

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100332; File No. SR-NYSEAMER-2024-41)

June 14, 2024

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

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 12, 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 amend the NYSE American Options Fee Schedule (“Fee Schedule”) to replace the Excessive Bandwidth Utilization Fees with a single fee. The Exchange proposes to implement the fee changes effective June 12, 2024.⁴ The proposed rule change is available on the Exchange’s website at 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ On May 1, 2024, the Exchange originally filed to amend the Fee Schedule (NYSEAMER-2024-30) and, on May 16, 2024, the Exchange withdrew that filing and submitted NYSEAMER-2024-32. On May 30, 2024, the Exchange withdrew NYSEAMER-2024-32 and submitted NYSEAMER-2024-37, which latter filing the Exchange withdrew on June 12, 2024.

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 is to amend the Fee Schedule to replace the Order to Trade Ratio Fee and Messages to Contracts Traded Ratio Fee with an Excessive Bandwidth Utilization Fee to reflect the Exchange's migration to NYSE Pillar ("Pillar"). The Exchange proposes to implement the fee changes effective May 30, 2024 [sic].

The Exchange imposes certain fees to discourage excessive message traffic (that do not result in executions or otherwise improve market quality) that could unnecessarily tax the Exchange's resources, bandwidth, and capacity, as no system has unlimited capacity.

With the Exchange's migration to the Pillar trading platform, market participants can send both quote and order message traffic over a single connection. This functionality allows the Exchange to monitor the message traffic of each ATP Holder, which in turn impacts how the Exchange calculates (and assess fees for) each ATP Holder's use of Exchange bandwidth and processing resources.

Currently, the Exchange assesses two fees designed to curtail excessive message traffic: an Order to Trade Ratio Fee that is based on the number of orders entered as compared to the number of executions received in a calendar month and a Messages to Contracts Traded Ratio Fees that measures the efficiency of an ATP Holder's orders and quotes, subject to certain

exceptions (collectively, the “Excessive Traffic fees”).⁵ Because the Pillar trading system enables the Exchange to monitor the excessive message traffic of both orders and quotes, the Exchange has determined it no longer needs both Excessive Traffic fees. The Exchange therefore proposes a single “Monthly Excessive Bandwidth Utilization Fee” or “EBUF”.⁶ As detailed below, the proposed EBUF is similar in structure to the existing Order to Trade Ratio Fee, except that the proposed EBUF would include quotes, which reflects the communication protocol available on Pillar. Consistent with the purpose of the proposed EBUF, the Exchange believes that assessing one fee (instead of two) for excessive message traffic would result in a more efficient use of Exchange resources.⁷

Like the Order to Trade Ratio Fee, the proposed EBUF is designed to strike the right balance between deterring ATP Holders from submitting an excessive number of messages (that do not result in executions or otherwise improve market quality) without discouraging ATP Holders from accessing the Exchange, except that it will include quotes. As proposed, the EBUF will only be assessed on ATP Holders that send more than 50 million messages per day on average during a calendar month.⁸ For purposes of EBUF, “messages” include quotes, orders,

⁵ See Fee Schedule, Section II. Monthly Excessive Bandwidth Utilization Fees, II.A. (Order to Trade Ratio Fees) and II.B. (Messages to Contracts Traded Ratio Fees). The calculation for assessing the Messages to Contracts Traded Ratio Fees, which aggregates the activity of affiliated entities, does not include for quotes submitted by a Specialist or e-Specialist that set the NBBO in their allocated issues and Market Makers that execute a monthly average daily volume electronically of at least 20,000 contracts (as aggregated all options issues in their assignment). See Fee Schedule, Sections II.A. and B, respectively. If an ATP Holder is liable for either or both fees in a given month, that firm is only charged the greater of the two fees. See Fee Schedule, Section II.

⁶ See proposed Fee Schedule, Section II., Monthly Excessive Bandwidth Utilization Fee.

⁷ As discussed further herein, the Exchange does not propose to carry forward the existing “Messages to Contracts Traded Ratio Fee” because the proposed EBUF is designed to capture the excessive quote traffic that was captured by that fee. Because Pillar processing renders the “Messages to Contracts Traded Ratio Fee” redundant (and therefore unnecessary), the Exchange believes the proposed EBUF would streamline the Fee Schedule.

⁸ See proposed Fee Schedule, Section II., Monthly Excessive Bandwidth Utilization Fee.

order cancellations and modifications.⁹

The proposed EBUF would calculate an ATP Holder’s “Monthly Message to Execution Ratio” (i.e., the number of messages sent versus the number of executions). The Exchange has determined that, on Pillar, setting a baseline threshold for this “Monthly Message to Execution Ratio” at 500,000 to 1 or greater should ensure the efficient use of the Exchange’s resources, bandwidth, and capacity by ATP Holders that are actively trading on the Exchange. Thus, as proposed, the Exchange will calculate the number of messages submitted by an ATP Holder, and the number of executions by the ATP Holder, and will only assess the EBUF if the Monthly Message to Execution Ratio exceeds 500,000 to 1. The proposed Fee will be assessed to further encourage efficient use of the Exchange’s resources as shown here:

