

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 38		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2023 - * 21 Amendment No. (req. for Amendments *)	
Filing by NYSE American LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>		Amendment * <input type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input type="checkbox"/>		Section 19(b)(3)(A) * <input checked="" type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Rule			
		<input type="checkbox"/> 19b-4(f)(1)		<input type="checkbox"/> 19b-4(f)(4)	
		<input checked="" type="checkbox"/> 19b-4(f)(2)		<input type="checkbox"/> 19b-4(f)(5)	
		<input type="checkbox"/> 19b-4(f)(3)		<input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div>Proposal to modify the NYSE American Options Fee Schedule</div>					
Contact Information Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action. First Name * Le-Anh Last Name * Bui Title * Counsel, NYSE Group Inc. E-mail * Le-Anh.Bui@ice.com Telephone * (212) 656-2225 Fax (212) 656-8101					
Signature Pursuant to the requirements of the Securities Exchange of 1934, NYSE American LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized. Date 03/15/2023 (Title *) By David De Gregorio Associate General Counsel (Name *) <div>NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.</div> <div>David De Gregorio Digitally signed by David De Gregorio Date: 2023.03.15 16:18:06 -04'00'</div>					

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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SEC Sub of 19b-4 Re-file NYSE Amer

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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Ex. 1 SEC Sub of 19b-4 Re-file NYSE

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

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Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

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Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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Ex. 5 SEC Sub of 19b-4 Re-file NYSE

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² NYSE American LLC (“NYSE American” or the “Exchange”) proposes to modify the NYSE American Options Fee Schedule (“Fee Schedule”) regarding routing fees and Floor Broker rebates and to delete text relating to discontinued programs. The Exchange proposes to implement the fee change effective March 15, 2023.³

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Le-Anh Bui
Counsel
NYSE Group, Inc.
(212) 656-2225

Peter G. Armstrong
Manager, Options
NYSE Group, Inc.
(415) 318-1924

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

- (a) Purpose

The purpose of this filing to amend the Fee Schedule to (1) delete text relating to fees and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange previously filed to amend the Fee Schedule on March 1, 2023 (SR-NYSEAMER-2023-18) and withdrew such filing on March 15, 2023.

credits for NYSE FANG+ Index (“FAANG”) transactions, (2) simplify the Routing Surcharge applied to orders routed to other markets, (3) eliminate the introductory pricing currently offered for Market Maker ATP fees and Premium Product fees, and (4) add a Floor Broker rebate program. The Exchange believes that the proposed changes would promote clarity and transparency in the Fee Schedule by eliminating fees and credits relating to programs that the Exchange proposes to discontinue and simplifying the fees charged for routed orders. The Exchange proposes to implement the rule change on March 15, 2023.

FAANG Transactions

Footnote 7 to Section I.A. of the Fee Schedule (Rates for Options transactions) currently provides for fees and credits relating to FAANG transactions. The Fee Schedule provides for a \$0.35 per contract, per side fee for Non-Customer FAANG transactions, whether executed manually or electronically. FAANG transactions (i) on behalf of Customers or (ii) by NYSE American Options Market Makers, Specialists, e-Specialists or DOMMs do not incur a fee. Marketing Charges are not applied to FAANG transactions. Volume in FAANG transactions is included in the calculations to qualify for any volume-based incentives currently offered on the Exchange.

The Fee Schedule also provides for a credit to any firm that is an NYSE American Options Market Maker, Specialist, e-Specialist or DOMM that executes a specified minimum number of total monthly contract sides that open a position in FAANG on the Exchange (“eligible contract sides”), as set forth below (“MM FAANG Credit”):

- a credit of \$5,000 for a minimum of 500 eligible contract sides; provided, however, that if more than five firms qualify for this MM FAANG Credit in a calendar month, the \$5,000 MM FAANG Credit for each qualifying firm will be a pro rata share of \$25,000; or
- a credit of \$10,000 for a minimum of 2,000 eligible contract sides; provided, however, that if more than two firms qualify for this MM FAANG Credit in a calendar month, the \$10,000 MM FAANG Credit for each qualifying firm will be a pro rata share of \$25,000. A firm that qualifies for the \$10,000 credit will not be eligible for the \$5,000 credit.

Because FAANG options were delisted after monthly expiration in February 2023, the Exchange now proposes to delete the current text of Footnote 7 to Section I.A. to remove references to fees and credits relating to FAANG transactions, which would no longer be applicable for any market participants, and designate Footnote 7 as Reserved. The Exchange also proposes a conforming change to Section I.D. (Prepayment Program) of the Fee Schedule to delete the reference in that section to “Section I.A., note 7,” to reflect the proposed deletion of the fees and credits relating to FAANG transactions. The Exchange believes this proposed change, which would remove text relating to a discontinued program, would promote clarity in the Fee Schedule.

Routing Surcharge

As set forth in Section I.L. of the Fee Schedule, the Exchange currently assesses a routing surcharge on all non-Customer orders routed to away markets and on Customer orders including Professional Customer orders that are charged transaction fees at another exchange. If the executing exchange does not charge a transaction fee for the execution of the Customer order, the Routing Surcharge will be waived. Currently, the Routing Surcharge is \$0.11 per contract plus (i) any transaction fees assessed by the away exchange(s) (calculated on an order-by-order basis since different away exchanges charge different amounts) or (ii) if the actual transaction fees assessed by the away exchange(s) cannot be determined prior to the execution, the highest per contract charge assessed by the away exchange(s) for the relevant option class and type of market participant (e.g., Customer, Firm, Broker/Dealer, Professional Customer or Market Maker). The Exchange applies the Routing Surcharge in addition to any customary execution fees applicable to the order.

