



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 October 13, 2022.

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 October 12, 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 certain incentive programs. The Exchange proposes to implement the fee change effective October 12, 2022.⁴ 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 places

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 September 30, 2022 (SR-NYSEAMER-2022-46) and withdrew such filing on October 12, 2022.

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 regarding three incentive programs currently offered by the Exchange. Specifically, the Exchange proposes to modify (1) the qualifications for the Alternative Initiating Participant Rebate for Complex CUBE auctions, as set forth in Section I.G. (the "Complex CUBE Rebate"), (2) the qualifications for the credit on Customer Electronic Simple and Complex executions set forth in Section I.H. (the "Customer Credit"), and (3) the amount of the Initiating Participant Credit for Single-Leg CUBE Auctions set forth in Section I.G. (the "Initiating Participant Credit").

As further discussed below, the proposed changes are designed to encourage ATP Holders to increase volume in a variety of transactions on the Exchange, including CUBE auction volume, Customer Electronic volume, and Professional Electronic volume.⁵

The Exchange proposes to implement this fee change on October 12, 2022.

Proposed Rule Change

Complex CUBE Auction Alternative Initiating Participant Rebate

Section I.G. of the Fee Schedule sets forth the per contract fees and credits for executions associated with Single-Leg and Complex CUBE Auctions. To encourage participation in Complex CUBE Auctions, the Exchange offers rebates on certain initiating Complex CUBE volume. Currently, the Exchange offers the ACE Initiating Participant Rebate to ATP Holders that also qualify for the American Customer Engagement ("ACE") Program⁶ and the Complex

⁵ For purposes of this filing, "Professional" Electronic volume includes: Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm.

⁶ See Fee Schedule, Section I.E., American Customer Engagement ("ACE") Program, available at: https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.

CUBE Rebate for ATP Holders that do not qualify for the ACE program.⁷ Both the ACE Initiating Participant Rebate and the Complex CUBE Rebate provide for a rebate of \$0.10 per contract, and an ATP Holder that qualifies for both rebates is entitled to only the greater of the two.⁸

Currently, ATP Holders that meet each of the following monthly qualification levels are eligible to receive the Complex CUBE Rebate: (a) 10,000 contracts ADV from Initiating CUBE orders in Complex CUBE Auctions; (b) Customer Electronic executions of 0.05% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange; and (c) Professional (as defined in Section I.H. of the Fee Schedule) Electronic executions of 0.03% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange.

The Exchange proposes to modify the qualifications for the Complex CUBE Rebate to require that ATP Holders execute: (a) 5,000 contracts ADV from Initiating CUBE orders in Complex CUBE Auctions; (b) Customer Electronic executions of 0.03% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange; and (c) Professional (as defined in Section I.H. of the Fee Schedule) Electronic executions of 0.02% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange.

The Exchange does not propose to modify the amount of the Complex CUBE Rebate (which will remain at \$0.10 per contract), and an ATP Holder that qualifies for both the ACE Initiating Participant Rebate and the Complex CUBE Rebate will continue to be entitled only to the greater of the two rebates.

Credit on Customer Electronic Simple and Complex Executions

As set forth in Section I.H. of the Fee Schedule, ATP Holders are currently eligible to

⁷ See id. at Section I.G., CUBE Auction Fees and Credits, Complex CUBE Auction.

⁸ See id.

receive the Customer Credit of \$0.10 per contract on Customer Electronic Simple and Complex executions, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange, by meeting each of the following monthly qualification levels: (a) 10,000 contracts ADV from Initiating CUBE Orders in Complex CUBE Auctions; (b) Customer Electronic executions of 0.05% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange; and (c) Professional Electronic executions of 0.03% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange.⁹

The Exchange proposes to modify the qualifications for the Customer Credit to require that ATP Holders execute: (a) 5,000 contracts ADV from Initiating CUBE orders in Complex CUBE Auctions; (b) Customer Electronic executions of 0.03% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange; and (c) Professional (as defined in Section I.H. of the Fee Schedule) Electronic executions of 0.02% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange. The Exchange does not propose to modify the amount of the Customer Credit, which will remain at \$0.10 per contract.

Single-Leg CUBE Auction Initiating Participant Credit

Section I.G. of the Fee Schedule sets forth the rates for per contract fees and credits for executions associated with Single-Leg and Complex CUBE Auctions.¹⁰ To encourage participants to utilize Single-Leg CUBE Auctions, the Exchange offers rebates and credits on certain initiating Single-Leg CUBE volume. Currently, as described in Note 1 in the Single-Leg CUBE Auction section of Section I.G., the Exchange offers Initiating Participant Credits for each

⁹ See id. at Section I.H. In calculating an OFP's Electronic volume, the Exchange will include the activity of either (i) Affiliates of the OFP, such as when an OFP has an Affiliated NYSE American Options Market Making firm, or (ii) an Appointed MM of such OFP.

