

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83532; File No. SR-NYSEAMER-2018-32)

June 28, 2018

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed 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 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 20, 2018, 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 June 20, 2018.<sup>4</sup> [sic] The proposed 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 it received on the proposed rule change. The text of those statements may be examined at the places

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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 originally filed to amend the Fee Schedule on June 11, 2018 (SR-NYSEAmer-2018-28) and withdrew such filing on June 20, 2018.

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 portions of the Fee Schedule, effective June 20, 2018, by introducing defined terms and pricing for new functionality that facilitates executing Complex Orders using the Complex CUBE Auction mechanism (“Complex CUBE” or “Auction”).

On June 5, 2018, the Exchange received approval to adopt the Complex CUBE mechanism, which operates in a manner substantially similar to the existing Single-Leg CUBE Auction.<sup>5</sup> The Exchange proposes to adopt fees and credits for the Complex CUBE Auction so that such pricing will be in place once the Complex CUBE Auction mechanism is implemented on June 11, 2018.

In short, similar to the Single-Leg CUBE Auction, the Complex CUBE Auction allows an ATP Holder to guarantee the execution of an order it represents as agent on behalf of a public customer, broker dealer, or any other entity, via the Complex CUBE Auction (“Complex CUBE Order”). The ATP Holder that submits the Complex CUBE Order (the “Initiating Participant”) agrees to guarantee the execution of the Complex CUBE Order by submitting a contra-side order (“Complex Contra Order”) representing principal interest or interest it has solicited to trade with the Complex CUBE Order. Although the Complex Contra Order would guarantee the execution

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<sup>5</sup> See Securities Exchange Act Release Nos. 83384 (June 5, 2018), 83 FR 27061 (June 11, 2018) (SR-NYSEAMER-2018-05) (“Complex CUBE Approval Order”); 82802 (March 2, 2018), 83 FR 9769 (March 7, 2018) (SR-NYSEAMER-2018-05) (“Complex CUBE Notice”).

of the Complex CUBE Order, the purpose of the Auction is to provide the Complex CUBE Order the opportunity for price improvement. Accordingly, the Exchange will notify market participants when an Auction is occurring and interested parties may submit “RFR Responses” during the auction.<sup>6</sup>

#### Key Terms and Definitions related to Complex CUBE

First, the Exchange proposes to add (or modify) the following to the “Key Terms and Definitions” section of the Fee Schedule:<sup>7</sup>

- A “Complex CUBE Auction” would refer to the electronic crossing mechanism that provides opportunities for price improvement to Complex CUBE Orders submitted to such auctions.
- A “Single-Leg CUBE Auction” would refer to the electronic crossing mechanism that provides opportunities for price improvement to CUBE Orders submitted to such auctions.
- A “CUBE Auction” would refer collectively to the Single-Leg and Complex CUBE Auctions available on the Exchange. The Exchange will use this reference in the Fee Schedule when executions in (and resulting volume from) such auctions are treated the same.<sup>8</sup>

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<sup>6</sup> Complex Orders on the opposite side of the market as Complex CUBE Order that arrive during the Auction and are eligible to trade with the Complex CUBE Order will be treated as RFR Responses and may trade in the Auction. See Complex CUBE Notice, id. [sic], 83 FR 9769, 9774-5.

<sup>7</sup> See proposed Fee Schedule, Key Terms and Definitions.

<sup>8</sup> See, e.g., Fee Schedule, Sections I.A., note 6 (exempting executions in CUBE Auctions from Marketing Fees), I.C. (excluding CUBE Auction volume from monthly threshold calculations for the Market Maker Sliding Scale program), I.E. (including CUBE Auction volume in monthly threshold calculations for the American Customer Engagement Program (“ACE”) Program, but excluding CUBE Auction executions from eligibility for

- A “Complex CUBE Order” would refer to an agency Complex Order that is guaranteed an execution in the Complex CUBE Auction by a Complex Contra Order.
  - In this regard, the Exchange proposes to modify the current definition of “CUBE Order” to specify that such orders relate to Single-Leg CUBE Auctions.
- A “Complex Contra Order” would be either principal interest or solicited interest an Initiating Participant is using to guarantee the execution of a Complex CUBE Order in the Complex CUBE Auction.
  - In this regard, the Exchange proposes to modify the current definition of “Contra Order” to specify that such orders relate to Single-Leg CUBE Auctions.
- To account for both Single-Leg and Complex CUBE Auctions, the Exchange proposes to modify “Initiating Participant” to refer to “an ATP Holder that submits the CUBE Order (or Complex CUBE Order) and agrees to guarantee the execution of such order by submitting a Contra Order (or Complex Contra Order) representing principal interest or interest it has solicited to trade with the CUBE Order (or Complex CUBE Order).”

