

inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-CBOE-2023-020, and should be submitted on or before May 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>51</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-09079 Filed 4-28-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2 p.m. on Thursday, May 4, 2023.

**PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

**CONTACT PERSON FOR MORE INFORMATION:**

For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

*Authority:* 5 U.S.C. 552b.

Dated: April 27, 2023.

**Vanessa A. Countryman,**  
Secretary.

[FR Doc. 2023-09266 Filed 4-27-23; 4:15 pm]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97372; File No. SR-NYSEAMER-2023-28]

### 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

April 25, 2023.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 18, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to 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 April 18, 2023.<sup>4</sup>

<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.

<sup>4</sup> The Exchange originally filed to amend the Fee Schedule on March 1, 2023 (SR-NYSEAMER-2023-18), withdrew such filing and amended the Fee Schedule on March 15, 2023 (SR-NYSEAMER-2023-21), withdrew such filing and amended the Fee Schedule on March 28, 2023 (SR-NYSEAMER-2023-24), and then withdrew such filing and amended the Fee Schedule on April 10, 2023 (SR-

The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The purpose of this filing is to 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 April 18, 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

NYSEAMER-2023-26), which latter filing the Exchange withdrew on April 18, 2023.

<sup>51</sup> 17 CFR 200.30-3(a)(12).

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 set at a fixed amount intended to counterbalance the internal resources required to support the handling of orders routed away from the Exchange. The Exchange proposes to implement a flat fee structure for routing fees, which the Exchange believes would streamline the process of calculating fees applied to orders routed away from the Exchange because it would, among other things, reduce the administrative burden of recalibrating routing fees each time an away exchange modifies its relevant transaction fees. 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. The Exchange believes the proposed routing fee structure is not novel, as at least one other options exchange similarly applies fixed routing fees based on whether the routed order is in a Penny or non-Penny issue, and that the proposed amounts of the fees are within the range of fees applied by other markets to routed orders.<sup>5</sup>

<sup>5</sup> See, e.g., BOX Options Exchange Fee Schedule, available at: <https://boxexchange.com/assets/BOX-Fee-Schedule-as-of-March-6-2023.pdf> (providing for fixed routing fees of \$0.60 per contract fee for customer orders in Penny classes and \$0.85 per contract fee for customer orders in non-Penny class); 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

#### 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.<sup>6</sup> 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.<sup>7</sup>

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,

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).

<sup>6</sup> 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.

<sup>7</sup> 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.

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. The Exchange further proposes that the Floor Broker Grow With Me program would be in place with these qualifying criteria until July 31, 2023, which would allow the Exchange a period to evaluate such criteria and to submit a proposed rule change regarding qualifications for the program beyond that date.

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,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

### The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission

has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>10</sup>

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>11</sup> 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.<sup>12</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange 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 it would provide for routing fees that would counterbalance the internal resources

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

<sup>11</sup> The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

<sup>12</sup> Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see *id.*, the Exchange’s market share in equity-based options was 7.03% for the month of January 2022 and 7.96% for the month of January 2023.

required to support the handling of orders routed away from the Exchange and would streamline the process of calculating routing fees by obviating the need to recalibrate fees based on individual away market fees (which are variable and subject to frequent change) and eliminating any potential confusion as to routing fees applicable to a given order. The Exchange also notes that a fixed fee structure for routing fees is not novel and that the amounts of the proposed Routing Surcharge amounts are within the range of routing fees currently charged by other options exchanges.<sup>13</sup>

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 and that the 25,000 manual billable contracts alternative requirement is reasonable because it would permit new Floor Brokers without base period volume to qualify for the program by meeting a requirement that also applies to current Floor Brokers. The Exchange also believes that it is reasonable to implement the program with the proposed qualifying criteria through July 31, 2023, as the Exchange would be able to further evaluate such criteria in the interim period and prepare a proposed rule change regarding appropriate qualifying criteria for the program beyond such date.

