

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103507; File No. SR-NYSEAMER-2025-42]

## **Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Lower the Options Regulatory Fee (ORF)**

July 21, 2025.

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 July 16, 2025, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the NYSE American Options Fee Schedule (“Fee Schedule”) regarding the Options Regulatory Fee (“ORF”). The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com) and at the principal office of the Exchange.

### **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

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<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.

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 Exchange proposes to amend the Fee Schedule to temporarily decrease the ORF from \$0.0038 per contract to \$0.0023 per contract, effective July 16, 2025.<sup>4</sup>

*Background*

As a general matter, the Exchange may only use regulatory funds such as the ORF “to fund the legal, regulatory, and surveillance operations” of the Exchange.<sup>5</sup> More specifically, the ORF is designed to recover a material portion, but not all, of the Exchange’s costs for the supervision and regulation of ATP Holders, including the Exchange’s regulatory program and legal expenses associated with options regulation, such as the costs related to in-house staff, third-party service providers, and technology that facilitate regulatory functions such as surveillance, investigation, examinations, and enforcement (collectively, the “ORF Costs”). ORF funds may also be used for indirect expenses such as human resources and other administrative costs. The Exchange monitors the amount of revenue collected from the ORF to ensure that this revenue, in combination with other regulatory fees and fines, does not exceed regulatory costs.

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<sup>4</sup> On July 1, 2025, the Exchange filed to amend the Fee Schedule (NYSEAMER-2025-39) and withdrew such filing on July 16, 2025.

<sup>5</sup> The Exchange considers surveillance operations part of regulatory operations. The limitation on the use of regulatory funds also provides that they shall not be distributed. See Thirteenth Amended and Restated Operating Agreement of NYSE American LLC, Article IV, Section 4.05 and Securities Exchange Act Release No. 87993 (January 16, 2020), 85 FR 4050 (January 23, 2020) (SR-NYSEAMER-2020-04).

The ORF is assessed on ATP Holders for options transactions that are cleared by the ATP Holder through the Options Clearing Corporation (“OCC”) in the Customer range regardless of the exchange on which the transaction occurs and is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American.<sup>6</sup> All options transactions must clear via a clearing firm and such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, i.e., the entering firms. The Exchange notes that the costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder’s relationship with its Customers via more labor-intensive exam-based programs.<sup>7</sup> As a result, the costs associated with administering the customer component of the Exchange’s overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., ATP Holder proprietary transactions) of its regulatory program.

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<sup>6</sup> See Fee Schedule, Section VII.A., Options Regulatory Fee (“ORF”), [available here](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf), [https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE\\_American\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf). The Exchange uses reports from OCC when assessing and collecting the ORF. The ORF is not assessed on outbound linkage trades. An ATP Holder is not assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE American. See *id.*

<sup>7</sup> The Exchange notes that many of the Exchange’s market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running, and contrary exercise advice violations/expiring exercise declarations. The Exchange and other options SROs are parties to a 17d-2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. See, e.g., Securities Exchange Act Release No. 85097 (February 11, 2019), 84 FR 4871 (February 19, 2019).

Because the ORF is based on options transactions volume, the amount of ORF collected is variable. For example, if options transactions reported to OCC in a given month increase, the ORF collected from ATP Holders will likely increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from ATP Holders will likely decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed a material portion of ORF Costs. If the Exchange determines the amount of ORF collected exceeds or may exceed a material portion of ORF Costs, the Exchange will, as appropriate, adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the “Commission”). Exchange rules establish that market participants must be notified of any change in the ORF via Trader Update at least 30 calendar days prior to the effective date of the change.<sup>8</sup>

#### *Proposed Rule Change*

Based on the Exchange’s recent review of regulatory costs, ORF collections, and options transaction volume, the Exchange proposes to temporarily decrease the amount of ORF collected from \$0.0038 per contract to \$0.0023 per contract, effective July 1, 2025.<sup>9</sup> This proposed decrease will help ensure that the amount collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange’s total regulatory costs. On May 30, 2025, the Exchange notified ATP Holders of the proposed change via Trader Update (i.e., at least 30 calendar days prior to the July 1<sup>st</sup> operative date) to afford market participants sufficient opportunity to configure their systems to account properly for the modified ORF.<sup>10</sup>

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<sup>8</sup> See Fee Schedule, supra note 6.