Monthly Message to Execution Ratio	Monthly Charge
Between 500,000 and 749,999 to 1	\$5,000
Between 750,000 and 999,999 to 1	\$10,000
1,000,000 to 1 and greater	\$15,000

Like the Order to Trade Ratio Fee, the higher the Messages to Executions Ratio (i.e., the more unexecuted message that Pillar ingests), the higher the proposed fee, which increase is designed to discourage (increasing levels of) excessive message traffic by ATP Holders. The Exchange notes that the proposed minimum thresholds for triggering the proposed EBUF are higher than the thresholds associated with the Order to Trade Ratio Fee (but the associated fees are substantially the same), which reflects the fact that both quotes and orders (and cancellations or modification thereof) are “messages” included in the calculation as well as the fact that Pillar can accommodate more message traffic than the Exchange’s pre-Pillar system.¹⁰ The proposed

⁹ Id.

¹⁰ For example, the current Order to Trade Ratio Fee has minimum “order to execution” ratio thresholds of

EBUF thresholds are set at levels that an ATP Holder should not hit or exceed in the ordinary course of trading. As such, the Exchange believes that the proposed EBUF thresholds and associated fees are set at levels reasonable designed to encourage ATP Holders to efficiently use message traffic as necessary.

In addition, like both existing Excessive Traffic fees, the Exchange will not assess the EBUF for an ATP Holder's first occurrence in a rolling twelve-month period (the "Exemption").¹¹ For example, an ATP Holder that exceeds the minimum EBUF threshold in October 2024 will not be assessed the EBUF as long as that ATP Holder does not exceed the minimum EBUF threshold again before October 2025. If that same ATP Holder exceeds the minimum EBUF threshold in December 2025, it will not incur the EBUF if it does not exceed the minimum EBUF before December 2026. As noted above, an ATP Holder should not exceed the EBUF in its normal course of trading. Therefore, the proposed Exemption acts as a guardrail of sorts that is designed to protect ATP Holders from incurring the EBUF when they first encounter lower than expected executions in a rolling twelve-month period, such as when they are new to the Pillar trading platform, deploying new technologies, or testing different trading strategies, thereby encouraging ATP Holders to maintain their trading activity on the Exchange by mitigating the initial impact of the EBUF.

Further, consistent with the application of the existing Excessive Traffic fees, the Exchange will likewise retain discretion to exclude one or more days of data for purposes of

between 10,000 and 14,999 to 1, with an accompanying fee of \$5,000; between 15,000 and 19,999 to 1, with an accompanying fee of \$10,000; between 20,000 and 24,999 to 1, with an accompanying fee of \$20,000; and 25,000 to 1 and greater, with an accompanying fee of \$35,000.

¹¹ Compare Section II. of the Fee Schedule with the proposed Section II. of the Fee Schedule, Monthly Excessive Bandwidth Utilization Fee.

calculating the proposed EBUF if the Exchange determines, in its sole discretion, that one or more ATP Holders or the Exchange was experiencing a bona fide systems problem.¹²

In adopting the single EBUF, the Exchange will no longer assess the Messages to Contracts Traded Ratio Fee (“Ratio”), which was adopted in 2011 to address quote traffic.¹³ In calculating this additional Ratio fee, an ATP Holder could aggregate all of its activity (orders and quotes and contracts) with its affiliates.¹⁴ To encourage the use of quotes instead of orders, the Exchange excluded from the Ratio fee calculation certain quotes (i.e., quotes setting the NBBO and those of Specialists). Because the proposed EBUF monitors each ATP Holder’s orders and quotes, the Exchange believes there is no need to carry forward this Ratio fee. Further, the Exchange notes that retaining this Ratio fees could result in ATP Holders potentially being double charged for similar excessive messaging activity. As such, the Exchange believes that adopting a single EBUF would be a more efficient use of Exchange resources and less burdensome to market participants.

In connection with the proposed EBUF (and associated removal of the current Excessive Traffic fees), the Exchange proposes to delete from the Fee Schedule both Excessive Traffic fees and the now-expired waivers.¹⁵

¹² See id.

¹³ See Securities Exchange Act Release No. 64655 (June 13, 2011), 76 FR 35495 (June 17, 2011) (immediately effective filing that, among other things, adopted the Messages to Contracts Traded Ratio Fee) (SR-NYSEAmex-2011-37).

¹⁴ The Exchange notes that this aggregation feature of the Ratio fee was not being employed by ATP Holders. The Order to Trade Ratio Fee does not include an aggregation feature. Accordingly, the proposed EBUF (which is similar to this fee) does not include an aggregation feature.

¹⁵ See proposed Fee Schedule, Monthly Excessive Bandwidth Utilization Fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁷ 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 Exchange believes that the proposed EBUF is reasonable, equitable, and not unfairly discriminatory because it is designed to strike the right balance between deterring ATP Holders from submitting an excessive number of messages that do not result in an execution (or improve market quality) without discouraging ATP Holders from accessing the Exchange. To the extent that the proposed EBUF results in the efficient use of the Exchange's finite resources, all market participant stand to benefit from improved market quality.