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

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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

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 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 would also streamline the process of calculating routing fees for all market

participants and provide increased clarity regarding execution costs at the time of order entry. 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 either growth over their own base period volume or an alternative that would permit new Floor Brokers that do not have base period volume to qualify for the program on a basis that is also applicable to current Floor Brokers. The Exchange also believes that the proposal to offer the Floor Broker Grow With Me program with the current qualifying criteria through July 31, 2023 is equitable because the intervening period would provide the Exchange an opportunity to evaluate the parameters of the program and to submit a proposed rule change regarding the criteria for the program going forward. 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 would simplify the calculation of routing fees for all market participants and add clarity and transparency to the Fee Schedule regarding the fees applicable to routed orders. 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 because current and new Floor Brokers alike are eligible to qualify for the rebate and 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."<sup>14</sup>

*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.<sup>15</sup> 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.<sup>16</sup>

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 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.<sup>17</sup> 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 is effective upon filing pursuant to Section 19(b)(3)(A)<sup>18</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>19</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>20</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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2023-28 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-2023-28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

<sup>14</sup> See Reg NMS Adopting Release, *supra* note 9, at 37499.

<sup>15</sup> See note 11, *supra*.

<sup>16</sup> See note 12, *supra*.

<sup>17</sup> See note 5, *supra*.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

<sup>20</sup> 15 U.S.C. 78s(b)(2)(B).

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-NYSEAMER-2023-28, and should be submitted on or before May 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-09086 Filed 4-28-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97374; File No. SR-NYSEAMER-2023-27]

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Change To Amend Rule 915 (Criteria for Underlying Securities) To Accelerate the Listing of Options on Certain IPOs

April 25, 2023

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 21, 2023, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 915 (Criteria for Underlying Securities). The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it 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 the proposed rule change is to amend Rule 915 (Criteria for Underlying Securities) (the "Rule") as set forth below. Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group ("LOMSWG") (collectively, the "Industry Working Group"), the Exchange proposes to modify the standard set forth in the Rule for the listing and trading of options on "covered securities" to reduce the time to market.

Commentary .01(4)(a) to Rule 915 sets forth the guidelines to be considered in evaluating for option transactions underlying securities that are "covered securities," as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter "covered security" or "covered securities").<sup>4</sup> Currently, the Exchange permits the listing of an option on an underlying covered security that, amongst other things, has a market price of at least \$3.00 per share

for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation ("OCC") to list and trade options on the underlying security (the "three-day lookback period").<sup>5</sup> Under the current rule, if an initial public offering ("IPO") occurs on a Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday, with the market price determined by the closing price over the three-day lookback period from Monday through Wednesday. The option on the IPO'd security would then be eligible for trading on the Exchange on Friday (*i.e.*, within four business days of the IPO inclusive of the day the listing certificate is submitted to OCC).<sup>6</sup>

The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities—well above the \$3.00 per share threshold—that would obviate the need for the three-day lookback period. In this regard, the Industry Working Group has recently identified proposed changes to Commentary .01(4)(a) to Rule 915 that would help options on covered securities that have a market capitalization of at least \$3 billion based upon the offering price of its IPO come to market earlier. The proposed change, which is intended to be harmonized across options exchanges, is designed to provide investors the opportunity to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted.<sup>7</sup> The Exchange believes that options serve a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO

<sup>5</sup> See Commentary .01(4)(a) to Rule 915. The Exchange is not proposing to make any changes to the guidelines for listing securities that are not a "covered security." See Commentary .01(4)(b) to Rule 915.

<sup>6</sup> See proposed Commentary .01(4)(a)(ii) to Rule 915. The Exchange proposes a non-substantive change to number the existing and proposed criteria for covered securities as (i) and (ii) of paragraph (4)(a). See proposed Commentary .01(4)(a)(i) to Rule 915.

<sup>7</sup> While the Exchange acknowledges that market participants may utilize options for speculative purposes (in addition to as a hedging tool), the Exchange believes (as set forth below) that its existing surveillance technologies and procedures adequately address potential violations of exchange rules and federal securities laws applicable to trading on the Exchange.

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<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.

<sup>4</sup> Rule 915(a) requires that, for underlying securities to be eligible for option transactions, such securities must be duly registered and be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Act and will be characterized by a substantial number of outstanding shares which are widely held and actively traded. See Rule 915(a)(1) and (2).