

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-89490; File No. SR-NYSEAMER-2020-61)

August 6, 2020

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend 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 August 3, 2020, 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, 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 amend the NYSE American Options Fee Schedule (“Fee Schedule”) regarding the Professional Step-Up Incentive program. The Exchange proposes to implement the fee change effective August 3, 2020. 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

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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.

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 regarding the Professional Step-Up Incentive program.

The Exchange proposes to implement the rule change on August 3, 2020.

Background

The Exchange has established various pricing incentives designed to encourage increased Electronic volume executed on the Exchange, including (but not limited to) the American Customer Engagement (“ACE”) Program, which provides credit on certain Customer executions, and the Professional Step-Up Incentive program (the “Step-Up Incentive”).<sup>4</sup>

The Step-Up Incentive is a four-tier program -- Tiers A-D -- that offers discounted rates on monthly Professional volume as well as certain credits on Customer Electronic volume to ATP Holders that increase their Professional volume (excluding Strategy Executions, CUBE Auctions, and QCC Transactions) by specified percentages of Total Industry Customer equity and ETF option average daily volume (“TCADV”),<sup>5</sup> over their August 2019 volume, or in the

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<sup>4</sup> See Sections I.H and I.E. of the Fee Schedule (describing Professional Step-Up Incentive and ACE Program, respectively), 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).

<sup>5</sup> The term “TCADV” is defined in the Key Terms and Definitions Section of the Preface of the Fee Schedule, *see supra* note 4. TCADV includes Options Clearing Corporation (“OCC”) calculated Customer volume of all types, including Complex Order transactions and QCC transactions, in equity and ETF options.

case of new ATP Holders, above a base level of 10,000 ADV (the “Qualifying Volume”).<sup>6</sup> ATP Holders that qualify for current Tiers C and D are also entitled to credits on their monthly Customer Electronic volume at the same rate as participants that achieve Tier 1 in the ACE Program.<sup>7</sup>

The Exchange proposes to simplify the Step-Up Incentive, which is voluntary, by removing two of the four tiers. In doing so, the Exchange has determined that it no longer seeks to provide a financial incentive for minimal increases to an ATP Holder’s base volume levels and therefore proposes to increase the qualifying volume that would be required for the Step-Up Incentive’s lower tier. The Exchange believes that the modified incentive program would still encourage ATP Holders to direct order flow to the Exchange, particularly given the high level of options trading in 2020, which additional liquidity benefits all markets participants on the Exchange.

#### Proposed Rule Change

##### *Professional Step-Up Incentive*

The Exchange is proposing to reduce the number of Step-Up Incentive Tiers from four to two by eliminating current Tiers A and C and renaming the remaining Tiers B and D as proposed Tiers A and B, respectively.<sup>8</sup> The Exchange also proposes to raise the qualification for the new Tier A (existing Tier B) from 0.08% of TCADV to 0.12% of TCADV. The proposed rule change

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<sup>6</sup> For purposes of this filing, “Professional” Electronic volume includes: Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm.

<sup>7</sup> See Fee Schedule, *supra* note 4.

<sup>8</sup> Proposed (and simply renamed) Tier B is substantively the same as existing Tier D and therefore “ATP Holders that increase Qualifying Volume by 0.20% of TCADV and execute posted Professional volume (i.e., that adds liquidity) of at least 0.10% of TCADV will receive a \$0.03 per contract discount off the Tier B rates.” See proposed Fee Schedule, Section I.H., note 1.

is shown in the table below, with to-be-deleted text in brackets and proposed (new) text underscored.<sup>9</sup>

Professional Step-Up Incentive				
	Qualifying Volume as a % of TCADV	Per Contract Penny Rate	Per Contract Non Penny Rate	ACE Benefits
[Tier A]	[0.06%]	[\$0.45]	[\$0.70]	[N/A]
Tier [B] <u>A</u>	[0.08%] <u>0.12%</u>	\$0.35	\$0.60	[N/A] <u>Tier 1</u>
[Tier C]	[0.10%]	[\$0.25]	[\$0.55]	[Tier 1]
Tier [D] <u>B</u> <sup>1</sup>	0.15%	\$0.20	\$0.50	Tier 1

