

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102884; File No. SR-NYSEAMER-2025-25]

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 Regarding Certain Fees and Rebates Applicable to Volume Executed in the CUBE Auctions

April 17, 2025.

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 April 15, 2025, 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”) to (1) adopt an alternative means of qualifying for Initiating Participant Credits for the single-leg CUBE Auction based on monthly executions of initiating Complex CUBE Orders; and (2) to adopt, for each CUBE Auction type, a new Initiating Participant Rebate for ATP Holders that that qualify for Tier B of the Professional Volume Incentive Program. The Exchange proposes to implement the fee change effective April 15, 2025.⁴ The proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ On April 1, 2025, the Exchange filed to amend the Fee Schedule (NYSEAMER-2025-20) and withdrew

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 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 the Fee Schedule to (1) adopt an alternative means of qualifying for Initiating Participant Credits for the single-leg CUBE Auction based on monthly executions of initiating Complex CUBE Orders; and (2) to adopt a new Initiating Participant Rebate for ATP Holders that that qualify for Tier B of the Professional Volume Incentive Program, which rebate is available in each CUBE Auction (i.e., single-leg, Complex, and AON CUBE).⁵

The Exchange offers certain “Initiating Participant” credits and rebates to ATP Holders that submit “CUBE Orders” to its Customer Best Execution (“CUBE”) Auctions.⁶ Currently, for

such filing on April 15, 2025.

⁵ See generally Rules 971.1NYP and 971.2NYP and Commentaries .04 (describing the CUBE Auction, which is an electronic crossing mechanism for single-leg, complex, and AON orders with a price improvement auction on the Exchange).

⁶ See Fee Schedule Section I.G (CUBE Auction Fees & Credits) (describing pricings and incentives for each of the Single-Leg CUBE Auction, the Complex CUBE Auction, and the AON CUBE Auction).

the single-leg CUBE Auction, ATP Holders receive (base level) Initiating Participant Credits of (\$0.26) per contract for Penny Issues and (\$0.65) per contract for Non-Penny Issues. However, ATP Holders that execute at least 0.40% of TCADV⁷ in Electronic Customer Complex Orders are eligible for enhanced Initiating Participant Credits of (\$0.30) per contract for Penny Issues and (\$0.70) per contract for Non-Penny Issues.⁸ The Exchange proposes to adopt an alternative means for ATP Holders to achieve these same enhanced Initiating Participant credits.

Specifically, ATP Holders that execute at least 0.40% of TCADV in monthly initiating Complex CUBE Orders (inclusive of AON Complex CUBE Orders) are eligible to receive the enhanced Initiating Participant Credits of (\$0.30) per contract for Penny Issues and (\$0.70) per contract for Non-Penny Issues.⁹ The proposed change is designed to encourage ATP Holders to (continue to) utilize its single-leg CUBE Auction and to direct (and increase) their complex auction order flow (i.e., Complex CUBE and AON Complex CUBE) to the Exchange.

Currently, the Exchange also offers certain Initiating Participant Rebates, payable in addition to the Initiating Participant Credits, including (but not limited to) the American Customer Engagement (“ACE”) Initiating Participant Rebate, which is available to ACE participants in all CUBE Auctions.¹⁰ The Exchange proposes to adopt a new Initiating

⁷ “TCADV” refers to Total Industry Customer equity and ETF option average daily volume. See id. KEY TERMS and DEFINITIONS.

⁸ Initiating Participant Credits are payable to the Initiating Participant for each contract in a Contra Order paired with a CUBE Order that does not trade with the CUBE Order because it is replaced in the auction. See Fee Schedule Section I.G (CUBE Auction Fees & Credits).

⁹ See proposed Fee Schedule, Section I.G. (CUBE Auction Fees & Credits) (providing the alternative qualifying basis in note 1 to the table setting for pricing for single-leg CUBE Auctions).

¹⁰ See Fee Schedule Sections I.E. (American Customer Engagement (“ACE”) Program). See also Fee Schedule Section I.G (CUBE Auction Fees & Credits) (providing in note 2 to each of the tables setting forth pricing for the Single-Leg CUBE Auction, the Complex CUBE Auction, and the AON CUBE Auction, the requirements to achieve the ACE Initiating Participant Rebate, which pays (\$0.12) per contract).

