to bring increased volume to the Exchange. To the extent that the proposed changes make the Exchange a more attractive marketplace

¹¹ 15 U.S.C. 78f(b)(8).

¹² See *supra* note 4.

for market participants at other exchanges, such market participants are welcome to become ATP Holders.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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)¹³ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁴ 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)¹⁵ 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 email to rule-comments@sec.gov. Please include File Number SR-

NYSEAMER-2017-04 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-2017-04. This file number should be included on the subject line if email 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2017-04, and should be submitted on or before September 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81410; File No. TP 17-10]

Order Granting Limited Exemptions From Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to IQ Real Return ETF Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M

August 16, 2017.

By letter dated August 16, 2017 (the "Letter"), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for IndexIQ ETF Trust (the "Trust"), on behalf of the Trust and one of its investment portfolios, the IQ Real Return ETF (the "Fund"), NYSE Arca, Inc. ("NYSE Arca") or other national securities exchanges on or through which shares issued by the Fund ("Shares") may subsequently trade, ALPS Distributors, Inc. (the "Distributor"), and persons or entities engaging in transactions in Shares (collectively, the "Requestors"), requested exemptions, or interpretive or no-action relief, from Rule 10b-17 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 50,000 shares ("Creation Units").

The Trust is registered with the Securities and Exchange Commission ("Commission") under the Investment Company Act of 1940, as amended ("1940 Act"), as an open-end management investment company. The Fund is a "fund of funds" that is passively managed according to an index. The Fund is designed to track the performance of the IQ Real Return Index ("Index"), which seeks to provide investors with a hedge against the U.S. inflation rate by providing a "real return," or a return above the rate of inflation, as represented by the Consumer Price Index ("CPI").

At least 80% of the Fund's portfolio holdings are, and will be, shares of some or all of the exchange-traded products ("ETPs") that constitute the Index. The Fund operates in a manner very similar to that of the ETPs held in its portfolio. Some or all of the remaining 20% may be invested in securities that are not Index constituents that the Fund's adviser believes will help the Fund track the Index, as well as cash, cash equivalents and various types of financial instruments including, but not

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

¹⁶ 17 CFR 200.30-3(a)(12).