



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67759; File No. SR-NYSE-2012-38)

August 30, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 107B to Change the Existing Supplemental Liquidity Provider Monthly Volume Requirement in All Assigned SLP Securities and Amend the Exchange's Price List to Specify the Applicable Percentage of NYSE CADV for the Monthly Volume Requirement

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on August 28, 2012, New York Stock Exchange LLC (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 (i) amend Rule 107B to change the existing Supplemental Liquidity Provider ("SLP") monthly volume requirement in all assigned SLP securities ("monthly volume requirement") from an average daily volume ("ADV") of more than 10 million shares to an ADV that is a specified percentage of consolidated ADV ("CADV") in all NYSE-listed securities ("NYSE CADV") and (ii) amend the Exchange's Price List to specify the applicable percentage of NYSE CADV for the monthly volume requirement. The Exchange is proposing that these changes become operative on September 1, 2012. The text of the proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

1. Purpose

The Exchange is proposing to (i) amend Rule 107B³ to change the existing SLP monthly volume requirement from an ADV of more than 10 million shares to an ADV that is a specified percentage of NYSE CADV and (ii) amend the Exchange's Price List to specify the applicable percentage of NYSE CADV for the monthly volume requirement. The Exchange is proposing that these changes become operative on September 1, 2012.

An SLP is a member organization that electronically enters orders or quotes from off the Floor of the Exchange into the systems and facilities of the Exchange and is obligated to maintain a bid or an offer at the National Best Bid ("NBB") or the National Best Offer ("NBO") in each assigned security in round lots averaging at least 10% of the trading day (the "percentage quoting requirement"). In addition, for all assigned SLP securities, an SLP is required to satisfy

³ Rule 107B operates pursuant to a pilot program that is in effect until January 31, 2013. See Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR-NYSE-2008-108). See also Securities Exchange Act Release No. 67493 (July 25, 2012), 77 FR 45388 (July 31, 2012) (SR-NYSE-2012-27).

a monthly volume requirement by adding liquidity of an ADV of more than 10 million shares on a monthly basis.⁴ An SLP can either be a proprietary trading unit of a member organization (“SLP-Prop”) or a registered market maker at the Exchange (“SLMM”).

An SLP that fails to satisfy the applicable percentage quoting requirement provided in Rule 107B(a) would be subject to certain non-regulatory penalties imposed by the Exchange, including, for example, having its SLP status revoked.⁵ However, an SLP that fails to satisfy the monthly volume requirement would not be subject to a non-regulatory penalty, but instead could fail to qualify for the credits available to SLPs. Because, unlike the applicable percentage quoting requirement, the monthly volume requirement only has an impact with respect to the credits available to SLPs, the Exchange believes that it is more appropriate to include the applicable monthly volume requirement in the Price List, rather than in Rule 107B.

The Exchange therefore proposes to amend Rule 107B(a) to change the current monthly volume requirement of adding liquidity of an ADV of more than 10 million ADV shares in all assigned SLP securities to specify instead that the monthly volume requirement would be based on a specified percentage of NYSE CADV. The Exchange believes that a monthly volume requirement based on a percentage of NYSE CADV, rather than a fixed volume requirement, is more appropriate because it would reasonably assure that the monthly volume requirement is consistent relative to fluctuations in market volume over time. In particular, in August 2010, when the Exchange adopted the current monthly volume requirement,⁶ NYSE CADV was 4.039 billion shares. In contrast, NYSE CADV for July 2012 was 3.484 billion shares.

⁴ See Rule 107B(a).

⁵ See Rule 107B(k).

⁶ See Securities Exchange Act Release No. 62791 (August 30, 2010), 75 FR 54411 (September 7, 2010) (SR-NYSE-2010-60).

