

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-NYSECHX-2022-01 and should be submitted on or before February 25, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2022-02315 Filed 2-3-22; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34491; 812-15276]

### John Hancock Asset-Based Lending Fund and John Hancock Investment Management LLC

January 31, 2022.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain

registered closed end investment companies to issue multiple classes of shares of beneficial interest with varying sales loads and to impose asset-based distribution and/or service fees.

**APPLICANTS:** John Hancock Asset-Based Lending Fund (the "Trust"), and John Hancock Investment Management LLC (the "Advisor").

**FILING DATES:** The application was filed on October 21, 2021, and amended on November 5, 2021, and January 10, 2022.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov) and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below.

Hearing requests should be received by the Commission by 5:30 p.m. on February 25, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

**ADDRESSES:** [mark.goshko@klgates.com](mailto:mark.goshko@klgates.com) and [pablo.man@klgates.com](mailto:pablo.man@klgates.com).

**FOR FURTHER INFORMATION CONTACT:** Lisa Reid Ragen, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** For Applicants' representations, legal analysis, and condition, please refer to Applicants' application, dated January 10, 2022, which may be obtained via the Commission's website by searching for the file number, using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2022-02325 Filed 2-3-22; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94104; File No. SR-NYSEAMER-2022-09]

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

January 31, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 21, 2022, NYSE American LLC ("NYSE American" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 incentives relating to Complex Customer Best Execution Auctions. The Exchange proposes to implement the fee change effective January 21, 2022.<sup>4</sup> The proposed 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.

<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> The Exchange originally filed to amend the Fee Schedule on December 29, 2021 (SR-NYSEAmer-2021-53), with an effective date of January 3, 2022, then withdrew such filing on January 12, 2022 (SR-NYSEAmer-2022-05), which latter filing the Exchange withdrew on January 21, 2022.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

*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 the qualifications for (1) the Alternative Initiating Participant Rebate, as set forth in Section I.G. (the "Rebate"), and (2) the credit on Customer Electronic Simple and Complex executions set forth in Section I.H. (the "Credit").

As further discussed below, the proposed changes are designed to encourage ATP Holders to initiate Complex Customer Best Execution ("CUBE") Auctions while also maintaining levels of both Customer and Professional Electronic volume.<sup>5</sup>

The Exchange proposes to implement this fee change on January 21, 2022.

Proposed Rule Change

Alternative Initiating Participant Rebate

Section I.G. of the Fee Schedule sets forth the per contract fees and credits for executions associated with Single-Leg and Complex CUBE Auctions. To encourage participation in Complex CUBE Auctions, the Exchange offers rebates on certain initiating Complex CUBE volume. Currently, the Exchange offers the ACE Initiating Participant Rebate to ATP Holders that also qualify for the American Customer Engagement ("ACE") Program<sup>6</sup> and an Alternative Initiating Participant Rebate (the "Rebate") for ATP Holders that do not qualify for the ACE program.<sup>7</sup> Both the ACE Initiating Participant Rebate and the Rebate for Complex CUBE orders provide for a rebate of \$0.10 per contract, and an ATP Holder that qualifies for both rebates is entitled to only the greater of the two.<sup>8</sup>

Currently, to qualify for the Rebate, an ATP Holder must execute a minimum of 5,000 contracts ADV in the Professional range (as defined in Section I.H. of the Fee Schedule) and execute a minimum of 15,000 contracts ADV from Initiating CUBE Orders in Single-Leg and/or Complex CUBE Auctions.<sup>9</sup>

The Exchange proposes to modify the qualifications to earn the Rebate by

<sup>5</sup> For purposes of this filing, "Professional" Electronic volume includes: Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm.

<sup>6</sup> See Fee Schedule, Section I.E., American Customer Engagement ("ACE") Program, available at: [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).

<sup>7</sup> See *id.* at Section I.G., CUBE Auction Fees and Credits, Complex CUBE Auction.