The Exchange now proposes to modify the Routing Surcharge to be based on whether the routed order is in a Penny or non-Penny issue and to establish a single fee that would be applicable to all routed orders in Penny issues, and a single fee for all routed orders in non-Penny issues. Specifically, the Exchange proposes that the fee for routed orders would be, similar to the current Routing Surcharge, equal to \$0.11 plus an amount based on the transaction fees charged by away exchanges, which the Exchange proposes to set at a fixed amount that would approximate such fees in a manner intended to counterbalance the internal resources required to support the handling of orders routed away from the Exchange. Accordingly, the Exchange proposes a Routing Surcharge of \$0.61 in Penny issues, and \$1.21 in non-Penny issues. The Exchange believes that having a single published rate for all routed orders in Penny issues and a single published rate for all routed orders in non-Penny Issues would also reduce potential confusion relating to the amount of the surcharge for a given routed order (particularly in light of the variability in transaction fees across other options markets) and would permit market participants to determine execution costs at the time of order entry, thereby promoting clarity and transparency in the Fee Schedule.

Introductory Pricing for Newly Enrolled Market Makers

Section III.A. of the Fee Schedule provides for monthly ATP fees. Footnote 2 of Section III.A. further provides that an ATP Holder that newly enrolls to operate as a Market Maker may be entitled to introductory pricing on ATP fees for up to six months.⁴ The

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A newly enrolled Market Maker on the Exchange may be entitled to introductory pricing on its ATP Fees for up to six months, beginning the first month in which it registers. For the first three months (i.e., months 1-3), the Exchange waives the ATP fees, and for the latter three months (i.e., months 4-6), the Exchange discounts such ATP fees by 50%, unless the Market Maker achieves a monthly ADV equal to at least 0.05% of TCADV, at which time the Exchange would charge the Market Maker 100% of its ATP Fees for the remaining months, regardless of its monthly ADV in subsequent months. An ATP Holder

Exchange similarly offers newly enrolled Market Makers introductory pricing on Premium Product Fees for up to six months, as set forth in Section III.B, Footnote 1.⁵

The Exchange now proposes to delete Section III.A., Footnote 2 and Section III.B., Footnote 1 to eliminate the introductory pricing for newly enrolled Market Makers on ATP fees and Premium Product Fees, respectively, as no ATP Holders have qualified for this pricing in the last few years. The Exchange adopted this introductory pricing to encourage ATP Holders to enroll as Market Makers. However, because these pricing incentives have been underutilized (and therefore did not achieve their intended effect), the Exchange proposes to eliminate such pricing from the Fee Schedule and believes that ATP Holders would not be impacted by its removal.

Floor Broker Grow With Me Program

The Exchange proposes to add the Floor Broker Grow With Me program, through which Floor Broker organizations (“Floor Brokers”) may earn a (\$0.05) rebate on manual billable volume. The Exchange proposes to add this program in Section III.E.2. of the Fee Schedule, which is currently designated as Reserved. The Exchange proposes that the Floor Broker Grow With Me program would provide Floor Brokers with an opportunity to earn a rebate on manual billable volume based on demonstrated growth as compared to the Floor Brokers’ manual billable volume ADV in January 2023 (the “base period”). The Exchange proposes that Floor Brokers that achieve (1) manual billable contracts volume of 100% over their base period volume in a month or (2) an ADV of 25,000 manual billable contracts in a month, whichever is greater, would be eligible for a rebate of (\$0.05) per billable side. The Exchange proposes that Floor Brokers new to the Exchange would be eligible to qualify for the program by achieving the second qualifying criteria, which is not tied to base period volume.

Although the Exchange cannot predict with certainty whether the proposed change would encourage Floor Brokers to increase their manual billable volume on the Exchange, the proposed change is designed to continue to incentivize Floor Brokers to do so by offering a rebate on manual billable volume. All Floor Brokers, including new Floor Brokers, would be eligible to earn a rebate through the Floor Broker Grow With Me program, as

may qualify for this introductory pricing only once in a 24-month period, which period begins in the first month the ATP Holder registers on the Exchange.

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A newly enrolled Market Maker on the Exchange may be entitled to introductory pricing on its Premium Product Fees for up to six months, beginning the first month in which it registers. For the first three months (i.e., months 1-3), the Exchange waives Premium Product Fees, and for the latter three months (i.e., months 4-6), the Exchange discounts such Premium Product Fees by 50%, unless the Market Maker achieves a monthly ADV equal to at least 0.05% of TCADV, at which time the Exchange would charge the Market Maker 100% of its Premium Product Fees for the remaining months, regardless of its monthly ADV in subsequent months. An ATP Holder may qualify for this introductory pricing only once in a 24-month period, which period begins in the first month the ATP Holder registers on the Exchange.

proposed.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁷ 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.”⁸

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.⁹ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in January 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.¹⁰

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,

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

⁹ 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>.

¹⁰ 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 was 7.03% for the month of January 2022 and 7.96% for the month of January 2023.

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 change to the Routing Surcharge is reasonable because it would establish a single fee that would be applicable to all routed orders in Penny issues and a single fee that would be applicable to all routed orders in non-Penny issues, and such fees would be applicable to all market participants equally. In addition, the Exchange believes the proposed change is reasonable because the proposed fees for routed orders would be structured similarly to the current Routing Surcharge and are designed to assess fixed routing fees in amounts intended to appropriately counterbalance the internal resources required to support the handling of orders routed away from the Exchange. The Exchange also notes that the proposed Routing Surcharge amounts are within the range of routing fees currently charged by at least one other options exchange.¹¹ The Exchange also believes that the proposed change would add clarity and transparency in the Fee Schedule by simplifying the structure of the Routing Surcharge and providing market participants with greater determinism with respect to execution costs at the time of order entry.

The Exchange believes that the proposed change to delete FAANG transaction fees and credits is reasonable because FAANG options were delisted after monthly expiration in February 2023, and such fees and credits are no longer applicable to any market participants. The Exchange believes that the proposed change to eliminate certain introductory pricing for newly enrolled Market Makers is reasonable because these programs have not served to encourage ATP Holders to enroll as Market Makers on the Exchange. Accordingly, the Exchange believes that the proposed changes to eliminate text from the Fee Schedule relating to discontinued or underutilized programs would promote clarity in the Fee Schedule, to the benefit of all market participants.

