

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-91248; File No. SR-NYSEAMER-2021-12)

March 3, 2021

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the NYSE American Options Fee Schedule

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 March 1, 2021, 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 an incentive program for Market Makers. The Exchange proposes to implement the fee change effective March 1, 2021. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements 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 to eliminate an incentive program that was designed to encourage Market Makers<sup>4</sup> to increase their Manual volume above a base rate (the "Step-Up Program"). The Exchange proposes to implement the rule change on March 1, 2021.

Currently, the Exchange offers discounts on the standard \$0.25 per contract fee on Manual volume to Market Makers that increase their Manual volume by a specified percentage of TCADV over their August 2019 volume or, for new Market Makers, that increase Manual volume by a specified percentage of TCADV above a base level of 15,000 ADV ("Increased Manual Volume"). Specifically, the Exchange provides an \$0.18 per contract charge on Increased Manual Volume to Market Makers (excluding Specialists and e-Specialists)<sup>5</sup> with Increased Manual Volume of at least 0.15% TCADV and a \$0.12 per contract charge on Increased Manual Volume to Market Makers with Increased Manual Volume of at least 0.30% TCADV.

The Exchange adopted the Step-Up Program -- a voluntary program -- in October of 2019

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<sup>4</sup> Unless otherwise specified, the term "Market Makers" as used herein includes Specialists and e-Specialists.

<sup>5</sup> Specialists and e-Specialists already pay a rate of \$0.18 per contract on Manual volume.

to encourage Market Makers to increase Manual volume on the Exchange.<sup>6</sup> However, because the Step-Up Program has not been utilized (and therefore did not achieve its intended effect), the Exchange proposes to eliminate the Step-Up Program from the Fee Schedule.<sup>7</sup>

The Exchange believes that the elimination of the Step-Up Program would not impact any Market Makers, given that no Market Makers ever achieved the Increased Manual Volume necessary to qualify for the discounted rates.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</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 rule change to eliminate the Step-Up Program from the Fee Schedule is reasonable because this program has not been utilized and thus has not effectively incented Market Makers to increase participation in manual executions on the Exchange. The Exchange believes eliminating an unutilized incentive program would simplify the Fee Schedule. The Exchange believes that eliminating the Step-Up Program from the Fee

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<sup>6</sup> See Securities Exchange Act Release No. 87404 (October 28, 2019), 84 FR 58772 (November 1, 2019) (SR-NYSEAMER-2019-43) (notice regarding adoption of the Step-Up Program).

<sup>7</sup> See proposed Fee Schedule, Section I.A. (reflecting deletion of footnote 8 relating to the Step-Up Program).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

Schedule is equitable and not unfairly discriminatory because the program would be eliminated in its entirety and would no longer be available to any Market Maker.

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, the Exchange believes that the proposed elimination of the Step-Up Program from the Fee Schedule would not affect intramarket or intermarket competition because, as discussed above, the program has not incited Market Makers to increase participation in manual executions on the Exchange. In addition, because only those Market Makers that increased their Manual volume by specified amounts were eligible for discounted rates under the Step-Up Program, the proposed elimination of the program would remove a potential burden on competition in that it would level the playing field for all Market Makers operating on the Exchange.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges. In such an environment, the Exchange must continually adjust its fees and rebates 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 removes an unutilized program that did not achieve its intended purpose of attracting order flow.

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>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</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>12</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-2021-12 on the subject line.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

Paper comments:

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

All submissions should refer to File Number SR-NYSEAMER-2021-12. 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-2021-12, 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>13</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).