

Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MRX-2024-02 and should be submitted on or before February 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

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Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99449; File No. SR-NYSEAMER-2024-06]

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

January 30, 2024.

Pursuant to section 19(b)(1)<sup>1</sup> 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 25, 2024, 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 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 modify the NYSE American Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective January 25, 2024.<sup>4</sup> 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 purpose of this filing [sic] to amend the Fee Schedule in a number of ways as described herein. The Exchange proposes to implement the rule change on January 25, 2024.

First, the Exchange proposes to modify the Fee Schedule to remove reference to costs that are no longer charged and are therefore inapplicable. Specifically, the Exchange proposes to modify the Fee Schedule to remove “Login” costs from Sections III.E.1 and IV and to remove “Floor Broker Handheld” costs from Section IV.

Next, the Exchange proposes to modify the Floor Broker Fixed Cost Prepayment Incentive Program (the “FB Prepay Program” or “Program”), a prepayment incentive program that allows Floor Brokers to prepay certain of their annual Eligible Fixed Costs in exchange for the opportunity to qualify for certain volume rebates.<sup>5</sup> Specifically, the Manual Billable Volume Rebate is designed to encourage Floor Brokers to increase their monthly volume in

[sic] and withdrew such filing on January 12, 2024 (SR-NYSEAMer-2024-05) [sic], which latter filing the Exchange withdrew on January 25, 2024.

<sup>5</sup> See Fee Schedule, Section III.E.1, Floor Broker Fixed Cost Prepayment Incentive Program (the “FB Prepay Program”). “Eligible Fixed Costs” include monthly ATP Fees, the Floor Access Fee, and certain monthly Floor communication, connectivity, equipment and booth or podia fees, as set forth in the table in Section III.E.1. The Exchange notes that the FB Prepay Program is currently structured similarly to the Floor Broker prepayment program offered by its affiliated exchange, NYSE Arca, Inc. (“NYSE Arca”). See NYSE Arca Options Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the “FB Prepay Program”).

billable manual contract sides to qualify for a rebate; increasing volumes qualify the Floor Broker for a higher level of rebate. Additional rebates may be earned by meeting the qualification levels of the Floor Broker Manual Billable Incentive Program.<sup>6</sup> Participating Floor Brokers receive their rebates payable on a monthly basis.<sup>7</sup> Floor Brokers that wish to participate in the FB Prepay Program for the following calendar year must notify the Exchange no later than the last business day of December in the current year.<sup>8</sup>

The Exchange proposes to eliminate the Floor Broker Manual Billable Incentive Program and accompanying monthly rebates<sup>9</sup> and instead provide Floor Brokers participating in the FB Prepay Program with enhanced opportunities for monthly rebates based on manual billable transaction volume (the “Manual Billable Rebate Program”) and the QCC Billable Bonus Rebate. The calculation of volume on which rebates earned through the Manual Billable Rebate Program would be paid is based on transactions for which at least one side is subject to manual transaction fees and excludes volume from QCC transactions, unless otherwise specified.<sup>10</sup> The Exchange proposes to

<sup>6</sup> See Fee Schedule, Section III.E.2., Floor Broker Manual Billable Incentive Program.

<sup>7</sup> See Fee Schedule, Section III.E. The Exchange proposes to remove the preamble to Section III.E., which relates to the Exchange’s already-completed migration to the Pillar trading platform, because the text is no longer applicable and its removal would add clarity to the Fee Schedule. See proposed Fee Schedule, Section III.E.

<sup>8</sup> See Fee Schedule, Section III.E (providing, in relevant part, that the notification “email to enroll in the Program must originate from an officer of the Floor Broker organization and, *except as provided for below*, represents a binding commitment through the end of the following calendar year.”). The Exchange proposes to modify Section III.E. of the Fee Schedule to remove the now obsolete phrase “except as provided for below,” as there is no exception to the notification requirement, which modification will add clarity, transparency, and internal consistency to the Fee Schedule. See proposed Fee Schedule, Section III.E.

