

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83524; File No. SR-NYSEAMER-2018-29)

June 26, 2018

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

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 June 11, 2018, NYSE American LLC (“Exchange” or “NYSE American”) 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 modify the NYSE American Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective June 11, 2018.<sup>4</sup> 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

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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.

<sup>4</sup> The Exchange originally filed to amend the Fee Schedule on June 1, 2018 (SR-NYSEAmer-2018-25) and withdrew such filing on June 11, 2018.

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 modify the Fee Schedule, effective June 11, 2018.

Specifically, the Exchange proposes to modify certain transaction fees.

Rates to incentivize Non-Customer, Non-Market Maker volume

First, the Exchange proposes to eliminate the reduced rates available to ATP Holders that transact a certain amount of Electronic volume as “Non-Customer, Non-Market Maker” (i.e., Electronic volume as a Broker-Dealer, Firm, Non-NYSE American Market Maker, or Professional Customer). Currently, an ATP Holder that transacts Electronic volume as a Non-Customer, Non-Market Maker at least 0.05% above that ATP Holder's 2nd Quarter 2017 Non-Customer, Non-Market Maker Electronic volume is charged \$0.36 per contract (as opposed to \$0.50) for Penny Pilot Issues and \$0.60 (as opposed to \$0.75) per contract in Non-Penny Pilot Issues.<sup>5</sup> The Exchange proposes to eliminate these reduced rates and references thereto from the Fee Schedule.<sup>6</sup>

Rates for Manual Transaction (i.e., executed in open outcry)

Next, the Exchange proposes to modify the fees for Manual transactions assessed on

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<sup>5</sup> Such calculations exclude volume in CUBE, QCC, Strategy Executions, or volume attributable to orders routed to another exchange in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY. See Fee Schedule, I.A., note 7, 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).

<sup>6</sup> See proposed Fee Schedule, Section I.A. The Exchange notes that rather than delete note 7 to Section I.A. it is replacing the now deleted text with the reduced Manual rate proposed herein. See, e.g., infra n. 10.

NYSE American Options Market Makers (“Market Makers”) and Specialists and e-Specialists (collectively, “Specialists”).<sup>7</sup> The Exchange proposes to charge Market Makers \$0.25 per contract (up from \$0.20) and to charge Specialists \$0.18 per contract (up from \$0.13).<sup>8</sup>

The Exchange also proposes to charge a reduced rate for Manual transactions to those Market Makers or Specialists that participate in the Prepayment Program, as outlined in the Fee Schedule.<sup>9</sup> Specifically, participating Market Makers would be charged \$0.23 per contract and participating Specialists would be charged \$0.17 per contract, and such changes and references thereto would be set forth in the Fee Schedule.<sup>10</sup> For additional clarity, the Exchange also proposes to modify Section I.D. (Prepayment Program) to make clear that participation in such program would entitle participants to these proposed reduced manual rates.<sup>11</sup>

#### Complex Surcharge for Non-Customer Complex Orders

Currently, the exchange applies a \$0.10 per contract surcharge to any Electronic Non-Customer Complex Order that executes against a Customer Complex Order, regardless of whether the execution occurs in a Complex Order Auction (the “Surcharge”).<sup>12</sup> The Exchange offers a reduced per contract Surcharge (of \$0.07) to those ATP Holders that achieve at least 0.20% of TCADV of Electronic Non-Customer Complex Orders in a month. The Exchange proposes to increase the Surcharge to \$0.12. In addition, for ATP Holders that continue to

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<sup>7</sup> Specialists and e-Specialist must be registered as Market Makers on the Exchange and are subject to heightened quoting obligations. See, e.g., Fee Schedule, Key Terms and Definitions; see also Rules 920NY, 927NY and 927.4NY.

<sup>8</sup> See proposed Fee Schedule, Section I.A.

<sup>9</sup> See Fee Schedule, Section I.D. (describing Prepayment Program).

<sup>10</sup> See proposed Fee Schedule, Section I.A., note 7.

<sup>11</sup> See proposed Fee Schedule, Section I.D.

