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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81549; File No. SR-NYSEAMER-2017-08)

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the NYSE American Options Fee Schedule

September 7, 2017

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 31, 2017, NYSE American LLC (the “Exchange” or “NYSE American”) 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. The proposed change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 amend the Fee Schedule effective September 1, 2017. Specifically, the Exchange proposes to modify the surcharge that is applied to certain Complex Orders executed on the Exchange.

Currently, the Exchange imposes a \$0.05 per contract surcharge for any Electronic Non-Customer Complex Order that executes against a Customer Complex Order, regardless of whether the execution occurs in a Complex Order Auction (the “Surcharge”).<sup>4</sup> The Exchange proposes to modify the Surcharge to \$0.10 per contract, which surcharge is comparable to charges imposed by other options exchanges.<sup>5</sup> For clarity, the Exchange also proposes to make clear that the Surcharge is applied on a “per contract” basis.<sup>6</sup>

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<sup>4</sup> See Fee Schedule, Section I.A., n. 6, [available here](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf), [https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE\\_American\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf). Per the Fee Schedule, a “Customer” is an individual or organization that is not a Broker-Dealer, per Rule 900.2NY(18); and is not a Professional Customer; and a “Non-Customer” is anyone who is not a Customer. See *id.*, Fee Schedule, Key Terms and Definitions. Thus, Non-Customers include Specialists, e-Specialists, Directed Order Market Makers, Firms, Broker Dealers, and Professional Customers. The Exchange notes that Firm Facilitation trades are not electronic and are therefore not subject to the Surcharge.

<sup>5</sup> See MIAX Options fee schedule, [available here](https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_08072017.pdf), [https://www.miaxoptions.com/sites/default/files/fee\\_schedule-files/MIAX\\_Options\\_Fee\\_Schedule\\_08072017.pdf](https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_08072017.pdf) (imposing a \$0.10 on certain complex orders). See also The Chicago Board Options Exchange, Inc. (“CBOE”) fee schedule, [available here](http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf), <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>, at n. 35 (same).

<sup>6</sup> See proposed Fee Schedule, Section I.A., n. 6. The Exchange also proposes to correct a typographical error referring to “a CUBE Auctions” by removing the word “a.” See *id.*

Additionally, to encourage ATP Holders to transact additional Non-Customer Complex Orders on the Exchange, the Exchange proposes to offer a reduced Surcharge for those ATP Holders that meet a certain volume threshold. Specifically, the Exchange proposes to reduce the per contract surcharge to \$0.07 for any ATP Holder that transacts at least 0.20% of Total Industry Customer equity and ETF option average daily volume (or TCADV) of Electronic Non-Customer Complex Order Executions in a month.

Finally, the Exchange proposes to add “TCADV” as a defined term in the Key Terms and Definitions section of the Fee Schedule, which would add clarity and transparency to the Fee Schedule.<sup>7</sup> As proposed, TCADV would refer to “Total Industry Customer equity and ETF option average daily volume that includes OCC calculated Customer volume of all types, including Complex Order Transactions and QCC transactions, in equity and ETF options.”<sup>8</sup> This proposed definition is consistent with how other options exchanges define this term.<sup>9</sup> Consistent with this proposed change, the Exchange proposes to utilize this defined term in Section I.E. regarding the American Customer Engagement (“ACE”) Program.<sup>10</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>12</sup> in

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<sup>7</sup> See Fee Schedule, Preface, Key Terms and Definitions.

<sup>8</sup> See proposed Fee Schedule, Preface, Key Terms and Definitions.

<sup>9</sup> See e.g., NYSE Arca Options Fee Schedule, Endnote 8.

