

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100126; File No. SR-NYSEAMER-2024-29)

May 14, 2024

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 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 1, 2024, 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 and II 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 Initiating Participant Rebates for Single -Leg Customer Best Execution Auctions. The Exchange proposes to implement the fee change effective May 1, 2024. The proposed rule 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Initiating Participant Rebates offered for initiating Single-Leg Customer Best Execution Auctions (each a “CUBE Auction”).⁴

Background

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient.

There are currently 17 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.⁵ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March of 2024, the Exchange had less than 9% market share of executed volume of multiply-listed equity & ETF options trades.⁶ Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow.

⁴ See generally Rule 971.1NYP (describing the CUBE Auction, which is an electronic crossing mechanism for single-leg orders with a price improvement auction on the Exchange).

⁵ 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>

⁶ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, see id., the Exchanges market share in equity-based options increased from 7.55% for the month of March 2023 to 8.36% for the month of March 2024.

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 use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees (and credits), and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its Fees Schedule, as do other competing options exchanges, which the Exchange believes provide incentive to ATP Holders to increase order flow of certain qualifying orders.

Proposal

In response to these competitive forces, 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 and the Professional Volume Incentive program.⁷ To encourage participation in the ACE Program and CUBE Auctions, the Exchange offers an ACE Initiating Participant Rebate to ACE Program participants that initiate CUBE Auctions.⁸ The Exchange also offers an alternative to the ACE Initiating Participant Rebate -- the Alternative Initiating Participant Rebate -- that enables non-ACE Program participants to qualify for this Rebate on certain initiating CUBE Orders provided they meet certain Professional volume requirements and increase their initiating CUBE volume.⁹

⁷ See Fee Schedule Sections I.E. (American Customer Engagement ("ACE") Program); and I.H. (Professional Volume Incentive).

⁸ See Fee Schedule Section I.G (CUBE Auction Fees & Credits, Single-Leg CUBE Auction).

⁹ Id., note 2. The Alternative Initiating Participant Rebate is available to ATP Holders that execute a minimum of 5,000 contracts ADV in the "Professional" range and increase their Initiating CUBE Orders by the greater of 40% over their August 2019 volume or 15,000 contracts ADV. Id. Section I.H. of the Fee Schedule defines volume in the Professional range as Electronic volume of Professional Customers, Broker Dealers, Non-NYSE American Options Market Makers, and Firms.

The ACE Initiating Participant Rebate (the “ACE Rebate”) and the Alternative Initiating Participant Rebate are applied to each of the first 5,000 contracts per leg of a CUBE Order executed in a CUBE Auction (each a “qualifying contract”).¹⁰ Currently, the ACE Rebate is (\$0.12) per qualifying contract for ATP Holders that qualify for any of the five ACE Program Tiers. The Alternative Initiating Participant Rebate is (\$0.10) per qualifying contract. These rebates are in addition to any additional credits offered for participation in CUBE Auctions and an ATP Holder that qualifies for both rebates would be entitled only to the greater of the two rebates.¹¹

The Exchange proposes to modify the ACE Initiating Participant Credit such that ATP Holders who qualify for the ACE Program are eligible to receive a different ACE Rebate amount depending on which ACE Tier that ATP Holder achieves. Specifically, ACE Program participants that qualify for ACE Tiers 1, 2, or 3 would be eligible for a (\$0.05) per contract rebate for qualify contracts.¹² The ACE Program participants that qualify for ACE Tiers 4 or 5 (the highest ACE Tiers) would continue to be eligible for the (\$0.12) per contract rebate for qualifying contracts.¹³ The proposed change is design [sic] to incent ATP Holders that currently qualify for the ACE Rebates to increase their Electronic volume on the Exchange (i.e., and to qualify for ACE Tier 4 or 5. For ACE Program participants that do not achieve ACE Tiers 4 or 5, the Exchange believes that the (\$0.05) per contract ACE Rebate would continue to incent ACE

¹⁰ Id.

¹¹ Id.

¹² See proposed Fee Schedule Section I.G (CUBE Auction Fees & Credits, Single-Leg CUBE Auction), including updates to note 2.

¹³ See proposed Fee Schedule Section I.G (CUBE Auction Fees & Credits, Single-Leg CUBE Auction), including updates to note 2 (specifying that the ACE Rebate amount is tied to the ACE Program Tier achieved).

Program participants to submit initiating CUBE Orders. The Exchange notes that the ACE Program Tiers are competitively achievable for all ATP Holders that submit significant Customer order flow, in that all firms that submit the requisite significant Customer order flow could compete to meet the tiers.

The Exchange also proposes to eliminate the Alternative Initiating Participant Rebate as it did not sufficiently encourage non-ACE Program participants to submit initiating CUBE Orders.¹⁴ Moreover, the Exchange believes that the removal of stale and outdated volume benchmarks (i.e., August 2019) would allow the Exchange to streamline the Fee Schedule.

To the extent that the proposed modification encourages the submission of CUBE Orders, all market participants stand to benefit from increased liquidity and opportunities for price improvement. Further, because the ACE Rebate is tied to Customer order flow -- in addition to initiating CUBE volume, the Exchange

believes all market participants stand to benefit from increased order flow, which promotes market depth, facilitates tighter spreads and enhances price discovery. The increased liquidity on the Exchange would result in enhanced market quality for all participants.

The Exchange notes the fee changes proposed herein are consistent with similar fees/credits offered on other options exchanges.¹⁵

¹⁴ See proposed Fee Schedule Section I.G (CUBE Auction Fees & Credits, Single-Leg CUBE Auction), including updates to note 2 (removing reference to the Alternative Initiating Participant Rebate and associated volume requirements).