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enhanced credits under the ACE Program), [available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE\\_American\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf). In these instances, the Exchange believes it is reasonable to treat Complex CUBE Volume in the same manner as Single-Leg CUBE volume because all CUBE Auction volume is subject to separate fees and credits as set forth in Section I.G. of the Fee Schedule.

## Fees and Credits related to Complex CUBE

Section I.G. sets forth fees and credits related to Single-Leg CUBE Auctions for single-leg orders.<sup>9</sup> The Exchange proposes to implement a pricing structure for the Complex CUBE Auction that mirrors its pricing structure for Single-Leg CUBE Auctions, with differences described below.<sup>10</sup>

As noted above, there are three ways to participate in a Complex CUBE Auction: (i) as the Complex CUBE Order; (ii) as the Complex Contra Order; and (iii) as an RFR Response. The Exchange proposes to charge for participation in the Complex CUBE Auction based on the following schedule of fees:<sup>11</sup>

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<sup>9</sup> See id., Fee Schedule, Section I.G., CUBE Auction Fees & Credits. The Exchange is not modifying fees and credits related to the Single-Leg CUBE Auction. The Exchange proposes to modify Section I.G. to make clear that the current table relates to pricing for executions in a “Single-Leg CUBE Auction” and to add a new table that sets forth pricing for executions in a “Complex CUBE Auction.” See proposed Fee Schedule, Section I.G., CUBE Auction Fees & Credits.

<sup>10</sup> See Securities Exchange Act Release No. 72469 (June 25, 2014), 79 FR 37380 (July 1, 2014) (SR-NYSEMKT-2014-52) (adopting fees and credits related to Single-Leg CUBE Auctions).

<sup>11</sup> See proposed Fee Schedule, Section I.G., CUBE Auction Fees & Credits. The Exchange proposes to modify the Single-Leg CUBE Auction table in Section I.G. to replace references to “both Penny and Non-Penny Pilot” with “all issues” in the table setting forth fees and credits for Single-Leg CUBE Auctions, which adds clarity, transparency and internal consistency to the Fee Schedule. See id. The Exchange likewise proposes to modify note 1 to Section I.G. of the Fee Schedule to make clear that “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,” which adds clarity, transparency and internal consistency to the Fee Schedule. See id.

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<b>Complex CUBE Auction</b>	
<b>Participant/Penny or Non-Penny</b>	<b>Standard Option Per Contract Fee or Credit</b>
Complex CUBE Order Fee Customer – All issues	\$0.00
Complex CUBE Order Fee Non-Customer – All issues	\$0.20
Complex Contra Order Fee – Penny Pilot issues	\$0.05
Complex Contra Order Fee – Non-Penny Pilot issues	\$0.07
RFR Response Fee Customer – All issues	\$0.00
RFR Response Fee Non-Customer – Penny Pilot	\$0.50
RFR Response Fee Non-Customer – Non-Penny Pilot	\$1.05

This proposed pricing is the same as the pricing for participation in the Single-Leg CUBE Auction with the exception of the Complex Contra Order Fee – Non-Penny Pilot issues, which is \$0.02 more than what is charged for such Contra Orders in the Single-Leg CUBE Auction.

The Exchange is also proposing to adopt credits to be paid to Initiating Participants for each Complex CUBE Order contract that does not trade with the Complex Contra Order, which credits increase if the Initiating Participant achieves Tier 2, 3, 4, or 5 of the ACE Program (or “Program”), as set forth below.<sup>12</sup>

<b>Initiating Participant Credit</b>		
<b>Base/ACE Tier</b>	<b>Penny Pilot</b>	<b>Non-Penny Pilot</b>
<b>Base or Tier 1</b>	(\$0.20)	(\$0.50)
<b>Tier 2</b>	(\$0.23)	(\$0.55)
<b>Tier 3</b>	(\$0.26)	(\$0.60)
<b>Tier 4</b>	(\$0.28)	(\$0.65)
<b>Tier 5</b>	(\$0.35)	(\$0.75)

<sup>12</sup> See Fee Schedule, Section I.E., American Customer Engagement (“ACE”) Program,” supra note 7 [sic].