<sup>9</sup> To effect the proposed change to eliminate the Floor Broker Manual Billable Incentive Program and related rebates, the Exchange proposes to delete in its entirety Section III.E.2. of the Fee Schedule. In addition, for consistency, the Exchange proposes to delete from the Table of Contents reference to this Section III.E.2., which is currently (and erroneously) listed as “Reserved”. See proposed Fee Schedule, Table of Contents.

<sup>10</sup> See proposed Fee Schedule, Section III.E.1 (excluding QCC transactions from volume calculation “unless otherwise specified”), which would add clarity, transparency, and internal consistency to the Fee Schedule. For certain volume thresholds (*i.e.*, those based solely on “manual billable sides”), the Exchange proposes to continue to exclude QCC volume from the calculation of eligible volume for rebates paid through the Manual Billable Rebate Program because Floor Brokers would continue to be eligible for separate credits and rebates for QCC transactions through the QCC Billable Bonus Rebate.

<sup>31</sup> 17 CFR 200.30-3(a)(12).

<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 January 2, 2024 (NYSEAMer-2023-69)

continue to exclude any volume calculated to achieve the Strategy Execution Fee Cap, regardless of whether the cap is achieved, from the Manual Billable Rebate Program because fees on such volume are already capped and therefore such volume does not increase billable manual volume. The Exchange will not issue any refunds in the event that a Floor Broker organization’s prepaid Eligible Fixed Costs exceeds actual annual costs.<sup>11</sup>

The Exchange proposes to modify the qualification levels and corresponding rebates in the Manual Billable Rebate Program as follows.

- First, the Exchange proposes to add a new qualification level that would provide for a (\$0.05) rebate per billable side for Floor Brokers that execute a minimum of 500,000 manual billable sides. This proposed new qualification threshold provides for a lower volume threshold than is currently required to achieve a rebate, with the distinction that it does not include “combined” QCC transactions—only manual

executions. The Exchange believes that this proposed qualification threshold may make the rebate more achievable for Floor Brokers, especially Floor Brokers that conduct more manual transactions than QCC transactions.

- Second, the Exchange proposes to modify the next-highest qualification level from 1 million “combined manual and QCC billable contracts” for a rebate of (\$0.05) per billable side to 1.1 million “manual billable sides,” which are no longer “combined” with QCC transactions and to raise the corresponding rebate to (\$0.07) per billable side. This proposed change raises the potential rebate along with the number of required manual executions while at the same time removing QCC executions from eligibility.

- Third, the Exchange proposes to remove the existing qualification level that offers an (\$0.08) rebate per billable side for Floor Brokers that execute 3 million combined manual and QCC billable contracts.

- Finally, the Exchange proposes to offer two new “Additional” rebates as described below.

- As proposed, a Floor Broker that executes at least 7 million “combined manual billable and QCC billable contracts” is eligible to receive an additional rebate of one cent (\$0.01) per billable side. However, a Floor Broker that executes at least 11 million “combined manual billable and QCC billable contracts” is eligible to instead receive an additional rebate of two cents (\$0.02).

The Exchange notes that it is not modifying the existing qualification level the requires a Floor Broker to execute 5 million “combined manual billable and QCC billable contracts” to achieve a (\$0.10) rebate per billable side.

The table below illustrates the monthly qualification levels and the related rebates that the Exchange proposes to make available through the Manual Billable Rebate Program, payable on a monthly basis:

Manual billable rebate qualification	Rebate per billable side
Execute 500,000 manual billable sides .....	(\$0.05).
Execute 1.1 million manual billable sides .....	(\$0.07).
Execute 5 million combined manual billable and QCC billable contracts .....	(\$0.10).
Execute 7 million combined manual billable and QCC billable contracts .....	Additional (\$0.01).
Execute 11 million combined manual billable and QCC billable contracts .....	Additional (\$0.02).