<sup>10</sup> See proposed Fee Schedule, Section I.E. The Exchange also proposes to fix a typographical error and add the word “for” to the end of the first paragraph describing the ACE Program, which would clearly provide that the ACE Program offers “two methods for OFPs to receive credits” (emphasis added). See *id.*

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed increase to the Surcharge is reasonable, equitable, and not unfairly discriminatory, as it applies to all similarly situated Non-Customer Complex Orders. Applying the Surcharge, as modified, to market participant orders except Customer orders is equitable and not unfairly discriminatory because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of Specialists and Market Makers in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

In addition, the proposed surcharge is reasonable, equitable, and not unfairly discriminatory as it is consistent with fees charged by other options exchanges.<sup>13</sup> For example, MIAX imposes a \$0.10 “Per Contract Surcharge for Removing Liquidity Against A Resting Priority Customer Complex Order on the Strategy Book” for all option classes), which may result in an overall per contract fee of \$0.60.<sup>14</sup>

Further, the Exchange believes that the proposal to offer a reduced surcharge to those

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<sup>13</sup> See supra note 5.

<sup>14</sup> See MIAX fee schedule, supra note 5 (providing for a potential total per contract fee of \$0.60 for Market Makers, which includes a “Complex Per Contract Fee for Penny Classes,” a per contract “Marketing Fee,” and a \$0.10 “Per Contract Surcharge for Removing Liquidity Against a Resting Priority Customer Complex Order on the Strategy Book for Penny and Non-Penny Classes”). The Exchange believes that MIAX does not subject transactions in a complex order auction to any fee cap. See also Securities Exchange Act Release No. 80262 (March 16, 2017), 82 FR 14779 (March 22, 2017) (SR-NYSEMKT-2017-15) (establishing the Surcharge).

ATP Holders that achieve certain volume thresholds is reasonable, equitable and not unfairly discriminatory. The Exchange believes the proposed reduced rate is reasonably designed to encourage ATP Holders that transact Non-Customer Complex Orders to direct more of this order flow to the Exchange to qualify for the reduced rates. The proposed rates are reasonable and equitable and not unfairly discriminatory because they apply equally to all ATP Holders that transact Non-Customer Complex Orders. In addition, the proposed changes are equitable and not unfairly discriminatory because, while only Non-Customer Complex Orders qualify for the reduced surcharge, the Exchange believes any increase in Non-Customer Complex Orders would result in greater volume and liquidity being attracted to the Exchange, which benefit all market participants by providing more trading opportunities and tighter spreads.<sup>15</sup> To the extent this goal is achieved, the Exchange would improve its overall competitiveness and strengthen its market quality for all market participants

The proposal to define “TCADV” in the Fee Schedule, as well as to fix the typographical errors in Section I.A.<sup>16</sup> and I.E.,<sup>17</sup> is likewise reasonable, equitable and not unfairly discriminatory because it would add clarity and transparency to the Fee Schedule to the benefit of all market participants.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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<sup>15</sup> The Exchange notes that it does not impose any fee on Electronic executions of Customer interest.

<sup>16</sup> See supra note 6.

<sup>17</sup> See supra note 10.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>18</sup> 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. The proposed modification to the Surcharge would not impose an unfair burden on competition as it is consistent with fees charged by other exchanges.<sup>19</sup> Further, the proposal to reduce the surcharge for certain ATP Holders that achieve certain volume thresholds would likewise not impose an unfair burden on competition because it is designed to attract Non-Customer Complex Orders to the Exchange. To the extent that this purpose is achieved, this proposal would enhance the quality of the Exchange's markets and increase the volume of Complex Orders traded here. In turn, all the Exchange's market participants would benefit from the improved market liquidity. If the proposed changes make the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become ATP Holders.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

No written comments were solicited or received with respect to the proposed rule change.

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<sup>18</sup> 15 U.S.C. 78f(b)(8).

<sup>19</sup> See supra note 5.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>20</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>21</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>22</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2017-08 on the subject line.

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(2).

<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2017-08. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSEAMER-2017-08, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).

[FR Doc. 2017-19378 Filed: 9/12/2017 8:45 am; Publication Date: 9/13/2017]