

Rule 3a1-1(a)(2) exempts from the definition of “exchange” under Section 3(a)(1) an organization, association, or group of persons that complies with Regulation ATS.⁴ Regulation ATS requires an ATS to, among other things, register as a broker-dealer with the Securities and Exchange Commission (“SEC”), file a Form ATS with the Commission to notice its operations, and establish written safeguards and procedures to protect subscribers’ confidential trading information. An ATS that complies with Regulation ATS and operates pursuant to the Rule 3a1-1(a)(2) exemption would not be required by Section 5 to register as a national securities exchange. Rule 302 of Regulation ATS (17 CFR 242.302) describes the recordkeeping requirements for ATSs. Under Rule 302, ATSs are required to make a record of subscribers to the ATS, daily summaries of trading in the ATS, and time-sequenced records of order information in the ATS.

The information required to be collected under Rule 302 should increase the abilities of the Commission, state securities regulatory authorities, and the self-regulatory organizations (“SROs”) to ensure that ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. If the information is not collected or collected less frequently, the regulators would be limited in their ability to comply with their statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

Respondents consist of ATSs that choose to operate pursuant to the exemption provided by Regulation ATS from registration as national securities exchanges. There are currently 83 respondents. These respondents will spend approximately 3,735 hours per year (83 respondents at 45 burden hours/respondent) to comply with the recordkeeping requirements of Rule 302. At an average cost per burden hour of \$73, the resultant total related internal cost of compliance for these respondents is \$272,655 per year (3,735 burden hours multiplied by \$73/hour).

Compliance with Rule 302 is mandatory. The information required by Rule 302 is available only for the examination of the Commission staff, state securities authorities, and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C.

522 (“FOIA”), and the Commission’s rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

ATSs are required to preserve, for at least three years, any records made in the process of complying with the requirements set out in Rule 302.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Lindsay.M.Abate@omb.eop.gov; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 3, 2019.

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 2019-19237 Filed 9-5-19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86833; File No. SR-NYSEAMER-2019-27]

Self-Regulatory Organizations; NYSE American, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify the Options Regulatory Fee

August 30, 2019.

I. Introduction

On July 2, 2019, NYSE American, LLC (the “Exchange” or “NYSE American”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change (File No. SR-NYSEAMER-2019-27) to modify the amount of its Options Regulatory Fee (“ORF”).³ The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁴ The proposed rule change was published for comment in the **Federal Register** on July 22, 2019.⁵ The Commission received one comment letter on the proposal.⁶ Pursuant to Section 19(b)(3)(C) of the Act,⁷ the Commission is hereby: (1) Temporarily suspending File No. SR-NYSEAMER-2019-27; and (2) instituting proceedings to determine whether to approve or disapprove File No. SR-NYSEAMER-2019-27.

II. Description of the Proposed Rule Change

The Exchange proposes to amend the amount of its ORF from \$0.0055 to \$0.0054 per contract.⁸ The Exchange assesses the ORF on American Trading Permit (“ATP”) Holders for all options transactions that are cleared by those firms through the Options Clearing Corporation (“OCC”) in the Customer range, regardless of the exchange on which the transaction occurs.⁹ The Exchange noted that its ORF “is designed to recover a material portion, but not all, of the Exchange’s regulatory costs for the supervision and regulation of ATP Holders.”¹⁰ Noting that it adjusts the ORF amount periodically to ensure that the revenue from ORF does not exceed its regulatory costs, the Exchange proposed to decrease the ORF because “from 2017 to 2018, options transaction volume increased to a level that if the ORF is not adjusted, the ORF revenue to the Exchange year-over-year

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 86391 (July 16, 2019), 84 FR 35165 (July 22, 2019) (“Notice”).

⁴ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii). Although the proposed rule change was effective upon filing, the Exchange indicated that it would not implement the fee until August 1, 2019. See Notice, *supra* note 3, at 35165.

⁵ See Notice, *supra* note 3, at 35165.

⁶ See Letter to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Securities Industry and Financial Markets Association (“SIFMA”), dated August 27, 2019 (“SIFMA Letter”).

⁷ 15 U.S.C. 78s(b)(3)(C).

⁸ See Notice, *supra* note 3, at 35165.

⁹ See *id.* at 35166.

¹⁰ *Id.* at 35165.

Act Rule 3b-16]; and (2) [t]hat does not: (i) [s]et rules governing the conduct of subscribers other than the conduct of subscribers’ trading on such [ATS]; or (ii) [d]iscipline subscribers other than by exclusion from trading.”

