

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103193; File No. SR-NYSEAMER-2025-29]

## **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 to Increase the Amount of Certain CUBE Auction Credits**

June 4, 2025.

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 June 2, 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 modify pricing for the Single-Leg and Complex Customer Best Execution (“CUBE”) Auction. The Exchange proposes to implement the fee change effective June 2, 2025. 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

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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.

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 modify pricing for Single-Leg and Complex CUBE Auctions as set forth in Section I.G (CUBE Auction Fees & Credits).<sup>4</sup>

The Exchange offers "Initiating Participant" credits and rebates to ATP Holders that submit "CUBE Orders" to its CUBE Auctions that are designed to encourage participation in the Auction.<sup>5</sup> In particular, the Exchange offers certain Initiating Participant Rebates, including (but not limited to) the American Customer Engagement ("ACE") Initiating Participant Rebates (each an "ACE Rebate"), which are available to ACE participants that initiate a Single-Leg or Complex CUBE Auction<sup>6</sup> and the Alternative Initiating Participant Rebate (the "Alternative Rebate"), which is available to all ATP Holders that initiate a Complex CUBE Auction.

For the Single-Leg CUBE Auction, the Exchange offers two ACE Rebates (tied to the ACE tier achieved) that are applied to the first 5,000 contracts executed in a CUBE Auction. The Exchange offers a (\$0.05) per contract for ATP Holders that achieve ACE Tiers 1,2, or 3 and a

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<sup>4</sup> See generally Rules 971.1NYP and 971.2NYP (describing the Single-Leg and Complex CUBE Auction, which is the Exchange's electronic crossing mechanism with a price improvement auction).

<sup>5</sup> See Fee Schedule Section I.G (CUBE Auction Fees & Credits). (describing pricing and incentives for CUBE Auctions).

<sup>6</sup> The ACE Program has five tiers and offers increasing per contract credits based on, and applied to, certain Electronic Customer volume executed on the Exchange. See Fee Schedule Sections I.E. (American Customer Engagement ("ACE") Program).

(\$0.12) per contract for those that achieve ACE Tiers 4 or 5.<sup>7</sup> For the Complex CUBE Auction, the Exchange offers a (\$0.10) per contract ACE Rebate (regardless of ACE tier achieved) and a (\$0.10) per contract Alternative Rebate, each of which are applied to the first 1,000 contracts per leg of a Complex CUBE Order executed in a Complex CUBE Auction.<sup>8</sup>

The Exchange proposes to increase certain of these Initiating Participant rebates to encourage ATP Holders to direct additional CUBE volume to the Exchange. For the Single-Leg CUBE Auction, the Exchange proposes to increase the ACE Rebate for participants that achieve ACE Tier 1, 2, or 3 from (\$0.05) to (\$0.12) per contract.<sup>9</sup> For the Complex CUBE Auction, the Exchange proposes to increase both the ACE Rebate and the Alternative Rebate from (\$0.10) to (\$0.12) per contract.<sup>10</sup> As is the case today, both the ACE Rebates and the Alternative Rebate are payable in addition to any Initiating Participant credits offered for participation in CUBE Auctions and ATP Holders that qualify for more than one rebate would be entitled only to the greater of the two rebates.<sup>11</sup>

Although the Exchange cannot predict with certainty whether the proposed Rebates will continue to encourage ATP Holders to initiate CUBE Auctions (or participate in the ACE Program), all market participants stand to benefit from increased liquidity and opportunities for price improvement. Increased order flow promotes market depth, facilitates tighter spreads and

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<sup>7</sup> See Fee Schedule Section I.G (CUBE Auction Fees & Credits, Single-Leg CUBE Auction), n. 2.

<sup>8</sup> See Fee Schedule Section I.G (CUBE Auction Fees & Credits, Complex CUBE Auction), n. 2. To be eligible for the Alternative Rebate, ATP Holders must [sic] certain monthly volume qualifications. See id.