Consistent with the current Manual Billable Rebate Program, Floor Brokers who achieve a Rebate Qualification level will earn the associated rebate back to the first contract and, as noted above, Participants that qualify for both “Additional” rebates are eligible to receive only one such rebate.<sup>12</sup>

The FB Prepay Program also currently offers participating Floor Brokers to be eligible to qualify for rebates on QCC transactions, payable on a monthly basis, in addition to the credits set forth in Section I.F (QCC Fees & Credits). The

Exchange proposes to modify the volume thresholds required to achieve the “QCC Billable Bonus Rebate. Specifically, the Exchange proposes to reduce the qualification threshold for the “Prepay Bonus Level” from 2 million to 500,000 “QCC billable contracts.” The Exchange also proposes to modify the “Additional Bonus Level,” which is currently only achievable if a Floor Broker that conduct volume that is “100% above Prepay Bonus Level,” to instead require

“4 million QCC billable contracts.” The proposed changes are designed to make the Prepay Bonus Level more achievable and the Additional Bonus Level more difficult to achieve. The Exchange is not proposing to modify the rebates available to Floor Brokers that achieve the new volume thresholds.

The table below illustrates the proposed requirements to achieve the QCC Billable Bonus Rebate—both the Prepay Bonus Level and the Additional Bonus Level.

QCC billable bonus rebate qualification	Additional rebate on single billable side QCC contract	Additional rebate on two billable side QCC contract
Prepay Bonus Level—achieved with 500,000 QCC billable contracts .....	(\$0.02)	(\$0.04)
Additional Bonus Level—achieved with 4 million QCC billable contracts .....	(\$0.04)	(\$0.06)

As with other rebates, the QCC Billable Bonus Rebate would be payable back to the first side and Participants that qualify for more than one

“Additional” rebate are eligible to receive only one such rebate.<sup>13</sup>

The Exchange further proposes to modify Section III.E.1. and Section I.F.

to increase the maximum Floor Broker credits paid for QCC trades and rebates paid through the Manual Billable Rebate Program to \$2,500,000 per month per

<sup>11</sup> As discussed *infra*, the Exchange proposes to expand entry to the FB Prepay Program to mid-year and therefore will remove reference to actual “annual” costs. See proposed Schedule, Section III.E.1.

<sup>12</sup> See proposed Fee Schedule, Section III.E.1 (providing that “[t]he Manual Billable Rebate (including the “Additional” rebates) is payable back to the first billable side. Qualifying Participants are eligible to receive only one “Additional” rebate”)

<sup>13</sup> See proposed Fee Schedule, Section III.E.1 (providing that “Qualifying Participants are eligible to receive only one “Additional” rebate”).

Floor Broker firm, an increase from the current monthly amount of 2,000,000 (the “Maximum Combined Rebate/Credit”).<sup>14</sup> The proposed increase is designed to encourage Floor Broker firms to continue to direct transactions to the Exchange, despite increasing industry volumes making it less difficult to attain the maximum rebate.

Next, the Exchange proposes to modify the FB Prepay Program to remove reference to a specific year (*i.e.*, November 2022) and to instead reference “November of the current year” as the date that the Exchange will use for the calculation of a Floor Broker’s Eligible Fixed Costs for the following calendar year. The FB Prepay Program currently specifies that a Floor Broker that commits to the program will be invoiced in January for Eligible Fixed Costs, based on annualizing their Eligible Fixed Costs incurred in November 2022. The Exchange believes that this proposed change would prevent the Exchange from relying on a stale date and would add flexibility to the program (insofar as it would not need to be revised each year).