As shown in the table above, by achieving an increase in Qualifying Volume, benefits accrue to the ATP Holder. To put in context, assume an ATP Holder executed Electronic Professional volume in August 2019 totaling 9,000 ADV and, in July, the TCADV is 17,200,000. To qualify for the Step-Up Incentive program, that ATP Holder would need to execute Electronic Professional volume above its August 2019 volume that is at least 20,640 ADV (i.e., 0.12% of TCADV) for new Tier A; 25,800 ADV (i.e., 0.15% of TCADV) for new Tier B. If that same ATP Holder did not have August 2019 volume, it would have to execute at least this much volume above the 10,000 ADV base level.

The net result of the incentive program as modified is that proposed Tier A has a slightly higher minimum monthly volume requirement than the Tiers being deleted and a slightly higher (but still discounted) rate than existing Tier C. However, as further proposed, ATP Holders that qualify for new Tiers A and B would be eligible for ACE Tier 1 credits on certain Customer

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<sup>9</sup> See proposed Fee Schedule, Section I.H.

executions,<sup>10</sup> which should also encourage an increase in Customer volume to the benefit of all market participants.

The Exchange's fees are constrained by intermarket competition, as ATP Holders may direct their order flow to any of the 16 options exchanges, including those with similar incentive programs.<sup>11</sup> To address this competitive environment, the Exchange offers incentives, such as the voluntary Step-Up Incentive to encourage ATP Holders to consistently direct order flow (in particular Professional flow) to the Exchange. The Exchange believes that the proposal to streamline the Step-Up Incentive would simplify the incentive program while still offering discounted rates and credits. Although proposed Tier A of the modified Step-Up Incentive would require a higher minimum volume threshold for a lower discount (than existing, to-be-deleted, Tier C), the Exchange believes the incentive program would continue to incent ATP Holders to direct volume to the Exchange. In particular, proposed Tier A together with the existing requirements of new Tier B (current Tier D) continue to offer discounted rates coupled with ACE Tier 1 credits on certain Customer executions at a time where the Exchange has experience a significant increase in options trading. The Exchange believes the Step-Up Incentive, as modified, should continue to incent the consistent and concerted redirection of order flow to the Exchange by ATP Holders in exchange for better economics as provided by the incentive

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<sup>10</sup> See Fee Schedule, Section I. A., supra note 4 (setting forth options transactions rates for Electronic Professional volume of \$0.50 and \$0.75 for Penny and Non-Penny issues respectively; except that Firm execution in Penny issues are charged \$0.47 per contract).

<sup>11</sup> See e.g., MIAX Options fee schedule, Section 1.a.iv, Professional Rebate Program, available here, [https://www.miaxoptions.com/sites/default/files/fee\\_schedule-files/MIAX\\_Options\\_Fee\\_Schedule\\_04012019.pdf](https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_04012019.pdf) (setting forth per contract credits on volume submitted for the account of Public Customers that are not Priority Customers, Non-MIAX Market Makers, Non-Member Broker Dealers, and Firms (collectively, Professional for purposes of MIAX program), provided the Member achieves certain Professional volume increase percentage thresholds (set forth in the schedule) in the month relative to the fourth quarter of 2015).

program (i.e., enhanced discounts and credits), making it a more attractive venue for trading.

The Exchange notes that all market participants stand to benefit from increased Electronic Professional volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants, including those that do not participate in (or qualify for) the Step-Up Incentive (or the ACE) program.

The Exchange cannot predict with certainty whether any ATP Holders would avail themselves of the proposed rule change.

## 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.

### The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive 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

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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).

promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>14</sup>

There are currently 16 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, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in June 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.<sup>16</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The proposal to simplify the Step-Up Incentive by removing two of the four tiers is reasonable because participation in the incentive program is voluntary and the Exchange continues to offer discounted rates and credits. Although proposed Tier A of the modified Step-

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<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 volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

<sup>16</sup> Based on OCC data, *see id.*, the Exchange’s market share in equity-based options increased slightly from 8.20% for the month of June 2019 to 8.32% for the month of June 2020.

