

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91065; File No. SR-NYSEAMER-2021-07)

February 4, 2021

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 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 1, 2021, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE American Options Fee Schedule (“Fee Schedule”) to introduce a new credit applicable to Customer Electronic executions. The Exchange proposes to implement the fee change effective February 1, 2021. 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 concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 modify the Fee Schedule to add a new credit for Customer Electronic Simple and Complex executions based on an ATP Holder's achievement of certain volume thresholds. Specifically, an ATP Holder that executes the requisite volume in Complex CUBE Auctions, Customer Electronic executions, and Professional (as defined in Section I.H. of the Fee Schedule) Electronic executions will earn a \$0.10 per contract credit on Customer Electronic executions, excluding CUBE Auctions, QCC Transactions, and orders routed to another exchange. The Exchange proposes to introduce this pricing on February 1, 2021.

Section I.H. of the Fee Schedule currently provides incentives for ATP Holders that increase their Electronic volume in the Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm ranges (collectively, the "Professional" range).

The Exchange proposes to modify Section I.H. to provide ATP Holders with a new credit of \$0.10 per contract on Customer Electronic Simple and Complex executions (excluding CUBE Auctions, QCC Transactions, and orders routed to another exchange), provided that each of three monthly volume qualifications are met: (a) 15,000 contracts ADV from Initiating CUBE Orders in Complex CUBE Auctions; (b) Customer Electronic executions of 0.05% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange; and (c) Professional Electronic executions of 0.03% of TCADV.⁴ In calculating an OFP's Electronic volume for purposes of this credit, the Exchange will include the activity of either (i) Affiliates of the OFP, such as when an OFP has an Affiliated NYSE American Options Market Making firm, or (ii) an Appointed MM of such OFP.

The Exchange believes the proposed credit will continue to incent ATP Holders to direct order flow to the Exchange and also encourage ATP Holders to engage in a variety of transactions on the Exchange, thereby promoting market depth, facilitating tighter spreads, and enhancing price discovery to the benefit of all market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁶ 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.

⁴ See proposed Fee Schedule, Section I.H.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁷

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.⁸ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity and ETF options trades.⁹

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or

⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

⁸ 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>.

⁹ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id., the Exchange’s market share in multiply-listed equity and ETF options increased from 8.06% for the month of November 2019 to 9.09% for the month of November 2020.

reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and rebates can have a direct effect on the ability of an exchange to compete for order flow.

The proposed rule change is designed to continue to incent ATP Holders to direct liquidity to the Exchange in a variety of forms and from a variety of sources, thereby promoting market depth, price discovery, and price improvement and enhancing order execution opportunities for market participants. In particular, the Exchange believes it is reasonable to provide ATP Holders with a credit for achieving certain volume goals in different types of executions, consistent with credits offered through a similarly-structured program on a competing options exchange.¹⁰

The Exchange believes that the proposed credit is reasonably designed to encourage ATP Holders to execute a variety of orders on the Exchange and that having multiple volume criteria to qualify for the proposed credit should encourage greater use of the Exchange by all ATP Holders, which may lead to greater opportunities to trade -- and for price improvement -- for all participants.

Further, the Exchange believes the proposed new credit would continue to attract more volume and liquidity to the Exchange generally and would therefore benefit all market participants through increased opportunities to trade at potentially improved prices, as well as by enhancing price discovery.

¹⁰ See, e.g., Cboe Exchange Inc. Fee Schedule, Volume Incentive Program, available at: https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (providing comparable per contract credits for Customer orders based on volume from a variety of executions, including auction volume, volume from various account types, and volume from both simple and complex executions).

Finally, to the extent the proposed fees and credits encourage greater volume and liquidity, the Exchange believes the proposed change would continue to improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to maintain its market share relative to its competitors.

The Proposed Rule Change is an Equitable Allocation of Fees and Credits

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of the incentive or not. Moreover, the proposal is designed to encourage ATP Holders and their affiliated or appointed parties to aggregate their executions at the Exchange as a primary execution venue. To the extent that the proposed change continues to attract more executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, continue to attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would be available to all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange's fees and credits are designed to continue to encourage greater use of the Exchange, which may lead to greater opportunities to trade -- and for price improvement -- for all participants.

The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders are not obligated to try to achieve the incentive. Rather, the proposal is designed to continue to encourage participants to utilize the Exchange as a primary trading venue (if they have not done so previously) or increase Electronic volume sent to the Exchange. To the extent that the proposed change continues to attract more executions -- and executions of varying types -- to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would continue to improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting volume and liquidity would continue to provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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. Instead, as discussed above, the Exchange believes that the proposed changes would continue to encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the

Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹¹

Intramarket Competition. The proposed change is designed to continue to attract increased and diverse order flow to the Exchange by offering competitive credits based on increased volumes on the Exchange, which may increase the volumes of contracts traded on the Exchange. Specifically, the Exchange believes that the proposed rule change, by offering an additional credit applicable to Customer Electronic executions, will incent ATP Holders to direct order flow to the Exchange and participate in a variety of types of executions on the Exchange to meet the proposed thresholds to qualify for the credit. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the continued market liquidity. Enhanced market quality and increased transaction volume that results from the increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹² Therefore, no exchange currently possesses

¹¹ See Reg NMS Adopting Release, supra note 7, at 37499.

¹² See supra note 8.

significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity and ETF options trades.¹³

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees and credits in a manner designed to encourage ATP Holders to direct trading interest to the Exchange, to provide liquidity and to attract order flow. Specifically, the Exchange believes that the proposed rule change will encourage ATP Holders to direct increased Electronic volume to the Exchange, thereby increasing the number of executions (and executions of varying types) on the Exchange and continuing to make the Exchange a more competitive venue for order execution. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed changes could promote competition between the Exchange and other execution venues by encouraging additional orders to be sent to the Exchange for execution.

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.

¹³ Based on OCC data, supra note 9, the Exchange's market share in multiply-listed equity and ETF options increased from 8.06% for the month of November 2019 to 9.09% for the month of November 2020.

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)¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁵ 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)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2021-07 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

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-2021-07. 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-2021-07, 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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).