Thus, as proposed, ATP Holders who do not participate in the ACE Program or ACE Program participants who achieve Tier 1 would be eligible for a per contract credit of \$0.20 or \$0.50 for Complex CUBE Orders in Penny Pilot issues or non-Penny Pilot issues, respectively. Further, the Exchange proposes that ACE Program participants that achieve at least Tier 2 would qualify for higher Initiating Credits, based on the Tier achieved, as outlined in the table above. In addition, the Exchange proposes to offer an alternative (higher) credit to ATP Holders that achieve Tier 5 and execute more than 1% TCADV in monthly Initiating Complex CUBE Orders (the “enhanced Tier 5 credits”). The enhanced Tier 5 credits would be \$(0.45) per contract for Penny Pilot issues and (\$0.90) per contract for non-Penny Pilot issues. The Exchange believes enhanced Tier 5 credits would encourage ATP Holders to direct Complex Order volume to the Exchange, specifically via the Complex CUBE mechanism, which benefits all markets participants, particularly those that receive price improvement on their Complex Orders.

The Exchange also proposes to offer an additional \$0.10 per contract rebate to Initiating Participants in the ACE Program (the “ACE Initiating Participant Rebate” or “ACE Rebate”). The ACE Rebate would be available to ATP Holders that achieve at least Tier 1 of the Program and would be applied to each of the first 1,000 Customer contracts for each leg of a Complex CUBE Order execution in a Complex CUBE Auction. The proposed ACE Rebate is payable in addition to any other fees or credits accrued from the Auction (e.g., in addition to the Initiating Participant Credit for both Penny and non-Penny Pilot issues). Thus, as proposed, the maximum potential Complex CUBE credit for Penny Pilot issues is \$0.55 (\$0.10 ACE Rebate + \$0.45 Initiating Participant Credit for Tier 5 ACE Program Participants) and for non-Penny Pilot issues is \$1.00 (\$0.10 ACE Rebate + \$0.90 Initiating Participant Credit for Tier 5 ACE Program Participants). The ACE Rebate is available regardless of whether the Complex CUBE Order

trades with the Complex Contra Order or RFR Response(s), whereas the Initiating Participant Credits (set forth in the table above) are payable only for each Complex CUBE Order contract that does not trade with the Complex Contra Order.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>14</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.

The proposal to add (or modify) defined terms related to the Complex CUBE are reasonable, equitable and not unfairly discriminatory as these terms would add clarity and transparency to the Fee Schedule making it easier to comprehend and navigate. The Exchange notes that the new definitions for Complex CUBE mirror the existing concepts defined in the Fee Schedule for Single-Leg CUBE and that the proposed updates to some existing Single-Leg CUBE definitions are meant to differentiate each of the auctions. Similarly, the proposed modifications to the current table in Section I.G., which are designed to streamline the pricing descriptions or to account for the addition of Complex CUBE pricing, would likewise add clarity and transparency to the Fee Schedule making it easier to comprehend and navigate. Finally, the proposal to treat Complex CUBE Auction executions/volume in the same manner as Single-Leg CUBE vis-à-vis other sections of the Fee Schedule (see supra note 7 [sic]) are reasonable, equitable and not unfairly discriminatory because the Complex CUBE Auction (like the Single-Leg CUBE auction) will be subject to the separate fees and credits as proposed herein.