Up Incentive would require a higher minimum volume threshold for a lower discount (than existing, to-be-deleted, Tier C), the Exchange believes the incentive program would continue to incent ATP Holders to direct volume to the Exchange. In particular, proposed Tier A (which has a slightly higher minimum monthly volume requirement than the Tiers being deleted) together with the existing requirements of new Tier B (current Tier D) continue to offer discounted rates coupled with ACE Tier 1 credits on certain Customer executions at a time where the Exchange has experience a significant increase in options trading. The Exchange believes the Step-Up Incentive, as modified, should continue to incent the consistent and concerted redirection of order flow to the Exchange by ATP Holders in exchange for better economics as provided by the incentive program (i.e., enhanced discounts and credits), making it a more attractive venue for trading.

The Exchange believes that the Step-Up Incentive, as modified, is still designed to encourage ATP Holders to increase the amount of Electronic Professional (and, given the ACE Tier 1 benefits, even Customer) volume directed to and executed on the Exchange. The Exchange notes that all market participants stand to benefit from increased Electronic Professional (and Customer) volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants, including those that do not participant in (or qualify for) the Step-Up Incentive (or the ACE) program.

The Exchange cannot predict with certainty whether any ATP Holders would avail themselves of the proposed rule change.

Finally, to the extent the proposed change attract greater volume and liquidity, the Exchange believes this would improve the Exchange's overall competitiveness and strengthen its



market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The proposed rule change is designed to incent ATP Holders to direct liquidity to the Exchange in Electronic executions, similar to other exchange programs with competitive pricing programs, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.<sup>17</sup>

The Proposed Rule Change is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of the Step-Up Incentive or not. Moreover, the proposal is designed to encourage ATP Holders to aggregate their executions -- particularly Electronic Professional (and Customer) -- at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Professional (and Customer) Electronic 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 rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change is not Unfairly Discriminatory

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<sup>17</sup> See, e.g., supra note 11 (regarding MIAX Professional Rebate Program).

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

Regarding the eliminated of Incentive Step-Up Tiers A and C, ATP Holders would continue to have the option of availing themselves of the still-reduced rates for Professional volume, as well as the ACE Tier 1 credits on certain Customer executions, that are available under proposed new Tier A and renamed Tier B.

The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders are not obligated to try to achieve either of the incentive pricing options. Rather, the proposal is designed to continue to encourage these participants to utilize the Exchange as a primary trading venue (if they have not done so previously) or increase Electronic volume sent to the Exchange. To the extent that the proposed change attracts 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 change would improve market quality for all market participants on the Exchange and, as a consequence, 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.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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 change -- which continues to offer discounted rates and credits -- would 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 change furthers 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>18</sup>

*Intramarket Competition.* The proposed change is designed to attract additional order flow (particularly Professional, and Customer, volume) to the Exchange. The Exchange believes that the proposed modification to the Step-Up Incentive would continue to incent market participants to direct additional volume to the Exchange. Greater liquidity benefits all market participants on the Exchange. The proposed qualification Tiers would be available to all similarly-situated market participants that incur transaction fees on Electronic executions, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must

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<sup>18</sup> See Reg NMS Adopting Release, supra note 14, at 37499.

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>19</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in June 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.<sup>20</sup>

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner 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.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar pricing incentives, by encouraging additional orders to be sent to the Exchange for execution.

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>21</sup> of

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<sup>19</sup> See supra note 15.

<sup>20</sup> Based on OCC data, supra note 16, the Exchange's market share in equity-based options was 8.20% for the month of June 2019 and 8.32% for the month of June 2020.

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

the Act and subparagraph (f)(2) of Rule 19b-4<sup>22</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>23</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-2020-61 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-2020-61. This file number should be included on the subject line if e-mail is used. To help the Commission process and

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<sup>22</sup> 17 CFR 240.19b-4(f)(2).

<sup>23</sup> 15 U.S.C. 78s(b)(2)(B).

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, D.C. 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-2020-61 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>24</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).