

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100490; File No. SR-NYSEAMER-2024-43)

July 10, 2024

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 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 1, 2024, 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 and II 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 the American Customer Engagement (“ACE”) Program. The Exchange proposes to implement the fee change effective July 1, 2024. 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 received on the proposed rule change. The text of those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Section I.E. of the Fee Schedule regarding the ACE Program. Specifically, the Exchange proposes to clarify the operation of the Program as relates to Customer volume executed via the BOLD Mechanism (“BOLD volume”) and to make other minor technical changes as described herein.⁴ This proposal would not alter how the ACE Program operates (or the credits applied on eligible BOLD volume) and is instead designed to clarify a potential ambiguity in the Fee Schedule.

The ACE Programs, as described in Section I.E., offers Order Flow Providers (OFP)⁵ per contract credits based on, and applied to, certain Electronic Customer volume executed on the Exchange.⁶ The ACE Program has five tiers and offers increasing per contract credits to an OFP that meets or exceeds increasing volume thresholds. Regarding BOLD volume, Section I.E. provides that “[t]he per contract credits in the table below apply to Electronic options transactions, including those executed via the BOLD Mechanism” and that such volume “will be included in an OFP’s Electronic volume calculation for purposes of the ACE Program.”[sic]⁷

⁴ See Rule 994NY (describing the operation of the Broadcast Order Liquidity Delivery (“BOLD”) Mechanism).

⁵ An OFP is an Order Flow provider means “any ATP Holder that submits, as agent, orders to the Exchange.” See Rule 900.2NY.

⁶ See Fee Schedule, Section I.E. (American Customer Engagement (“ACE”) Program).

⁷ Id.

Section I.M. of the Fee Schedule describes the fees and credits applied to BOLD volume.⁸ Specifically, the Exchange offers per contract credits on each “BOLD Initiating Order” executed on behalf of Customers that are the “[b]etter of (\$0.12) or, if eligible for a higher credit via the ACE Program, per Section I.E., (\$0.13).”⁹ Thus, although not specified in Section I.E., an OFP’s potential per contract credit on eligible BOLD volume is capped at (\$0.13) regardless of what ACE Program tier an OFP achieves.

To address this potential ambiguity, the Exchange proposes to amend Section I.E. as relates to BOLD volume. First, the Exchange proposes to reorganize current rule text to make clear that, like volume executed via the Customer Best Execution (“CUBE”) Auction, Customer volume “executed via the BOLD Mechanism” will be “included in an OFP’s Electronic volume calculation for purposes of the ACE Program tiers.”¹⁰ Second, the Exchange proposes to modify the first sentence of Section I.E., regarding the application of ACE Program credits, to remove reference to BOLD volume.¹¹ Instead, the Exchange proposes to add a cross-reference to Section I.M., which specifies the per contract credits available for eligible BOLD volume.¹² Finally, the Exchange proposes a technical change to clarify that ACE Program credits are not “payable” or “paid” to OFPs but are instead “available” to OFPs and are “applied” to an OFPs fees, if

⁸ See Fee Schedule, Section I.M. (BOLD Mechanism Fees & Credits).

⁹ See *id.* A “BOLD Initiating Order” is “an order submitted to be executed via the BOLD Mechanism.” See Fee Schedule, KEY TERMS and DEFINITIONS.

¹⁰ See proposed Fee Schedule, Section I.E. (American Customer Engagement (“ACE”) Program). The Exchange proposes to make clear that, for purposes of determining whether an OFP qualifies for any of the “ACE Program *tiers*”, the Exchange includes Customer volume resulting from CUBE Auctions and executions via the BOLD Mechanism. See *id.* (emphasis added).

¹¹ See *id.* (“The per contract credits in the table below apply to Electronic options transactions.”).

¹² See *id.* The Exchange also proposes minor technical changes to specify that credits applicable to certain CUBE Auction volume are “*as set forth* in Section I.G.” (emphasis added).

earned.¹³

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁵ 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 believes the proposed change to specify the per contract credit available on eligible BOLD volume is reasonable, equitable and not unfairly discriminatory because the change would add clarity, transparency, and internal consistency, to the Fee Schedule. Likewise, the proposed technical change would add clarity and transparency to the Fee Schedule. Taken together, the proposed changes would benefit investors because such changes should improve the accuracy and comprehensibility of the Fee Schedule.

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. This proposal is not a competitive change. Instead, the changes proposed herein would add clarity, transparency, and internal consistency to the Fee Schedule thereby improving its accuracy and comprehensibility to the benefit of investors.

¹³ See *id.* (specifying, for example, that the ACE Program credits are “available” to OFPs; and “applied solely to Customer volume”; and “applied” based on an OFP’s eligible Customer volume).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

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)¹⁶ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁷ 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)¹⁸ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(2).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

SR-NYSEAMER-2024-43 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-2024-43. 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-2024-43 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.¹⁹

Vanessa A. Countryman,

Secretary.

¹⁹ 17 CFR 200.30-3(a)(12).