

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101866; File No. SR-NYSEAMER-2024-63)

December 10, 2024

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE American Options Fee Schedule Concerning the Options Regulatory Fee (ORF)

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 November 25, 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 Exchange. 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 Options Regulatory Fee (“ORF”). 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 Exchange proposes to amend the Fee Schedule to (1) temporarily waive the ORF for the period December 1, 2024 through December 31, 2024 (the “Waiver Period”), and (2) delete outdated language relating to a prior ORF waiver and superseded ORF rate.

Background

As a general matter, the Exchange may only use regulatory funds such as the ORF “to fund the legal, regulatory, and surveillance operations” of the Exchange.⁴ More specifically, the ORF is designed to recover a material portion, but not all, of the Exchange’s costs for the supervision and regulation of ATP Holders, including the Exchange’s regulatory program and legal expenses associated with options regulation, such as the costs related to in-house staff, third-party service providers, and technology that facilitate regulatory functions such as surveillance, investigation, examinations, and enforcement (collectively, the “ORF Costs”). ORF funds may also be used for indirect expenses such as human resources and other administrative costs. The Exchange monitors the amount of revenue collected from the ORF to ensure that this revenue, in combination with other regulatory fees and fines, does not exceed regulatory costs.

The ORF is assessed on ATP Holders for options transactions that are cleared by the ATP Holder through the Options Clearing Corporation (“OCC”) in the Customer range regardless of

⁴ The Exchange considers surveillance operations part of regulatory operations. The limitation on the use of regulatory funds also provides that they shall not be distributed. See Thirteenth Amended and Restated Operating Agreement of NYSE American LLC, Article IV, Section 4.05 and Securities Exchange Act Release No. 87993 (January 16, 2020), 85 FR 4050 (January 23, 2020) (SR-NYSEAMER-2020-04).

the exchange on which the transaction occurs and is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American.⁵ All options transactions must clear via a clearing firm and such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, i.e., the entering firms. The Exchange notes that the costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs.⁶ As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., ATP Holder proprietary transactions) of its regulatory program.

Because the ORF is based on options transactions volume, the amount of ORF collected is variable. For example, if options transactions reported to OCC in a given month increase, the ORF collected from ATP Holders will likely increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from ATP Holders will likely

⁵ See Fee Schedule, Section VII.A., Options Regulatory Fee ("ORF"). The Exchange uses reports from OCC when assessing and collecting the ORF. The ORF is not assessed on outbound linkage trades. An ATP Holder is not assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE American. See id.

⁶ The Exchange notes that many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running, and contrary exercise advice violations/expiring exercise declarations. The Exchange and other options SROs are parties to a 17d-2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. See, e.g., Securities Exchange Act Release No. 85097 (February 11, 2019), 84 FR 4871 (February 19, 2019).

decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed [sic] the ORF Costs. If the Exchange determines the amount of ORF collected exceeds [sic] or may exceed [sic] ORF Costs, the Exchange will, as appropriate, adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the “Commission”). Exchange rules establish that market participants must be notified of any change in the ORF via Trader Update at least 30 calendar days prior to the effective date of the change.⁷

Proposed Rule Change

Based on the Exchange’s recent review of regulatory costs, ORF collections, and options transaction volume, the Exchange proposes to waive the ORF from December 1 through December 31, 2024 in order to help ensure that the amount collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange’s total regulatory costs. The Exchange proposes to resume assessing the ORF on January 1, 2025 at the current rate of \$0.0038 per contract. The Exchange notified ATP Holders of the proposed change to the ORF via Trader Update on October 30, 2024⁸ (which was at least 30 calendar days prior to the proposed operative date of the waiver, December 1, 2024) so that market participants have sufficient opportunity to configure their systems to account properly for the waiver of the ORF.

The proposed waiver is based on the Exchange’s analysis of recent options volumes and its regulatory costs. The Exchange believes that, if the ORF is not adjusted, the ORF revenue to the Exchange year over year could exceed a material portion of the Exchange’s ORF Costs. The options industry has continued to experience very high options trading volumes and volatility,

⁷ See Fee Schedule, supra note 5.

⁸ See <https://www.nyse.com/trader-update/history#110000945374>.

and although the Exchange recently reduced the ORF as of January 1, 2024,⁹ the persisting increased options volumes have impacted the Exchange's ORF collection.