⁴ See 17 CFR 240.3a1-1(a)(2).

could exceed a material portion of the Exchange's regulatory costs.”¹¹

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,¹² at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,¹³ the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (“SRO”) 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.¹⁴ The instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement “should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements”¹⁵

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;¹⁶ (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;¹⁷ and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.¹⁸ In justifying its proposal, the Exchange stated in its

filing that its proposal “is reasonable because it would help ensure that revenue collected from the ORF does not exceed a material portion of the Exchange's regulatory costs.”¹⁹ In determining the amount of the proposed ORF, the Exchange said that it considered: (1) The increase in options transaction volume in 2018, (2) the decrease in options transaction volumes in the first five months of 2019, (3) the Exchange's projection that options transaction volumes will remain stable at best in the future, and (4) the “estimated projections for [the Exchange's] regulatory costs.”²⁰ The Exchange also asserted that the ORF is equitably allocated and not unfairly discriminatory because the fees are imposed on clearing firms, who can then choose to pass through all, a portion, or none of the costs of the ORF to their customers.²¹ In addition, the Exchange stated that the regulatory costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the regulatory costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive.²²

As noted above, the Commission received one comment letter on the proposal, in which the commenter argued that the Exchange has not provided sufficient information to satisfy the statutory requirements under the Act.²³ Specifically, the commenter stated that the Exchange should “include quantitative data showing anticipated revenues, costs and profitability” and describe the methodology used for any estimations of baseline and expected costs and revenues to support the Exchange's assertions that the proposed ORF is an equitable allocation of reasonable fees among members.²⁴ The commenter also stated that the Exchange should provide support for its assertions that assessing ORF only on transactions cleared at OCC in the Customer range represents an equitable allocation that is not unfairly discriminatory.²⁵ Lastly, the commenter argued that the Exchange should not be permitted to charge ORF for trades occurring on other exchanges unless the Exchange can support its assertion concerning its “authority to

act on activities occurring outside its own market.”²⁶

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the proposal to modify the amount of the ORF is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²⁷

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.²⁸

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) and 19(b)(2)(B) of the Act³⁰ to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,³¹ the Commission is providing

²⁶ See *id.*

²⁷ See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

²⁸ For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁹ 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

³⁰ 15 U.S.C. 78s(b)(2)(B).

³¹ 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of

¹¹ See *id.* at 36166. The Exchange noted that it last changed the ORF in 2014. See *id.*

¹² 15 U.S.C. 78s(b)(3)(C).

¹³ 15 U.S.C. 78s(b)(1).

¹⁴ See 17 CFR 240.19b-4 (Item 3 entitled “Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change”).

¹⁵ See *id.*

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78f(b)(8).

¹⁹ See Notice, *supra* note 3, at 35167.

²⁰ See *id.*

²¹ See *id.*

²² See *id.*

²³ See SIFMA Letter, *supra* note 6, at 1–2.

²⁴ See *id.* at 2.

²⁵ See *id.*

notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange “provide for the *equitable allocation* of *reasonable* dues, fees, and other charges among its members and issuers and other persons using its facilities;”³² (emphasis added);

- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be “designed to permit *unfair discrimination* between customers, issuers, brokers, or dealers”³³ (emphasis added); and

- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].”³⁴

As noted above, the proposal purports to modify the amount of the ORF in response to changes in options transaction volume in a manner that is designed to recover a material portion, but not all, of the Exchange’s regulatory costs for the supervision and regulation of its options participants. However, the Exchange’s statements in support of the proposed rule change are general in nature and lack detail and specificity.³⁵ For example, the Exchange provides only broad information on options transaction volume trends, but does not provide any information on the Exchange’s historic or projected options regulatory costs (including the costs of regulating activity that clears in the Customer range and the costs of regulating activity that occurs away from the Exchange), the amount of regulatory revenue it has generated and expects to generate from the ORF as well as other sources, or the “material portion” of options regulatory expenses that it seeks to recover from the ORF. Similarly, the Exchange has not

provided information to support its assertion that regulating customer activity is “generally more labor-intensive” and therefore, more costly.³⁶

As the commenter stated, without more information in the filing on the Exchange’s regulatory revenues attributable to ORF as well as regulatory revenue from other sources, and more information on the Exchange’s regulatory costs to supervise and regulate ATP Holders, including, *e.g.*, Customer versus non-Customer activity and on-exchange versus off-exchange activity, the proposal lacks information that can speak to whether the proposed ORF is reasonable, equitably allocated, and not unfairly discriminatory, particularly given that the ORF is assessed only on transactions that clear in the Customer range and regardless of the exchange on which the transaction occurs, and that the ORF is designed to recover a material portion, but not all, of the Exchange’s regulatory costs for the supervision and regulation of activity across all ATP Holders.³⁷

