

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99709; File No. SR-NYSEAMER-2024-15)

March 11, 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)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 29, 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 Professional Step-Up Incentive program. The Exchange proposes to implement the fee changes effective March 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 [sic] to modify the Fee Schedule to replace the Professional Step-Up Incentive program with the Professional Volume Incentive program.

Currently, the Exchange offers an incentive program known as the Professional Step-Up Incentive (the “Step-Up Program”), designed to encourage ATP Holders to increase their electronic volume in the “Professional” range.⁴ The Step-Up Program offers discounted rates on monthly Professional volume and credits on Customer electronic volume at the same rate as ATP Holders that qualify for Tier 1 of the American Customer Engagement (“ACE”) Program⁵ to ATP Holders that increase their Professional volume by specified percentages of TCADV over their August 2019 volume, or in the case of new ATP Holders, above a base level of 10,000 contracts ADV. Volume from strategy executions, CUBE auctions, and QCC transactions are not included in the calculation of base volume amounts or volume to qualify for the Step-Up Program, nor is interest that takes liquidity from posted Customer interest.

The Exchange now proposes to rename the Step-Up Program as the Professional Volume Incentive program.⁶ Under the Professional Volume Incentive program, ATP Holders would qualify for the same discounted rates and credits as in the Step-Up Program by achieving

⁴ See Fee Schedule, Section I.H. (Professional Step-Up Incentive). For purposes of this filing, “Professional” electronic volume includes Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm.

⁵ See Fee Schedule, Section I.E. (American Customer Engagement (“ACE”) Program).

⁶ Consistent with this change, the Exchange also proposes to amend the Fee Schedule’s Table of Contents to update the title of Section I.H. to “Professional Volume Incentive.”

qualifying volume of specified percentages of TCADV (“Qualifying Volume) rather than increased volume over a certain base level. Volume from strategy executions, CUBE auctions, and QCC transactions, as well as interest that takes liquidity from posted Customer interest, will continue to be excluded from an ATP Holder’s Qualifying Volume.

As proposed, Tier A of the Professional Volume Incentive program would have the same Qualifying Volume requirement as the Step-Up Program (0.20% of TCADV) and would provide qualifying ATP Holders with the same per contract Penny rate of \$0.35 and the same per contract non-Penny rate of \$0.65. The Exchange proposes that the Qualifying Volume requirement for Tier B would be 0.30% of TCADV under the Professional Volume Incentive program (rather than an increase of 0.25% of TCADV under the Step-Up Program), and that the per contract Penny and non-Penny rates (\$0.20 and \$0.55, respectively) would remain the same. ATP Holders that qualify for either tier of the proposed Professional Volume Incentive program will also continue to receive benefits offered in Tier 1 of the ACE program.

Currently, under the Step-Up Program, ATP Holders would also qualify for an additional discount on the Tier B rates by increasing their program-qualifying volume and executing a qualifying amount of posted Professional volume. The Exchange proposes to eliminate this additional discount and instead introduce additional discounts available to ATP Holders that achieve higher levels of Qualifying Volume. ATP Holders that achieve Qualifying Volume as set forth in the table below would earn the corresponding additional discount on the Tier B Penny and non-Penny rates (applicable from the first contract) as set forth in the table below:

Qualifying Volume as % of TCADV	Additional Discount on Tier B Per Contract Penny and Non-Penny Rate
0.40%	\$0.01
0.50%	\$0.02
0.60%	\$0.03

The proposed change is intended to continue to encourage ATP Holders to increase both Professional and Customer electronic order flow to the Exchange by continuing to offer the discounted rates and credits that were available in the Step-Up Program through the new Professional Volume Incentive program, as well as additional discounts for qualifying ATP Holders. The Exchange believes the proposed change to the qualifications for the Professional Volume Incentive Program, which are based on ATP Holders' Qualifying Volume rather than increased volume over a certain base volume, is reasonable and that the volume requirements are attainable by ATP Holders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁸ 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 that the proposed Professional Volume Incentive program is reasonable, equitable, and not unfairly discriminatory because it is designed to continue to incent ATP Holders to increase the amount of Professional and Customer electronic order flow directed to the Exchange. The Professional Volume Incentive program, as proposed, would continue to offer discounted rates and credits as under the Step-Up Program, as well as additional discounts for qualifying ATP Holders, based on Qualifying Volume rather than increased volume over a certain base volume. As noted above, the Exchange believes the proposed volume requirements

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

for the Professional Volume Incentive program, including for the additional discounts on Tier B rates, are attainable by ATP Holders and are reasonably designed to incentivize ATP Holders to achieve increasingly higher levels of Qualifying Volume to earn the corresponding higher discounts. In addition, with respect to the additional discounts that would be available under the Professional Volume Incentive program, the Exchange believes that the Qualifying Volume requirements and discount amounts are reasonably designed to encourage ATP Holders to direct increased Professional and Customer electronic volume to the Exchange, thereby providing additional liquidity, attracting additional order flow from other market participants, and improving market quality for all market participants. To the extent the proposed change achieves its purpose in attracting greater volume and liquidity to the Exchange, the Exchange believes that all market participants stand to benefit from increased electronic transaction volume, whether Professional or Customer, as greater volume and liquidity would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because it would apply to all similarly-situated market participants on an equal and non-discriminatory basis. The qualifications for and benefits offered in the Professional Volume Incentive program are based on the amount and type of business transacted by ATP Holders, and all ATP Holders are eligible to qualify for the Professional Volume Incentive program by achieving the same Qualifying Volume as a percentage of TCADV.

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."⁹

Intramarket Competition. The proposed change to replace the Step-Up Program with the Professional Volume Incentive program is designed to continue to attract additional order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Professional and Customer electronic volume could increase opportunities for execution of other trading interest. Because the Professional Volume Incentive program would be available to all similarly-situated market participants, the Exchange does not believe that the proposed change would impose a disparate burden on competition among market participants on the Exchange.

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. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to

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

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.¹⁰ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January of 2024, the Exchange had less than 8% market share of executed volume of multiply-listed equity & ETF options trades.¹¹ 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. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased trading opportunities. The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues 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

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>.

¹¹ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, see id., the Exchange's market share in equity-based options decreased from 7.96% for the month of January 2023 to 7.82% for the month of January 2024.

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ 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)¹⁴ 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 SR-NYSEAMER-2024-15 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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-2024-15. 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-2024-15 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).