

Required fields are shown with yellow backgrounds and asterisks.

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| Page 1 of * 23  |  | SECURITIES AND EXCHANGE COMMISSION<br>WASHINGTON, D.C. 20549<br>Form 19b-4   |  | File No. * SR 2023 - * 10<br>Amendment No. (req. for Amendments *) |  |
| Filing by NYSE American LLC<br>Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934   |  |  |  |  |  |
| Initial *<br><input checked="" type="checkbox"/>  |  | Amendment *<br><input type="checkbox"/>                                      |  | Withdrawal<br><input type="checkbox"/>                             |  |
| Section 19(b)(2) *<br><input type="checkbox"/>  |  | Section 19(b)(3)(A) *<br><input checked="" type="checkbox"/>                 |  | Section 19(b)(3)(B) *<br><input type="checkbox"/>                  |  |
| Pilot<br><input type="checkbox"/>   |  | Extension of Time Period for Commission Action *<br><input type="checkbox"/> |  | Date Expires *<br><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<br>Section 806(e)(1) *<br><input type="checkbox"/>  |  |  | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934<br>Section 3C(b)(2) *<br><input type="checkbox"/> |  |  |
| Exhibit 2 Sent As Paper Document<br><input type="checkbox"/>  |  |  | Exhibit 3 Sent As Paper Document<br><input type="checkbox"/>   |  |  |
| <b>Description</b><br>Provide a brief description of the action (limit 250 characters, required when Initial is checked *).<br><div>Proposal to modify the NYSE American Options Fee Schedule</div>   |  |  |  |  |  |
| <b>Contact Information</b><br>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.<br>First Name * Le-Anh Last Name * Bui<br>Title * Counsel, NYSE Group Inc.<br>E-mail * Le-Anh.Bui@ice.com<br>Telephone * (212) 656-2225 Fax (212) 656-8101   |  |  |  |  |  |
| <b>Signature</b><br>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.<br>Date 01/31/2023 (Title *)<br>By Patrick Troy Associate General Counsel<br>(Name *)<br>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.<br><div>Patrick Troy Digitally signed by Patrick Troy<br/>Date: 2023.01.31 16:54:22 -05'00'</div> |  |  |  |  |  |

Required fields are shown with yellow backgrounds and astericks.

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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19b-4 NYSE American Firm Fee Cap

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 19b-4 NYSE American Firm Fee

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 19b-4 NYSE American Firm Fee

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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NYSE American LLC (“NYSE American” or the “Exchange”) proposes to modify the NYSE American Options Fee Schedule (“Fee Schedule”) regarding the Firm Monthly Fee Cap. The Exchange proposes to implement the fee change effective February 1, 2023.

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 modify the Firm Monthly Fee Cap. The Exchange proposes to implement the rule change on February 1, 2023.

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

<sup>2</sup> 17 CFR 240.19b-4.

The Firm Monthly Fee Cap is set forth in Section I.I. of the Fee Schedule.<sup>3</sup> Currently, a Firm's fees associated with Manual transactions are capped at \$150,000 per month per Firm.

The Exchange proposes to raise the Firm Monthly Fee Cap to \$200,000 per month per Firm. To effect this change, the Exchange proposes to modify Section I.I. to replace references to a \$150,000 cap with references to a \$200,000 cap.<sup>4</sup> The Exchange also proposes to increase the incremental service fee—which is charged for Manual transactions once the Firm Monthly Fee Cap has been reached—from \$0.01 to \$0.02 and to extend the proposed incremental service fee of \$0.02 per contract to also apply to QCC transactions entered by Floor Brokers from the Trading Floor. Royalty Fees and fees or volumes associated with Strategy Executions will continue to be excluded from the calculation of fees towards the Firm Monthly Fee Cap. Firm Facilitation Manual trades will also continue to be executed at the rate of \$0.00 per contract regardless of whether a Firm has reached the Firm Monthly Fee Cap.

The Exchange believes that the proposed change, despite increasing the amount of the Firm Monthly Fee Cap and the incremental service fee for Manual transactions and QCC transactions, would continue to incentivize Firms to direct order flow to the Exchange to receive the benefits of a cap on their Manual transaction fees.