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

decreasing the required volume in Initiating CUBE Orders from 15,000 ADV from Initiating CUBE Orders in Single-Leg and/or Complex CUBE Auctions to 10,000 ADV in Initiating CUBE orders from Complex CUBE Auctions only. The Exchange proposes to modify this qualification to be based only on Initiating CUBE Orders in Complex CUBE Auctions in order to encourage increased participation in Complex CUBE Auctions. The Exchange also proposes to delete the requirement to execute a minimum of 5,000 contracts ADV in the Professional range and proposes two additional qualifications to earn the Rebate. The Exchange proposes these changes to align the requirements for this incentive with those for the Credit (as further discussed below). Specifically, the Exchange proposes to require, in addition to the volume requirement with respect to Initiating CUBE Orders in Complex CUBE Auctions, that an ATP Holder also achieve Customer Electronic executions of 0.05% of TCADV (excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange) and Professional (as defined in Section I.H. of the Fee Schedule) Electronic executions of 0.03% of TCADV (excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange). The Exchange proposes to exclude CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange from the calculations of Customer Electronic and Professional Electronic volume, consistent with exclusions set forth elsewhere in the Fee Schedule.<sup>10</sup> The Exchange proposes to exclude volume from CUBE Auctions, QCC Transactions, and orders routed to another exchange because volume from such transactions would be subject to separate pricing.<sup>11</sup> The Exchange does not propose to modify the amount of the Rebate (which will remain at \$0.10 per contract), and an ATP Holder that

<sup>10</sup> See, e.g., Fee Schedule, Section I.C., NYSE American Options Market Maker Sliding Scale—Electronic (excluding volumes attributable to QCC trades and CUBE Auctions from calculation of Market Maker Electronic monthly volumes); Section I.E., American Customer Engagement ("ACE") Program (excluding volume resulting from QCC trades and volume attributable to orders routed to another exchange from calculation of an OFF's Electronic volume); Section I.H., Professional Step-Up Incentive (excluding volumes from CUBE Auctions and QCC transactions from the calculation of base volume and qualifying volume for the incentive).

<sup>11</sup> See Fee Schedule, Sections I.F. (setting forth fees and credits for QCC trades) and I.G. (setting forth fees and credits for CUBE Auctions). Volume from orders routed to another exchange would be subject to pricing set forth by such exchange.

qualifies for both the ACE Initiating Participant Rebate and the Rebate will continue to be entitled only to the greater of the two rebates.

Credit on Customer Electronic Simple and Complex Executions

The Exchange also proposes to modify the qualifications to earn the Credit. Currently, the Credit provides that ATP Holders are eligible to receive a credit of \$0.10 per contract on Customer Electronic Simple and Complex executions, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange, by meeting each of the following monthly qualification levels: (a) 15,000 contracts ADV from Initiating CUBE Orders in Complex CUBE Auctions; (b) Customer Electronic executions of 0.05% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange; and (c) Professional Electronic executions of 0.03% of TCADV.<sup>12</sup>

The Exchange proposes to decrease the required volume in Initiating Complex CUBE Orders from 15,000 to 10,000 ADV, which, as discussed above, would align the qualifying bases for the Credit with the proposed requirements for the Rebate. While the Exchange is not proposing any changes to the qualifying requirements with respect to Customer or Professional Electronic executions or to the amount of the Credit, which will remain \$0.10 per contract, the Exchange proposes to modify the Fee Schedule to clarify the Professional Electronic volume requirement. Specifically, the Exchange proposes to specify that qualifying Professional Electronic volume, like Customer Electronic qualifying volume, excludes CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange. The Exchange proposes this change to improve the clarity of the Fee Schedule by providing additional detail regarding how qualifying volume for the Credit is currently determined.

\* \* \* \* \*

The proposed changes are designed to incent ATP Holders to direct order flow to the Exchange and to encourage ATP Holders to engage in a variety of transactions on the Exchange. In particular, the Exchange notes that volume executed in auctions has increased across the industry and thus believes the proposed change would

<sup>12</sup> See Fee Schedule, Section I.H. In calculating an OFF's Electronic volume, the Exchange will include the activity of either (i) Affiliates of the OFF, such as when an OFF has an Affiliated NYSE American Options Market Making firm, or (ii) an Appointed MM of such OFF.

encourage ATP Holders to direct more auction-eligible order flow (and, in particular, Initiating CUBE Orders in Complex CUBE auctions) to the Exchange to qualify for the Rebate and Credit.<sup>13</sup> To the extent that the proposed changes to the Rebate and Credit achieve their intended purpose, the increased liquidity on the Exchange would result in enhanced market quality for all participants.