The Exchange believes that the proposed Floor Broker Grow With Me Program is reasonable because it is designed to continue to incent Floor Brokers to increase their manual billable volume executed on the Exchange and provides Floor Brokers with two ways to earn the additional rebate offered by the program. The Exchange also believes that using a Floor Broker organization's January 2023 manual billable volume ADV as a basis for measuring growth is reasonable because it reflects each organization's recent volumes.

To the extent that the proposed changes improve the clarity and transparency of the Fee Schedule, the Exchange believes they would continue to make the Exchange a more

¹¹ See, e.g., Cboe Exchange, Inc. Options Fee Schedule, [available at: https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf](https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf) (providing, for example, Customer routing fees of \$0.75 for orders in Penny issues or \$1.25 for orders in non-Penny issues routed to certain away markets and Non-Customer routing fees of \$1.17 for all orders in Penny issues or \$1.45 for all orders in non-Penny issues routed away).

competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume, which could promote market depth, facilitate tighter spreads and enhance price discovery, particularly to the extent the proposed change encourages market participants to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, 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 share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as market participants can choose to direct their order flow to any of the 16 options exchanges. The Exchange believes that proposed rule change is designed to continue to incent market participants to direct liquidity to the Exchange, and, to the extent they continue to be incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for all market participants.

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

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed change to the Routing Surcharge is equitable because the proposed single fee for all routed orders in Penny issues and single fee for all routed orders in non-Penny issues would apply to all market participants equally and the proposed amounts are designed to offset internal resources necessary to support the handling of orders routed away from the Exchange. The proposed change to delete fees and credits relating to FAANG transactions is also equitable because their elimination would likewise apply to all market participants equally. The Exchange also believes that the proposed changes to eliminate introductory pricing for newly enrolled Market Makers in ATP fees and Premium Product Fees are equitable because the pricing programs would no longer be available to any ATP Holders, and, moreover, no ATP Holders have qualified for the introductory pricing in recent years. The Exchange believes that the proposed rebate for Floor Brokers through the Floor Broker Grow With Me Program is an equitable allocation of fees and credits because the rebate would be available to all qualifying Floor Brokers equally, and Floor Brokers may qualify for the rebate based on growth over their own base period volume. The Exchange further believes that the proposed change is equitable because it is intended to encourage the role performed by Floor Brokers in facilitating the execution of orders via open outcry, a function which the Exchange wishes to support for the benefit of all market participants.

To the extent that the proposed changes continue to incent ATP Holders to utilize the

Exchange as a primary execution venue and attract more volume on the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, 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 Proposed Rule Change is Not Unfairly Discriminatory

The Exchange believes the proposed change is not unfairly discriminatory. The proposed change to the Routing Surcharge is not unfairly discriminatory because the proposed fees are intended to assess streamlined routing fees in amounts that would appropriately account for the internal resources necessary to support orders routed away from the Exchange and would apply equally to all market participants' routed orders, based on whether such order is in a Penny or non-Penny issue. The proposed change to delete fees and credits relating to FAANG transactions is not unfairly discriminatory because they are no longer applicable to any market participants following the delisting of FAANG options. The Exchange also believes that the proposed changes to eliminate introductory pricing for new Market Makers in ATP fees and Premium Product Fees are equitable because the pricing programs would be eliminated in their entirety and would no longer be available to any ATP Holders. Finally, the Exchange believes that the proposed Floor Broker Grow With Me Program is not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders on the Exchange, which the Exchange wishes to encourage and support to promote price improvement opportunities for all market participants.

Thus, the Exchange believes that, to the extent the proposed rule change would continue to improve market quality for all market participants on the Exchange by promoting clarity and transparency in the Fee Schedule and 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, 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.

4. 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."¹²

Intramarket Competition. The proposed change is designed to improve the clarity and transparency of the Fee Schedule and to continue to attract order flow to the Exchange. The proposed change to offer Floor Brokers a rebate on manual billable volume through the Floor Broker Grow With Me program is intended to attract additional order flow to the Exchange, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased manual billable transactions could increase opportunities for execution of other trading interest. The Exchange believes that the proposed change to the Routing Surcharge would not impose any burden on competition that is not necessary or appropriate because it is intended to simplify the calculation of fees for routed orders and to continue to incent Firms to direct order flow to the Exchange, thereby promoting liquidity on the Exchange to the benefit of all market participants. The Exchange does not believe that the proposed changes relating to FAANG transactions or introductory pricing for newly enrolled Market Makers would impose any burden on competition that is not necessary or appropriate because the changes would apply equally to all ATP Holders and would add clarity to the Fee Schedule, to the benefit of all market participants.

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.¹³ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in January 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.¹⁴

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees and credits in a manner designed to continue to incent Floor Brokers to direct trading interest (particularly manual billable volume) to the Exchange, to provide liquidity, and to attract order flow. In addition, to the extent that the proposed change to simplify the Routing Surcharge incentivizes ATP Holders to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and

¹² See Reg NMS Adopting Release, supra note 8, at 37499.

¹³ See note 9, supra.

¹⁴ See note 10, supra.

increased opportunities for price improvement. The Exchange also believes that the proposed rule change reflects this competitive environment because it removes underutilized programs from the Fee Schedule that did not achieve their intended purpose. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues, including one that offers similarly structured routing fees.¹⁵ In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁶ 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) of the Act to determine whether the proposed rule change should be approved or disapproved.¹⁷

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

¹⁵ See note 11, *supra*.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 15 U.S.C. 78s(b)(2)(B).

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of the Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Amendment to the Exchange's Fee Schedule

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEAMER-2023-21)

[Date]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Modify 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 March 15, 2023, 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 modify the NYSE American Options Fee Schedule (“Fee Schedule”) regarding routing fees and Floor Broker rebates and to delete text relating to discontinued programs. The Exchange proposes to implement the fee change effective March 15, 2023.⁴ 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange previously filed to amend the Fee Schedule on March 1, 2023 (SR-NYSEAMER-2023-18) and withdrew such filing on March 15, 2023.