(b) Statutory Basis

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

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<sup>3</sup> See Fee Schedule, Section I.I., Firm Monthly Fee Cap, available at: [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).

<sup>4</sup> The Exchange also proposes a conforming change to footnote 4 in Section I.A. (Rates for Options transactions) of the Fee Schedule, which cross-references the Firm Monthly Fee Cap as set forth in Section I.I. The Exchange likewise proposes to modify footnote 4 to replace the reference to a \$150,000 cap with a reference to a \$200,000 cap.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

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>7</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>8</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in December 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.<sup>9</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 proposed change to the Firm Monthly Fee Cap is reasonable because the Exchange believes the fee cap would continue to incentivize Firms to direct order flow to the Exchange to receive the benefits of capped fees for their Manual transactions, even though the proposed change would increase the amount of the fee cap and the incremental service charge applicable to Manual transactions and QCC transactions after a Firm has reached the fee cap. The Exchange also believes the proposed change is reasonable because the proposed fee cap amount would be applicable to all Firms and the proposed incremental service charge would be applicable to all Manual transactions and QCC transactions executed by a Firm once it reaches the fee cap. The Exchange also believes that the proposed change is reasonable because it would continue to offer Firms the ability to qualify for capped fees on Manual transactions, which similar benefit is not offered by at least one other options exchange.<sup>10</sup>

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<sup>7</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>8</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>9</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 6.77% for the month of December 2021 and 7.11% for the month of December 2022.

<sup>10</sup> See, e.g., BOX Options Fee Schedule, available at: <https://boxoptions.com/fee-schedule/>.

To the extent that the proposed change continues to attract volume to the Exchange, this order flow 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 Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed change is equitable because the increased Firm Monthly Fee Cap would be available to all Firms equally. The proposed change is also equitable because the increased incremental service charge would apply equally to all Firms that achieve the fee cap and would apply equally to both Manual transactions and QCC transactions executed by Firms once they have reached the fee cap. The Exchange believes that the proposed changes, although they increase the fee cap and incremental service charge amounts, would not discourage Firms from directing order flow to the Exchange. To the extent that the proposed change achieves its purpose in continuing to incent Firms to aggregate their executions at the Exchange as a primary execution venue and attracting more volume to 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 that the modification of the Firm Monthly Fee Cap is not unfairly discriminatory because the fee cap and incremental service charge amounts, as proposed,

would continue to be applicable to all similarly situated Firms, any of which could continue to be incentivized to direct order flow to the Exchange to qualify for the fee cap. Thus, to the extent the proposed change continues to attract Manual transactions to the Exchange, 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 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."<sup>11</sup>

*Intramarket Competition.* The proposed change is designed to continue to attract 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 the Exchange believes that the proposed modification of the Firm Monthly Fee Cap (even though it would raise the amount of the fee cap and incremental service charge) would not impose any burden on competition that is not necessary or appropriate because it is intended to continue to incentivize Firms to direct order flow to the Exchange to be eligible for the benefits of capped fees on Manual transactions, thereby promoting liquidity on the Exchange 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

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<sup>11</sup> See Reg NMS Adopting Release, supra note 7, at 37499.

share of executed volume of multiply-listed equity and ETF options trades.<sup>12</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in December 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.<sup>13</sup>

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent market participants to direct trading interest to the Exchange, to provide liquidity and to attract order flow. To the extent that Firms are incentivized 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 notes that it operates in a highly competitive market in which market participants can readily favor competing venues, including those that do not offer a cap on Firm fees.<sup>14</sup> 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 Act<sup>15</sup> 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

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<sup>12</sup> See note 8, *supra*.

<sup>13</sup> See note 9, *supra*.

<sup>14</sup> See note 10, *supra*.

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



Act to determine whether the proposed rule change should be approved or disapproved.<sup>16</sup>

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.

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

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<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

## EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NYSEAMER-2023-10)

[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)<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 January 31, 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 the Firm Monthly Fee Cap. The Exchange proposes to implement the fee change effective February 1, 2023. 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

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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.

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 modify the Firm Monthly Fee Cap. The Exchange proposes to implement the rule change on February 1, 2023.