The options industry has continued to experience high options trading volumes, as illustrated in the table below reflecting industry data from OCC for 2022, 2023, and 2024:¹⁰

	2022	2023	2024
Customer ADV	34,091,409	35,957,560	38,412,142
Total ADV	76,488,459	81,483,685	86,706,482

Both total average daily volume and customer average daily volume in 2024 increased over the already elevated levels in 2022 and 2023. In addition, the below industry data from OCC demonstrates the high options trading volumes and volatility that the industry has continued to experience in 2024:

	May 2024	June 2024	July 2024	August 2024	September 2024	October 2024
Customer ADV	36,231,012	39,784,756	40,657,739	38,558,587	39,214,407	39,920,560
Total ADV	72,462,024	79,569,512	81,315,478	77,117,174	78,428,814	79,841,120

Because of the sustained impact of the trading volumes that have persisted through 2024, along with the difficulty of predicting if and when volumes may return to historical levels, the Exchange proposes to waive the ORF from December 1 through December 31, 2024 to help

⁹ See Securities Exchange Act Release No. 98678 (October 3, 2023), 88 FR 69973 (October 10, 2023) (SR-NYSEAMER-2023-48) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE American Options Fee Schedule To Modify the Options Regulatory Fee). The Exchange also previously filed to waive the ORF from October 1, 2023 through December 31, 2023. See id.

¹⁰ 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>. The volume discussed in this filing is based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, in contract sides.

ensure that ORF collection will not exceed [sic] ORF Costs for 2024. The Exchange cannot predict whether options volumes will remain at these levels going forward and projections for future regulatory costs are estimated, preliminary, and may change. However, the Exchange believes that the proposed waiver of the ORF would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs without the need to account for any ORF collection during the Waiver Period.

Based on the Exchange's estimated projections for its regulatory costs, balanced with the observed increase in options volumes, the Exchange proposes to resume assessing the current ORF rate of \$0.0038 per contract as of January 1, 2025. As noted above, although the options industry has experienced high options trading volumes in recent years, the Exchange cannot predict with certainty whether options volumes will remain at these levels going forward. The Exchange believes that maintaining the current rate when ORF collection resumes following the Waiver Period would allow the Exchange to continue assessing an ORF designed to recover a material portion, but not all, of the Exchange's ORF Costs, based on current projections that the Exchange's ORF Costs will increase in 2025. The Exchange will continue monitoring ORF Costs in advance of the resumption of the ORF and when it resumes assessing ORF on January 1, 2025, and, if the Exchange determines that, in light of projected volumes and ORF Costs, the ORF rate should be modified to help ensure that ORF collections would not exceed a material portion of ORF Costs, adjust the ORF by submitting a proposed rule change and notifying ATP Holders of such change by Trader Update.

The Exchange also proposes to delete language in the Fee Schedule pertaining to the ORF waiver that was in effect from October 1, 2023 to December 31, 2023, as well as the old

ORF rate of \$0.0058 per contract, which was superseded by the current ORF rate of \$0.0038 as of January 1, 2024. The Exchange believes this change would improve the clarity of the Fee Schedule by removing obsolete language.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)¹¹ of the Act, in general, and Section 6(b)(4) and (5)¹² of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal is Reasonable

The Exchange believes the proposed temporary waiver of the ORF is reasonable because it would help ensure that collections from the ORF do not exceed a material portion of the Exchange's ORF Costs. As noted above, the ORF is designed to recover a material portion, but not all, of the Exchange's ORF Costs.

Although there can be no assurance that the Exchange's final costs for 2024 will not differ materially from its expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at current or similar levels going forward, the Exchange believes that the amount collected based on the current ORF rate, when combined with regulatory fees and fines, may result in collections in excess of the estimated ORF Costs for the year. Particularly, as noted above, the options market has continued to experience elevated volumes and volatility in 2024, thereby resulting in higher ORF collections than projected