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

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that the proposed fee structure for the Complex CUBE Auction is reasonable, equitable, and not unfairly discriminatory. The proposed fee structure is reasonably designed because it is intended to incentivize market participants to send Complex Order flow to the Exchange in order to participate in the price improvement mechanism in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. Complex CUBE Auctions and the corresponding fees are also reasonably designed because the proposed fees and credits are very similar to ones the Exchange assesses for Single-Leg CUBE Auctions, and are within the range of fees and credits assessed by other exchanges employing similar fee structures for complex orders submitted and executed in a price improvement mechanism.<sup>15</sup> Other competing exchanges offer different fees and credits for complex agency orders, contra-side orders, and responders to an auction in a manner similar to the proposal.<sup>16</sup> Other competing exchanges also charge different rates for transactions in their complex price improvement mechanisms for Customers versus their non-Customers in a manner similar to the proposal.<sup>17</sup>

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<sup>15</sup> See e.g., Nasdaq ISE, LLC (“ISE”) Schedule of Fees, Section I, II, IV.B., [available here, http://ise.cchwallstreet.com/tools/PlatformViewer.asp?selectednode=chp\\_1\\_1\\_2&manual=%2Fcontents%2Fise%2Fise-fee%2F](http://ise.cchwallstreet.com/tools/PlatformViewer.asp?selectednode=chp_1_1_2&manual=%2Fcontents%2Fise%2Fise-fee%2F) (setting forth fees and credits related to its price improvement auction or PIM); BOX Options Exchange (“BOX”) Fee Schedule, [available here, https://boxoptions.com/assets/BOX-Fee-Schedule-as-of-April-2-2018.pdf](https://boxoptions.com/assets/BOX-Fee-Schedule-as-of-April-2-2018.pdf) (setting forth fees and credits related to its price improvement auctions -- PIP (for single-leg orders) or COPIP (for complex orders)); MIAX Options fee schedule, [available here, https://www.miaxoptions.com/sites/default/files/fee\\_schedule-files/MIAX\\_Options\\_Fee\\_Schedule\\_03012018B.pdf](https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_03012018B.pdf) (setting forth fees and credits related to its price improvement auctions -- PRIME (for single-leg orders) or cPRIME (for complex orders)); Cboe fee schedule, [available here, http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf](http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf) (setting forth fees and credits related to its price improvement auction or AIM).

<sup>16</sup> See *id.*

<sup>17</sup> See *id.* For example, on ISE, fees for trades in Select and Non-Select Symbols are \$0.00 per contract for Priority Customer Crossing Orders and \$0.20 per contract for non-Priority Customer Crossing Orders. Similarly, BOX charges \$0.00 per contract for

The Complex CUBE transaction fees applied are reasonable, equitable, and not unfairly discriminatory because they would apply equally amongst all Customer orders in each category of Complex CUBE Auction participation and would also apply equally amongst all non-Customer orders in each category of Complex CUBE. Regarding Customers, all similarly situated orders for Customers are subject to the same transaction fee schedule and the Exchange believes that is equitable and not unfairly discriminatory that Customers be charged lower fees in Complex CUBE Auctions than other market participants. The exchanges in general have historically aimed to improve markets for investors and develop various features within market structure for customer benefit.<sup>18</sup> The Exchange assesses Customers lower or no transactions fees because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Regarding Non-Customers, all similarly situated orders for market participants that are not Customers are subject to the same transaction fees and access to the Exchange is offered on terms that are not unfairly discriminatory.<sup>19</sup> Moreover, assessing a higher transaction fee on Non-Customer interest than on Customer interests for Complex CUBE Order transactions is

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Customer COPIP orders, but charges \$0.05 per contract for COPIP orders submitted on behalf of Professional Customers, Broker Dealers or Market.

<sup>18</sup> The Exchange notes that, as discussed below, certain Non-Customers may be eligible to enhanced Initiating Participant Credits based on volume executed on the Exchange, which would offset their transaction costs.

<sup>19</sup> For example, the Exchange offers Customers preferential rates for other trades executed on the Exchange such as for Qualified Contingent Cross (“QCC”) orders. See, e.g., Fee Schedule, Section I.F., supra note 7 [sic] (assessing \$0.00 per contract for Customer QCC orders and \$0.20 per contract for non-Customer QCC orders).

reasonable, equitable, and not unfairly discriminatory because these types of market participants are more sophisticated and have higher levels of order flow activity and system usage, which system usage better equips Non-Customers to both interact with Auctions and to react to market changes. This level of trading activity draws on a greater amount of system resources than that of Customers, and thus, generates greater ongoing operational costs. Further, the Exchange believes that charging all market participants that are not Customers the same fee for all transactions is not unfairly discriminatory as the fees will apply to all these market participants equally.