The Firm Monthly Fee Cap is set forth in Section I.I. of the Fee Schedule.<sup>4</sup> Currently, a Firm's fees associated with Manual transactions are capped at \$150,000 per month per Firm.

The Exchange proposes to raise the Firm Monthly Fee Cap to \$200,000 per month per Firm. To effect this change, the Exchange proposes to modify Section I.I. to replace references to a \$150,000 cap with references to a \$200,000 cap.<sup>5</sup> The Exchange also proposes to increase the incremental service fee—which is charged for Manual transactions once the Firm Monthly Fee Cap has been reached—from \$0.01 to \$0.02 and to extend the proposed incremental service fee of \$0.02 per contract to also apply to QCC transactions entered by Floor Brokers from the Trading Floor. Royalty Fees and fees or volumes associated with Strategy Executions will continue to be excluded from the calculation of fees towards the Firm Monthly Fee Cap. Firm

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<sup>4</sup> See Fee Schedule, Section I.I., Firm Monthly Fee Cap, available at: [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).

<sup>5</sup> The Exchange also proposes a conforming change to footnote 4 in Section I.A. (Rates for Options transactions) of the Fee Schedule, which cross-references the Firm Monthly Fee Cap as set forth in Section I.I. The Exchange likewise proposes to modify footnote 4 to replace the reference to a \$150,000 cap with a reference to a \$200,000 cap.

Facilitation Manual trades will also continue to be executed at the rate of \$0.00 per contract regardless of whether a Firm has reached the Firm Monthly Fee Cap.

The Exchange believes that the proposed change, despite increasing the amount of the Firm Monthly Fee Cap and the incremental service fee for Manual transactions and QCC transactions, would continue to incentivize Firms to direct order flow to the Exchange to receive the benefits of a cap on their Manual transaction fees.

## 2. Statutory Basis

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

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>8</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”).

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>9</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in December 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.<sup>10</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 proposed change to the Firm Monthly Fee Cap is reasonable because the Exchange believes the fee cap would continue to incentivize Firms to direct order flow to the Exchange to receive the benefits of capped fees for their Manual transactions, even though the proposed change would increase the amount of the fee cap and the incremental service charge applicable to Manual transactions and QCC transactions after a Firm has reached the fee cap. The Exchange

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<sup>9</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>10</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 6.77% for the month of December 2021 and 7.11% for the month of December 2022.

also believes the proposed change is reasonable because the proposed fee cap amount would be applicable to all Firms and the proposed incremental service charge would be applicable to all Manual transactions and QCC transactions executed by a Firm once it reaches the fee cap. The Exchange also believes that the proposed change is reasonable because it would continue to offer Firms the ability to qualify for capped fees on Manual transactions, which similar benefit is not offered by at least one other options exchange.<sup>11</sup>

To the extent that the proposed change continues to attract volume to the Exchange, this order flow 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

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<sup>11</sup> See, e.g., BOX Options Fee Schedule, available at: <https://boxoptions.com/fee-schedule/>.

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 Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed change is equitable because the increased Firm Monthly Fee Cap would be available to all Firms equally. The proposed change is also equitable because the increased incremental service charge would apply equally to all Firms that achieve the fee cap and would apply equally to both Manual transactions and QCC transactions executed by Firms once they have reached the fee cap. The Exchange believes that the proposed changes, although they increase the fee cap and incremental service charge amounts, would not discourage Firms from directing order flow to the Exchange. To the extent that the proposed change achieves its purpose in continuing to incent Firms to aggregate their executions at the Exchange as a primary execution venue and attracting more volume to 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 that the modification of the Firm Monthly Fee Cap is not unfairly discriminatory because the fee cap and incremental service charge amounts, as proposed, would

continue to be applicable to all similarly situated Firms, any of which could continue to be incentivized to direct order flow to the Exchange to qualify for the fee cap.

Thus, to the extent the proposed change continues to attract Manual transactions to the Exchange, 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 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>12</sup>

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<sup>12</sup> See Reg NMS Adopting Release, supra note 8, at 37499.