Participant Rebate that will be available to ATP Holders that qualify for Tier B of the Professional Volume Incentive program (the “Professional IP Rebate”).¹¹

The Professional Volume Incentive (the “Incentive”) offers qualifying ATP Holders discounted rates on their total monthly Professional Volume and credits on their monthly Customer Electronic volume at the same rate as participants that achieve Tier 1 in the ACE Program.¹² The Professional IP Rebate will pay (\$0.12) per contract, be available in each of the CUBE Auctions -- i.e., for the single-leg CUBE Auction, the Complex CUBE Auction, and the AON CUBE Auction.¹³ Consistent with current practice, this proposed rebate is paid in addition to Initiating Participant credits and ATP Holders that qualify for more than one Initiating Participant Rebate would be entitled only to the highest of the earned rebates.¹⁴ Regarding AON CUBE Orders, the Exchange notes that the proposed Professional IP Rebate will not apply to AON CUBE Orders executed by a Floor Broker as such volume may be eligible for the Floor Broker Initiating Participant Rebate.¹⁵ The Exchange notes that the proposed Professional IP

¹¹ For purposes of the Professional Volume Incentive program, “Professional” volume includes certain qualifying volume that clears in the Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm ranges. See Section I.H. (Professional Volume Incentive) (describing the Incentive as well as what constitutes “Qualifying Volume”).

¹² See id. To achieve Tier B of this Incentive, ATP Holders must execute “Qualifying Volume,” that clears in the Professional range, of at least 0.30% of TCADV. See id. ATP Holders that achieve Tier B “are eligible to receive a credit of \$0.10 per contract on Customer Electronic Simple and Complex executions, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange,” if such ATP Holders meet certain monthly qualification levels. See id.

¹³ See proposed Fee Schedule Section I.G (CUBE Auction Fees & Credits) (adopting the (\$0.12) per contract Professional IP Rebate in note 3 to each of the tables setting forth pricing for Single-Leg CUBE Auction, the Complex CUBE Auction, and the AON CUBE Auction). See supra note 10 (regarding the ACE Initiating Participant Rebate).

¹⁴ See Fee Schedule Section I.G (CUBE Auction Fees & Credits) (providing in note 2 to each of the tables setting forth pricing for the Single-Leg CUBE Auction, the Complex CUBE Auction, and the AON CUBE Auction, that ATP Holders are eligible for only one Initiating Participant Rebate).

¹⁵ See id. Consistent with the proposal, the existing ACE Initiating Participant Rebate is likewise not applied to AON CUBE Orders executed by a Floor Broker, as set forth in note 2 to the table setting forth pricing for the AON CUBE Auction. See id.

Rebate would enable non-ACE Program participants to qualify for an additional Rebate on initiating CUBE Orders provided they meet certain Professional volume requirements.

To the extent that the proposed modifications continue to encourage ATP Holders to initiate CUBE Auctions -- whether single-leg, complex, or AON -- and to further incent ATP Holders to increase their Professional and Customer volume on the Exchange, all market participants stand to benefit from increased liquidity and opportunities for price improvement. Increased order flow promotes market depth, facilitates tighter spreads and enhances price discovery, which enhances market quality for all participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁷ 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 changes to the Fee Schedule are 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

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁸

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.¹⁹ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in February 2025, the Exchange had 6.65% market share of executed volume of multiply-listed equity & ETF options trades.²⁰ In such a low-concentrated and highly competitive market, no single options exchange 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.

In response to these competitive forces and as discussed herein, the Exchange has established various pricing incentives regarding its CUBE Auctions, including (but not limited to) the (base and enhanced) Initiating Participant credits and various Initiating Participant rebates that are designed to encourage ATP Holders to utilize the Auction and to direct (increased) volume to the Exchange.

The Exchange believes that the proposed fee change to offer an alternative means to

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

¹⁹ 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>.

²⁰ 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 Exchanges market share in equity-based options decreased slightly from 7.64% for the month of February 2024 to 6.65% for the month of February 2025.

achieve an enhanced Initiating Participant credit -- in the same amount as is currently available -- for the single-leg CUBE Auction is reasonable, equitable, and not unfairly discriminatory. First, the Exchange is merely offering ATP Holders another way to earn the same enhanced credits, with the difference being that the proposed credits are tied to initiating Complex CUBE (inclusive of AON Complex CUBE) volume (rather than electronic Complex Order volume). As such, the proposed change does not alter an ATP Holder's ability to (continue to) qualify for the existing enhanced Initiating Participant credit. The proposed alternative qualification basis is reasonable because it is designed to encourage ATP Holders to utilize both the single-leg and Complex CUBE Auction mechanisms, which may incentivize ATP Holders to direct their paired-auction volume -- as well as other volume -- to the Exchange, which increased liquidity promotes market depth and enhances market quality to the benefit of all market participants.

The Exchange believes that the proposal represents an equitable allocation of credits and is not unfairly discriminatory because the proposal is based on the amount and type of business transacted on the Exchange. ATP Holders are not obligated to participate in CUBE Auctions or to attempt to achieve the proposed enhanced Initiating Participant credit. In addition, the proposed change will apply equally to all similarly-situated ATP Holders.