<sup>9</sup> The Exchange proposes to have an automatic sunset of the proposed fee on December 31, 2025. See proposed Fee Schedule, Section VII.A., Options Regulatory Fee (“ORF”).

<sup>10</sup> See <https://www.nyse.com/trader-update/history#110000949347>.

The proposed change to the ORF is based on the Exchange’s analysis of recent options volumes and its regulatory costs. The Exchange believes that, if the ORF is not adjusted, the ORF revenue to the Exchange year over year could exceed a material portion of the Exchange’s ORF Costs. Over the past few years, the options industry has experienced high options trading volumes and volatility and, although the Exchange waived the ORF for the last two months of 2024,<sup>11</sup> the persisting increased options volumes have impacted the Exchange’s ORF collection.

The table below reflects industry data from OCC and illustrates that both total average daily volume and customer average daily volume in 2025 increased over the already elevated levels in 2023 and 2024.<sup>12</sup>

|              | <b>2023</b> | <b>2024</b> | <b>2025 YTD</b> |
|--------------|-------------|-------------|-----------------|
| Customer ADV | 35,327,417  | 39,365,049  | 46,831,086      |
| Total ADV    | 40,368,590  | 44,360,426  | 53,043,204      |

In addition, as shown in the table below, during 2025, options trading volumes have remained elevated and volatility has persisted.<sup>13</sup>

|              | <b>Jan. 2025</b> | <b>Feb. 2025</b> | <b>Mar. 2025</b> | <b>Apr. 2025</b> | <b>May 2025</b> |
|--------------|------------------|------------------|------------------|------------------|-----------------|
| Customer ADV | 46,758,284       | 48,508,333       | 46,281,134       | 47,786,196       | 46,234,519      |
| Total ADV    | 53,134,932       | 54,563,396       | 53,182,376       | 55,339,630       | 51,351,579      |

<sup>11</sup> See Securities Exchange Act Release No. 101866 (December 10, 2024), 89 FR 101674 (December 16, 2024) (SR-NYSEAMER-2024-63) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE American Options Fee Schedule To Modify the Options Regulatory Fee).

<sup>12</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>. The volume discussed in this filing is based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, in contract sides.

<sup>13</sup> See id.

Because of the sustained impact of the trading volumes that have persisted through mid-2025, along with the difficulty of predicting whether and when volumes may return to historical levels, the Exchange proposes to temporarily decrease the ORF from July 1 through December 31, 2025, to help ensure that ORF collection will not exceed ORF Costs for 2025.<sup>14</sup> The Exchange cannot predict whether options volumes will remain at these levels going forward and projections for future regulatory costs are estimated, preliminary, and may change. However, the Exchange believes that the proposed change to the ORF would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs for 2025.

#### Potential ORF Reform

The Exchange appreciates the evolving changes in the markets and regulatory environment and, in connection with industry and other feedback, has been evaluating the current methodologies and practices for the assessment and collection of ORF. The Exchange believes ORF reform is appropriate, including moving to a model in which ORF would be assessed only to transactions occurring on the Exchange. This would allow for consistent industry billing. The Exchange is committed to switching to a new, modified model as soon as a consistent framework has been established with the SEC, adopted by all the options exchanges, and necessary regulatory filings submitted. Until that time, the Exchange believes it is fair and reasonable to temporarily decrease the current ORF under the existing model.

The Exchange also believes that the potential for ORF reform provides further support for the sunset provision included in this proposal because it will allow the Exchange to discuss

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<sup>14</sup> After December 31, 2025, the Exchange proposes that the ORF rate automatically revert to \$0.0038 per contract (the “sunset provision”). See proposed Fee Schedule, Section VII.A., Options Regulatory Fee (“ORF”).

its anticipated, or potential alternative, ORF methodology with ATP Holders between July 1 and December 31, 2025 (i.e., the sunset date).<sup>15</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>16</sup> of the Act, in general, and Section 6(b)(4) and (5)<sup>17</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

### The Proposal is Reasonable

The Exchange believes the proposed rule change is reasonable because it would help ensure that collections from the ORF do not exceed a material portion of the Exchange's ORF Costs. As noted above, the ORF is designed to recover a material portion, but not all, of the Exchange's ORF Costs.