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 to amend the Fee Schedule to (1) delete text relating to fees and credits for NYSE FANG+ Index ("FAANG") transactions, (2) simplify the Routing Surcharge applied to orders routed to other markets, (3) eliminate the introductory pricing currently offered for Market Maker ATP fees and Premium Product fees, and (4) add a Floor Broker rebate program. The Exchange believes that the proposed changes would promote clarity and transparency in the Fee Schedule by eliminating fees and credits relating to programs that the Exchange proposes to discontinue and simplifying the fees charged for routed orders. The Exchange proposes to implement the rule change on March 15, 2023.

FAANG Transactions

Footnote 7 to Section I.A. of the Fee Schedule (Rates for Options transactions) currently provides for fees and credits relating to FAANG transactions. The Fee Schedule provides for a \$0.35 per contract, per side fee for Non-Customer FAANG transactions, whether executed manually or electronically. FAANG transactions (i) on behalf of Customers or (ii) by NYSE American Options Market Makers, Specialists, e-Specialists or DOMMs do not incur a fee.

Marketing Charges are not applied to FAANG transactions. Volume in FAANG transactions is included in the calculations to qualify for any volume-based incentives currently offered on the Exchange.

The Fee Schedule also provides for a credit to any firm that is an NYSE American Options Market Maker, Specialist, e-Specialist or DOMM that executes a specified minimum number of total monthly contract sides that open a position in FAANG on the Exchange (“eligible contract sides”), as set forth below (“MM FAANG Credit”):

- a credit of \$5,000 for a minimum of 500 eligible contract sides; provided, however, that if more than five firms qualify for this MM FAANG Credit in a calendar month, the \$5,000 MM FAANG Credit for each qualifying firm will be a pro rata share of \$25,000; or
- a credit of \$10,000 for a minimum of 2,000 eligible contract sides; provided, however, that if more than two firms qualify for this MM FAANG Credit in a calendar month, the \$10,000 MM FAANG Credit for each qualifying firm will be a pro rata share of \$25,000. A firm that qualifies for the \$10,000 credit will not be eligible for the \$5,000 credit.

Because FAANG options were delisted after monthly expiration in February 2023, the Exchange now proposes to delete the current text of Footnote 7 to Section I.A. to remove references to fees and credits relating to FAANG transactions, which would no longer be applicable for any market participants, and designate Footnote 7 as Reserved. The Exchange also proposes a conforming change to Section I.D. (Prepayment Program) of the Fee Schedule to delete the reference in that section to “Section 1.A., note 7,” to reflect the proposed deletion of the fees and credits relating to FAANG transactions. The Exchange believes this proposed

change, which would remove text relating to a discontinued program, would promote clarity in the Fee Schedule.

Routing Surcharge

As set forth in Section I.L. of the Fee Schedule, the Exchange currently assesses a routing surcharge on all non-Customer orders routed to away markets and on Customer orders including Professional Customer orders that are charged transaction fees at another exchange. If the executing exchange does not charge a transaction fee for the execution of the Customer order, the Routing Surcharge will be waived. Currently, the Routing Surcharge is \$0.11 per contract plus (i) any transaction fees assessed by the away exchange(s) (calculated on an order-by-order basis since different away exchanges charge different amounts) or (ii) if the actual transaction fees assessed by the away exchange(s) cannot be determined prior to the execution, the highest per contract charge assessed by the away exchange(s) for the relevant option class and type of market participant (e.g., Customer, Firm, Broker/Dealer, Professional Customer or Market Maker). The Exchange applies the Routing Surcharge in addition to any customary execution fees applicable to the order.

The Exchange now proposes to modify the Routing Surcharge to be based on whether the routed order is in a Penny or non-Penny issue and to establish a single fee that would be applicable to all routed orders in Penny issues, and a single fee for all routed orders in non-Penny issues. Specifically, the Exchange proposes that the fee for routed orders would be, similar to the current Routing Surcharge, equal to \$0.11 plus an amount based on the transaction fees charged by away exchanges, which the Exchange proposes to set at a fixed amount that would approximate such fees in a manner intended to counterbalance the internal resources required to support the handling of orders routed away from the Exchange. Accordingly, the Exchange

proposes a Routing Surcharge of \$0.61 in Penny issues, and \$1.21 in non-Penny issues. The Exchange believes that having a single published rate for all routed orders in Penny issues and a single published rate for all routed orders in non-Penny Issues would also reduce potential confusion relating to the amount of the surcharge for a given routed order (particularly in light of the variability in transaction fees across other options markets) and would permit market participants to determine execution costs at the time of order entry, thereby promoting clarity and transparency in the Fee Schedule.

Introductory Pricing for Newly Enrolled Market Makers

Section III.A. of the Fee Schedule provides for monthly ATP fees. Footnote 2 of Section III.A. further provides that an ATP Holder that newly enrolls to operate as a Market Maker may be entitled to introductory pricing on ATP fees for up to six months.⁵ The Exchange similarly offers newly enrolled Market Makers introductory pricing on Premium Product Fees for up to six months, as set forth in Section III.B, Footnote 1.⁶

⁵ A newly enrolled Market Maker on the Exchange may be entitled to introductory pricing on its ATP Fees for up to six months, beginning the first month in which it registers. For the first three months (i.e., months 1-3), the Exchange waives the ATP fees, and for the latter three months (i.e., months 4-6), the Exchange discounts such ATP fees by 50%, unless the Market Maker achieves a monthly ADV equal to at least 0.05% of TCADV, at which time the Exchange would charge the Market Maker 100% of its ATP Fees for the remaining months, regardless of its monthly ADV in subsequent months. An ATP Holder may qualify for this introductory pricing only once in a 24-month period, which period begins in the first month the ATP Holder registers on the Exchange.

