

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-101920; File No. SR-NYSEAMER-2024-77)

December 16, 2024

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule 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 December 11, 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 modify the NYSE American Options Fee Schedule (“Fee Schedule”) regarding the charges applicable to Manual transactions by NYSE American Options Market Makers. The Exchange proposes to implement the fee change effective December 11, 2024.<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 concerning the purpose of, and basis for, the proposed rule change and discussed any comments

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<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 November 29, 2024 (SR-NYSEAMER-2024-74), for December 2, 2024 effectiveness, and withdrew such filing on December 11, 2024.

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 Section I.A. of the Fee Schedule regarding the fee for Manual transactions by NYSE American Options Market Makers ("Market Makers"). Currently, Market Makers are charged \$0.35 per contract for Manual transactions. The Exchange proposes to increase the fee for Market Makers' Manual transactions to \$0.50 per contract.<sup>5</sup> The proposed change is intended to more closely align the Exchange's fee for Manual transactions by Market Makers with fees charged by at least one other competing exchange.<sup>6</sup> Although the proposed change would increase the fee for Manual transactions for Market Makers, the Exchange believes Market Makers will continue to quote actively to participate in transactions on the Trading Floor as they do today, thereby promoting trading opportunities and competition on the Trading Floor 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,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>8</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

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<sup>5</sup> See Fee Schedule, Section I.A. (Rates for Options transactions).

<sup>6</sup> See Nasdaq PHLX, Options 7 Pricing Schedule, Section 4 (providing for \$0.50 per contract fee for Market Maker manual transactions).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposed change is reasonable, equitable, and not unfairly discriminatory. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that 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.”<sup>9</sup>

There are currently 18 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>10</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in October 2024, the Exchange had 6.26% market share of executed volume of multiply-listed equity and ETF options trades.<sup>11</sup> In such a low-concentrated and highly competitive market, no single options exchange

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<sup>9</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>10</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>11</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 multiply-listed equity and ETF options decreased slightly from 6.45% for the month of October 2023 to 6.26% for the month of October 2024.

possesses significant pricing power in the execution of option order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The Exchange believes the proposed change is reasonable because, although it would increase the fee for Market Maker Manual transactions, it is designed to bring the Exchange's fee closer into alignment with a similar fee charged on at least one other competing exchange with a trading floor.<sup>12</sup> In addition, although Market Makers would continue to be subject to a Manual transaction fee greater than those charged to other market participants, the proposed fee is reasonable, on balance, given various other incentives available only to Market Makers.<sup>13</sup> The Exchange also believes the proposed change, although it would increase the fee applicable to Market Makers' Manual transactions, would not discourage Market Makers from conducting Manual transactions on the Exchange, thereby continuing to attract volume and liquidity to the Exchange generally and to the benefit all market participants (including those that do not participate in Manual transactions) through increased opportunities to trade.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits and is not unfairly discriminatory, as it applies equally to all similarly-situated market participants on an equal and non-discriminatory basis. The proposal is based on the type of business transacted on the Exchange, and Market Makers are not obligated to engage in Manual transactions. Market Makers benefit from having access to interact with orders that are made available in open outcry on the Trading Floor, and the Exchange believes that the proposed increased fee for Market Makers' Manual transactions is designed to balance the need to attract

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<sup>12</sup> See note 6, *supra*.

<sup>13</sup> See, e.g., Fee Schedule, Sections I.C. (NYSE American Options Market Maker Sliding Scale - Electronic) and I.D. (Prepayment Program).

both Market Makers' and other market participants' orders to the Trading Floor. Although the proposed change would increase the fee for Market Makers' Manual transactions, the Exchange believes Market Makers would continue to quote actively so that they may participate in Manual transactions as they do today, thereby promoting competition and maintaining market quality for all market participants. The Exchange also believes that increasing fees for Manual transactions by Market Makers, but not for other market participants, represents an equitable, non-discriminatory allocation of fees on balance because Market Makers continue to be entitled to various incentives not available to other market participants.<sup>14</sup>

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 change would be consistent with charges for similar business on at least one other market. 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>15</sup>

*Intramarket Competition.* The proposed change is designed to continue to promote the use of the Exchange as a primary trading venue, and, specifically, to encourage competition on

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<sup>14</sup> See id.

<sup>15</sup> See Reg NMS Adopting Release, supra note 9, at 37499.

the Trading Floor. The proposed change is designed to balance the need to attract both Market Makers' and other market participants' orders to the Trading Floor. The Exchange believes that the proposed change to the fee applicable to Manual transactions by Market Makers would not discourage them from continuing to conduct Manual transactions on the Exchange because interacting with orders that are made available in open outcry on the Trading Floor promotes additional opportunities for quality executions. 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. The Exchange also believes that increasing fees for Manual transactions by Market Makers relative to other market participants does not impose an undue burden on competition because, as noted above, Market Makers have access to other incentives in the Fee Schedule not available to other market participants.<sup>16</sup>

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 competing option exchanges if they deem fee levels at a particular venue to be excessive. 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.<sup>17</sup> Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity

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<sup>16</sup> See note 13, supra.

<sup>17</sup> See note 10, supra.

and ETF options order flow. More specifically, in October 2024, the Exchange had 6.26% market share of executed volume of multiply-listed equity and ETF options trades.<sup>18</sup>

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees to be more closely aligned with fees charged by at least one other market with a Trading Floor for similar transactions.<sup>19</sup> The Exchange also believes that the proposed change would continue to promote competition between the Exchange and other execution venues because continued Market Maker activity on the Trading Floor would encourage liquidity, thereby maintaining market quality on the Exchange and encouraging orders to be sent to the Exchange for 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.

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)<sup>20</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>21</sup> 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

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<sup>18</sup> See note 11, supra.

<sup>19</sup> See note 6, supra.

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(2).

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)<sup>22</sup> 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](mailto:rule-comments@sec.gov). Please include file number SR-NYSEAMER-2024-77 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-2024-77. 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

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<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

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-2024-77 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>23</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>23</sup> 17 CFR 200.30-3(a)(12).