

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81569; File No. SR-NYSEAMER-2017-13)

September 11, 2017

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 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 1, 2017, NYSE American LLC (the “Exchange” or “NYSE American”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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”). The Exchange proposes to implement the fee change effective September 1, 2017. The proposed 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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, effective September 1, 2017. Specifically, the Exchange proposes to amend the American Customer Engagement (“ACE”) Program to modify various credits offered and to establish certain credits provided depending on the type of Electronic transactions (e.g., whether it is a simple or complex execution). The Exchange also proposes to add “Simple Order” to the glossary of defined terms in the Fee Schedule.

Section I. E. of the Fee Schedule describes the Exchange’s ACE Program. The ACE Program features a base tier and five higher tiers expressed as a percentage of TCADV⁴ and provides two alternative methods by which Order Flow Providers (each an “OFP”) may receive per contract credits for Electronic Customer volume that the OFP, as agent, submits to the Exchange.⁵ The Exchange proposes to modify the qualifications for certain of the tiers.

⁴ See Fee Schedule, Section I.E., available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf. See also Fee Schedule, Key Terms and Definitions (defining TCADV as “Total Industry Customer equity and ETF option average daily volume. TCADV includes OCC calculated Customer volume of all types, including Complex Order transactions and QCC transactions, in equity and ETF options”).

⁵ The volume thresholds are based on an OFP’s Customer volume transacted Electronically as a percentage of total industry Customer equity and ETF options volumes as reported by the Options Clearing Corporation (the “OCC”). See OCC Monthly Statistics Reports, available here, <http://www.theocc.com/webapps/monthly-volume-reports>.

Currently, an OFP that achieves 0.75% or less of Customer Electronic ADV (“CADV”) as a percent of TCADV falls within the Base Tier and is not eligible to receive ACE Credits. To qualify for Tier 1 or 2, an OFP may achieve a level of CADV that is equal to or greater than certain percentages of the OFP’s October 2015 volume (collectively, the “Step Up” qualifications):

- For Tier 1, an OFP qualifies by achieving CADV that exceeds October 2015 volume by at least 0.20% to be eligible for a \$0.14 per contract credit;
- For Tier 2, the OFP may qualify by achieving CADV that exceeds October 2015 volume by at least 0.35% to be eligible for a \$0.18 per contract credit.⁶ An OFP that achieves Tier 2 is also eligible to receive a more favorable \$0.19 per contract credit on Electronic Customer Complex Orders.⁷

The Exchange proposes to eliminate Step Up qualifications and to instead provide that OFPs may qualify for ACE credits based solely on percentages of monthly TCADV. The Exchange believes this proposed change would provide the opportunity to all Exchange participants to meet the same reasonable, yet meaningful standard to qualify for the ACE Program credits. Thus, as proposed, an OFP that achieves monthly CADV of at least 0.40% would qualify for Tier 1; and an OFP that achieves monthly CADV of greater than 0.75% would qualify for Tier 2.⁸ Consistent with the change, the Exchange proposes to modify the Fee

⁶ As an alternative to the Step Up qualification basis, an OFP may qualify for Tier 2 (and receive the same \$0.18 per contract credit) by achieving greater than 0.75 CADV.

⁷ See Fee Schedule, Section I.E., n. 1 (providing that the credit for Customer Complex Orders is provided regardless of whether the Complex Order trades against interest in the Complex Order Book or with individual orders and quotes in the Consolidated Book).

⁸ See proposed Fee Schedule, Section I.E.

Schedule to reflect that an OFP that achieves monthly CADV of less than 0.40% falls within the Base Tier and, as is the case today, would therefore be ineligible for ACE credits.⁹

The Exchange also proposes to modify the credits for various Tiers and to set forth separate credits based on transaction type. Currently, the ACE program provides various credits, applied on a per contract basis, on all Customer Electronic executions in Standard Options; the ACE program also offers more favorable credit for electronic Customer Complex Orders to OFPs that achieve Tiers 2, 4 or 5.¹⁰ An OFP may be eligible for enhanced ACE credits based on the Exchange's Prepayment Programs (the "Enhanced Credits").¹¹ The Exchange proposes to modify the ACE Program to reflect differing credits based on the execution of Simple Orders – sometimes referred to by the Exchange as single-leg orders – and to establish ACE credits at each of the five tiers for execution of Complex Orders. In this regard, the Exchange proposes to define a "Simple Order," as "any order to purchase or sell contracts in a single listed option series" and to make clear that "[a] Simple Order is sometimes referred to in NYSE American Rules as a single-leg order (e.g., Rules 928NY and 980NY)."¹²