⁶ A newly enrolled Market Maker on the Exchange may be entitled to introductory pricing on its Premium Product Fees for up to six months, beginning the first month in which it registers. For the first three months (i.e., months 1-3), the Exchange waives Premium Product Fees, and for the latter three months (i.e., months 4-6), the Exchange discounts such Premium Product Fees by 50%, unless the Market Maker achieves a monthly ADV equal to at least 0.05% of TCADV, at which time the Exchange would charge the Market Maker 100% of its Premium Product Fees for the remaining months, regardless of its monthly ADV in subsequent months. An ATP Holder may qualify for this introductory pricing only once in a 24-month period, which period begins in the first month the ATP Holder registers on the Exchange.

The Exchange now proposes to delete Section III.A., Footnote 2 and Section III.B., Footnote 1 to eliminate the introductory pricing for newly enrolled Market Makers on ATP fees and Premium Product Fees, respectively, as no ATP Holders have qualified for this pricing in the last few years. The Exchange adopted this introductory pricing to encourage ATP Holders to enroll as Market Makers. However, because these pricing incentives have been underutilized (and therefore did not achieve their intended effect), the Exchange proposes to eliminate such pricing from the Fee Schedule and believes that ATP Holders would not be impacted by its removal.

Floor Broker Grow With Me Program

The Exchange proposes to add the Floor Broker Grow With Me program, through which Floor Broker organizations (“Floor Brokers”) may earn a (\$0.05) rebate on manual billable volume. The Exchange proposes to add this program in Section III.E.2. of the Fee Schedule, which is currently designated as Reserved. The Exchange proposes that the Floor Broker Grow With Me program would provide Floor Brokers with an opportunity to earn a rebate on manual billable volume based on demonstrated growth as compared to the Floor Brokers’ manual billable volume ADV in January 2023 (the “base period”). The Exchange proposes that Floor Brokers that achieve (1) manual billable contracts volume of 100% over their base period volume in a month or (2) an ADV of 25,000 manual billable contracts in a month, whichever is greater, would be eligible for a rebate of (\$0.05) per billable side. The Exchange proposes that Floor Brokers new to the Exchange would be eligible to qualify for the program by achieving the second qualifying criteria, which is not tied to base period volume.

Although the Exchange cannot predict with certainty whether the proposed change would encourage Floor Brokers to increase their manual billable volume on the Exchange, the proposed

change is designed to continue to incentivize Floor Brokers to do so by offering a rebate on manual billable volume. All Floor Brokers, including new Floor Brokers, would be eligible to earn a rebate through the Floor Broker Grow With Me program, as proposed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁸ 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.”⁹

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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

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

trades.¹⁰ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in January 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.¹¹

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 change to the Routing Surcharge is reasonable because it would establish a single fee that would be applicable to all routed orders in Penny issues and a single fee that would be applicable to all routed orders in non-Penny issues, and such fees would be applicable to all market participants equally. In addition, the Exchange believes the proposed change is reasonable because the proposed fees for routed orders would be structured similarly to the current Routing Surcharge and are designed to assess fixed routing fees in amounts intended to appropriately counterbalance the internal resources required to support the handling of orders routed away from the Exchange. The Exchange also notes that the

¹⁰ 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>.

¹¹ 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 was 7.03% for the month of January 2022 and 7.96% for the month of January 2023.

proposed Routing Surcharge amounts are within the range of routing fees currently charged by at least one other options exchange.¹² The Exchange also believes that the proposed change would add clarity and transparency in the Fee Schedule by simplifying the structure of the Routing Surcharge and providing market participants with greater determinism with respect to execution costs at the time of order entry.

The Exchange believes that the proposed change to delete FAANG transaction fees and credits is reasonable because FAANG options were delisted after monthly expiration in February 2023, and such fees and credits are no longer applicable to any market participants. The Exchange believes that the proposed change to eliminate certain introductory pricing for newly enrolled Market Makers is reasonable because these programs have not served to encourage ATP Holders to enroll as Market Makers on the Exchange. Accordingly, the Exchange believes that the proposed changes to eliminate text from the Fee Schedule relating to discontinued or underutilized programs would promote clarity in the Fee Schedule, to the benefit of all market participants.

The Exchange believes that the proposed Floor Broker Grow With Me Program is reasonable because it is designed to continue to incent Floor Brokers to increase their manual billable volume executed on the Exchange and provides Floor Brokers with two ways to earn the additional rebate offered by the program. The Exchange also believes that using a Floor Broker

¹² See, e.g., Cboe Exchange, Inc. Options Fee Schedule, available at: https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (providing, for example, Customer routing fees of \$0.75 for orders in Penny issues or \$1.25 for orders in non-Penny issues routed to certain away markets and Non-Customer routing fees of \$1.17 for all orders in Penny issues or \$1.45 for all orders in non-Penny issues routed away).

organization's January 2023 manual billable volume ADV as a basis for measuring growth is reasonable because it reflects each organization's recent volumes.

To the extent that the proposed changes improve the clarity and transparency of the Fee Schedule, the Exchange believes they would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume, which could promote market depth, facilitate tighter spreads and enhance price discovery, particularly to the extent the proposed change encourages market participants to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, 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 share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as market participants can choose to direct their order flow to any of the 16 options exchanges. The Exchange believes that proposed rule change is designed to continue to incentivize market participants to direct liquidity to the Exchange, and, to the extent they continue to be incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for all market participants.

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

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed change to the Routing Surcharge is equitable because the proposed single fee for all routed orders in Penny issues and single fee for all routed orders in non-Penny issues would apply to all market participants equally and the proposed amounts are designed to offset internal resources necessary to support the handling of orders routed away from the Exchange. The proposed change to delete fees and credits relating to FAANG transactions is also equitable because their elimination would likewise apply to all market participants equally. The Exchange also believes that the proposed changes to eliminate introductory pricing for newly enrolled Market Makers in ATP fees and Premium Product Fees are equitable because the pricing programs would no longer be available to any ATP Holders, and, moreover, no ATP Holders have qualified for the introductory pricing in recent years. The Exchange believes that the proposed rebate for Floor Brokers through the Floor Broker Grow With Me Program is an equitable allocation of fees and credits because the rebate would be available to all qualifying Floor Brokers equally, and Floor Brokers may qualify for the rebate based on growth over their own base period volume. The Exchange further believes that the proposed change is equitable because it is intended to encourage the role performed by Floor Brokers in facilitating the execution of orders via open outcry, a function which the Exchange wishes to support for the benefit of all market participants.