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 one with an incentive program similar to the Rebate and Credit.<sup>14</sup> Thus, ATP Holders have a choice of where they direct their order flow. The proposed modifications to the qualifications for the Rebate and Credit are designed to encourage the submission of Complex CUBE Orders, which should maximize price improvement opportunities. In addition, because both the Rebate and Credit will also have requirements based on Customer Electronic executions and Professional Electronic order flow, as modified, the Exchange believes all market participants stand to benefit from increased order flow, which promotes market depth, facilitates tighter spreads, and enhances price discovery.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>16</sup> 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 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."<sup>17</sup>

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.<sup>18</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2021, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.<sup>19</sup>

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

The proposed rule change is designed to continue to incent ATP Holders to direct liquidity to the Exchange in a variety of forms and from a variety of sources, thereby promoting market depth, price discovery, and price improvement and enhancing order execution opportunities for market participants. In particular, the Exchange believes it is reasonable to provide ATP Holders with a rebate or credit for achieving certain volume goals in different types of executions, consistent with credits offered through a similarly

structured program on a competing options exchange.<sup>20</sup> The Exchange also believes that the proposed exclusions applicable to qualifying volume for the Rebate are reasonable because they are consistent with exclusions set forth elsewhere in the Fee Schedule, based on CUBE Auctions, QCC trades, and volume from orders routed to another exchange being subject to separate fees and credits.<sup>21</sup>

The Exchange also believes that the proposed modifications to the qualifications for the Rebate and the Credit are reasonably designed because they would encourage ATP Holders to execute a variety of orders on the Exchange and, in particular, make greater use of Complex CUBE Auctions. The Exchange further believes that implementing the same criteria to qualify for the Rebate or Credit should encourage greater use of the Exchange by all ATP Holders, which may lead to greater opportunities to trade—and for price improvement—for all participants. The Exchange notes that all market participants stand to benefit from increased transaction volume, as such increase 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 believes that the proposed modification of the Fee Schedule regarding qualifying Professional Electronic volume for the Credit is reasonable because it will provide additional clarity regarding the current method of calculating qualifying volume for the Credit.

The Exchange cannot predict with certainty whether any ATP Holders would seek to qualify for the Rebate or the Credit, as modified, but believes that the proposed qualifying bases for the Rebate and Credit, which lower the volume of CUBE Orders necessary to qualify and align the volume requirements in Customer and Professional Electronic executions across the two incentives, are achievable for ATP Holders and would continue to incent ATP Holders to direct volume to the Exchange.

Finally, to the extent the proposed changes attract greater volume and liquidity, the Exchange believes the proposed changes 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 changes are a reasonable attempt by

<sup>13</sup> The Exchange's analysis of OPRA data indicates that auction volume has fluctuated from 19.2% of all options industry volume at the end of 2019, to as high as 23.4% in June 2020, to a current level of 19.7% in November 2021.

<sup>14</sup> See, e.g., Cboe Exchange Inc. Fee Schedule, Volume Incentive Program, available at: [https://cdn.cboe.com/resources/membership/Cboe\\_FeeSchedule.pdf](https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf) (providing comparable per contract credits for Customer orders based on volume from a variety of executions, including auction volume, volume from various account types, and volume from both simple and complex executions).

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

<sup>16</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>17</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) ("Reg NMS Adopting Release").

<sup>18</sup> 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/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

<sup>19</sup> Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see *id.*, the Exchange's market share in multiply listed equity and ETF options decreased from 9.09% for the month of November 2020 to 7.06% for the month of November 2021.

<sup>20</sup> See *supra* note 14.

<sup>21</sup> See *supra* notes 10 & 11.

the Exchange to increase the depth of its market and improve its market share relative to its competitors.

#### The Proposed Rule Change Is an Equitable Allocation of Fees and Rebates

The Exchange believes the proposed rule change is an equitable allocation of its fees and rebates. The proposal is based on the amount and type of business transacted on the Exchange, and ATP Holders can seek to qualify for these incentives or not. The Exchange further believes that the proposed exclusion of CUBE Auctions, QCC trades, and volume routed to another exchange from the qualifying Customer Electronic and Professional Electronic volume for the Rebate is equitable because volume from such transactions is subject to separate pricing.<sup>22</sup> Moreover, because ATP Holders would need to meet requirements based on Initiating CUBE Orders, Customer Electronic executions, and Professional Electronic executions in order to qualify for either the Rebate or Credit, as modified, the Exchange believes that the proposed changes are designed to encourage ATP Holders to aggregate their executions at the Exchange as a primary execution venue. To the extent that the proposed changes attract more volume to the Exchange (and, in particular, more Complex CUBE auction volume), this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule changes 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 also believes that the proposed change to specify that CUBE Auctions, QCC trades, and volume routed to another exchange are excluded from the calculation of qualifying Professional Electronic volume for the Credit is an equitable allocation of fees and rebates because the proposed exclusion is consistent with exclusions set forth elsewhere in the Fee Schedule and such transactions are subject to separate pricing.<sup>23</sup> The Exchange also believes that the proposed change promotes an equitable allocation of fees and rebates by ensuring that the Fee Schedule reflects the current method of calculating qualifying volume for the Credit.

