

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82809; File No. SR-NYSEAMER-2018-06)

March 6, 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 February 23, 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 March 1, 2018. 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

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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.

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, effective March 1, 2018. Specifically, the Exchange proposes to modify the Messages to Contracts Traded Ratio Fees by modifying the number of messages permitted by an ATP holder before excessive messages are charged.

The Exchange proposes to modify the calculation basis for the Messages to Contracts Traded Ratio Fees (“Messages Fee”), which are assessed as part of the Monthly Excessive Bandwidth Utilization Fees.<sup>4</sup> Currently, the Exchange charges \$0.005 per 1,000 messages (including orders or quotes) in excess of 1.5 billion messages in a calendar month if the ATP Holder does not execute at least 1 contract for every 1,500 – 5,000 messages entered, as determined by the Exchange.<sup>5</sup> The Exchange proposes to modify the threshold and to charge for messages in excess of 3 billion messages per calendar month.

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<sup>4</sup> See Fee Schedule, Section II (Monthly Excessive Bandwidth Utilization Fees) (“EBUF”) (describing both the Order to Trade Ratio Fee (Section II.A) and the Messages to Contracts Traded Ratio Fee (Section II.B), which comprises the EBUF, and noting that if an ATP Holder is liable for either or both fees in a given month, that firm would only be charged the greater of the two fees). The Exchange is not proposing to modify the Order to Trade Ratio Fees.

<sup>5</sup> Currently, the Exchange has set the ratio at 1 contract for every 5,000 messages.

During the period of recent volatility and activity, the Exchange noted a significantly higher number of messages generated without a proportional amount of executed volume, especially in less active-option issues. Concurrently, the Exchange saw no degradation in system performance because of prudent upgrades and expansion of the trading system in the past year. Thus, the Exchange believes that the proposal to increase the threshold to incur the monthly Messages Fee would continue to encourage market participants to be rational and efficient in the use of the Exchange's system capacity. The Exchange believes that the increased threshold should also reduce the possibility of charging ATP Holders a Messages Fee for messages designed to help maintain accurate and liquid markets with more narrow spreads.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>7</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 Exchange believes that the proposed modification to the Messages Fees is reasonable, equitable, and not unfairly discriminatory because it should still encourage market participants to be rational and efficient in the use of the Exchange's system capacity, which benefits all market participants. The proposed calculation basis is reasonable because it would apply to all market participants that are subject to the

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

Messages Fee.

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

In accordance with Section 6(b)(8) of the Act,<sup>8</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 the proposed changes to the Messages Fees would not place an unfair burden on competition as it would continue to encourage efficient use of Exchange bandwidth and would apply to all market participants that are subject to the Messages Fee.

To the extent that these purposes are achieved, the Exchange believes that the proposed changes would enhance the quality of the Exchange's markets and increase the volume of orders directed to the Exchange. 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 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.

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

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>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</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>11</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. Please include File Number SR-

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

NYSEAMER-2018-06 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2018-06. 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. 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-2018-06 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>12</sup>

Eduardo A. Aleman  
Assistant Secretary

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