To the extent that the proposed changes continue to incent ATP Holders to utilize the Exchange as a primary execution venue and attract more volume on the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, 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 Proposed Rule Change is Not Unfairly Discriminatory

The Exchange believes the proposed change is not unfairly discriminatory. The proposed change to the Routing Surcharge is not unfairly discriminatory because the proposed fees are intended to assess streamlined routing fees in amounts that would appropriately account for the internal resources necessary to support orders routed away from the Exchange and would apply equally to all market participants' routed orders, based on whether such order is in a Penny or non-Penny issue. The proposed change to delete fees and credits relating to FAANG transactions is not unfairly discriminatory because they are no longer applicable to any market participants following the delisting of FAANG options. The Exchange also believes that the proposed changes to eliminate introductory pricing for new Market Makers in ATP fees and Premium Product Fees are equitable because the pricing programs would be eliminated in their entirety and would no longer be available to any ATP Holders. Finally, the Exchange believes that the proposed Floor Broker Grow With Me Program is not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders on the Exchange, which the Exchange wishes to encourage and support to promote price improvement opportunities for all market participants.

Thus, the Exchange believes that, to the extent the proposed rule change would continue to improve market quality for all market participants on the Exchange by promoting clarity and transparency in the Fee Schedule and 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, 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.

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."¹³

Intramarket Competition. The proposed change is designed to improve the clarity and transparency of the Fee Schedule and to continue to attract order flow to the Exchange. The proposed change to offer Floor Brokers a rebate on manual billable volume through the Floor Broker Grow With Me program is intended to attract additional order flow to the Exchange, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased manual billable transactions could increase opportunities for execution of other trading interest. The Exchange believes that the

¹³ See Reg NMS Adopting Release, supra note 9, at 37499.

proposed change to the Routing Surcharge would not impose any burden on competition that is not necessary or appropriate because it is intended to simplify the calculation of fees for routed orders and to continue to incent Firms to direct order flow to the Exchange, thereby promoting liquidity on the Exchange to the benefit of all market participants. The Exchange does not believe that the proposed changes relating to FAANG transactions or introductory pricing for newly enrolled Market Makers would impose any burden on competition that is not necessary or appropriate because the changes would apply equally to all ATP Holders and would add clarity to the Fee Schedule, to the benefit of all market participants.

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.¹⁴ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in January 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.¹⁵

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees and credits in a manner designed to continue to incent Floor Brokers to direct trading interest (particularly manual billable volume)

¹⁴ See note 10, supra.

¹⁵ See note 11, supra.

to the Exchange, to provide liquidity, and to attract order flow. In addition, to the extent that the proposed change to simplify the Routing Surcharge incentivizes ATP Holders to utilize the Exchange as a primary trading venue for all transactions, all of 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 rule change reflects this competitive environment because it removes underutilized programs from the Fee Schedule that did not achieve their intended purpose. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues, including one that offers similarly structured routing fees.¹⁶ In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges.

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 has become effective upon filing pursuant to Section 19(b)(3)(A)¹⁷ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the 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.

¹⁶ See note 12, *supra*.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

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-2023-21 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-2023-21. 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-2023-21 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.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).

Additions underscored

Deletions [bracketed]

NYSE AMERICAN OPTIONS FEE SCHEDULE*

*NYSE American Options is the options trading facility of NYSE American LLC

Effective as of March [1] 15, 2023

Section I. Options Transaction Fees and Credits^[7]

A. Rates for Options transactions. The following transaction fees apply to executions in Option contracts.

Participant	Penny/Non-Penny	Rate Per Contract For Electronic Transactions	Marketing Charges Per Contract for Electronic Transactions ³	Rate Per Contract Manual Transactions
Broker-Dealer ^{1,5,8}	Penny	\$0.50	N/A	\$0.25
	Non-Penny	\$0.85	N/A	\$0.25
Customer	Penny	\$0.00	N/A	\$0.00
	Non-Penny	\$0.00	N/A	\$0.00
DOMM ^{1,2,3,5}	Penny	\$0.25	\$0.25	N/A
	Non-Penny	\$0.25	\$0.70	N/A
e-Specialist ^{1,2,3,5}	Penny	\$0.25	\$0.25	\$0.30
	Non-Penny	\$0.25	\$0.70	\$0.30
Firm ^{1,4,5}	Penny	\$0.49	N/A	\$0.25
	Non-Penny	\$0.85	N/A	\$0.25
Firm Facilitation ¹	Penny	N/A	N/A	\$0.00
	Non-Penny	N/A	N/A	\$0.00

NYSE American Options Market Maker ^{1,2,3,5}	Penny	\$0.25	\$0.25	\$0.35
	Non-Penny	\$0.25	\$0.70	\$0.35
Non-NYSE American Options Market Maker ^{1,2,5,8}	Penny	\$0.50	N/A	\$0.25
	Non-Penny	\$0.85	N/A	\$0.25
Professional Customer ^{1,5,8}	Penny	\$0.50	N/A	\$0.25
	Non-Penny	\$0.85	N/A	\$0.25
Specialist ^{1,2,3,5}	Penny	\$0.25	\$0.25	\$0.30
	Non-Penny	\$0.25	\$0.70	\$0.30