*Intramarket Competition.* The proposed change is designed to continue to attract 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 the Exchange believes that the proposed modification of the Firm Monthly Fee Cap (even though it would raise the amount of the fee cap and incremental service charge) would not impose any burden on competition that is not necessary or appropriate because it is intended to continue to incentivize Firms to direct order flow to the Exchange to be eligible for the benefits of capped fees on Manual transactions, thereby promoting liquidity on the Exchange 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>13</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in December 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.<sup>14</sup>

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent

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<sup>13</sup> See note 9, *supra*.

<sup>14</sup> See note 10, *supra*.

market participants to direct trading interest to the Exchange, to provide liquidity and to attract order flow. To the extent that Firms are incentivized 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 notes that it operates in a highly competitive market in which market participants can readily favor competing venues, including those that do not offer a cap on Firm fees.<sup>15</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 has become effective upon filing pursuant to Section 19(b)(3)(A)<sup>16</sup> 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.

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:

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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-2023-10 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-2023-10. 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-2023-10 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>17</sup>

J. Matthew DeLesDernier,  
Deputy Secretary.

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<sup>17</sup> 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 [January 13] February 1, 2023

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## **Section I. Options Transaction Fees and Credits<sup>7</sup>**

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

| <b>Participant</b>              | <b>Penny/Non-Penny</b> | <b>Rate Per Contract For Electronic Transactions</b> | <b>Marketing Charges Per Contract for Electronic Transactions<sup>3</sup></b> | <b>Rate Per Contract Manual Transactions</b> |
|---------------------------------|------------------------|--|---|--|
| Broker-Dealer <sup>1,5,8</sup>  | 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 <sup>1,2,3,5</sup>         | Penny                  | \$0.25   | \$0.25  | N/A  |
|                                 | Non-Penny              | \$0.25   | \$0.70  | N/A  |
| e-Specialist <sup>1,2,3,5</sup> | Penny                  | \$0.25   | \$0.25  | \$0.30                                       |
|                                 | Non-Penny              | \$0.25   | \$0.70  | \$0.30                                       |
| Firm <sup>1,4,5</sup>           | Penny                  | \$0.49   | N/A   | \$0.25                                       |
|                                 | Non-Penny              | \$0.85   | N/A   | \$0.25                                       |
| Firm Facilitation <sup>1</sup>  | Penny                  | N/A  | N/A   | \$0.00                                       |
|                                 | Non-Penny              | N/A  | N/A   | \$0.00                                       |

|   |           |        |        |        |
|---|-----------|--------|--------|--------|
| NYSE American Options Market Maker <sup>1,2,3,5</sup>     | Penny     | \$0.25 | \$0.25 | \$0.35 |
|   | Non-Penny | \$0.25 | \$0.70 | \$0.35 |
| Non-NYSE American Options Market Maker <sup>1,2,5,8</sup> | Penny     | \$0.50 | N/A    | \$0.25 |
|   | Non-Penny | \$0.85 | N/A    | \$0.25 |
| Professional Customer <sup>1,5,8</sup>                    | Penny     | \$0.50 | N/A    | \$0.25 |
|   | Non-Penny | \$0.85 | N/A    | \$0.25 |
| Specialist <sup>1,2,3,5</sup>                             | 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 [\$150,000] \$200,000 for fees associated with Manual transactions as more fully described below in Section I. I.

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**I. Firm Monthly Fee Cap.** The Monthly Firm Fee Cap for Manual transactions will aggregate the fees associated with Firm Manual transactions and cap them at [\$150,000] \$200,000 per month per Firm. Once a Firm has reached the Firm

Monthly Fee Cap, an incremental service fee of [\$0.01] \$0.02 per contract for Firm Manual transactions will apply, [except] including for the execution of a QCC order [, in which case there is no incremental service fee]. Any fee or volume associated with a Strategy Execution described in Section I.J., (e.g., reversal and conversion, box spread, short stock interest spread, merger spread and jelly roll) will not be counted toward the [\$150,000] \$200,000 cap. Royalty Fees will continue to be charged at the rates described in Section I. K., and do not count toward the [\$150,000] \$200,000 fee cap. Firm Facilitation Manual trades will continue to be executed at the rate of \$0.00 per contract regardless of whether a Firm has reached the [\$150,000] \$200,000 cap or not.

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