

and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed rule change reflects the Exchange's stated goals to improve the governance process of the Parent and update the Parent Bylaws to reflect and track the DGCL and current best practices.<sup>19</sup> The Exchange has represented that it does not believe the proposed rule changes are controversial and that the proposed provisions are common among comparable public companies.<sup>20</sup>

The Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act, including Section 6(b)(1) thereunder, in that the Exchange, and its Parent on the Exchange's behalf as applicable, will remain so organized and have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

While proposed Section 3.15 will provide the Parent with special limited powers to ensure continued operations at the onset of an emergency situation that otherwise prevents the Board from obtaining the necessary quorum to convene and exercise its power, that section is intended only to provide limited short-term flexibility to ensuring continue operations of the Parent during the initial stage of the emergency situation. Pursuant to proposed paragraph (f), a majority of the elected directors are expected to reconvene as soon as it is possible to do so. In addition, the provisions in new Section 3.15 concerning amendments to the Parent Bylaws remain subject to existing Section 10.2 and, as applicable, the rule filing requirements of Section 19 of the Act.<sup>21</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

including whether Amendment No. 1 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-CboeEDGA-2020-021 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-CboeEDGA-2020-021. 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 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-CboeEDGA-2020-021 and should be submitted on or before October 29, 2020.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as amended by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal**

**Register**. Amendment No. 1 provided additional detail and clarity on a few points without materially changing the proposal or the proposed rule text.<sup>22</sup> The Commission notes that Amendment No. 1 does not change the substance of the proposed rule change as it was initially filed, but merely adds detail to a few select items of the proposal regarding their intended scope. These points of clarification add helpful detail to support the proposal without materially altering it. Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.<sup>23</sup>

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change, as modified by Amendment No. 1 (SR-CboeEDGA-2020-021), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

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

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90074; File No. SR-NYSEAMER-2020-68]

#### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Section 220 of the NYSE American Company Guide To Eliminate a Fee Cap on Original Listing Fees for Companies Listed on Foreign Stock Exchanges and Subject All Foreign Issuers to the Original Listing Fee Schedule Applicable to All Other Newly-Listed Companies

October 2, 2020.

Pursuant to Section 19(b)(1) 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 September 24, 2020, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities

<sup>22</sup> See *supra* note 4 for a description of Amendment No. 1.

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> *Id.*

<sup>25</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>19</sup> See Notice, *supra* note 3, at 51130.

<sup>20</sup> The Exchange represents that other public companies have provisions similar to what it is proposing, and that some of its proposed rule changes have been adopted by other securities and commodities exchanges, including Nasdaq, Inc., Intercontinental Exchange, and the CME Group, Inc. *Id.*

<sup>21</sup> 15 U.S.C. 78s. See also Amendment No. 1.

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 Section 220 of the NYSE American Company Guide (the “Company Guide”) to amend Section 220(b) to remove a limitation on original listing fees for any company listed on a foreign stock exchange. 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.

#### **A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

Section 220 of the Company Guide provides that the original listing fee for companies listed on foreign stock exchanges, including the one-time charge, is 50% of the rate for domestic companies, with a maximum fee of \$32,500.<sup>4</sup> The Exchange proposes to amend Section 220 to eliminate this cap on original listing fees for companies listed on foreign stock exchanges and to specify instead that all foreign issuers will be subject to the original listing fee schedule applicable to all other newly-listed companies as set forth in Section 140. Over time, the Exchange has

concluded that it now typically expends similar resources in relation to the initial listing of those companies as for other listing applicants and thus believes that it is appropriate for listing applicants who are listed on a foreign stock exchange to pay original listing fees pursuant to the same fee schedule as other newly-listed companies.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>6</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to 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 and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly competitive marketplace for the listing of equity securities. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.

The Exchange believes that the ever shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

The Exchange believes that it does not constitute an inequitable allocation of fees and is not unfairly discriminatory to remove the cap on original listing fees for companies that are listed on a foreign stock exchange and to charge the same original listing fees to those companies as are charged to other newly-listed companies, because the

Exchange expends similar resources in the listing of those companies as for the listing of domestic companies. In addition, the Exchange notes that companies listed on foreign stock exchanges will pay according to the same fee schedule as all other listed companies under the amended rule.

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**

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.

##### **Intramarket Competition**

As amended, all newly listed companies would pay original listing fees on the same basis. The Exchange does not believe that the proposed rule change would have any meaningful effect on the competition among issuers listed on the Exchange.

##### **Intermarket Competition**

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees in response, and because issuers may change their listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

#### **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>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</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

<sup>4</sup> Section 220(b) specifies that additional and annual fees for companies listed on a foreign stock exchange are the same as charged for domestic companies pursuant to Sections 141 and 142. As amended, Section 220(b) would clarify that all foreign issuers are subject to the applicable fee provisions of Sections 141 and 142.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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>10</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 (<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-2020-68 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-2020-68. 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 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-2020-68 and should be submitted on or before October 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90085; File No. SR-NYSEAMER-2020-69]

#### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Rules 9261 and 9830 With Recent Changes by the Financial Industry Regulatory Authority, Inc.

October 2, 2020.

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 September 23, 2020, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission ("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 harmonize Rules 9261 and 9830 with recent changes by the Financial Industry Regulatory Authority, Inc. ("FINRA") that temporarily grants the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing novel coronavirus ("COVID-19") pandemic. As proposed, these

temporary amendments would be in effect through December 31, 2020. 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 Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

The Exchange proposes to harmonize Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) with recent changes by FINRA to its Rules 9261 and 9830 that temporarily grants to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID-19 pandemic. As proposed, these temporary amendments would be in effect through December 31, 2020.<sup>4</sup>

##### Background

In 2016, NYSE American (then known as NYSE MKT LLC) adopted disciplinary rules that are, with certain exceptions, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and its affiliate, the New York Stock Exchange LLC ("NYSE"), and which set forth rules for conducting investigations and enforcement actions.<sup>5</sup>

<sup>4</sup> The Exchange may submit a separate rule filing to extend the expiration date of the proposed temporary amendments if the Exchange requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020. The amended NYSE American rules will revert back to their current state at the conclusion of the temporary relief period and any extension thereof.

<sup>5</sup> See Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR-NYSEMKT-2016-30) ("2016 Notice").

<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>25</sup> 15 U.S.C. 78a.

<sup>37</sup> 17 CFR 240.19b-4.