Although there can be no assurance that the Exchange's final costs for 2025 will not differ materially from its expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at current or similar levels going forward, the Exchange believes that the amount collected based on the current ORF rate, when combined with regulatory fees and fines, may result in collections in excess of the estimated ORF Costs for the year. Particularly, as noted above, the options market has continued to experience elevated volumes and volatility in 2025, thereby resulting in higher ORF collections than projected. The

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<sup>15</sup> The Exchange notes that the existence of the proposed sunset date would not preclude the Exchange from filing to modify its ORF methodology prior to that date.

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

<sup>17</sup> 15 U.S.C. 78f(b)(4) and (5).

Exchange therefore believes that the proposed temporary decrease to the ORF is reasonable because it would help ensure that ORF collection does not exceed the ORF Costs for 2025. Particularly, the Exchange believes that this temporary reduction in the ORF, taken together with the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of ORF Costs, while lessening the potential for generating excess funds that may otherwise occur using the current rate. Per the sunset provision, the Exchange proposes to resume assessing its current ORF (i.e., \$0.0038 per contract) after December 31, 2025. The Exchange believes that resumption of the ORF at the current rate on January 1, 2026 (unless the Exchange determines it necessary to adjust the ORF rate to help ensure that ORF collections do not exceed ORF Costs) is reasonable because it would permit the Exchange to resume collecting an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange's proposal to revert to its current ORF rate after December 31, 2025 is based on the Exchange's estimated projections for its regulatory costs, which are currently projected to increase in 2026, balanced with the increase in options volumes that has persisted into 2025 and that may continue into 2026.

The Exchange will continue to monitor ORF Costs in advance of the sunset date (i.e., December 31, 2025) and, if necessary, based on projected volumes and ORF Costs, will adjust the ORF rate to help ensure that ORF collections would not exceed a material portion of ORF Costs, adjust the ORF by submitting a proposed rule change and notifying ATP Holders of such change by Trader Update.

#### The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed rule change would not place certain



market participants at an unfair disadvantage because it would apply equally to all ATP Holders on all their transactions that clear in the Customer range at the OCC and would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs. The Exchange also believes that reverting to the existing ORF after December 31, 2025, unless the Exchange determines it necessary to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs, is equitable because the ORF would continue to apply equally to all ATP Holders on options transactions in the Customer range, at a rate designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, based on current projections that such costs will increase in 2026.

#### The Proposed Fee is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the proposed temporary decrease to the ORF rate would not place certain market participants at an unfair disadvantage because it would apply to all ATP Holders subject to the ORF and would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs. The Exchange also has provided all such ATP Holders with 30 days' advance notice of the planned change to the ORF. Further, the Exchange believes that reverting to the existing ORF after December 31, 2025 (i.e., the sunset date), unless the Exchange determines it necessary to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs, is not unfairly discriminatory because the Exchange would resume assessing the ORF (at its current rate) equally to all ATP Holders based on their transactions that clear in the Customer range at the OCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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 change would not impose an undue burden on intramarket competition because the ORF is charged to all ATP Holders on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed temporary decrease of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, i.e., the entering firms. The ORF is collected from ATP Holder clearing firms by the OCC on behalf of the Exchange and is assessed on all options transactions cleared at the OCC in the Customer range.

The Exchange also believes that reverting to the existing ORF after December 31, 2025 (i.e., the sunset date) -- unless the Exchange determines it necessary at that time to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs -- would not impose an undue burden on competition because it would permit the Exchange to resume assessing an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, based on current projections that such costs will increase in 2026. As is the case today, the proposed reduced ORF rate would apply to all ATP Holders on their options transactions that clear in the Customer range at the OCC, which rate will automatically revert to the current ORF rate after December 31, 2025.

*Intermarket Competition.* The proposed fee change is not designed to address any

competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total collections from regulatory fees do not exceed total regulatory costs.

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 has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and paragraph (f) of Rule 19b-4<sup>19</sup> thereunder. At any time within 60 days of the filing of the 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 will institute proceedings 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

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f).

SR-NYSEAMER-2025-42 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-2025-42. 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 filing 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-2025-42 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.<sup>20</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>20</sup> 17 CFR 200.30-3(a)(12).