As proposed, an OFP that qualifies for Tier 1 would receive a credit of \$0.12 per contract on executions of Customer Simple Orders, or, if eligible, an Enhanced Credit of \$0.13 per contract. An OFP that qualifies for Tier 1 would receive a credit of \$0.19 per contract for

⁹ The Enhanced Credits are only available to those OFPs who have an Affiliated NYSE American Options Market Making firm or an Appointed MM that has committed to the 1 Year Prepayment Program, Balance of the Year Program, or the 3 Year Prepayment Program, respectively, as described in Section I.D. See Fee Schedule, Section I.E.

¹⁰ See supra note 7 (regarding more favorable \$0.19 credit available for OFPs that achieve Tier 2); see also Fee Schedule, Section I.E., n. 2 (regarding more favorable \$0.25 per contract credit available for OFPs that achieve Tier 4 or 5, provided the OFP executes more than 0.50% of TCADV in Initiating CUBE Orders in a calendar month).

¹¹ See supra note 9.

¹² See proposed Fee Schedule, Key Terms and Definitions.

executions of Complex Orders,¹³ or, if eligible, an Enhanced Credit of \$0.20 or \$0.21 per contract, respectively, depending on whether the OFP is a participant in the 1- or 3-Year Prepayment Program.

As proposed, an OFP that qualifies for Tier 2 would receive a credit of \$0.14 per contract on executions of Customer Simple Orders, or, if eligible, an Enhanced Credit of \$0.15 or \$0.16 per contract, respectively, depending on whether a participant in the 1- or 3-Year Prepayment Program. The Exchange proposes to offer an OFP that qualifies for Tier 2 the same credits for executions of Complex Orders as is offered to OFPs that achieve Tier 1 (i.e., \$0.19 per contract or, if eligible, an Enhanced Credit of \$0.20 or \$0.21 per contract, respectively, depending on whether the OFP is a participant in the 1- or 3-Year Prepayment Program).

For clarity purposes, the Exchange is proposing to specify ACE credits for Complex Order executions available to an OFP that achieve Tiers 3, 4, or 5, which credits are equivalent to ACE credits currently available to an OFP that achieve these Tiers.

Consistent with the foregoing proposal to differentiate ACE credits for executions in Simple Orders and Complex Orders, the Exchange proposes to modify notes 1 and 2 to Section I.E. (referred to simply as “note 1” and “note 2”). Regarding note 1, the Exchange proposes to remove language made superfluous by these changes (i.e., to delete reference to the \$0.19 credit for certain Complex Orders) and to make clear that “[t]he credit for Customer Complex Order executions will be provided regardless of whether the Complex Order trades against interest in the Complex Order Book or with individual orders and quotes in the Consolidated Book.”¹⁴ In addition, the Exchange proposes to delete the reference to note 1 that appears solely in Tier 2 and

¹³ As noted herein (see supra note 7), under Tier 2, the Exchange currently offers a credit of \$0.19 per contract for executions of Customer Complex Orders.

¹⁴ See proposed Fee Schedule, Section I.E., n. 1.

to instead add reference to note 1 in each column of the table setting forth the proposed ACE credit for “Complex” executions.¹⁵ To further streamline the Fee Schedule, the Exchange proposes to merge information from note 2 into proposed note 1 (resulting in the deletion of note 2).¹⁶

The Exchange is also proposing a modification to the calculation of an OFP’s Electronic volume. The Exchange would no longer provide overweighting in the calculation for Customer orders that take liquidity. The Exchange believes that eliminating the overweighting of such orders, coupled with the proposed modifications to the ACE credits offered, should incent OFPs to send a variety of different orders to NYSE American Options, including Complex Orders to rest in the Complex Order Book.

The proposed modifications to the ACE Program are designed to further encourage market participants to direct order flow to the Exchange in an effort to achieve the modified (more achievable) qualification thresholds as well as to encourage OFPs to direct Complex Order flow to the Exchange in an effort to qualify for the proposed (more favorable) rebates. To the extent this purposes [sic] is achieved, all Exchange participants would benefit from any additional volume and liquidity through increased opportunities to trade as well as enhancing price discovery.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

¹⁵ See proposed Fee Schedule, Section I.E.

