SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94083; File No. SR-NYSEAMER-2022-07)

January 27, 2022

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)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on January 21, 2022, 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") to modify certain Market Maker incentives. The Exchange proposes to implement the fee change effective January 21, 2022.[4] The proposed change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

4 The Exchange originally filed to amend the Fee Schedule on December 29, 2021 (SR-NYSEAmer-2021-51), with an effective date of January 3, 2022, then withdrew such filing and amended the Fee Schedule on January 12, 2022 (SR-NYSEAmer-2022-03), which latter filing the Exchange withdrew on January 21, 2022.

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 purpose of this filing is to modify certain incentives available to NYSE American Options Market Makers ("Market Makers"), as set forth below.

Currently, Market Makers are entitled to reduced per contract rates for Electronic options transactions as set forth in Section I.C. of the Fee Schedule, NYSE American Options Market Maker Sliding Scale - Electronic (the "Sliding Scale").[5] These lower per contract rates are applicable to monthly volume within a given tier (expressed as Market Maker Electronic ADV as a percentage of TCADV), such that the lower per contract rate applies to volume that falls within the range specified for each tier.[6]

The Exchange also offers a prepayment program to Market Makers, in which Market Maker firms may prepay a portion of the fees they incur on Electronic transactions, including

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5 See Fee Schedule, Section I.C., NYSE American Options Market Maker Sliding Scale - Electronic, available at: https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.

6 In calculating Market Maker Electronic monthly volumes, the Exchange will exclude any volumes attributable to QCC trades, CUBE Auctions, or Strategy Execution Fee Caps as these transactions are subject to separate pricing described in Sections I.F., I.G. and I.J. of the Fee Schedule, respectively. Id.

CUBE transactions, ATP Fees, and other fees (the “Prepayment Program”). Market Makers who participate in the Prepayment Program are entitled to further reduced rates on the Sliding Scale.[7]

The Exchange now proposes to modify the requirements to qualify for the Market Maker rates set forth in Tiers 1 through 4 of the Sliding Scale and to adjust the Prepayment Program Participant Rate for non-take volume in Tier 1, as modified. The Exchange also proposes to eliminate Tier 5 of the Sliding Scale. These proposed changes are reflected in the table below with deletions in brackets and new text underscored.

Tier	Market Maker Electronic ADV as a % of TCADV	Rate per Contract for Non-Take Volume[1]	Rate per Contract for Take Volume[1]	Prepayment Program Participant Rates	
				Rate per Contract for Non-Take Volume[1]	Rate per Contract for Take Volume[1]
1	0.00% to [0.20] 0.25%	$0.25	$0.25	[$0.22] $0.21	$0.24
2	> [0.20% to 0.65%] 0.25% to 0.70%	$0.22	$0.24	$0.18	$0.22
3	> [0.65% to 1.40%] 0.70% to 1.50%	$0.12	$0.17	$0.09	$0.13
4	> [1.40% to 2.00%] 1.50%	$0.09	$0.14	$0.06	$0.10
[5	> 2.00%	$0.06	$0.09	$0.03	$0.06]

The Exchange believes that the proposed changes will continue to encourage Market Makers to direct orders and quotes to the Exchange and to incent Market Makers to participate in the Prepayment Program to receive reduced rates on Electronic options transactions, among other benefits. Although the Exchange proposes slight increases to the ranges covered by each of Tiers 1 through 4, the Exchange believes that the Sliding Scale, as modified, would continue

7 See Fee Schedule, Section I.D., Prepayment Program.

to offer a significant reduction in overall transaction rates for Market Makers, as well as additional reductions for Market Makers that participate in the Prepayment Program. The Exchange further believes that the proposed reduction to the Tier 1 rate per contract for non-take volume for Prepayment Program participants will likewise continue to encourage those Market Makers to participate in the program and to direct orders and quotes to the Exchange to benefit from the reduced rates under the program. Finally, the Exchange proposes to eliminate Tier 5 on the Sliding Scale because it has not successfully incented Market Makers to achieve the requisite volume to earn the corresponding per contract rates.

Currently, the Exchange also offers Market Makers that participate in the Prepayment Program a reduced rate on Manual transactions, as set forth in Section I.A. of the Fee Schedule at footnote 6.[8] Specifically, for each contract transacted manually, Market Makers receive a $0.02 per contract discount, and NYSE American Options Specialists/e-Specialists receive a $0.01 per contract discount. The Exchange proposes to eliminate these reduced rates on Manual transactions for participants in the Prepayment Program because this incentive has not impacted their participation in Manual transactions.[9]

The Exchange proposes to implement these changes effective January 12 [sic], 2022.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[11] in

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8 See Fee Schedule, Section I.A., Rates for Options transactions, note 6.

9 To effect this change, the Exchange also proposes to delete the references to footnote 6 in the "Participant" column of the table in Section I.A. and to designate footnote 6 as "Reserved."

10 15 U.S.C. 78f(b).

11 15 U.S.C. 78f(b)(4) and (5).

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 promoting market competition in its broader forms that are most important to investors and listed companies."[12]

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.[13] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2021, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[14]

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12 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) ("Reg NMS Adopting Release").