The Exchange likewise believes that it is reasonable for Complex CUBE Orders and Complex Contra Orders to be assessed lower fees than those providing RFR Responses. Complex Contra Orders guarantee the Complex CUBE Order, and are subject to market risk during the time period that the Complex CUBE Order is exposed to other market participants. The Exchange believes that the market participants entering the Complex Contra Order plays a critical role in the Auction as their willingness to guarantee the Complex CUBE Order is the keystone to providing that CUBE Order the opportunity for price improvement. The Exchange believes that it is equitable and not unfairly discriminatory to assess fees to responders to the Complex CUBE Auction and credit another participant to provide incentive for participants to submit order flow to Complex CUBE Auctions (as discussed further below). The Exchange believes that it is appropriate to provide incentives to market participants to direct orders to participate in Complex CUBE Auction. Further, the Exchange believes that the proposed transaction fees for responding to the Auction would not deter market participants from providing price improvement.

Similarly, the Exchange believes that the proposed changes to CUBE Auction credits are reasonable, equitable and not unfairly discriminatory. First, as proposed, all Initiating Participants would receive a base per contract credit for each Complex CUBE Order contract that does not trade with the Complex Contra Order in a Complex CUBE Auction, regardless of whether that Initiating Participant qualifies for the ACE Program. Thus, the proposed credits are not applied in a discriminatory manner. The proposed credits of \$0.20 per contract for Penny Pilot issues and \$0.50 per contract for non-Penny Pilot issues are consistent with “break up” credits offered on other exchanges.<sup>20</sup>

The Exchange also believes the proposal to provide ATP Holders the opportunity to achieve greater Initiating Participant Credits, based on Tier, if those ATP Holders achieve at least Tier 2 of the ACE Program is likewise reasonable, equitable and not unfairly discriminatory. The ACE Program is based on the amount of Customer business transacted on the Exchange and offers ATP Holders an enhanced per contract credit on transaction fees for Customer volumes above certain minimum thresholds (established in Tiers 1 - 5). Thus, the Exchange believes this proposed change is reasonably designed because it would incentivize providers of Customer order flow to direct that order flow to the Exchange to receive greater Complex CUBE credits in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed (tiered) rebate is fair, equitable, and not unreasonably discriminatory because it would apply equally to all Customer orders submitted as a Complex CUBE Order. The Exchange also notes that the concept of offering a tiered rebate in connection with a price improvement auction is not

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<sup>20</sup> For example, the ISE pays a volume-based Complex PIM Break Up Rebate ranging from a base rate of \$0.26 per contract in Select Symbols to \$0.85 in the highest tier for contracts submitted to a PIM that do not trade with their contra order. See ISE fee schedule, supra note 15.

new or novel.<sup>21</sup> Finally, the Exchange believes this proposed tiered rebate is reasonable because it would attract more volume and liquidity to the Exchange generally, and to Complex CUBE Auctions specifically, and would therefore benefit all market participants (including those that do not participate in the ACE Program) through increased opportunities to trade at potentially improved prices as well as enhancing price discovery. The Exchange believes enhanced Tier 5 credits would encourage ATP Holders to direct Complex Order volume to the Exchange, specifically via the Complex CUBE mechanism, which benefits all markets participants, particularly those that receive price improvement on their Complex Orders.

The Exchange believes that the proposed ACE Initiating Participant credit is likewise reasonable, equitable and not unfairly discriminatory. Specifically, the ACE Initiating Participant Rebate is based on the amount of business transacted on the Exchange and is designed to attract more volume and liquidity to the Exchange generally, and to CUBE Auctions specifically, which will benefit all market participants (including those that do not participate in the ACE Program) through increased opportunities to trade at potentially improved prices as well as enhancing price discovery. Furthermore, the proposed ACE Rebate is reasonably designed and not unfairly discriminatory because it is available regardless of the parties that trade with the Complex CUBE Order (i.e., whether the CUBE Order trades with the Complex Contra Order or otherwise). The Exchange notes that the proposal to offer an additional incentive to participate in the Complex CUBE Auction to those ATP Holders that have achieved certain monthly volume thresholds is also not new or novel.<sup>22</sup> Nor it is novel that the Exchange caps the amount of the

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<sup>21</sup> See id.