The proposal to assess one fee (instead of two) for excessive message traffic is reasonable as it would result in a more efficient use of Exchange resources and would streamline the Fee Schedule, which benefits all market participants. The Exchange believes that the proposed EBUF, which captures excessive quote traffic, would render the "Messages to Contracts Traded Ratio Fee" redundant and therefore unnecessary.¹⁸

The Exchange believes that the proposed minimum EBUF thresholds, which are higher than the thresholds associated with the Order to Trade Ratio Fee (but carry roughly the same incremental fees), are reasonable because, unlike the Order to Trade Ratio Fee, the proposed

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

¹⁸ As noted herein, the Pillar trading system enables the Exchange to monitor the excessive message traffic of both orders and quotes and the Exchange no longer needs both Excessive Traffic fees.

EBUF counts a broader category of “message,” including quotes, orders, order cancellations, and modifications. Therefore, the Exchange believes the EBUF appropriately accounts for the significantly wider category of “messages” now included and accounts for the increased capacity available to Exchange participants on the Pillar trading system. Given that the proposed EBUF is meant to operate as a guardrail of sorts that an ATP Holder should not “hit” or exceed in the ordinary course of trading, the Exchange proposes to set the EBUF thresholds at levels reasonably designed to encourage ATP Holders to efficiently use message traffic as necessary.

The Exchange believes that the proposed Exemption is reasonable, equitable, and not unfairly discriminatory because is designed to protect ATP Holders from incurring the EBUF when they first encounter lower than expected executions in a rolling twelve-month period, such as when they are new to the Pillar trading platform, deploying new technologies, or testing different trading strategies, thereby encouraging ATP Holders to maintain their trading activity on the Exchange by mitigating the initial impact of the EBUF. The Exchange believes the proposed Exemption is reasonable as it is intended to lessen the initial impact of the EBUF while affording ATP Holders an opportunity to moderate or fine tune their message rates as needed once- every-twelve-months.

The proposed EBUF is a reasonable, equitable, and not unfairly discriminatory because it neither targets nor will it have a disparate impact on any category of market participant. The proposed EBUF would impact all similarly situated ATP Holders on an equal basis; all ATP Holders would be eligible for the Exemption the first time they incur the EBUF in a rolling 12-month period.

The Exchange believes that eliminating the Ratio fee (in favor of the single EBUF) is reasonable, equitable, and not unfairly discriminatory because it is rendered redundant by the

proposed EBUF, which will monitor both order and quotes of each ATP Holder.¹⁹

Because the proposed EBUF monitors quote traffic, the Exchange believes that retaining this Ratio fee would risk the potential for ATP Holders being double charged for similar excessive messaging activity. The proposed EBUF (like the Order to Trade Ratio Fee) would not include the option for ATP Holders to aggregate their activity with their affiliates.²⁰ Moreover, ATP Holders did not employ this aspect of the Ratio fee. As such, the Exchange believes that adopting a single EBUF would be a more efficient use of Exchange resources and less burdensome to market participants.

The Exchange believes that the removal of the obsolete text from the Fee Schedule (regarding the Excessive Traffic fees and associated stale waiver language) would further the protection of investors and the public interest by promoting clarity and transparency in Fee Schedule thereby making the Fee Schedule easier to navigate and understand.

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.

Intramarket Competition. The Exchange believes the proposed EBUF, including the Exemption, would not place an unfair burden on intramarket competition because it is designed to encourage efficient and rational use of the Exchange's finite resources and would apply to all market participants. Similarly, the elimination of the Ratio fee will impact all similarly situated ATP Holders.

¹⁹ As noted herein, the Pillar trading system enables the Exchange to monitor the excessive message traffic of both orders and quotes and the Exchange no longer needs both Excessive Traffic fees.

²⁰ See supra note 14.

The deletion of the language relating to the now-expired waivers of the Excessive Traffic fees would remove from the Fee Schedule language that is no longer applicable to any ATP Holders and, accordingly, would not have any impact on intramarket competition. The proposed Exemption would apply equally to all ATP Holders; all ATP Holders would be eligible for the Exemption for the first occurrence of the proposed Ratio Threshold Fee in a rolling 12-month period.

Intermarket Competition. The Exchange believes the proposed EBUF, including the Exemption, would not place an unfair burden on intermarket competition as it is not intended to address any competitive issues but is instead designed solely to encourage the efficient use of the Exchange's resources. The Exchange believes that the proposed EBUF should deter excessive message traffic that does not improve market quality which, in turn, will sustain the Exchange's overall competitiveness.

The proposed deletion of text related to the Excessive Traffic fees would add clarity to the Fee Schedule by removing obsolete pricing and, accordingly, would not have any impact 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)²¹ of the Act and subparagraph (f)(2) of Rule 19b-4²² thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(2).

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)²³ 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. Please include file number SR-NYSEAMER-2024-41 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-2024-41. 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>).

²³ 15 U.S.C. 78s(b)(2)(B).

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-2024-41 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,
Assistant Secretary.

²⁴ 17 CFR 200.30-3(a)(12).