¹⁶ See proposed Fee Schedule, Section I.E., n. 1 (making clear that the potential \$0.25 credit available to OFPs that achieve Tiers 4 or 5 (described supra at note 10) is an *alternative* more favorable credit to the proposed (base) credits for such OFPs, which range from \$0.19 - \$0.24). OFPs that are eligible for more than one credit will always receive the more favorable credit.

the Act,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁸ 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 amendments to the ACE Program are reasonable, equitable and not unfairly discriminatory because they would enhance the incentives to OFPs to transact Customer orders on the Exchange, which would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the ACE Program. Additionally, the Exchange believes the proposed changes to the ACE Program are consistent with the Act because they may attract greater volume and liquidity to the Exchange, which would benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

Specifically, the Exchange believes that the proposal to eliminate Step Up qualifications (for Tiers 1 and 2) would provide the opportunity to all Exchange participants to meet the same reasonable, yet meaningful standard to qualify for the ACE Program credits. The Exchange believes that the proposed modified qualification thresholds to achieve Tier 1 or 2 are reasonably offset by the slightly reduced credits for an OFP's Simple Order executions. The Exchange believes Tiers 1 and 2, as modified, would encourage market participants to direct order flow (especially Simple Orders) to the Exchange in an effort to achieve the modified (more achievable) qualification thresholds. Further, the proposal to set forth ACE credits for Complex

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

Orders would encourage OFPs that transact Customer Complex Orders to direct this order flow to the Exchange in an effort to qualify for the proposed (more favorable) rebates. The Exchange believes that all Exchange participants would benefit from the any [sic] additional volume and liquidity (resulting from the proposed changes) through increased opportunities to trade as well as enhancing price discovery. To the extent this goal is achieved, the Exchange would improve its overall competitiveness and strengthen its market quality for all market participants. The Exchange notes that other exchanges similarly offer credits for executions of Complex Orders and such credits are therefore not new or novel.¹⁹

The proposal to define “Simple Orders,” in the Fee Schedule is likewise reasonable, equitable and not unfairly discriminatory because it would add clarity and transparency to the Fee Schedule to the benefit of all market participants.

The Exchange believes that the proposal to eliminate the overweighting in the calculation for Customer orders that take liquidity is likewise reasonable, equitable and not unfairly discriminatory because eliminating the overweighting of such orders, coupled with the proposed modifications to the ACE credits offered, should incent OFPs to send a variety of different orders to NYSE American Options, including Complex Orders to rest in the Complex Order Book.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

¹⁹ See MIAX Options fee schedule, Section 1.a.ii. (Priority Customer Rebate Program), available here, https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_08072017.pdf (offering per contracts credits ranging from \$0.21-\$0.25 for complex orders). See also The Chicago Board Options Exchange, Inc. (“CBOE”) fee schedule, Volume Incentive Program, at p. 3, available here, <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (offering per contracts credits ranging from \$0.20-\$0.25 for complex orders).

In accordance with Section 6(b)(8) of the Act,²⁰ 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. The Exchange believes the proposed amendments to the ACE Program are pro-competitive as the changes should encourage OFPs to direct Customer order flow – including Complex Orders – to the Exchange and any resulting increase in volume and liquidity to the Exchange would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery. To the extent that this purpose is achieved, this proposal would enhance the quality of the Exchange’s markets and increase the volume of contracts traded here. In turn, all the Exchange’s market participants would benefit from the improved market liquidity. If the proposed changes make the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become ATP Holders. The Exchange notes that other exchanges similarly offer credits for executions of Complex Orders and such credits are not new or novel and would allow the Exchange to better compete with other options exchanges.²¹

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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.

²⁰ 15 U.S.C. 78f(b)(8).

²¹ See supra note 19.

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)²² of the Act and subparagraph (f)(2) of Rule 19b-4²³ 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)²⁴ 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2017-13 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.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(2).

²⁴ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEAMER-2017-13. This file number should be included on the subject line if e-mail 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSEAMER-2017-13, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

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²⁵ 17 CFR 200.30-3(a)(12).