

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-98159; File No. SR-NYSEAMER-2023-40)

August 17, 2023

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 August 8, 2023, NYSE American LLC (“NYSE American” or “Exchange”) 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”) regarding Floor Broker incentives and the Strategy Execution Fee Cap. The Exchange proposes to implement the fee changes effective August 8, 2023.<sup>4</sup> The proposed rule 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

---

<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 previously filed to amend the Fee Schedule on July 31, 2023 (SR-NYSEAMER-2023-38) and withdrew such filing on August 8, 2023.

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 to amend the Fee Schedule to (1) delete text relating to the expired Floor Broker Grow With Me Program and add a new Floor Broker incentive, and (2) add dividend strategies to the list of strategy executions eligible for the Strategy Execution Fee Cap (the “Strategy Cap”). The Exchange proposes to implement the rule changes on August 8, 2023.

Floor Broker Incentives

The Exchange proposes to modify Section III.E.2. of the Fee Schedule to delete text providing for the Floor Broker Grow With Me Program (the “Grow With Me Program”), which expired on July 31, 2023, and to introduce the Floor Broker Manual Billable Incentive Program (the “Manual Billable Incentive Program”). The Exchange proposes that Floor Brokers would be eligible for rebates on manual billable volume through the Manual Billable Incentive Program by achieving certain qualifying levels of average daily manual billable contracts. Specifically, a Floor Broker would earn a rebate of (\$0.05) per manual billable side by executing an average daily volume of 40,000 manual billable contracts; a rebate of (\$0.07) per manual billable side by executing an average daily volume of 100,000 manual billable contracts; or a rebate of (\$0.09) per manual billable side by executing an average daily volume of 150,000 manual billable contracts. Rebates available through the Manual Billable Incentive Program would be payable back to the first contract, and Floor Brokers would earn the highest rebate for which they

qualify.<sup>5</sup> The Exchange believes that the proposed qualifications for rebates available through the Manual Billable Incentive Program are reasonable and attainable by Floor Brokers based on their recent manual billable volume.

Although the Exchange cannot predict with certainty whether the proposed change would encourage Floor Brokers to increase their manual billable volume, the proposed change is designed to continue to incentivize Floor Brokers to do so by offering rebates on manual billable volume. All Floor Brokers would be eligible to earn a rebate through the Manual Billable Incentive Program, as proposed.

#### Strategy Cap

Currently, the Strategy Cap provides for a \$1,000 cap on transaction fees for strategy executions involving (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls.<sup>6</sup> The Strategy Cap applies to each strategy execution executed in standard option contracts on the same trading day. In addition, the cap is reduced to \$200 on transactions fees for qualifying strategies traded on the same trading day for those ATP Holders that trade at least 25,000 monthly billable contract sides in qualifying strategy executions.

The Exchange now proposes to modify Section I.J. of the Fee Schedule to add dividend strategies as item (f) in the list of strategy executions eligible for the Strategy Cap (and to make non-substantive conforming changes to include an item (f) in such list). The Exchange also proposes that dividend strategies would be included among the strategies that contribute to an ATP Holder's qualification for the lower cap of \$200. Finally, the Exchange proposes to add

---

<sup>5</sup> For example, a Floor Broker that executes an average daily volume of 100,000 manual billable contracts would be eligible for the (\$0.07) rebate but would not also earn the (\$0.05) rebate.

<sup>6</sup> See Fee Schedule, Section I.J., Strategy Execution Fee Cap.

new subparagraph (f) to Section I.J. of the Fee Schedule to define a dividend strategy as transactions done to achieve a dividend arbitrage involving the purchase, sale, and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

The Exchange notes that other options exchanges currently offer caps on fees for dividend strategy executions.<sup>7</sup> Although the Exchange cannot predict with certainty whether the proposed change would encourage ATP Holders to increase their dividend strategy executions, the proposed change is intended to encourage additional dividend strategy executions on the Exchange by including them in the strategies eligible for the Strategy Cap (including the lower cap for qualifying ATP Holders).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</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 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,

---

<sup>7</sup> See, e.g., BOX Options Fee Schedule, Section V.D. (Strategy QOO Order Fee Cap and Rebate), available at: <https://boxexchange.com/assets/BOX-Fee-Schedule-as-of-July-3-2023.pdf> (providing for daily cap on manual transaction fees for dividend strategies); Nasdaq PHLX LLC Options 7, Section 4, available at: <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207> (providing for daily cap on fees for dividend strategies).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

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.”<sup>10</sup>

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.<sup>11</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in June 2023, the Exchange had less than 7% market share of executed volume of multiply-listed equity and ETF options trades.<sup>12</sup>

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.

---

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

<sup>11</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>.

<sup>12</sup> 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 decreased from 7.43% for the month of June 2022 to 6.57% for the month of June 2023.

The Exchange believes the proposed deletion of the language describing the Grow With Me Program is reasonable because the program has expired, and the deletion would thus improve the clarity of the Fee Schedule and reduce confusion as to the fees and credits that are currently in effect. The Exchange also believes that the removal of obsolete text from the Fee Schedule would further the protection of investors and the public interest by promoting clarity and transparency in the Fee Schedule and making the Fee Schedule easier to navigate and understand.

The Exchange believes that the proposed Manual Billable Incentive Program is reasonable because it is designed to continue to incent Floor Brokers to increase their manual billable volume executed on the Exchange. The Exchange also believes that the proposed change is reasonable because the proposed volume thresholds to qualify for the rebates are attainable based on recent manual billable volume executed by Floor Brokers, and the proposed rebates would be available to all Floor Brokers.