#### The Proposed Rule Change Is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would apply to all similarly-situated market participants on an equal and non-discriminatory basis. The proposed changes are based on the amount and type of business transacted on the Exchange, and ATP Holders are not obligated to try to achieve either incentive. Rather, the proposals are designed to encourage participants to utilize the Exchange as a primary trading venue (if they have not done so previously) and increase auction, Customer Electronic, and Professional Electronic volume sent to the Exchange. In addition, the proposed modifications to the requirements to qualify for the Rebate and Credit are designed to align the requirements for the two incentives and to encourage greater use of Complex CUBE Auctions by ATP Holders, which may lead to greater opportunities to trade—and for price improvement—for all participants. The Exchange believes that the proposed exclusions from qualifying volume for the Rebate are not unfairly discriminatory because they are consistent with exclusions set forth elsewhere in the Fee Schedule and account for CUBE Auctions, QCC trades, and volume routed to another exchange being subject to separate pricing.<sup>24</sup>

To the extent that the proposed changes attract more executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule changes 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 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.

The Exchange further believes that the proposed change to specify that CUBE Auctions, QCC trades, and volume routed to another exchange are excluded from the calculation of qualifying Professional Electronic volume for the Credit is not unfairly discriminatory because it would update the Fee

Schedule to provide additional clarity regarding the current method of calculating qualifying volume for the Credit.

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.

For the foregoing 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, 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 changes further 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."<sup>25</sup>

*Intramarket Competition.* The proposed change is designed to continue to attract increased and diverse order flow to the Exchange by offering competitive credits and rebates, which would enhance the quality of quoting and may increase the volume of contracts traded on the Exchange. Specifically, the Exchange believes the proposed rule change, by specifying requirements in auction, Customer Electronic, and Professional Electronic volume, would incent ATP Holders to participate in a variety of types of executions on the Exchange to qualify for the Rebate or Credit. 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 resulting from the anticipated increase in order flow directed to the Exchange would benefit all market participants and improve competition on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily favor one of the

<sup>22</sup> See *supra* note 11.

<sup>23</sup> See *supra* notes 10 & 11.

<sup>24</sup> See *supra* notes 10 & 11.

<sup>25</sup> See Reg NMS Adopting Release, *supra* note 17, at 37499.

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 multiply-listed equity and ETF options trades.<sup>26</sup> Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2021, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.<sup>27</sup>

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees and rebates in a manner designed to encourage ATP Holders to direct trading interest to the Exchange, to provide liquidity and to attract order flow. Specifically, the Exchange believes that the proposed change would encourage ATP Holders to direct increased volume to the Exchange, thereby increasing the number of executions (and executions of varying types) on the Exchange. The Exchange further believes that harmonizing the requirements for the Rebate and Credit could make the incentives more achievable for ATP Holders and would thus continue to make the Exchange a more attractive and competitive venue for order execution. 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.

Thus, the Exchange believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer similar pricing incentives, by encouraging additional orders to be sent to the Exchange for execution.

<sup>26</sup> See *supra* note 18.

<sup>27</sup> Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see *id.*, the Exchange's market share in multiply listed equity and ETF options decreased from 9.09% for the month of November 2020 to 7.06% for the month of November 2021.

*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)<sup>28</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>29</sup> thereunder. 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.

**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-NYSEAMER-2022-09 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-2022-09. 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 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

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</sup> 17 CFR 240.19b-4(f)(2).

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-2022-09 and should be submitted on or before February 25, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2022-02314 Filed 2-3-22; 8:45 am]

BILLING CODE 8011-01-P

**DEPARTMENT OF STATE**

[Public Notice 11646]

**Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Alberto Giacometti: Toward the Ultimate Figure” Exhibition**

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition “Alberto Giacometti: Toward the Ultimate Figure” at the Cleveland Museum of Art, Cleveland, Ohio; the Seattle Art Museum, Seattle, Washington; the Museum of Fine Arts, Houston, in Houston, Texas; the Nelson-Atkins Museum of Art, Kansas City, Missouri; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of

<sup>30</sup> 17 CFR 200.30-3(a)(12).