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

despite the reduced ORF rate in effect as of January 1, 2024. The Exchange therefore believes that it would be reasonable to waive ORF from December 1 through December 31, 2024 to help ensure that ORF collection does not exceed [sic] the ORF Costs for 2024. Particularly, the Exchange believes that waiving the ORF from December 1 through December 31, 2024 and taking into account all of the Exchange's other regulatory fees and fines would allow the Exchange to continue covering a material portion of ORF Costs, while lessening the potential for generating excess funds that may otherwise occur using the current rate. The Exchange proposes to resume assessing its current ORF (\$0.0038 per contract) following the Waiver Period. The Exchange believes that resumption of the ORF at the current rate on January 1, 2025 (unless the Exchange determines it necessary to adjust the ORF rate to help ensure that ORF collections do not exceed [sic] ORF Costs) is reasonable because it would permit the Exchange to resume collecting an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange's proposal to resume ORF collection following the Waiver Period at the current ORF rate is based on the Exchange's estimated projections for its regulatory costs, which are currently projected to increase in 2025, balanced with the increase in options volumes that has persisted into 2024 and that may continue into 2025. The Exchange will continue monitoring ORF Costs in advance of the resumption of the ORF and when it resumes assessing ORF on January 1, 2025, and, if the Exchange determines that, in light of projected volumes and ORF Costs, the ORF rate should be modified to help ensure that ORF collections would not exceed a material portion of ORF Costs, adjust the ORF by submitting a proposed rule change and notifying ATP Holders of such change by Trader Update.

The Exchange also believes that the proposed deletion of language relating to an ORF waiver period that has now elapsed and a superseded ORF rate is reasonable because it would

remove obsolete language and thus improve the clarity of the Fee Schedule.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed waiver would not place certain market participants at an unfair disadvantage because it would apply equally to all ATP Holders on all their transactions that clear in the Customer range at the OCC and would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs. The Exchange also believes that recommencing the ORF on January 1, 2025 at the current rate, unless the Exchange determines it necessary to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs, is equitable because the ORF would resume applying equally to all ATP Holders on options transactions in the Customer range, at a rate designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, based on current projections that such costs will increase in 2025.

The proposed change to remove language relating to an ORF waiver period that has now elapsed and a superseded ORF rate is also equitable because it would eliminate language from the Fee Schedule that is no longer applicable to any ATP Holders.

The Proposed Fee is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the proposed waiver of the ORF would not place certain market participants at an unfair disadvantage because the change would apply to all ATP Holders subject to the ORF and would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed

regulatory costs. The Exchange also has provided all such ATP Holders with 30 days' advance notice of the planned change to the ORF. The Exchange also believes that recommencing the ORF on January 1, 2025 at the current rate, unless the Exchange determines it necessary to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs, is not unfairly discriminatory because the Exchange would resume assessing an ORF designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, based on current projections that such costs will increase in 2025. In addition, the ORF would resume applying equally to all ATP Holders based on their transactions that clear in the Customer range at the OCC.

The proposed change to remove language relating to an ORF waiver period that has now elapsed and a superseded ORF rate is also not unfairly discriminatory because it would eliminate outdated language from the Fee Schedule that no longer impacts any ATP Holders.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes the proposed change would not impose an undue burden on intramarket competition because the ORF is charged to all ATP Holders on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed temporary waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, i.e., the entering firms. The ORF is collected from ATP Holder clearing firms by the OCC on

behalf of NYSE American and is assessed on all options transactions cleared at the OCC in the Customer range. The Exchange also believes recommencing the ORF on January 1, 2025 at the current rate (unless the Exchange determines it necessary at that time to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs) would not impose an undue burden on competition because it would permit the Exchange to resume assessing an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, based on current projections that such costs will increase in 2025. The ORF would, as currently, apply to all ATP Holders on their options transactions that clear in the Customer range at the OCC when ORF collection resumes on January 1, 2025. The Exchange also believes that the proposed change to eliminate language relating to an ORF waiver period that has now elapsed and a superseded ORF rate would not impact intramarket competition because it is intended only to add clarity to the Fee Schedule by removing obsolete text.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total collections from regulatory fees do not exceed [sic] total regulatory costs and to promote clarity in the Fee Schedule by deleting obsolete text.

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 pursuant to Section 19(b)(3)(A)(ii) of the

Act¹³ and Rule 19b-4(f)(2)¹⁴ 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. If the Commission takes such action, the Commission shall institute proceedings 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 SR-NYSEAMER-2024-63 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-2024-63. This file number should be included on the subject line if email is used. To help the Commission process and

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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-2024-63 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.¹⁵

Sherry R. Haywood,

Assistant Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).