The Exchange believes the proposed modification of the Strategy Cap is reasonable because it is designed to encourage ATP Holders to increase their dividend strategies executed on the Exchange by including dividend strategies among the strategy executions eligible for the Strategy Cap. The Exchange also believes the proposed change could incent ATP Holders to execute and aggregate dividend strategy orders as well as other types of strategy orders at NYSE American as a primary execution venue.

To the extent that the proposed changes attract greater volume and liquidity, the Exchange believes they would improve the Exchange's overall competitiveness, strengthen its market quality for all market participants, and continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of

trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume, which could promote market depth, facilitate tighter spreads, and enhance price discovery, particularly to the extent the proposed change encourages market participants to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants.

In addition, in the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. 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 those that also offer caps on dividend strategies.<sup>13</sup> Thus, ATP Holders have a choice of where they direct their order flow, including their strategy executions. The proposed rule change is designed to incent ATP Holders to direct liquidity to the Exchange, thereby promoting market depth and enhancing order execution opportunities for market participants.

#### 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 proposed deletion of language relating to the expired Grow With Me Program would eliminate text from the Fee Schedule no longer applicable to any Floor Brokers, thus impacting all similarly situated Floor Brokers on an equal basis and improving the clarity of the Fee Schedule to the benefit of all market participants. The proposed Manual Billable Incentive Program is equitable because it is based on the amount and type of business transacted on the

---

<sup>13</sup> See note 7, supra.

Exchange; Floor Brokers can choose to execute manual billable volume to earn rebates through the program or not. In addition, the rebates offered through the Manual Billable Incentive Program would be available to all qualifying Floor Brokers equally. The Exchange further believes that the proposed change is equitable because it is intended to encourage the role performed by Floor Brokers in facilitating the execution of orders via open outcry, a function which the Exchange wishes to support for the benefit of all market participants. To the extent the proposed change continues to encourage increased liquidity on the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution.

The Exchange also believes that the proposed change to the Strategy Cap is an equitable allocation of fees and credits because it is based on the amount and type of business transacted on the Exchange, and ATP Holders can opt to avail themselves of the Strategy Cap or not. The modified Strategy Cap, as proposed, would continue to be available to all ATP Holders that direct strategy executions, including dividend strategies, to the Exchange. Moreover, the proposal is designed to continue to encourage ATP Holders to aggregate strategy executions at the Exchange as a primary execution venue. To the extent that the proposed change attracts more dividend strategies 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, 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 the proposed rule change is not unfairly discriminatory. The proposed elimination of text describing the expired Grow With Me Program would affect all Floor Brokers on an equal and non-discriminatory basis, as the program would no longer be available to any Floor Brokers. The Exchange believes that the proposed Manual Billable Incentive Program is not unfairly discriminatory because all Floor Brokers are eligible to qualify for the rebates offered through the program. Moreover, the proposed change is not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders on the Exchange, which the Exchange wishes to encourage and support to promote price improvement opportunities for all market participants.

The Exchange also believes the proposed change is not unfairly discriminatory because the proposed modification of the Strategy Cap would apply to all similarly-situated market participants on an equal and non-discriminatory basis. 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 Strategy Cap, nor are they obligated to execute any dividend strategies. Rather, the proposal is designed to encourage ATP Holders to increase their dividend strategy executions and to utilize the Exchange as a primary trading venue for all strategy executions (if they have not done so previously).

Thus, the Exchange believes that, to the extent the proposed rule change would continue to improve market quality for all market participants on the Exchange by attracting 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.

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."<sup>14</sup>

*Intramarket Competition.* The Exchange does not believe that the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate. The proposed changes are designed to attract order flow to the Exchange. The proposed Manual Billable Incentive Program is intended to attract additional order flow to the Exchange by offering Floor Brokers rebates on manual billable volume, which could increase the volume of contracts traded on the Exchange. The proposed modification of the Strategy Cap to include dividend strategies is intended to attract additional dividend strategies to the Exchange and could also encourage ATP Holders to aggregate all strategy executions on the Exchange to qualify for

---

<sup>14</sup> See Reg NMS Adopting Release, supra note 10, at 37499.

the Strategy Cap. Greater liquidity benefits all market participants on the Exchange, and increased manual billable transactions and strategy executions could increase opportunities for execution of other trading interest. Finally, the proposed deletion of language relating to the Grow With Me Program would remove language from the Fee Schedule no longer applicable to any Floor Brokers and, accordingly, would not have any impact on intramarket competition.

*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 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.<sup>15</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in June 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.<sup>16</sup>

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 continue to incent additional manual billable volume and dividend strategy volume to the Exchange, to provide liquidity, and to attract order flow. To the extent the proposed changes encourage Floor Brokers and other market participants to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from

---

<sup>15</sup> See note 11, supra.

<sup>16</sup> See note 12, supra.

the improved market quality and increased opportunities for price improvement. The Exchange also believes that the proposed change could promote competition between the Exchange and other execution venues, as other competing options exchanges currently offer fee caps for dividend strategies.<sup>17</sup> Finally, the Exchange believes that deleting text describing the Grow With Me Program would add clarity to the Fee Schedule by removing expired 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 has become effective upon filing pursuant to Section 19(b)(3)(A)<sup>18</sup> of the Act and paragraph (f) 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.

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

---

<sup>17</sup> See note 7, *supra*.

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

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEAMER-2023-40 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-2023-40. 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 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-2023-40 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>19</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

---

<sup>19</sup> 17 CFR 200.30-3(a)(12).