13 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/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.

14 Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id., the Exchange's market share in multiply-listed equity and ETF options the Exchange's market share in equity-based options

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, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes the proposed modifications to the Sliding Scale tier requirements for Market Makers and the rates available to Prepayment Program participants are reasonable because they would continue to incent Market Makers, including Prepayment Program participants, to direct orders and quotes to the Exchange and because the Sliding Scale fee structure, as modified, would remain in line with a similarly structured program on another options exchange.[15] The Exchange also believes the elimination of Tier 5 of the Sliding Scale and the reduced Manual rates for Prepayment Program participants is reasonable, as neither incentive has fulfilled its intended purpose to date.

To the extent the proposed change continues to attract greater volume and liquidity to the Exchange, the Exchange believes the proposed change 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

decreased from 9.09% for the month of November 2020 to 7.06% for the month of November 2021.

15 See CBOE Options Exchange Fee Schedule, Liquidity Provider Sliding Scale and footnote 10, available at: https://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf (providing liquidity providers that prepay monthly fees with reduced transaction rates).

share relative to its competitors.

While the Exchange cannot predict the extent to which Market Makers would choose to participate in the Prepayment Program or seek to achieve the Sliding Scale tiers, the Exchange believes that Market Makers would continue to be encouraged to take advantage of the favorable rates available in the Sliding Scale tiers and through the Prepayment Program, thereby increasing order flow to the Exchange and promoting market quality for all market participants.

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 Market Makers can opt to participate in the Prepayment Program or not, and to achieve one of the tiers on the Sliding Scale, or not. Moreover, to the extent the proposal is designed to continue to encourage Market Makers to commit capital to the Exchange as a demonstration of long-term participation on the Exchange as a primary execution venue, the Exchange believes that the proposed modifications to incent Market Maker participation in the Prepayment Program are an equitable allocation of fees and credits. In addition, to the extent that the proposed change continues to incent Market Makers to increase volume on the Exchange in order to qualify for the Sliding Scale rates, the resulting increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution.

The Exchange believes that eliminating Tier 5 of the Sliding Scale and the reduced Manual rates for Prepayment Program participants is an equitable allocation of fees and credits because these incentives have not successfully encouraged the intended Market Maker activity.

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

The Exchange believes the proposed modifications are not unfairly discriminatory because they would apply and be available to all similarly-situated market participants on an equal and non-discriminatory basis. Specifically, the proposal is based on the amount and type of business transacted on the Exchange, and Market Makers are not obligated to participate in the Prepayment Program or try to achieve any of the Sliding Scale tiers that would provide for reduced rates. In addition, because Market Makers have increased obligations with respect to trading on the Exchange, the Exchange believes that the proposed changes are not unfairly discriminatory to non-Market Makers and further believes that the proposed change would continue to incent Market Makers to both participate in the Prepayment Program and increase orders and quotes directed to the Exchange. To the extent that the proposed change attracts a variety of transactions 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.

The Exchange further believes that the elimination of Sliding Scale Tier 5 and the reduced Manual rates for Prepayment Program participants is not unfairly discriminatory because the reduced rates have not been effective in incenting Market Makers to execute sufficient volume to qualify for the tier or to execute Manual transactions, as applicable.

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.

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, 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 changes 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."[16]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange by offering competitive rates based on increased volumes on the Exchange, including further reduced rates for Market Makers that participate in the Prepayment Program. The Exchange believes that the proposed modifications to the Sliding Scale and other incentives available to Market Makers would continue to incent Market Makers to direct additional volume to the Exchange. Greater liquidity benefits all market participants on the Exchange, and

[16] See Reg NMS Adopting Release, supra note 12, at 37499.

increased volume from Market Makers would increase opportunities for execution of other trading interest. The proposed modifications would apply to all similarly-situated Market Makers and, because Market Makers have increased obligations with respect to trading on the Exchange, are not unfairly discriminatory to non-Market Makers, and thus 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 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.[17] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2021, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[18]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to encourage Market Makers to direct trading interest to the Exchange, to provide liquidity and to attract order flow. Specifically, the Exchange believes that the modifications to the Sliding Scale

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17 See supra note 13.

18 Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id., the Exchange's market share in multiply-listed equity and ETF options the Exchange's market share in equity-based options decreased from 9.09% for the month of November 2020 to 7.06% for the month of November 2021.

would continue to offer a significant reduction in overall transaction rates for Market Makers, as well as additional reductions for Market Makers that participate in the Prepayment Program. 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 also believes that the proposed change would promote competition between the Exchange and other execution venues, 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)[19] of the Act and subparagraph (f)(2) of Rule 19b-4[20] 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)[21] of the Act to determine whether the proposed rule change should be approved or disapproved.

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19 15 U.S.C. 78s(b)(3)(A).

20 17 CFR 240.19b-4(f)(2).

21 15 U.S.C. 78s(b)(2)(B).

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-NYSEAMER-2022-07 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-2022-07. 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-2022-07, 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.[22]

J. Matthew DeLesDernier
Assistant Secretary

[22] 17 CFR 200.30-3(a)(12).