<sup>9</sup> See proposed Fee Schedule Section I.G (CUBE Auction Fees & Credits, Single-Leg CUBE Auction). The ACE Rebate for participants that achieve ACE Tiers 4 or 5 is not being altered and will remain at (\$0.12) per contract. See id.

<sup>10</sup> See proposed Fee Schedule Section I.G (CUBE Auction Fees & Credits, Single-Leg CUBE Auction).

<sup>11</sup> See Fee Schedule Section I.G (CUBE Auction Fees & Credits, Single-Leg CUBE Auction, at n. 3 [sic] and Complex CUBE Auction, at n. 2).

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,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>13</sup> 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.

In particular, the proposed rebates 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 been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>14</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>15</sup> Therefore, currently no exchange possesses significant pricing power in the execution of

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>14</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>15</sup> The OCC publishes options and futures volume in a variety of formats, including daily and monthly

multiply-listed equity & ETF options order flow. More specifically, in April 2025, the Exchange had 6.43% market share of executed volume of multiply-listed equity & ETF options trades.<sup>16</sup> In such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of options 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 ACE Rebates and the Alternative Rebate, to encourage ATP Holders to utilize the Auction and to direct (increased) volume to the Exchange.

The Exchange believes the proposed rebates are reasonable, equitable, and not unfairly discriminatory. First, the proposed changes do not alter an ATP Holder's ability to qualify for existing Initiating Participant credits or rebates that are not being altered by this proposal. In addition, this proposal does not modify the qualification basis to achieve any of the proposed rebates but instead increases the per contract amount that an ATP Holder may achieve. Therefore, the proposed rebates should not impact the ability of ATP Holders that previously qualified for the ACE Rebates or the Alternative Rebate to continue to do so. Furthermore, the proposed increases in the ACE Rebates should incent ATP Holders that participate in the ACE Program to continue to initiate CUBE Auctions. Similarly, for non-ACE participants that qualify for the Alternative Rebate, the proposed increase should continue to incent ATP Holders to

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volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

<sup>16</sup> 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 from 8.50% for the month of April 2024 to 6.43% for the month of April 2025.

(continue to) initiate Complex CUBE Auctions. To the extent the proposed rebates increase the amount of 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 rebates represents [sic] an equitable allocation of credits/rebates and are not unfairly discriminatory because they are based on the amount and type of business transacted on the Exchange. ATP Holders are not obligated to participate in CUBE Auctions or the ACE Program. In addition, the proposed rebates will apply equally to all similarly-situated ATP Holders. Like other pricing incentives, the proposed rebates are designed to encourage market 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 CUBE Auction and Customer volume.

To the extent that the proposed (increased) rebates attract more CUBE volume 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 rebates will 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 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>17</sup>

*Intramarket Competition.*

The Exchange believes that the proposed rebates do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as they will apply equally to all similarly-situated ATP Holders and be based on the amount and type of business transacted on the Exchange. ATP Holders are not obligated to participate in CUBE Auctions or to avail themselves of the proposed rebates. The proposed rebates will not adversely impact any ATP Holder's ability to qualify for existing pricing incentives related to initiating CUBE Auctions as this proposal does not alter (nor impact the availability of) existing Initiating Participant credits and rebates. Further, the qualification bases to achieve the increased rebates will remain the same.

This proposal is designed to encourage participants to utilize the Exchange as a primary trading venue (if they have not done so previously), particularly to initiate CUBE Auctions. 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

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<sup>17</sup> See Reg NMS Adopting Release, supra note 13, at 37499.

improvement and access greater 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.<sup>18</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in April 2025, the Exchange had 6.43% market share of executed volume of multiply-listed equity & ETF options trades.<sup>19</sup>

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.

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<sup>18</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>19</sup> 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 from 8.50% for the month of April 2024 to 6.43% for the month of April 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)<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 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-2025-29 on the subject line.

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

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

<sup>22</sup> 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-2025-29. 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-2025-29 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>

**Stephanie Fouse,**

*Assistant Secretary.*

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