

June 3, 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)<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 May 31, 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”) regarding credits relating to the BOLD Mechanism. The Exchange proposes to implement the fee change effective June 1, 2022. 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 credits associated with the BOLD Mechanism, a trading mechanism for automated order handling for eligible orders in designated classes pursuant to NYSE American Rule 994NY.

Currently, BOLD Initiating Orders receive the better of a \$0.12 per contract credit or a higher credit earned by qualifying for the American Customer Engagement (“ACE”) Program.<sup>4</sup> As set forth in Section I.E. of the Fee Schedule, the ACE Program provides qualifying participants with per contract credits applicable to Electronic options transactions, including those executed via the BOLD Mechanism.

The Exchange now proposes to modify Section I.M. of the Fee Schedule to provide that the credit available to BOLD Initiating Orders would be the better of \$0.12 or, to the extent an ATP Holder would qualify for a higher credit via the ACE Program, \$0.13.<sup>5</sup>

The Exchange notes that the fees and credits relating to the BOLD Mechanism, as originally established,<sup>6</sup> were intended to encourage the use of the new mechanism, which

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<sup>4</sup> See Fee Schedule, Section I.M. BOLD Mechanism Fees & Credits.

<sup>5</sup> The Exchange notes that this proposed change would only impact the credit relating to BOLD Initiating Orders, and the ACE Program credits outlined in Section I.E. remain unchanged.

<sup>6</sup> See Securities Exchange Act Release No. 80964 (June 19, 2017), 82 FR 28726 (June 23, 2017) (SR-NYSEMKT-2017-37) (Notice of Filing and Immediate Effectiveness of Proposed Change to Modify the NYSE Amex Options Fee Schedule).

purpose was achieved. The Exchange believes that, although the proposed change would set an upper limit on the credit for BOLD Initiating Orders offered to ATP Holders that qualify via the ACE Program, the proposed change would not discourage ATP Holders from continuing to use the BOLD Mechanism and would continue to provide an incentive to ATP Holders to submit orders to the Exchange for execution via the BOLD Mechanism.

The Exchange proposes to implement the fee change effective June 1, 2022.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>8</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 promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>9</sup>

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

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>9</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”).

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>10</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in April 2022, the Exchange had less than 9% market share of executed volume of multiply-listed equity and ETF options trades.<sup>11</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, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges. The Exchange regularly reviews the effectiveness of various fees and incentives, including to determine whether moderations of such fees and incentives would be appropriate. As noted above, the existing fees and credits for use of the BOLD Mechanism were designed to incent ATP Holders to become familiar with the

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<sup>10</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/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

<sup>11</sup> 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 equity-based options decreased from 8.57% for the month of April 2021 to 8.14% for the month of April 2022.

execution quality of the mechanism, and ATP Holders have now had the opportunity to do so. Having reviewed the effectiveness of the credit offered on BOLD Initiating Orders, the Exchange believes that its proposed modification of the incentives for use of the BOLD Mechanism is reasonably designed to continue to encourage ATP Holders to submit orders to the Exchange for execution via the BOLD Mechanism and would not discourage ATP Holders from continuing to use the BOLD Mechanism even though the credit available to ATP Holders that earn a higher credit through the ACE Program would be capped at \$0.13, as proposed.

The Exchange cannot predict with certainty whether or the extent to which ATP Holders would continue to use the BOLD Mechanism, but believes that the \$0.12 credit on BOLD Initiating Orders (which remains unchanged) as well as the proposed credit of \$0.13 for qualifying ACE Program participants would continue to encourage ATP Holders to utilize the mechanism. The Exchange further believes that the benefits associated with the use of the BOLD Mechanism would continue to provide an incentive for ATP Holders to direct Customer options order flow to the Exchange, which brings increased liquidity and order flow for the benefit of all market participants.

Finally, to the extent the proposed change continues to attract volume and liquidity, while encouraging use of the BOLD Mechanism, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants by offering various mechanisms for execution of orders. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to maintain the depth of its market and maintain its market share relative to its competitors. ATP Holders have a choice of where they direct their order flow (including their Customer marketable orders), and the proposed rule change is designed to

continue to incent ATP Holders to direct liquidity to the Exchange, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for 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 ATP Holders can opt to use the BOLD Mechanism or not. Although the proposed change would limit the credit available on BOLD Initiating Orders for certain ATP Holders that also participate in the ACE Program, such limit would apply equally to all ACE Program participants that may be eligible for a higher credit and would thus provide for a more equitable allocation of credits associated with the use of the BOLD Mechanism. Moreover, the proposal is designed to continue to incent ATP Holders to aggregate all Customer interest at the Exchange as a primary execution venue and to attract more marketable orders to be executed through the BOLD Mechanism. To the extent that the proposed change does not discourage ATP Holders from directing Customer marketable orders to the Exchange, the Exchange believes that order flow sent to the Exchange for execution via the BOLD Mechanism would continue to make the Exchange a more competitive venue for, among other things, order execution of all order types. 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 does not believe that the proposed change to the credit for BOLD Initiating Orders is unfairly discriminatory because all ATP Holders that submit orders through

the BOLD Mechanism would continue to be eligible for the \$0.12 credit, and the proposed modification to cap the credit available to ATP Holders that may be eligible for a higher credit via the ACE Program at \$0.13 would apply equally to all such ATP Holders.

The proposal is based on the amount and type of business transacted on the Exchange, and ATP Holders are not obligated to use the BOLD Mechanism. Rather, the proposal is designed to encourage ATP Holders to utilize the Exchange as a primary trading venue for Customer marketable orders (if they have not done so previously). To the extent that the proposed change would continue to encourage ATP Holders to maintain their current level of Customer interest, including marketable interest, on the Exchange, this order flow would continue to make the Exchange a competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would support market quality for all market participants on the Exchange and, as a consequence, attract order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting continued 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.

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 continue to 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>12</sup>

*Intramarket Competition.* The proposed change is designed to maintain order flow (particularly Customer marketable orders) to the Exchange. The Exchange believes that the proposed modification to the credit on BOLD Initiating Orders would not discourage ATP Holders from using the BOLD Mechanism or maintaining their current level of Customer marketable order flow to the Exchange and, to the extent such purpose is achieved, the Exchange would maintain its Customer order flow, which benefits all market participants on the Exchange. In addition, because the credits available on BOLD Initiating Orders, as modified, would be available to all similarly-situated market participants that execute Customer marketable interest through the BOLD Mechanism, the Exchange does not believe that the proposed change would 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

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<sup>12</sup> See Reg NMS Adopting Release, supra note 9, at 37499.



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>13</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in April 2022, the Exchange had less than 9% market share of executed volume of multiply-listed equity & ETF options trades.<sup>14</sup>

The Exchange believes that the proposed rule change reflects this competitive environment because, although it may reduce the credit that some ATP Holders would earn on BOLD Initiating Orders, it modifies the Exchange's fees in a manner designed to continue to incent ATP Holders to direct trading interest (particularly Customer marketable 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 maintain competition between the Exchange and other execution venues, including those that currently offer similar Customer execution mechanisms, 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.

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<sup>13</sup> See note 10, supra.

<sup>14</sup> 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 equity-based options decreased from 8.57% for the month of April 2021 to 8.14% for the month of April 2022.

### 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.

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-2022-22 on the subject line.

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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).

<sup>17</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-2022-22. 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-2022-22, 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).