1. Royalty Fees described in Section I.K., may also apply.
2. NYSE American Options Market Makers may qualify for lower rates for Electronic transactions pursuant to the Market Maker Sliding Scale in section I. C.
3. NYSE American Options Market Makers who are counterparties to an Electronic trade with a Customer are liable for Marketing Charges, except as provided in Section I.M. The pool of monies resulting from the collection of Marketing Charges on Electronic non-Directed Orders will be controlled by the Specialist or the e-Specialist with superior volume performance over the previous quarter, unless otherwise designated by the ATP Holder that submits an Electronic non-Directed Order as described below, for distribution by the Exchange at the direction of such Specialist or e-Specialist to eligible payment accepting firms. An ATP Holder that submits an Electronic non-Directed Order to the Exchange may designate an NYSE American Options Market Maker to control to pool of monies resulting from the collection of Marketing Charges, which shall be distributed by the Exchange at the direction of such NYSE American Options Market Maker to payment accepting firms. The pool of monies resulting from collection of Marketing Charges on Electronic Directed Orders will be controlled by the NYSE American Options Market Maker to which the order was directed and distributed by the Exchange at the direction of such NYSE American Options Market Maker to payment accepting firms.
4. Firms are subject to a Monthly Firm Fee Cap of \$200,000 for fees associated with Manual transactions as more fully described below in Section I. I.
5. A \$0.12 per contract surcharge will be applied to any Electronic Non-Customer Complex Order that executes against a Customer Complex Order, regardless of whether the execution occurs in a Complex Order Auction (“COA”). The surcharge will not apply to executions in CUBE Auctions. The Exchange will reduce this per contract surcharge to \$0.10 for ATP Holders that achieve at least 0.20% of TCADV of Electronic Non-Customer Complex Orders in a month.
6. Reserved.

⁷ [Options on NYSE FANG+ Index (“FAANG”) transactions. The Exchange will charge \$0.35 per contract, per side for Non-Customer FAANG transactions, whether executed Manually or Electronically. The Exchange will not charge a fee for any FAANG transactions (i) on behalf of Customers or (ii) by NYSE American Options Market Makers, Specialists, e-Specialists or DOMMs. Marketing Charges will not be applied to FAANG transactions. Any volume in FAANG will be included in the calculations to qualify for any volume-based incentives currently being offered on the Exchange. The Exchange will provide a credit to any firm that is an NYSE American Options Market Maker, Specialist, e-Specialist or DOMM that executes a specified minimum number of total monthly contract sides that open a position in FAANG on the Exchange (“eligible contract sides”), as set forth below (“MM FAANG Credit”):

- a credit of \$5,000 for a minimum of 500 eligible contract sides; provided, however, that if more than five firms qualify for this MM FAANG Credit in a calendar month, the \$5,000 MM FAANG Credit for each qualifying firm will be a pro rata share of \$25,000; or
- a credit of \$10,000 for a minimum of 2,000 eligible contract sides; provided, however, that if more than two firms qualify for this MM FAANG Credit in a calendar month, the \$10,000 MM FAANG Credit for each qualifying firm will be a pro rata share of \$25,000. A firm that qualifies for the \$10,000 credit will not be eligible for the \$5,000 credit.]

Reserved.

D.Prepayment Program. Any NYSE American Options Market Maker is eligible for the rates described in the Market Maker Sliding Scale in Section I. C. A NYSE American Options Market Maker may prepay a portion of the fees it incurs under Section I.C., I.G., I.M., and III.A. In exchange for prepayment of a portion of their Section I.C., I.G., I.M., and III. A. fees, the NYSE American Options Market Maker qualifies for reduced fees under [Section I.A., note 7, and] Section I.C. and also qualifies its Affiliated OFP or its Appointed OFP to earn enhanced credits under Section I.E. NYSE American Options Market Makers can commit to a 1-year term (“1 Year Prepayment Program”) or, can commit to prepay for the remainder of the calendar year, effective the following quarter (“Balance of the Year Program”). The choice of a 1 Year Prepayment Program or Balance of the Year Program impacts the enhanced credits an Affiliated OFP or an Appointed OFP of a NYSE American Options Market Maker is eligible for under Section I.E.

The 1 Year Prepayment Program amount is \$3 million, payable by the last business day of January in the respective year (i.e., the year in which prepayments will apply). A NYSE American Options Market Maker that participates in the 1 Year Prepayment Program will receive a credit of \$3 million toward fees it incurs under Section I.C., I.G., I.M., and III.A. The prepayment amount and payment schedule for the Balance of the Year Program is based on the quarter in which the NYSE American Options Market Maker joins, as set forth below:

Balance of the Year Program	2nd Quarter	3rd Quarter	4th Quarter
Prepayment Amount and Payment Schedule	\$2,475,000, due by last business day in April	\$1,800,000, due by last business day in July	\$975,000, due by last business day in October

A NYSE American Options Market Maker that participates in the Balance of the Year Program will receive a credit equal to its prepayment amount (i.e., \$2,475,000; \$1,800,000; or \$975,000, respectively) toward fees it incurs under Section I.C., I.G., I.M., and III.A. Once the prepayment credit has been exhausted, the Exchange will invoice the NYSE American Options Market Maker at the applicable rates under Section I.C., I.G., I.M., and III.A. In the event that a NYSE American Options Market Maker does not conduct sufficient activity to exhaust the entirety of their prepayment credit within the calendar year, there will be no refunds issued for any unused portion of their prepayment credit.

To participate in the 1 Year Prepayment Program or the Balance of the Year Program, interested NYSE American Options Market Makers must notify the Exchange in writing by emailing optionsbilling@nyse.com, indicating to which prepayment term they are committing. To participate in the Balance of the Year Program, NYSE American Options Market Makers must send an email to the Exchange by the last business day before the start of the new (following) quarter. The email to enroll in the Prepayment Program must originate from an officer of the NYSE American Options Market Maker firm and, except as provided for below, represents a binding commitment for the 1 year term, or the Balance of the Year Program to which the NYSE American Options Market Making firm commits, requiring payment according to the schedule described above.