Finally, the Exchange proposes to allow a Floor Broker to join the Program after the first of the year. To do so, similar to the protocol required of existing Program participants, such Floor Broker organizations would notify the Exchange in writing by emailing [optionsbilling@nyse.com](mailto:optionsbilling@nyse.com) and indicating their commitment to submit prepayment for the balance of the calendar year; the email notification would have to originate from an officer of the Floor Broker organization and would represent a binding commitment through the balance of the calendar year.<sup>15</sup> As further proposed, the Floor Broker organization would be enrolled in the Program beginning on the first day of the next full month and would be invoiced for that first full month for Eligible Fixed Costs and the balance of the year, based on annualizing for the remainder of the calendar year their Eligible Fixed Costs incurred in its first

full month in the Program.<sup>16</sup> The Exchange notes that both the current and proposed methodology rely on recently incurred Eligible Fixed Costs to predict anticipated Eligible Fixed Costs. For current program Participants the Exchange relies on November costs; whereas, for later-joining Program participants, the Exchange would rely on costs incurred in the Floor Broker’s first full month in the Program. The Exchange believes that this approach allows the Exchange the flexibility to offer the FB Prepay Program to Floor Brokers that did not enroll before the end of the prior calendar year, including/especially Floor Brokers new to the Exchange, without putting these Floor Brokers at a competitive disadvantage. Finally, consistent with the current Program, the Exchange will not issue refunds if a Floor Broker organization’s prepaid Eligible Fixed Costs exceeds its actual costs; however, the Exchange proposes to remove reference to “annual” costs in the current Fee Schedule because this phrase would not apply to Floor Brokers that join the Program after the first of the year.<sup>17</sup>

Finally, as noted above, the Exchange proposes to eliminate the Floor Broker Manual Billable Incentive Program. The Exchange determined that this program was duplicative of the FB Prepay Program, which made it difficult for Floor Brokers to ascertain the total rebates earned. The Exchange believes that the proposed adjustments to the Prepay Program (including changes to the QCC Billable Bonus Rebate Qualification) would reduce potential confusion and would add clarity and transparency to the Fee Schedule.

Although the Exchange cannot predict with certainty whether the proposed changes to the FB Prepay Program would encourage Floor Brokers to participate in the program or to increase either their manual billable volume or QCC volume, the Exchange believes that the proposed changes would continue to incent Floor Brokers to participate in the FB Prepay Program by adding flexibility to the structure of the Program, including by allowing Floor Brokers to join the Program after the first of the year and increasing the Maximum Combined Rebate/Credit. All Floor Brokers are eligible to participate

in the FB Prepay Program and qualify for the proposed credits and rebates, and the credits and rebates are achievable in any given month without regard to volumes from any other month. The Exchange notes that the proposed restructuring of the FB Prepay Program (including by eliminating the Floor Broker Manual Billable Incentive Program) would more closely align the qualifications for and incentives offered through the Program with order flow executed by Floor Broker firms operating on the Exchange and with other fees and credits set forth in the Fee Schedule.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,<sup>19</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>20</sup>

There are currently 17 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>21</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and

<sup>14</sup> See proposed Fee Schedule, Sections III.E.1 and I.F. (providing, in relevant, part that Floor Broker credits paid for QCC trades and rebates paid through the Manual Billable Rebate Program shall not combine to exceed \$2,500,000 per month per Floor Broker firm).

<sup>15</sup> See proposed Fee Schedule, FB Prepay Program (providing, in relevant part, that “[t]o participate in the FB Prepay Program after the first of the year, Floor Broker organizations must notify the Exchange in writing by emailing [optionsbilling@nyse.com](mailto:optionsbilling@nyse.com), indicating a commitment to submit prepayment for the balance of the calendar year” and that the notification “email to enroll in the Program must originate from an officer of the Floor Broker organization and represents a binding commitment through the balance of the calendar year.”).

<sup>16</sup> See proposed Fee Schedule, FB Prepay Program.

<sup>17</sup> See proposed Fee Schedule, Section III.E (providing, in relevant part, that “[t]he Exchange will not issue any refunds in the event that a Floor Broker organization’s prepaid Eligible Fixed Costs exceeds actual costs.”). The Exchange believes this proposed change would add clarity, transparency, and internal consistency to the Fee Schedule.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>20</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>21</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>.

