

public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to update its rules without delay to reflect current and accurate information with respect to the third party data feeds to which it offers connectivity and to correct typographical errors. The Commission also notes that BX recently made similar changes to its rules.<sup>11</sup> Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of the 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2018-11 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-GEMX-2018-11. This file

<sup>11</sup> See Securities Exchange Act Release No. 82628 (February 5, 2018), 83 FR 5818 (February 9, 2018) (SR-BX-2018-006).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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-GEMX-2018-11, and should be submitted on or before May 1, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82994; File No. SR-NASDAQ-2018-008]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Modify the Listing Requirements Contained in Listing Rule 5635(d) To Change the Definition of Market Value for Purposes of the Shareholder Approval Rules and Eliminate the Requirement for Shareholder Approval of Issuances at a Price Less Than Book Value but Greater Than Market Value

April 4, 2018.

On January 30, 2018, the Nasdaq Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the listing requirements contained in Listing Rule 5635(d) to change the definition of market value for purposes of the shareholder approval rules and eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value. The proposed rule change was published for comment in the **Federal Register** on February 20, 2018.<sup>3</sup> The Commission received three comments in response to the proposed rule change.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that, within 45 days of the publication of the notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall approve the proposed rule change, disapprove the proposed rule change, or institute

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 82702 (February 13, 2018), 83 FR 7269 (February 20, 2018).

<sup>4</sup> See Letters to Brent J. Fields, Secretary, Commission, from Michael A. Adelstein, Partner, Kelley Drye & Warren LLP, dated February 28, 2018; Penny Somer-Grief, Chair, and Gregory T. Lawrence, Vice-Chair, Committee on Securities Law of the Business Law Section of the Maryland State Bar Association, dated March 13, 2018; and Greg Rodgers, Latham Watkins, dated March 14, 2018. The comment letters are available at: <https://www.sec.gov/comments/sr-nasdaq-2018-008/nasdaq2018008.htm>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 6, 2018. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comment letters. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> designates May 21, 2018, as the date by which the Commission should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR-NASDAQ-2018-008).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82992; File No. SR-NYSEAMER-2018-11]

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE Amex Options Fee Schedule With Respect to the Options Regulatory Fee

April 4, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 23, 2018, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex Options Fee Schedule ("Fee Schedule") by modifying the description of the Options Regulatory Fee ("ORF"). The proposed rule change is available on the Exchange's website at [www.nyse.com](http://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, 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 Exchange proposes to amend the Fee Schedule to clarify the description of the ORF. The Exchange charges an ORF in the amount of \$0.0055 per contract side. The proposed rule change does not change the amount of the ORF, but instead modifies the rule text to clarify how the ORF is assessed and collected. Currently, the Exchange describes the ORF as follows:

The ORF will be assessed on each ATP Holder for all options transactions, including Mini Options, executed or cleared by the ATP Holder that are cleared by the OCC in the customer range regardless of the exchange on which the transaction occurs. The fee is collected indirectly from ATP Holders through their clearing firms by the OCC on behalf of NYSE American. Effective December 1, 2012, an ATP Holder shall not be assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE American. The Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August. The Exchange will notify participants via a Trader Update of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.<sup>4</sup>

The Exchange proposes to modify this description to more accurately reflect how the ORF is imposed. Specifically, the ORF is assessed to each ATP Holder for all options transactions *cleared* (but not necessarily executed) by an ATP Holder through the OCC in the customer range regardless of the exchange on which the transaction occurs. The ORF is only assessed to ATP Holders that act as the clearing firm for the transaction, regardless of whether the executing firm (if different from the clearing firm) is an ATP Holder.<sup>5</sup> Thus, the Exchange proposes to delete the words "executed or" from the current description of the ORF and to make clear that the ORF is assessed "to each ATP Holder" on transactions "that are cleared by the ATP Holder through the OCC" and that the ORF is "collected from ATP Holder clearing firms by OCC on behalf of NYSE American."<sup>6</sup> The Exchange also proposes to clarify that it "uses reports from OCC when assessing and collecting the ORF."<sup>7</sup> The Exchange believes these changes would clarify how the ORF is assessed and collected. To illustrate how the ORF is assessed and collected, the Exchange provides the following set of scenarios.

###### Scenario 1:

Executing (or Give-Up) Firm is *not* an ATP Holder. The Executing Firm does not "give-up" or "CMTA" the transaction to another clearing firm.<sup>8</sup>

No ORF Fee is assessed.

###### Scenario 2:

Executing Firm is an ATP Holder. The Executing Firm "give-ups" or "CMTAs" the transaction to another clearing firm that is *not* an ATP Holder.

No ORF Fee is assessed.

###### Scenario 3:

The Executing (or Give-Up) Firm is an ATP Holder. The Executing Firm does not "give-up" or "CMTA" the transaction to another clearing firm.

ORF Fee is assessed on the self-clearing Executing Firm.

###### Scenario 4:

The Executing (or Give-Up) Firm is an ATP Holder. The Executing Firm "give-ups" or "CMTAs" the transaction to

<sup>5</sup> The Exchange uses reports from OCC to determine the identity of the clearing firm and compares that to the list of ATP Holders for billing purposes.

<sup>6</sup> See proposed Fee Schedule, Section VII, Regulatory Fees, ORF. In connection with the proposed revisions, the Exchange proposes to remove as redundant the word "indirectly" from the sentence explaining that the OCC collects the ORF from the ATP Holder clearing firm. See *id.*

<sup>7</sup> See *id.* See *supra* note 5.

<sup>8</sup> A CMTA or Clearing Member Trade Assignment is an agreement by which an investor may enter derivative trades with a limited number of different brokers and later consolidate these trades with one brokerage house for clearing.

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 200.30-3(a)(31).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Fee Schedule, Section VII, Regulatory Fees, ORF, available here, [https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE\\_American\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf).