SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94093; File No. SR-NYSEAMER-2022-08)

January 28, 2022

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed 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 January 21, 2022, 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") regarding fees for Professional executions. The Exchange proposes to implement the fee change effective January 21, 2022.[4] The proposed 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.

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1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

4 The Exchange originally filed to amend the Fee Schedule on December 29, 2021 (SR-NYSEAmer-2021-52), with an effective date of January 3, 2022, then withdrew such filing and amended the Fee Schedule on January 12, 2022 (SR-NYSEAmer-2022-04), which latter filing the Exchange withdrew on January 21, 2022.

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 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 certain fees for Electronic executions in the "Professional" range.[5] Specifically, the Exchange proposes to modify the fees for Electronic executions in the Professional range for all participants, as well as fees for Electronic executions for participants that qualify for the Professional Step-Up Incentive.[6] The Exchange further proposes a discounted rate for Electronic volume in the Professional range for ATP Holders that achieve Tier 3 or higher in the American Customer Engagement ("ACE") Program.[7]

The Exchange proposes to implement the rule change on January 21, 2022.

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5 For purposes of this filing, "Professional" Electronic volume includes: Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm.

6 See NYSE American Options Fee Schedule, Section I.H., available at: https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.

7 See id. at Section I.E. (American Customer Engagement ("ACE") Program). The ACE program offers tiered credits based on increasing levels of Customer Electronic Average Daily Volume ("ADV") or Total Electronic ADV, of which 20% of the qualifying volume for the Tier must be Customer volume. Participants in the ACE Program are eligible for per contract credits on Customer volume in Electronic options transactions based on the ACE Tier achieved.

Proposed Rule Change

Professional Transaction Rates

Currently, Section I.A. of the Fee Schedule (“Rates for Options transactions”) provides that the Exchange charges all participants a base rate of $0.75 per contract for Electronic executions in the Professional range in Non-Penny issues. The Exchange proposes to increase the rate per contract for Electronic transactions in Non-Penny issues for all participants that execute in the Professional range to $0.85 per contract.

The Exchange also proposes to increase the per contract rate for Electronic transactions in Penny issues by Firm participants from $0.47 to $0.49.

The Exchange further proposes to add footnote 8 in Section I.A., which would provide for an additional discount to ATP Holders that also participate in the ACE program. Specifically, ATP Holders that achieve at least ACE Tier 3 would qualify for a further discounted rate of $0.80 per contract for Electronic transactions in the Professional range in Non-Penny issues.[8]

Professional Step-Up Incentive

The Professional Step-Up Incentive is a program offering incentives to ATP Holders that increase their Electronic volume in the Professional range. Currently, the Professional Step-Up Incentive program provides that ATP Holders that increase their monthly Electronic Professional volume by specified percentages of TCADV over their August 2019 volume or, for new ATP Holders, that increase Electronic Professional volume by specified percentages of TCADV above

8 To effect this change, the Exchange also proposes to add references to footnote 8 in the “Participant” column to specify that the rate set forth in footnote 8 would be available to Broker-Dealer, Firm, Non-NYSE American Options Market Maker, and Professional Customer participants. See proposed Fee Schedule, Section I.A.

a base level of 10,000 contracts ADV, will qualify for certain reduced transaction rates on Electronic Professional volume, as well as credits on Electronic Customer volume at Tier 1 of the ACE program. The Professional Step-Up Incentive program offers such incentives at two Tiers, based on qualifying volume.

The Exchange proposes to modify the rates offered under the Professional Step-Up Incentive program to increase the per contract Non-Penny rates for both Tiers by $0.05 per contract. Specifically, the Exchange proposes to increase the rate for Tier A from $0.60 per contract to $0.65 per contract, and to increase the rate for Tier B from $0.50 per contract to $0.55 per contract.

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The Exchange's fees are constrained by intermarket competition, as ATP Holders may direct their order flow to any of the 16 options exchanges, including exchanges that charge similar fees for Professional transactions and that offer a similar incentive program for Professional volume.[9] Thus, ATP Holders have a choice of where they direct their order flow.

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[9] See, e.g., Nasdaq MRX, LLC ("Nasdaq MRX") Options 7 Pricing Schedule, Section 3. Regular Order Fees and Rebates, available at: https://listingcenter.nasdaq.com/rulebook/mrx/rules/MRX%20Options%207 (charging $0.90 maker fee and $1.10 taker fee for transactions by NASDAQ MRX Professional Customers in non-penny symbols); BOX Exchange ("BOX") Fee Schedule, Section I.A. Non-Auction Transactions, available at: https://boxoptions.com/regulatory/fee-schedule/ (providing for $0.95 fee on BOX Professional Customer or Broker Dealer transactions with customers); Nasdaq ISE, LLC ("Nasdaq ISE") Options 7 Pricing Schedule, Section 3. Regular Order Fees and Rebates, available at: https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207 (providing for $0.70 maker fee and $0.90 taker fee for Professional transactions); see also MIAX Options ("MIAX") Fee Schedule, Section 1.a.iv, Professional Rebate Program, available at: https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_121021.pdf (setting forth incentive program that, like the Professional Step-Up Incentive, provides a discounted net rate on Professional (as defined by the MIAX program) electronic volume, provided the Member achieves

The Exchange believes that the proposed modifications to the base rates applicable to Electronic executions in the Professional range (including the additional discount proposed for ATP Holders that achieve ACE Tier 3 or better) and to the Professional Step-Up Incentive program would not discourage ATP Holders from continuing to direct and execute Electronic Professional volume on the Exchange. In addition, the proposed change to provide ATP Holders that achieve ACE Tier 3 or higher with a lower per contract rate on Non-Penny Electronic transactions in the Professional range is designed to incent ATP Holders to direct such order flow to the Exchange by offering a more favorable rate on Professional executions while also encouraging increased Customer volume. Moreover, although the proposed changes would increase the rates for Electronic executions in the Professional range for Non-Penny issues (and, for Firm participants, the rates for executions in Penny issues), the modified rates remain lower than those charged by competing options exchanges,[10] and the Exchange does not believe that the modified rates would discourage ATP Holders from continuing to direct Electronic Professional volume to the Exchange, thereby promoting market quality and opportunities for order execution for all market participants. In addition, while the Exchange likewise proposes increased rates for Non-Penny contracts for participants in the Professional Step-Up Incentive program, the Exchange believes that the program, as modified, would continue to incent ATP Holders to direct both Professional and Customer order flow to the Exchange because it would continue to offer discounted rates on Professional volume coupled with ACE program Tier 1 credits on Customer volume. Thus, the Exchange believes the proposed changes should continue to incent the consistent and concerted

certain Professional volume increase percentage thresholds in the month relative to the fourth quarter of 2015).

10 See Nasdaq MRX Pricing Schedule, BOX Fee Schedule, and Nasdaq ISE Fee Schedule, id.

direction of both Professional and Customer order flow to the Exchange by ATP Holders, making it a more attractive venue for trading.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[12] 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 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."[13]

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

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11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(4) and (5).

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

trades.[14] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2021, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[15]

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 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 can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed modifications to the Professional transaction fees and to the Firm charge for transactions in Penny issues are reasonable because they are within the range of fees currently charged by other options exchanges and, in the case of the Firm rate, would also more closely align with both the Exchange's Penny rates for other executions in the Professional range and the fee charged by another options exchange.[16]

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14 The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available at: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.

15 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 equity-based options was 9.09% for the month of November 2020 and 7.06% for the month of November 2021.

16 See Nasdaq MRX Pricing Schedule, BOX Fee Schedule, and Nasdaq ISE Fee Schedule, supra note 9; see also Fee Schedule, Section I.A. (providing for $0.50 per contract rate for Penny issues for Broker-Dealer, Non-NYSE American Options Market Maker, and Professional Customer participants); Nasdaq Options Market, Options 7 Pricing Schedule, Section 2 Nasdaq Options Market - Fees and Rebates, available at: https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Options%207 (setting

Accordingly, the Exchange believes that the proposed rates, although they would generally increase the rates for Professional Electronic executions, would not discourage ATP Holders from continuing to direct Professional volume to the Exchange. In addition, to the extent the proposed fees on Professional volume are coupled with new or existing incentives that are intended to encourage Customer volume (e.g., the proposed additional discount available to ATP Holders that achieve ACE Tier 3 or higher), the Exchange further believes that the proposed changes are reasonably designed to encourage ATP Holders to direct a variety of transactions to the Exchange. All market participants stand to benefit from such volume -- whether Professional or Customer -- as such increase promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

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

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 direct their Professional Electronic order flow to the Exchange to avail themselves of the rates and incentives offered or not. The Exchange also believes that the proposed rate for Firm transactions in Penny issues would be an equitable allocation of fees because it would bring the rate closer in line with those assessed to other participants executing in the Professional range. Moreover, although the proposed changes would generally increase the rates for Electronic executions in the Professional range, the Exchange believes that they would not discourage ATP Holders from continuing to aggregate their executions at the Exchange as a primary execution venue, particularly to the extent the proposal provides

forth $0.50 fee for Firms to remove liquidity in penny symbols).

opportunities for ATP Holders to qualify for reduced rates by increasing their Customer volume. The Exchange further believes that maintaining a higher fee for Professional transactions as compared to transactions by Market Makers and Specialists represents an equitable allocation of fees because Market Makers and Specialists are subject to heightened obligations and additional fees based on their roles on the Exchange.

To the extent that the proposed changes attract more Professional Electronic volume or Customer volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule changes would 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 Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would be apply and be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposed changes are based on the amount and type of business transacted on the Exchange and would apply to all ATP Holders that execute Professional Electronic transactions to the Exchange. The Exchange believes that the disparity between fees for Professional Electronic transactions and Electronic transactions by Market Makers or Specialists is not unfairly discriminatory because those participants are subject to heightened obligations and additional fees based on their roles on the Exchange. In addition, ATP Holders that qualify for the Professional Step-Up Incentive will still be entitled to a discounted rate based on the Tier they achieve. The Exchange also believes that increasing the rate for Firm transactions in Penny issues would not be unfairly discriminatory because it would bring the rate closer in line with those assessed for transactions by other participants in the Professional range in Penny issues. In addition, to the extent the proposed rates are intended to incent both Professional and Customer volume, the Exchange believes they are designed to continue to encourage ATP Holders to direct order flow to the Exchange and utilize the Exchange as a primary trading venue (if they have not done so previously). To the extent that the proposed changes attract more executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule changes would 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 increased volume and liquidity would 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, 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.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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 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 change furthers 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."[17]

Intramarket Competition. The Exchange believes that the proposed modifications to the base rates for Professional Electronic transactions, as well as to the rates available to ATP Holders that qualify for the Professional Step-Up Incentive, would continue to incent market participants to direct both Professional and Customer volume to the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased Electronic Professional volume would increase opportunities for execution of other trading interest. In addition, the base rates, as modified, would be the same for all participants executing Professional Electronic volume in Non-Penny issues, and the rates for ATP Holders that achieve the Professional Step-Up Incentive will continue to be discounted and maintain the incentive structure of the two Tiers of that program. In addition, while Professional transactions will continue to be subject to a higher fee than transactions by Market Makers or Specialists, the Exchange does not believe that the proposed change would impose any burden on competition that is not necessary or appropriate because the lower fees offered to Market Makers or Specialists on their Electronic transactions are balanced with heightened obligations and additional fees based on their roles on the Exchange.

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17 See Reg NMS Adopting Release, supra note 13, at 37499.

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 to remain competitive with other exchanges (including other options exchanges with a similar incentive program or comparable transaction fees)[18] and to attract order flow to the Exchange. 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.[19] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in November 2021, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[20]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to encourage ATP Holders to direct trading interest to the Exchange, to provide liquidity and to attract order flow, including by continuing to provide discounted rates for ATP Holders that achieve the Professional Step-Up Incentive and offering a new discounted rate to ATP Holders that execute the requisite Customer volume to achieve ACE Tier 3. 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.

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[18] See supra note 9.

[19] See supra note 14.

[20] See supra note 15.

Thus, the Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar pricing models, 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.

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-4[22] 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)[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:

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21 15 U.S.C. 78s(b)(3)(A).

22 17 CFR 240.19b-4(f)(2).

23 15 U.S.C. 78s(b)(2)(B).

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-2022-08 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-2022-08. 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-2022-08, 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.[24]

J. Matthew DeLesDernier
Assistant Secretary

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[24] 17 CFR 200.30-3(a)(12).