<sup>12</sup> See Fee Schedule, Section I.A, note 6. The Surcharge does not apply to executions in CUBE Auctions.

qualify for the reduced Surcharge, the Exchange proposes to increase this reduced Surcharge to \$0.10 per contract.<sup>13</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>15</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange also believes that eliminating the reduced rates for certain Non-Customer/Non-Market Maker volume is reasonable, equitable, and non-discriminatory as it applies to all similarly situated participants. The Exchange notes that the reduced rate did not generate the desired result of Non-Customer/Non-Market Maker volume being directed to the Exchange, and therefore the Exchange believes it is reasonable to eliminate this incentive fee.

The Exchange believes that the proposed modifications to the fees charged to Market Makers for Manual transactions are reasonable, equitable, and not unfairly discriminatory because the proposed rates are consistent with rates charged for other Non-Customer volume (i.e., volume executed as Broker-Dealer, Firm, Non-NYSE American Market Maker, or Professional Customer). The Exchange likewise believes that the proposed (more favorable) rates charged to Specialists for Manual transactions are reasonable, equitable, and non-discriminatory, because Specialists have a heightened quoting obligations and higher overhead

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<sup>13</sup> See proposed Fee Schedule, Section I.A, note 6. As is the case today, the Surcharge would not apply to executions in CUBE Auctions.

<sup>14</sup> 15 U.S.C. 78f(b).

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

costs related to such obligations. The Exchange also notes that the proposed rates for Manual transactions are consistent with rates charged on other options markets.<sup>16</sup>

The Exchange also believes the reduced Manual transaction rates for ATP Holders that are participating in the Prepayment Program are reasonable, equitable, and non-discriminatory, as it is available to all similarly situated participants, and is designed to incent ATP Holders to participate in the Prepayment Program. Any NYSE American Options Market Makers may elect to participate (or elect not to participate) in any of the Prepayment Programs. The Prepayment Programs are designed to incent Market Makers to commit to directing their order flow to the Exchange, which would benefit all market participants by expanding liquidity, providing more trading opportunities and tighter spreads, even to those market participants that are not eligible for the Programs. Thus, the Exchange believes that introducing additional incentives to encourage participation in the Prepayment Programs is reasonable, equitable and not unfairly discriminatory to other market participants because non-Market Makers and other market participants will benefit from the anticipated greater capital commitment and resulting liquidity on the Exchange. To the extent that participation in the Prepayment Program is increased, all market participants would benefit from increased liquidity on the Exchange by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

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<sup>16</sup> See, e.g., NYSE Arca Options fee schedule, available here, [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf) (charging NYSE Arca Market Makers \$0.25 per contract executed manually and charging Lead Market Makers (or LMMs) \$0.18 per contract executed manually); BOX options fee schedule, available here, <https://boxoptions.com/regulatory/fee-schedule/> (charging market makers \$0.25 per contract to transact manually); and NASDAQ PHLX (“PHLX”) pricing schedule, available here, <http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing> (charging specialists and market makers \$0.35 per contract to transact manually).

The Exchange further believes the increase in the Complex Order Surcharge is reasonable, equitable, and non-discriminatory, as it is similar to charges on other exchanges, and is charged to all similarly situated non-Customers.<sup>17</sup> Applying the Surcharge to all market participant orders except Customer orders is equitable and not unfairly discriminatory because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of Specialists and Market Makers in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

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

In accordance with Section 6(b)(8) of the Act,<sup>18</sup> 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. The Exchange believes the proposed changes, particularly the elimination of the incentive for Non-Customer/Non-Market Maker volume and the modification to Manual transaction rates, would not place an unfair burden on competition as it would apply to all similarly-situated market participants. The Exchange also notes that the proposed rates for Manual transactions, as well as the proposed modifications to the Surcharge, are competitive with rates charges by other options exchanges.<sup>19</sup> To the extent that the proposed reduced Manual rates for certain participants in the Prepayment Program make the Exchange a more attractive marketplace for market participants at other exchanges, such

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<sup>17</sup> See id., PHLX pricing schedule (imposing a \$0.12 surcharge on certain complex orders); and Cboe fee schedule, available here, <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (same).

<sup>18</sup> 15 U.S.C. 78f(b)(8).

<sup>19</sup> See supra notes 16 and 17.

market participants are welcome to become NYSE American Options ATP Holders.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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>20</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>21</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>22</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

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(2).

<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2018-29 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-2018-29. This file number should be included on the subject line if e-mail 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-2018-29 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).