¹⁰ See id. at Section I.G., CUBE Auction Fees & Credits.

contract in a Contra Order paired with a CUBE Order that does not trade with the CUBE Order because it is replaced in the auction.¹¹ The Exchange offers a \$0.30 per contract credit for Penny issues and a \$0.70 per contract credit for Non-Penny issues.

The Exchange proposes to modify the amounts of the Initiating Participant Credits to offer a \$0.26 per contract credit for Penny issues and a \$0.65 per contract credit for Non-Penny issues. The Exchange further proposes to modify Note 1 to provide that ATP Holders that execute at least 0.40% of TCADV in Electronic Customer Complex Orders would be eligible for an increased Initiating Participant Credit of \$0.30 per contract for Penny issues and \$0.70 per contract for Non-Penny issues, instead of the proposed \$0.26 and \$0.65 per contract credits for Penny and Non-Penny issues, respectively.

The proposed changes are designed to incent ATP Holders to direct order flow to the Exchange and to encourage ATP Holders to engage in a variety of transactions on the Exchange. In particular, the Exchange believes the proposed change would encourage ATP Holders to direct more auction-eligible order flow, Customer Electronic volume, and Professional Electronic volume to the Exchange to qualify for the Complex CUBE Rebate, Customer Credit, and/or Initiating Participant Credit. The Exchange notes that the proposed changes to the Complex CUBE Rebate and Customer Credit would also maintain alignment between the requirements for the Complex CUBE Rebate and Customer Credit. The Exchange also believes that the proposed changes to the Initiating Participant Credit, although they would decrease the amount of the credit available to ATP Holders that do not execute the proposed required level of Electronic Customer Complex volume, would continue to provide an incentive for participation in Single-Leg CUBE Auctions, while also encouraging increased Electronic Customer Complex volume. Although the Exchange cannot predict with certainty whether ATP Holders will be

¹¹ See id., Single-Leg CUBE Auction, note 1 (setting forth both the ACE Initiating Participant Rebate and the Alternative Initiating Participant Rebate).

incentivized to qualify for the Complex CUBE Rebate, Customer Credit, or Initiating Participant Credit, as modified, the Exchange believes that, to the extent that the proposed changes achieve their intended purpose, the increased liquidity on the Exchange would result in enhanced market quality for all participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹³ 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.”¹⁴

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.¹⁵ Therefore, currently no exchange possesses significant pricing power in the execution

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

¹⁵ The OCC publishes options and futures volume in a variety of formats, including daily

of multiply-listed equity and ETF options order flow. More specifically, in August 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.¹⁶

The Exchange's fees are constrained by intermarket competition, as ATP Holders may direct their order flow to any of the 16 options exchanges, including those offering incentives similar to the Complex CUBE Rebate, Customer Credit, and Initiating Participant Credit.¹⁷ Thus, ATP Holders have a choice of where they direct their order flow. The proposed modifications to the Complex CUBE Rebate, Customer Credit, and Initiating Participant Credit are designed to continue to encourage ATP Holders to engage in a variety of transactions on the Exchange and increase volume in CUBE auctions as well as Customer and Professional Electronic executions. The Exchange believes all market participants stand to benefit from increased order flow, which promotes market depth, facilitates tighter spreads, and enhances price discovery.

and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

¹⁶ 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 was 7.56% for the month of August 2021 and 7.57% for the month of August 2022.

¹⁷ See, e.g., Cboe Exchange, Inc. ("Cboe") Fee Schedule, Volume Incentive Program, available at: https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (providing per contract credits that, similar to the Complex CUBE Rebate and Customer Credit, have qualifications based on volume from a variety of executions, including auction volume, volume from various account types, and volume from both simple and complex executions); Cboe Fee Schedule, Break-Up Credits (offering break-up credits on certain orders executed through Cboe Automated Improvement Mechanism of \$0.25 and \$0.60 for penny and non-penny classes, respectively, similar to the Initiating Participant Credit for Single-Leg CUBE orders); Cboe EDGX ("EDGX") Options Fee Schedule, Break-Up Credits, available at: https://www.cboe.com/us/options/membership/fee_schedule/edgx/ (offering break-up credits on certain orders executed through EDGX Automated Improvement Mechanism of \$0.25 and \$0.60 for penny and non-penny program securities, respectively, similar to the Initiating Participant Credit for Single-Leg CUBE orders).

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 and rebates can have a direct effect on the ability of an exchange to compete for order flow.

The proposed rule change is designed to continue to incent ATP Holders to direct liquidity to the Exchange in a variety of forms and from a variety of sources, thereby promoting market depth, price discovery, and price improvement and enhancing order execution opportunities for market participants. In particular, the Exchange believes it is reasonable to provide ATP Holders with a rebate or credit for achieving certain volume goals in different types of executions.