<sup>22</sup> For example, MIAX offers an additional per contract rebate on certain agency orders executed in PRIME, which provides for a maximum credit of \$0.12 per contract, based on a member achieving certain monthly volume thresholds. See MIAX fee schedule, Priority Customer Rebate Program, supra note 15.

potential rebate at the first 1,000 contracts per leg of a Complex CUBE Order, as the Exchange currently caps the potential rebate in the Single-Leg CUBE at the first 5,000 Customer contracts of a CUBE Order.<sup>23</sup> The Exchange notes that although the proposed ACE Rebate applies solely to Customer orders, it is nonetheless equitable and not unfairly discriminatory because it would enhance the incentives to ATP Holders to transact Customer orders on the Exchange and an increase in Customer order flow would bring greater volume and liquidity to the Exchange. Increased volume to the Exchange benefits all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the ACE Program.

The Exchange believes that it is reasonable to assess lower transaction and credit rates to Penny Pilot option classes than non-Penny Pilot option classes. The Exchange believes that options that trade at these wider spreads merit offering greater inducement for market participants. In particular, within the Complex CUBE Auction, option classes that typically trade in minimum increments of \$0.05 or \$0.10 provide greater opportunity for market participants to offer price improvement. As such, the Exchange believes that the opportunity for additional price improvement provided by these wider spreads again merits offering greater incentive for market participants to increase the potential price improvement for customer orders in these transactions.

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<sup>23</sup> Similar to the Exchange, Cboe also caps the number of contracts submitted to its price improvement auction that are eligible for additional volume rebates. Cboe's cap is at 1,000 contracts per order for simple executions and at 1,000 contracts per leg for complex executions. See Cboe fee schedule, Volume Incentive Program, supra note 15.

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

In accordance with Section 6(b)(8) of the Act,<sup>24</sup> 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 that the proposed change would enhance the competitiveness of the Exchange relative to other exchanges that offer their own electronic crossing mechanisms, including for complex orders.<sup>25</sup> The Exchange believes that the proposed fees and rebates for participation in the Complex CUBE Auction would not have an impact on intra-market competition based on the total cost for participants to transact in such order types versus the cost for participants to transact in the other order types available for trading on the Exchange.

As noted above, the Exchange believes that the proposed pricing for the Complex CUBE Auction is comparable to its own pricing for Single-Leg CUBE and that of other exchanges offering similar electronic price improvement mechanisms for complex orders.<sup>26</sup> The Exchange believes that, based on experience with electronic price improvement crossing mechanisms on other markets, market participants understand that the price-improving benefits offered by the Complex CUBE Auction justify the transaction costs associated with the Auction. To the extent that there is a difference between non-Complex CUBE Auction transactions and Complex CUBE

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<sup>24</sup> 15 U.S.C. 78f(b)(8).

<sup>25</sup> See supra note 14. See also Chicago Board Options Exchange, Inc. (“CBOE”) Rule 6.74A – Automated Improvement Mechanism (“AIM”); Nasdaq PHLX, LLC (“PHLX”) Rule 1087 – Price Improvement XL (“PIXL”); BOX Options Exchange LLC (“BOX”) Rule 7245 – Complex Order Price Improvement Period (“COPIP”); Nasdaq ISE, LLC (“ISE”) Rule 723 – Price Improvement Mechanism (“PIM”); Miami International Securities Exchange, LLC (“MIAX”) Rule 515A, Interpretation and Policies .12 - Price Improvement Mechanism (“PRIME”).

<sup>26</sup> See Fee Schedule, Section I.G., CUBE Auction Fees & Credits, supra note 8 and supra note 16 (citing the fee schedules of other exchanges that set forth pricing for price improvement auctions).

Auction transactions, the Exchange does not believe this difference would cause participants to refrain from responding to Complex CUBE Auctions. The Exchange expects to see robust competition within the Complex CUBE Auction to trade against the Complex CUBE Order.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues 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. The Exchange believes that the proposed rule change reflects this competitive environment because it establishes a fee structure in a manner that encourages market participants to direct their order flow, to provide liquidity, and to attract additional transaction volume to the Exchange.

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>27</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>28</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

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>28</sup> 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)<sup>29</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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2018-32 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-2018-32. 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

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<sup>29</sup> 15 U.S.C. 78s(b)(2)(B).

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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2018-32 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.<sup>30</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>30</sup> 17 CFR 200.30-3(a)(12).