ETF options order flow. More specifically, in November 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.<sup>22</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 can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed credits offered to Floor Brokers on QCC transactions and manual billable volume offered through the FB Prepay Program, as proposed, are reasonable because they are designed to continue to incent Floor Brokers to increase the number of QCC transactions and manual billable orders executed on the Exchange. The Exchange also believes that the proposed increase in the maximum monthly amount that a Floor Broker firm could earn from Floor Broker QCC credits or from rebates via the proposed changes to the Manual Billable Rebate Program (*i.e.*, the Maximum Combined Rebate/Credit) is reasonable because it is likewise intended to encourage Floor Brokers to direct QCC transactions and manual billable volume to the Exchange.

With respect to the FB Prepay Program, the Exchange also believes that the proposed changes are reasonable because participation in the program is optional, and Floor Brokers can elect to participate in the program to be eligible to earn the proposed rebates on manual billable transactions and QCC transactions or not. The Exchange also believes that the proposed modification of the FB Prepay Program (including the proposal to eliminate the Floor Broker Manual Billable Incentive Program) is reasonable because it is designed to simplify the incentives offered through the program, to continue to encourage Floor Brokers to participate in the FB Prepay Program, and to provide liquidity on the Exchange. Specifically, the Exchange believes that the proposed qualifying thresholds for the Manual Billable Rebate Program and QCC Bonus Rebate are achievable by Floor Broker

firms based on recent Floor Broker activity and in consideration of the proposed changes in this filing, and that the rebate amounts are designed to encourage Floor Brokers to continue to direct manual billable volume and QCC transactions to the Exchange. The Exchange further believes that the amounts of the proposed rebates are reasonable and comparable to rebate amounts offered by another options exchange to Floor Brokers on manual transactions.

To the extent that the proposed changes attract more volume 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 notes that all market participants stand to benefit from any increase in volume by Floor Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery, to the extent the proposed change encourages Floor Brokers to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants. In addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

The Exchange also believes that the proposed change to modify the Program to remove reference to a specific year is reasonable because it would prevent the Exchange from using a benchmark based on a stale date and would add flexibility to the Program (insofar as it would not need to be revised each year). In addition, the proposed change to allow Floor Brokers to join the Program after the first of the year—by prepaying an amount (to cover the balance of the year) based on their Eligible Fixed Costs incurred in their first month in the Program—is reasonable for several reasons. First, the proposed method used to determine the prepayment amount for any later-joining Floor Brokers is analogous to the Exchange's current method of determining the prepayment amount for Program participants (*i.e.*, prepayment amount is based on the Eligible Fixed Costs recently-incurred). Second, the Exchange believes that the proposed method of determining a (later-joining) Floor Broker's prepayment amount would provide the most accurate basis for anticipating that Floor Broker's future Eligible Fixed Costs. Moreover, the Exchange believes that this approach would allow the Exchange the

flexibility to offer the FB Prepay Program to later-joining Floor Brokers, including/especially Floor Brokers new to the Exchange, without putting these Floor Brokers at a competitive disadvantage.

Further, the proposal to eliminate the Floor Broker Manual Billable Incentive Program and accompanying monthly rebates is reasonable because it is rendered redundant by the proposed enhanced opportunities for Floor Brokers participating in the FB Prepay Program to achieve rebates through the Manual Billable Rebate Program and the QCC Billable Bonus Rebate. The Exchange believes that this proposed restructuring is reasonable because it may encourage more Floor Brokers to sign up for the Program, which may result in increased liquidity on the Exchange to the benefit of all market participants.