The Exchange believes the proposed fee change to adopt a new Professional IP Rebate that will be available to ATP Holders that initiate CUBE Auctions on the Exchange, is reasonable, equitable, and not unfairly discriminatory. First, the addition of this Rebate does not alter an ATP Holder's ability to qualify for the existing rebates, which rebates are not being altered by this proposal. In addition, the proposed Rebate provides all ATP Holders (including ACE program participants) another avenue through which to earn a Rebate for their initiating CUBE Order volume. Further, this proposed Rebate is designed to allow ATP Holders that do

not participate in the ACE Program -- and are therefore not eligible for the ACE Initiating Participant Rebate -- an opportunity to qualify for a Rebate. The Exchange notes that the proposed Rebate would operate in the same manner as existing rebates such that ATP Holders may only receive the highest rebate achieved and, in the case of AON CUBE Auctions, that AON CUBE Orders executed by a Floor Broker are not eligible for the proposed Rebate. Moreover, the proposed Professional IP Rebate is reasonable because it designed to encourage ATP Holders to utilize the CUBE Auction mechanisms as well as to increase their (qualifying) Professional volume, which may incent ATP Holders to use the Exchange as their primary trading venue. To the extent the proposed Rebate increases order flow directed to the Exchange, this increased liquidity will promote market depth and enhance market quality to the benefit of all market participants.

The Exchange believes that the proposed Professional IP Rebate represents an equitable allocation of credits/rebates and is not unfairly discriminatory because the proposal is based on the amount and type of business transacted on the Exchange. ATP Holders are not obligated to participate in CUBE Auctions or to attempt to achieve the proposed Rebate by increasing (or directing) qualifying Professional order flow to the Exchange. In addition, the proposed change will apply equally to all similarly-situated ATP Holders. Further, like the proposed Rebate, which is designed to encourage Professional order flow, the Exchange currently offers pricing incentives designed to encourage ATP Holders to direct certain types of order flow to the Exchange, including the ACE Program and the ACE Initiating Participant Rebate. In addition, the Exchange offers pricing incentives designed to encourage activity by certain market participants (e.g., Market Makers and Floor Brokers) that play an important role in facilitating

transactions on the Exchange.²¹ Like these other pricing incentives, the proposed Rebate is designed to encourage participants to utilize the Exchange as a primary trading venue (if they have not done so previously) and increase volume sent to the Exchange, including auction, Customer, and Professional volume.

To the extent that the proposed changes attract more executions 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 changes would improve market quality for all market participants on the Exchange and attract 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, to protect investors and the public interest.

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 continue to 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 changes further the Commission's goal in adopting

²¹ See, e.g., Fee Schedule, Sections I.C. (NYSE American Options Market Maker Sliding Scale - Electronic); I.D. ([Market Maker] Prepayment Program); and III.E.1. (Floor Broker Fixed Cost Prepayment Incentive Program).

Regulation NMS of fostering integrated competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”²²

Intramarket Competition.

The Exchange believes that this proposal to offer an alternative means of achieving existing Initiating Participant Credits and to adopt a new Professional IP Rebate does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes apply equally to all similarly-situated ATP Holders. Further, the proposal is based on the amount and type of business transacted on the Exchange and ATP Holders are not obligated to participate in CUBE Auctions or to avail themselves of the proposed Rebate. In addition, the proposed Rebate is similar to existing pricing incentives designed to increase certain types of order flow (e.g., Customer) or to encourage participation by certain market participants -- all of which are designed to increase liquidity and market quality on the Exchange to the benefit of all market participants. The Exchange does not believe that the proposed changes will adversely impact any ATP Holder’s ability to qualify for existing pricing incentives related to initiating CUBE Auctions as this proposal does not alter (and will not impact the availability of) existing the credits and rebates. This proposal is designed to encourage participants to utilize the Exchange as a primary trading venue (if they have not done so previously), particularly as relates to initiating CUBE Auctions and directing (or increasing) their qualifying Professional volume directed to the Exchange. As such, the Exchange believes this proposal will help promote competition by providing incentives for market participants to continue to submit CUBE Orders (i.e., Customer order flow) to the Exchange and thus, create a greater opportunity for Customers to receive additional price improvement and access greater

²² See Reg NMS Adopting Release, *supra* note 18, at 37499.

liquidity.

Intermarket Competition.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the other 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 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.²³ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in February 2025, the Exchange had 6.65% market share of executed volume of multiply-listed equity & ETF options trades.²⁴

The Exchange believes that the proposed rule change reflects this competitive environment as it designed 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 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.

²³ 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>.

²⁴ 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 Exchanges market share in equity-based options decreased slightly from 7.64% for the month of February 2024 to 6.65% for the month of February 2025.

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)²⁵ of the Act and subparagraph (f)(2) of Rule 19b-4²⁶ 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)²⁷ 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-2025-25 on the subject line.

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(2).

²⁷ 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-2025-25. 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-2025-25 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.²⁸

Sherry R. Haywood,

Assistant Secretary.

²⁸ 17 CFR 200.30-3(a)(12).