L.Routing Surcharge. The Routing Surcharge is assessed on all [non-Customer] orders routed to away markets, [and on Customer orders including Professional Customer orders that are charged transaction fees at another exchange. If the executing exchange does not charge a transaction fee for the execution of the Customer order, the Routing Surcharge will be waived. The Routing Surcharge will be made up of \$0.11 per contract plus (i) any transaction fees assessed by the away exchange(s) (calculated on an order-by-order basis since different away exchanges charge different amounts) or (ii) if the actual transaction fees assessed by the away exchange(s) cannot be determined prior to the execution, the highest per contract charge assessed by the away exchange(s) for the relevant option class and type of market participant (e.g., Customer, Firm, Broker/Dealer, Professional Customer or Market Maker).]

<u>Penny Issues</u>	<u>Non-Penny Issues</u>
<u>\$0.61</u>	<u>\$1.21</u>

The Routing Surcharge is in addition to NYSE American's customary execution fees applicable to the order.

Section III. Monthly Trading Permit, Rights, Floor Access and Premium Product Fees

- A. Monthly ATP Fees.** ATP fees are charged based on the maximum number of ATPs held during the month, according to the table shown below. The "Bottom 45%" refers to the least actively traded issues on the Exchange, ranked by industry volume, as reported by the OCC for each issue during the calendar quarter. Each calendar quarter, with a one-month lag, the Exchange will publish on its website a list of the Bottom 45% of issues traded. Any newly listed issues will automatically become part of the Bottom 45% until the next evaluation period, at which time they may or may not remain part of the Bottom 45% list depending upon their trading volumes and resultant rank among all issues traded on the Exchange.

ATP Type	Monthly Fee Per ATP ^[2]	Number Of Issues Permitted In A Market Makers Quoting Assignment
Floor Broker	\$500	N/A
Order Flow Provider	\$1,000	N/A
Clearing Member	\$1,000	N/A
NYSE American Options Market Maker 1st ATP	\$8,000	60 plus the Bottom 45%
NYSE American Options Market Maker 2nd ATP	\$6,000	150 plus the Bottom 45%
NYSE American Options Market Maker 3rd ATP	\$5,000	500 plus the Bottom 45%
NYSE American Options Market Maker 4th ATP	\$4,000	1,100 plus the Bottom 45%
NYSE American Options Market Maker 5th ATP	\$3,000	All issues traded on the Exchange
NYSE American Options Market Maker 6th to 9 th ATP	\$2,000	All issues traded on the Exchange

NYSE American Options Market Maker 10 th or more ATPs	\$500	All issues traded on the Exchange
NYSE American Options Floor Market Maker 1st ATP ¹	\$5,000	60 plus the Bottom 45%
NYSE American Options Floor Market Maker 2nd ATP ¹	\$5,000	150 plus the Bottom 45%
Reserve Floor Market Maker ATP	\$175	N/A

- ¹. An NYSE American Options Floor Market Maker ATP is a Floor Market Maker that purchases no more than two ATPs per month and transacts at least 75% of its volume, excluding QCC and Strategy Executions, as Manual trades in open outcry on the Trading Floor.
- ¹². An ATP Holder that is not currently an NYSE American Options Market Maker (“Market Maker”) and enrolls to operate as an Market Maker on the Exchange may be entitled to introductory pricing on its ATP Fees for up to six months, beginning the first month in which it registers (each a “Newly Enrolled MM”). For the first three months (i.e., months 1-3), the Exchange will waive the ATP fees for a Newly Enrolled MM. For latter three months (i.e., months 4-6), the Exchange will discount such ATP fees by 50%, unless the Newly Enrolled MM achieves a monthly ADV equal to at least 0.05% of TCADV, at which time the Exchange would charge the Newly Enrolled MM 100% of its ATP Fees for the remaining months, regardless of the Newly Enrolled MM’s monthly ADV in subsequent months. An ATP Holder may qualify for this introductory pricing only once in a 24-month period, which period begins in the first month the ATP Holder registers on the Exchange.]

B. NYSE American Options Market Maker Monthly Premium Product Fee.^[1] The Exchange assesses a monthly fee to any NYSE American Options Market Maker, other than a Market Maker that qualifies as an NYSE American Options Floor Market Maker as described in note 1 to Section III.A., transacting in any Premium Products in the Table below during any given month. The maximum monthly Premium Product Fees for any single NYSE American Options Market Maker firm is \$7,000 per month.

The Premium Product Fees are shown in the table below.

Premium Product Symbol	Monthly Premium Product Fee
SPY	\$1,000
AAPL	\$1,000
IWM	\$1,000
QQQ	\$1,000
BABA	\$1,000
BAC	\$1,000
EEM	\$1,000
META	\$1,000
USO	\$1,000
VXX	\$1,000

- ^[1] An ATP Holder that is not currently an NYSE American Options Market Maker (“Market Maker”) and enrolls to operate as a Market Maker on the Exchange may be entitled to introductory pricing on its Premium Products Fees for up to six months, beginning the first month in which it registers (each a “Newly Enrolled MM”). For the first three months (i.e., months 1-3), the Exchange will waive the Premium Product Fees for a Newly Enrolled MM. For latter three months (i.e., months 4-6), the Exchange will discount such Premium Product Fees by 50%, unless the Newly Enrolled MM achieves a monthly ADV equal to at least 0.05% of TCADV, at which time the Exchange would charge the Newly Enrolled MM 100% of its Premium Product Fees for the remaining months, regardless of the Newly Enrolled MM’s monthly ADV in subsequent months. An ATP Holder may qualify for this introductory pricing only once in a 24-month period, which period begins in the first month the ATP Holder registers on the Exchange.]

E. Floor Broker Incentive and Rebate Programs

1. No Change
2. **[Reserved.] Floor Broker Grow With Me Program**

Floor Broker organizations may earn a rebate on manual billable volume based on demonstrated growth as compared to the organization's manual billable volume ADV in January 2023 (the "base period") (or, for new Floor Broker organizations, based on the ADV requirement set forth below) through the Floor Broker Grow With Me Program.

Floor Broker organizations that achieve (1) manual billable contracts volume of 100% over their base period volume in a month or (2) an ADV of 25,000 manual billable contracts in a month, whichever is greater, will be eligible for a rebate of (\$0.05) per billable side.