To the extent the proposed changes continue to 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 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 Floor Brokers may direct their order flow to any of the 17 options exchanges, including those offering rebates on QCC orders<sup>23</sup> and Floor Broker rebates on manual billable orders. Thus, Floor Brokers have a choice of where they direct their order flow, including their QCC transactions and manual billable orders. The proposed rule changes are designed to continue to incent Floor Brokers to direct liquidity (and, in particular, QCC orders and manual billable orders) to the Exchange; to the extent Floor Brokers are incented to

<sup>23</sup> See, e.g., EDGX Options Exchange Fee Schedule, QCC Initiator/Solicitation Rebate Tiers (applying (\$0.16) per contract rebate up to 999,999 contracts for QCC transactions when only one side of the transaction is a non-customer or (\$0.24) per contract rebate up to 999,999 contracts for QCC transactions with non-customers on both sides); BOX Options Fee Schedule at Section IV.D.1. (QCC Rebate) (providing for (\$0.14) per contract rebate up to 999,999 contracts for QCC transactions when only one side of the QCC transaction is a broker-dealer or market maker or (\$0.22) per contract rebate up to 1,499,999 contracts for QCC transactions when both parties are a broker-dealer or market maker); Nasdaq ISE, Options 7, Section 6.B. (QCC Rebate) (offering rebates on QCC transactions of (\$0.14) per contract when only one side of the QCC transaction is a non-customer or (\$0.22) per contract when both sides of the QCC transaction are non-customers).

<sup>22</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 equity-based options was 6.98% for the month of November 2022 and 7.60% for the month of November 2023.

aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

Finally, the proposed changes to remove reference to inapplicable fees (*i.e.*, costs for Login and Floor Broker Hand Held), to remove now obsolete language related to the migration to Pillar, as well as the to make conforming changes to the Table of Contents (in connection with the deletion of Floor Broker Incentive Program), and to remove superfluous or obsolete text from the FB Prepay Program, are reasonable because they would add clarity, transparency, and internal consistency to the Fee Schedule to the benefit of all market participants.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange; Floor Brokers are not obligated to participate in the FB Prepay Program and can choose to execute QCC transactions or manual billable transactions to earn the various proposed credits and rebates or not. In addition, the proposed credits and rebates are available to all Floor Brokers equally, and the proposed monthly limit on the amount that Floor Brokers could earn from credits and rebates on QCC transactions and manual billable transactions would apply to all Floor Brokers equally.

The Exchange also notes that the proposed changes are designed to encourage Floor Brokers that have previously enrolled in the FB Prepay Program to reenroll for the upcoming year, as well as to attract Floor Brokers that have not yet participated in the program. Moreover, the Exchange believes that the proposed modifications to the FB Prepay Program are an equitable allocation of fees and credits because they would apply to participating Floor Brokers equally and are intended to encourage the role performed by Floor Brokers in facilitating the execution of orders via open outcry, a function which the Exchange wishes to support for the benefit of all market participants.

The Exchange also believes that the proposed change to modify the Program to remove reference to a specific year is equitable because it would prevent the Exchange from using a benchmark based on a stale date. In addition, the proposed change to allow Floor Brokers

to join the Program after the first of the year—by prepaying an amount (to cover the balance of the year) based on their Eligible Fixed Costs incurred in their first month in the Program—is equitable for several reasons. First, the proposed method used to determine the prepayment amount for any later-joining Floor Brokers is analogous to the Exchange's current method of determining the prepayment amount for Program participants (*i.e.*, prepayment amount is based on the Eligible Fixed Costs recently-incurred). Second, the Exchange believes that the proposed method of determining a (later-joining) Floor Broker's prepayment amount would provide the most accurate basis for anticipating that Floor Broker's future Eligible Fixed Costs. Moreover, the Exchange believes that this approach would allow the Exchange the flexibility to offer the FB Prepay Program to later-joining Floor Brokers, including/especially Floor Brokers new to the Exchange, without putting these Floor Brokers at a competitive disadvantage.