¹⁵ See, e.g., Miami Options Exchange LLC (“MIAX”) Fee Schedule, 1.a.iii. (Transaction Fees, Multiply-Listed Options Exchange Fees, Priority Customer Rebate Program) (providing a (\$0.10) per contract credit for PRIME Agency Orders -- the MIAX equivalent to initiating CUBE Orders and an additional (\$0.02) per contract credit for Priority Customer Agency Orders submitted to PRIME), which amounts are tied to meeting certain Priority Customer volume thresholds; and Cboe Exchange Inc. (“Cboe”) Fee Schedule, Volume Incentive Program (providing Trading Permit Holders (“TPH”) --their ATP Holder equivalent per contract credits for Public Customer orders transmitted by TPHs and executed electronically on the Exchange, provided the TPH meets certain volume thresholds in a month).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁷ 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 change to the ACE Rebate is reasonable, equitable, and not unfairly discriminatory. As noted above, the Exchange operates in highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. As such, market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that the proposed fee change is reasonable, equitable, and not unfairly discriminatory in that the Exchange and competing options exchanges currently offer reduced fees or credits in connection with Customer volume and auction volume. The proposed change to the ACE Rebate is reasonable because it continues to encourage ATP Holders to take the opportunity to receive credits on initiating CUBE Orders by reaching the Customer volume thresholds (set forth in the ACE Program). The Exchange notes that the volume thresholds for each Tier of the ACE Program are not being modified in this proposal -- only the amount of ACE Rebate associated with each Tier. The Exchange also believes that the changes to the ACE

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

Rebate, as amended, are in a reasonable increment to encourage overall order flow to the Exchange without change the criteria for reaching each ACE Program Tier.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all ATP Holders have the opportunity to meet the ACE Program Tier thresholds and, in turn, qualify for the higher ACE Rebate. The Exchange also notes that the proposed changes will not adversely impact any ATP Holder's ability to qualify for other credit tiers. Rather, should an ATP Holder not achieve ACE Program Tier 4 or 5, the ATP Holder will still receive the ACE Rebate (albeit a reduced one). Further, the proposal is based on the amount and type of business transacted on the Exchange and ATP Holders are not obligated to participate in CUBE Auctions. Rather, the proposal is designed to encourage participants to utilize the Exchange as a primary trading venue (if they have not done so previously) or increase Electronic Customer volume sent to the Exchange to be eligible to receive an ACE Rebate.

The Exchange believes that the proposed elimination of the Alternative Initiating Participant Rebate is reasonable, equitable, and not unfairly discriminatory as this Rebate was not functioning as intended. Moreover, the proposed removal of this Rebate is reasonable because it eliminates a stale and outdated volume benchmarks (i.e., August 2019) and would therefore streamline the Fee Schedule.

As noted herein, relative volume-based incentives and discounts have been widely adopted by exchanges¹⁸ and are reasonable, equitable and non-discriminatory because they are open to all ATP Holders on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher

¹⁸ See supra note 15.

levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates/credits and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the rebates and credits available based on Customer and auction volume.¹⁹

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 changes further 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."²⁰

Intramarket Competition.

The Exchange believes that the proposed change to the ACE Rebate does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the

¹⁹ Id.

²⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) ("Reg NMS Adopting Release").

purposes of the Act. All ATP Holders have the opportunity to meet the ACE Program Tier thresholds and, in turn, qualify for the higher ACE Rebate. The Exchange does not believe that the proposed changes to the ACE Rebate will adversely impact any ATP Holder's ability to qualify for other credit tiers. Rather, should an ATP Holder not achieve ACE Program Tier 4 or 5, the ATP Holder will still receive the ACE Rebate (albeit a reduced one). Further, the proposal is based on the amount and type of business transacted on the Exchange and ATP Holders are not obligated to participate in CUBE Auctions. Rather, the proposal is designed to encourage participants to utilize the Exchange as a primary trading venue (if they have not done so previously) or increase Electronic Customer volume sent to the Exchange to be eligible to receive an ACE Rebate.

The Exchange believes this proposed change will help promote competition by providing incentives for market participants to continue to submit Customer order flow to the Exchange and thus, create a greater opportunity for Customers to receive additional price improvement and access greater liquidity. As such, the Exchange does not believe the proposed changes to ACE Initiating Participant rebate will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed elimination of the Alternative Initiating Participant Rebate does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would apply equally to all similarly-situated ATP Holders.

Intermarket Competition.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 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 currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.²¹ Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March of 2024, the Exchange had less than 9% market share of executed volume of multiply-listed equity & ETF options trades.²²

The Exchange believes that the proposed rule change reflects this competitive environment as it 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 changes could promote competition between the Exchange and other execution venues, including those that currently offer similar pricing structures, by encouraging additional orders to be sent to the Exchange for execution.²³

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

²¹ See supra note 5.

²² Based on OCC data, supra note 6, the Exchange's market share in equity-based options increased from 7.55% for the month of March 2023 to 8.36% for the month of March 2024.

²³ See supra note 15.

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²⁴ of the Act and subparagraph (f)(2) of Rule 19b-4²⁵ 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)²⁶ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-29 on the subject line.

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(2).

²⁶ 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-2024-29. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-NYSEAMER-2024-29 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Sherry R. Haywood,

Assistant Secretary.

²⁷ 17 CFR 200.30-3(a)(12).