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”³⁸ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,³⁹ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.⁴⁰

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated and not be unfairly discriminatory.⁴¹

V. Commission’s Solicitation of Comments

The Commission requests written views, data, and arguments with respect

to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by September 27, 2019. Rebuttal comments should be submitted by October 11, 2019. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁴²

The Commission asks that commenters address the sufficiency and merit of the Exchange’s statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule changes, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-NYSEAMER-2019-27 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 No. SR-NYSEAMER-2019-27. The 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

publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

³² 15 U.S.C. 78f(b)(4).

³³ 15 U.S.C. 78f(b)(5).

³⁴ 15 U.S.C. 78f(b)(8).

³⁵ *See, e.g.*, SIFMA Letter, *supra* note 6, at 2 (arguing that the Exchange has “not provided enough information . . . to satisfy the Exchange Act standards”).

³⁶ *See id.* *See also* SIFMA Letter, *supra* note 6, at 2.

³⁷ *See* SIFMA Letter, *supra* note 6, at 2.

³⁸ 17 CFR 201.700(b)(3).

³⁹ *See id.*

⁴⁰ *See id.*

⁴¹ *See* 15 U.S.C. 78f(b)(4), (5), and (8).

⁴² 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. 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 publicly available. All submissions should refer to File No. SR-NYSEAMER-2019-27 and should be submitted on or before September 27, 2019. Rebuttal comments should be submitted by October 11, 2019.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,⁴³ that File No. SR-NYSEAMER-2019-27, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-19219 Filed 9-5-19; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 10862]

60-Day Notice of Proposed Information Collection: Adoptive Family Relief Act Refund Application

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to November 5, 2019.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering "Docket Number: DOS-2019-0029" in the Search field. Then click the "Comment Now" button and complete the comment form.

- *Email:* fees@state.gov. You must include the DS form number (DS-7781), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Jorge Abudei, who may be reached at 202-485-8915 or at fees@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Adoptive Family Relief Act Refund Application.

- *OMB Control Number:* 1405-0223.

- *Type of Request:* Extension of a Currently Approved Collection.

- *Originating Office:* CA/C.

- *Form Number:* DS-7781.

- *Respondents:* Immigrant Visa Petitioners.

- *Estimated Number of Respondents:* 20.

- *Estimated Number of Responses:* 20.

- *Average Time per Response:* 5 Minutes.

- *Total Estimated Burden Time:* 1.6 Hours.

- *Frequency:* On Occasion.

- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public

record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Adoptive Family Relief Act (Pub. L. 114-70) amended Section 221(c) of the Immigration and Nationality Act (INA), 8 U.S.C. 1201(c), to allow for the waiver or refund certain immigrant visa fees for a lawfully adopted child, or a child coming to the United States to be adopted by a United States citizen, subject to criteria prescribed by the Secretary of State. Over 350 American families have successfully adopted children from the Democratic Republic of the Congo. However, since September 25, 2013, they have not been able to bring their adoptive children home to the United States because the Democratic Republic of the Congo suspended the issuance of "exit permits" for these children. As the permit suspension drags on, however, American families are repeatedly paying visa renewal and related fees, while also continuing to be separated from their adopted children.

The waiver or refund provides support and relief to American families seeking to bring their adoptive children home to the United States from the Democratic Republic of the Congo and families in situations similar to the one stipulated above. This form collects information to determine the extra fees these families have paid and refund them in accordance with the Adoptive Family Relief Act.

Methodology

The collection will be hosted on the Department of State website to be printed, filled out, and eventually sent to the consular section where the adoption case was originally processed.

Douglass R. Benning,

Deputy Assistant Secretary.

[FR Doc. 2019-19292 Filed 9-5-19; 8:45 am]

BILLING CODE 4710-06-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36343]

Stephens Pioneer Rail LLC—Control Exemption—BRX Transportation Holdings, LLC

Stephens Pioneer Rail LLC (Stephens Pioneer),¹ a noncarrier, filed a verified

¹ Stephens Pioneer states that it is an affiliate of Stephens Capital Partners LLC, which is also a noncarrier.

⁴³ 15 U.S.C. 78s(b)(3)(C).

⁴⁴ 17 CFR 200.30-3(a)(57) and (58).