Further, the proposal to eliminate the Floor Broker Manual Billable Incentive Program and accompanying monthly rebates is equitable because it is rendered redundant by the proposed enhanced opportunities for Floor Brokers participating in the FB Prepay Program to achieve rebates through the Manual Billable Rebate Program and the QCC Billable Bonus Rebate. The Exchange believes that this proposed restructuring is reasonable because it may encourage more Floor Brokers to sign up for the Program, which may result in increased liquidity on the Exchange to the benefit of all market participants

Moreover, the proposed changes are designed to continue to incent Floor Brokers to encourage ATP Holders to aggregate their executions—including QCC transactions and manual orders—at the Exchange as a primary execution venue. To the extent that the proposed change achieves its purpose in attracting more Floor Broker volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, 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 Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed fees, credits, and rebates applicable to Floor Brokers on QCC transactions and manual billable transactions are not unfairly discriminatory because they are based on the amount and type of business transacted on the Exchange, and Floor Brokers are not obligated to execute QCC or manual billable volume, or to participate in the FB Prepay Program. Further, the proposal to eliminate the Floor Broker Manual Billable Incentive Program and accompanying monthly rebates is not unfairly discriminatory because it is rendered redundant by the proposed enhanced opportunities for Floor Brokers participating in the FB Prepay Program to achieve rebates through the Manual Billable Rebate Program and the QCC Billable Bonus Rebate. The Exchange believes that this proposed restructuring is reasonable because it may encourage more Floor Brokers to sign up for the Program, which may result in increased liquidity on the Exchange to the benefit of all market participants. In addition, the proposed changes, including the increase of the Maximum Combined Rebate/Credit, would apply to all similarly-situated Floor Brokers on an equal and non-discriminatory basis. The proposed credits and rebates are also not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders on the Exchange, which the Exchange wishes to encourage and support to promote price improvement opportunities for all market participants.

The Exchange also believes that the proposed change to modify the Program to remove reference to a specific year is not unfairly discriminatory because it would apply equally to all Program participants and would prevent the Exchange from using a benchmark based on a stale date. In addition, the proposed change to allow Floor Brokers to join the Program after the first of the year—by prepaying an amount (to cover the balance of the year) based on their Eligible Fixed Costs incurred in their first month in the Program—is not unfairly discriminatory for several reasons. First, the proposed method used to determine the prepayment amount for any later-joining Floor Brokers is analogous to the Exchange's current method of determining the prepayment amount for Program participants (*i.e.*, prepayment amount is based on the Eligible Fixed Costs recently-incurred). Second, the

Exchange believes that the proposed method of determining a (later-joining) Floor Broker's prepayment amount would provide the most accurate basis for anticipating that Floor Broker's future Eligible Fixed Costs. Moreover, the Exchange believes that this approach would allow the Exchange the flexibility to offer the FB Prepay Program to later-joining Floor Brokers, including/especially Floor Brokers new to the Exchange, without putting these Floor Brokers at a competitive disadvantage.

Further, the proposal to eliminate the Floor Broker Manual Billable Incentive Program and accompanying monthly rebates is not unfairly discriminatory because it is rendered redundant by the proposed enhanced opportunities for Floor Brokers participating in the FB Prepay Program to achieve rebates through the Manual Billable Rebate Program and the QCC Billable Bonus Rebate. The Exchange believes that this proposed restructuring is reasonable because it may encourage more Floor Brokers to sign up for the Program, which may result in increased liquidity on the Exchange to the benefit of all market participants.

To the extent that the proposed changes attract more QCC orders and manual orders 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 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 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, protect investors and the public interest.