The Exchange also believes that the proposed changes are designed to continue to encourage ATP Holders to execute a variety of orders on the Exchange. The Exchange further believes that maintaining the same criteria to qualify for the Complex CUBE Rebate or Customer Credit should encourage greater use of the Exchange by all ATP Holders, which may lead to greater opportunities to trade and for price improvement for all participants. The Exchange notes that all market participants stand to benefit from increased transaction volume, as such increase promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange cannot predict with certainty whether any ATP Holders would seek to qualify for the Complex CUBE Rebate or the Customer Credit, as modified, but believes that the proposed qualifying bases for the Complex CUBE Rebate and Customer Credit, which lower the volume necessary to qualify and maintain alignment between the volume requirements across the two incentives, are achievable for ATP Holders and would continue to incent ATP Holders to direct volume to the Exchange. The Exchange also believes that the proposed modification of

the Initiating Participant Credit, although it would decrease the credit earned by ATP Holders that do not execute the proposed required level of Customer Electronic Complex volume, would continue to promote both participation in Single-Leg CUBE Auctions and increased Customer Electronic Complex volume directed to the Exchange.

Finally, to the extent the proposed changes attract greater volume and liquidity, the Exchange believes the proposed changes 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 changes are a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.

The Proposed Rule Change is an Equitable Allocation of Fees and Rebates

The Exchange believes the proposed rule change is an equitable allocation of its fees and rebates. The proposal is based on the amount and type of business transacted on the Exchange, and ATP Holders can seek to qualify for these incentives or not. The Exchange further believes that, because ATP Holders would need to meet requirements based on Initiating CUBE Orders, Customer Electronic executions, and Professional Electronic executions in order to qualify for either the Complex CUBE Rebate or Customer Credit, and would need to meet a requirement based on Electronic Customer Complex to earn a higher Initiating Participant Credit on Single-Leg CUBE orders, the proposed changes are designed to continue to encourage ATP Holders to aggregate their executions at the Exchange as a primary execution venue. To the extent that the proposed changes attract more volume 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 changes 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 that the proposal is not unfairly discriminatory because the proposed modifications would apply to all similarly-situated market participants on an equal and non-discriminatory basis. The proposed changes are based on the amount and type of business transacted on the Exchange, and ATP Holders are not obligated to try to achieve any of the incentives offered. Rather, the proposals are designed to continue to encourage participants to utilize the Exchange as a primary trading venue (if they have not done so previously) and increase auction, Customer Electronic, and Professional Electronic volume sent to the Exchange. In addition, the proposed modifications would continue to align the requirements for the Customer Credit and Complex CUBE Rebate, which may lead to greater opportunities to trade -- and for price improvement -- for all participants.

To the extent that the proposed changes attract more executions 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 changes 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.

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 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."¹⁸

Intramarket Competition. The proposed change is designed to continue to attract increased and diverse order flow to the Exchange by offering competitive credits and rebates, which may increase the volume of contracts traded on the Exchange. Specifically, the Exchange believes the proposed rule change, by specifying requirements in auction, Customer Electronic, and Professional Electronic volume, would incent ATP Holders to participate in a variety of types of executions on the Exchange to qualify for the Complex CUBE Rebate, Customer Credit, and Initiating Participant Credit. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume resulting from the anticipated increase in order flow directed to the Exchange would benefit all market participants and improve competition 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 currently has more than 16% of the market share of executed volume of

¹⁸ See Reg NMS Adopting Release, supra note 14, at 37499.

multiply-listed equity and ETF options trades.¹⁹ Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in August 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.²⁰

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees and rebates in a manner designed to encourage ATP Holders to direct trading interest to the Exchange, to provide liquidity and to attract order flow. Specifically, the Exchange believes that the proposed change would encourage ATP Holders to direct increased and diverse volume to the Exchange, thereby increasing the number of executions (and executions of varying types) on the Exchange. The Exchange further believes that maintaining consistency between the requirements for the Complex CUBE Rebate and Customer Credit could make the incentives more achievable for ATP Holders and would thus continue to make the Exchange a more attractive and competitive venue for order execution. 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.

Thus, the Exchange believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer similar pricing incentives, by encouraging additional orders to be sent to the Exchange for execution.

¹⁹ See supra note 15.

²⁰ 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 was 7.56% for the month of August 2021 and 7.57% for the month of August 2022.

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)²¹ of the Act and subparagraph (f)(2) of Rule 19b-4²² 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)²³ 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. Please include File Number SR-NYSEAMER-2022-48 on the subject line.

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(2).

²³ 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-2022-48. 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-2022-48, 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.²⁴

J. Matthew DeLesDernier,
Deputy Secretary.

²⁴ 17 CFR 200.30-3(a)(12).

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