

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92592; File No. SR-NYSEAMER-2021-35)

August 6, 2021

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to amend the NYSE American Equities Price List and Fee Schedule

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 30, 2021, NYSE American LLC (“NYSE American” or “Exchange”) filed with the Securities and Exchange Commission (“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 Equities Price List and Fee Schedule (“Price List”) to offer an optional monthly per security credit to Electronic Designated Market Makers (“eDMM”) that elect to receive a lower transaction credit per share credit for adding liquidity to the Exchange. 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.

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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.

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 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 Exchange proposes to amend the Price List to offer an optional monthly per security credit to eDMMs that elect to receive a lower transaction credit per share credit for adding liquidity to the Exchange.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for eDMMs to increase quoting on, and send additional displayed liquidity to, the Exchange.

The Exchange proposes to implement the fee changes effective August 2, 2021.

Competitive Environment

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

promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>4</sup>

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”<sup>5</sup> Indeed, cash equity trading is currently dispersed across 16 exchanges,<sup>6</sup> numerous alternative trading systems,<sup>7</sup> and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share.<sup>8</sup> Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange currently has less than 1% market share of executed volume of cash equities trading.<sup>9</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or

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<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

<sup>5</sup> See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

<sup>6</sup> See Cboe U.S Equities Market Volume Summary, available at [https://markets.cboe.com/us/equities/market\\_share](https://markets.cboe.com/us/equities/market_share). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexc hangeshtml.html>.

<sup>7</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atslist.htm>.

<sup>8</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

<sup>9</sup> See *id.*

reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow.

Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

#### Proposed Rule Change

The Exchange proposes an optional monthly credit per security ("Credit Per Security") to eDMMs, up to a maximum credit of \$550 per month across all assigned securities, provided that the eDMM agrees to a lower transaction credit of \$0.0030, from \$0.0045 currently, for adding displayed liquidity for all assigned securities. An eDMM electing the additional Credit Per Security must notify the Exchange prior to the start of a month if the eDMM elects to change their credit either to or from the Credit Per Security for all the eDMM's assigned securities.

The Credit Per Security will be available for the following month for each assigned security where the eDMM meets the following quoting requirements:

- An eDMM quoting at the National Best Bid or Offer ("NBBO") for a minimum average of 25% of the time would be entitled a \$100 Credit Per Security per month, or
- An eDMM quoting at the NBBO for a minimum average of 40% of the time would be entitled a \$250 Credit Per Security per month, or
- Finally, an eDMM quoting at the NBBO for a minimum average of 50% of the time would be entitled to the maximum \$550 Credit Per Security per month.

The Exchange believes that providing Exchange eDMMs with the option to receive a

lower per share transaction credit for increased quoting and adding displayed liquidity in exchange for monthly rebates per assigned security would foster liquidity provision and stability in the marketplace and lessen eDMM reliance on transaction fees, to the benefit of the marketplace and all market participants.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>11</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, is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and does not unfairly discriminate between customers, issuers, brokers or dealers.

### The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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 promoting market competition in its broader forms

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

that are most important to investors and listed companies.”<sup>12</sup>

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange by offering further incentives for eDMMs to quote on, and send additional displayed liquidity to, the Exchange.

The Exchange believes that providing eDMMs with the option to receive a lower per share transaction credit for adding displayed liquidity in exchange for monthly rebates per assigned security, up to a maximum credit of \$550 per month across all eDMM assigned securities, is reasonable because it would foster liquidity provision and stability in the marketplace and lessen eDMM reliance on transaction fees, to the benefit of the marketplace and all market participants. Moreover, the proposal is reasonable because it would balance the increased risks and heightened quoting and other obligations that eDMMs on the Exchange have and that other market participants do not. The Exchange also believes that assigning a maximum credit of \$550 per month for the Credit Per Security is reasonable and will provide a further incentive for eDMMs to quote and trade a greater number of securities on the Exchange and will generally allow the Exchange and eDMMs to better compete for order flow, and thus enhance competition.

#### The Proposed Fee Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees and credits among its market participants. The Exchange believes that it is equitable to offer eDMMs the option to receive a lower per share transaction credit for adding displayed liquidity in exchange for monthly rebates per assigned security because it would balance the increased risks and heightened quoting and other obligations that eDMMs on the Exchange have and that other

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<sup>12</sup> See Regulation NMS, supra note 6, 70 FR at 37499.

market participants do not have. As such, it is equitable to offer eDMMs the option to receive a flat per security credit based on the eDMM's quoting in that symbol, coupled with a lower transaction fee. The requirement is also equitable because it would apply equally to all eDMM firms, who would have the option to elect (or not elect) to participate on a monthly basis. Moreover, the Exchange believes that the proposal is equitable because eDMMs would be required to meet prescribed quoting requirements in order to qualify for the payments, as described above. All eDMMs would be eligible to elect to receive a Credit Per Security and could do so by notifying the Exchange and meeting the per symbol quoting requirement.

#### The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory. In the prevailing competitive environment, market participants, including eDMMs, are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The Exchange believes it is not unfairly discriminatory to offer eDMMs the option to receive a flat per security credit coupled with a lower transaction fee for orders that provide displayed liquidity assigned securities as the proposed credits would be provided on an equal basis to all such participants. The Credit Per Security would apply equally to all eDMM firms, who would have the option to elect (or not elect) to participate on a monthly basis. Further, the Exchange believes the proposed incremental credits would incentivize eDMMs that meet the proposed quoting requirements to send more orders to the Exchange to qualify for a higher Credit Per Security. The proposal to introduce an additional eDMM credit neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed threshold would be applied to all similarly situated eDMMs, who would all be eligible for the same credit on an equal basis.

Accordingly, no eDMM already operating on the Exchange would be disadvantaged by this allocation of fees.

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

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

In accordance with Section 6(b)(8) of the Act,<sup>13</sup> the Exchange believes that the proposed rule change would not 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 fee change 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 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>14</sup>

*Intramarket Competition.* The Exchange believes the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to attract additional liquidity to the Exchange. The Exchange believes that the proposed credit and lower fee would incentivize eDMMs to increase quoting on the Exchange in assigned securities and to direct liquidity providing orders to the Exchange. Increased eDMM quoting and greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality

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<sup>13</sup> 15 U.S.C. 78f(b)(8).

<sup>14</sup> See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).



and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange currently has less than 1% market share of executed volume of equities trading. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging greater quoting on, and additional orders being sent 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>15</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>16</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

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>17</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-2021-35 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-2021-35. 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

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<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

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-2021-35 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>18</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).