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. 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 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."<sup>24</sup>

*Intramarket Competition.* The proposed modification of the FB Prepay Program and the proposed credits and rebates offered to Floor Brokers manual billable orders are designed to incent participation in the FB Prepay Program and to attract additional order flow to the Exchange, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased QCC and manual billable transactions could increase opportunities for execution of other trading interest. The proposed rebates available through the Manual Billable Rebate Program and QCC Billable Bonus Rebate would be available to all Floor Brokers that choose to participate in the FB Prepay Program and meet the qualifying criteria for such rebates. The proposed increase of the Maximum Combined Rebate/Credit would likewise apply equally to all similarly-situated Floor Brokers. To the extent that there is an additional competitive burden on non-Floor Brokers, the Exchange believes that any such burden would be appropriate because Floor Brokers serve an important function in facilitating the execution of orders and price discovery for all market participants.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 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 has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>25</sup> Therefore, no exchange possesses significant pricing power in the

execution of multiply-listed equity and ETF options order flow. More specifically, in November 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.<sup>26</sup>

The Exchange believes that the proposed changes reflect this competitive environment because they modify the Exchange's fees and credits in a manner designed to continue to incent Floor Brokers to direct trading interest (particularly QCC transactions and manual orders) to the Exchange, to provide liquidity and to attract order flow. To the extent that Floor Brokers are encouraged to participate in the FB Prepay Program and/or incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement. 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.

The Exchange further believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer rebates on QCC transactions and manual billable volume,<sup>27</sup> by encouraging additional orders to be sent to the Exchange for execution.

Finally, the proposed changes to remove reference to inapplicable fees (*i.e.*, costs for Login and Floor Broker Hand Held) and to make conforming changes to the Table of Contents (to reflect deletion of Floor Broker Incentive Program), and to remove superfluous or obsolete text from the FB Prepay Program are not designed to address any competitive issue but are instead designed to add clarity, transparency, and internal consistency to the Fee Schedule.

#### *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.

<sup>24</sup> See Reg NMS Adopting Release, *supra* note 20, at 37499.

<sup>25</sup> See note 21, *supra*.

<sup>26</sup> See note 22, *supra*.

<sup>27</sup> See note 23, *supra*.

### 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, 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)<sup>30</sup> 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 (<https://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-2024-06 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-2024-06. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2024-06 and should be submitted on or before February 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2024-02160 Filed 2-2-24; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35121; 812-15209]

#### Blue Tractor ETF Trust and Blue Tractor Group, LLC

January 31, 2024.

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

**ACTION:** Notice of an application to amend a prior order for exemptive relief.

**SUMMARY OF APPLICATION:** Applicants request an order ("Amended Order") that would amend a prior order to permit a Fund (as defined below) to engage in short sales with respect to the same types of instruments that a Fund is permitted to hold as long positions.

**APPLICANTS:** Blue Tractor ETF Trust and Blue Tractor Group, LLC ("Applicants").

**FILING DATES:** The application was filed on March 19, 2021, and amended on August 12, 2021, February 15, 2022, June 3, 2022, June 7, 2023 and January 30, 2024.

**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 by emailing the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov) and serving Applicants 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 26, 2024 and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Investment Company Act of 1940 ("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 to the Commission's Secretary.

**ADDRESSES:** The Commission: [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov). Applicants: [MMundt@stradley.com](mailto:MMundt@stradley.com).

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel; Trace W. Rakestraw, Senior Special Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** For Applicants' representations, legal analysis, and conditions, please refer to Applicants' fifth amended and restated application, dated January 30, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

### I. Introduction

1. On December 10, 2019, the Commission issued an order<sup>1</sup> (as subsequently amended,<sup>2</sup> the "Prior Order")<sup>3</sup> under section 6(c) of the Act

<sup>1</sup> See Blue Tractor ETF Trust and Blue Tractor Group, LLC, Investment Company Act Release No. 33682 (Nov. 14, 2019) (notice) and Investment Company Act Release No. 33710 (Dec. 10, 2019) (order).

<sup>2</sup> See Blue Tractor ETF Trust and Blue Tractor Group, LLC, Investment Company Act Release No. 34194 (Feb. 10, 2021) (notice) and Investment Company Act Release No. 34221 (Mar. 9, 2021) (order).

<sup>3</sup> Except as specifically noted in the application for the Amended Order, all representations and conditions contained in the application first

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

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

<sup>30</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>31</sup> 17 CFR 200.30-3(a)(12).