Accordingly, the Exchange proposes to change references in Rule 107B, generally, from “10 million shares” to “a specified percentage of CADV in all NYSE-listed securities, as set forth in the Exchange’s Price List.” The Exchange also proposes to amend the Price List to specify that the applicable percentage of NYSE CADV will be 0.22%. In this regard, the following three credit rates would apply to SLPs:⁷

1. [sic] \$0.0015 per share (or \$0.0010 per share if a Non-Displayed Reserve Order) when adding liquidity to the Exchange in securities with a per share price of \$1.00 or more, if the SLP does not qualify for the higher credit set forth in paragraph 2, below.
2. [sic] \$0.0021 per share (or \$0.0016 per share if a Non-Displayed Reserve Order) when adding liquidity to the Exchange in securities with a per share price of \$1.00 or more if the SLP (i) meets the 10% average or more quoting requirement in the assigned security pursuant to Rule 107B⁸ and (ii) adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.22% of NYSE CADV.⁹
3. [sic] \$0.005 per share when adding liquidity to the Exchange in securities with a per share price of less than \$1.00 if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B and (ii) adds

⁷ The Exchange notes that the only aspect of the SLP credits in the Price List that would change is replacing the 10 million share ADV reference with the 0.22% of NYSE CADV reference (e.g., the credit rates would remain the same as they currently are). SLP execution of securities with a per share price of \$1.00 or more at the close would continue to be free.

⁸ As is currently the case, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated for purposes of this calculation.

⁹ As is currently the case, this calculation includes shares of both an SLP-Prop and an SLMM of the same member organization.

liquidity of an ADV of more than 0.22% of NYSE CADV for all assigned SLP securities in the aggregate.

Finally, the Exchange proposes to amend the description of the method of calculation of the monthly volume requirement in Rule 107B(h) in order to reflect the use of a specified percentage of NYSE CADV. Specifically, it will provide that to calculate the ADV, the aggregated liquidity an SLP provides in all of its assigned SLP securities each month should be divided by the number of trading days in the applicable month, and then the ADV figure should be divided by the NYSE CADV during the month.

2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed change promotes just and equitable principles of trade because, by basing the monthly volume requirement on a percentage of NYSE CADV, the SLP requirement to add liquidity to the market would track actual consolidated trading volumes. Accordingly, in months with lower trading volumes, a monthly volume

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

requirement that tracks the actual consolidated volume would reasonably assure that SLPs add sufficient liquidity relative to the market, without the monthly volume requirement being too burdensome for SLPs. Conversely, during months when trading volumes are generally higher across all markets, the proposed change would result in SLPs being required to increase the liquidity they add to the market, thereby reasonably assuring that SLPs are engaging in trading activity that is meaningful and consistent with the purpose of the SLP credits.

Similarly, the Exchange believes that the proposed change will protect investors and the public interest because it will result in the level of trading activity that is required of SLPs in order to qualify for the increased credit being at a level that is reflective of trading activity across the markets at any given point in time, as opposed to the current monthly volume requirement that is a fixed number of shares and therefore does not account for fluctuations in market volume over the course of different months. Finally, the Exchange believes that the proposed change does not permit unfair discrimination among customers, issuers, brokers or dealers because it would apply to all member organizations that operate as an SLP. In this regard, SLPs are required to satisfy certain quoting requirements that contribute to the quality of the Exchange's market throughout the trading day, which other member organizations are not required to satisfy.

Additionally, the Exchange believes that the proposed change will remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because by relocating the specified percentage of NYSE CADV to the Price List, member organizations will only need to go to a single source to identify both what the credit would be, and the monthly volume requirement for such credit.

The Exchange further believes that the proposed change is consistent with, and furthers

the objectives of, Section 6(b)(4) of the Act¹² because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Specifically, the Exchange believes that the proposed change is reasonable, because the proposed monthly volume requirement of 0.22% of NYSE CADV is consistent with a level of activity on the Exchange that is believed to be commensurate with the existing monthly volume requirement of 10 million shares, as was contemplated when the current monthly volume requirement was added in August 2010. The Exchange further believes that the proposed change is reasonable because it would continue to encourage SLPs to send additional orders to the Exchange for execution in order to qualify for an incrementally higher credit for such executions that add liquidity on the Exchange. In this regard, the Exchange believes the proposed change may incentivize SLPs to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery, promotes market transparency and is reasonably related to an exchange's market quality that is associated with higher volumes. Finally, the Exchange believes that the proposed change is reasonable because it would include the actual monthly volume requirement details within the Price List, where the monthly volume requirement actually has a direct impact (i.e., qualifying for the increased credit is determined by whether the SLP satisfies the monthly volume requirement), as opposed to Rule 107B, where the monthly volume requirement does not have a direct impact (i.e., the non-regulatory penalties are not determined by the SLP's activity across all assigned securities).

The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because it would apply equally and uniformly to all member organizations that

¹² 15 U.S.C. 78f(b)(4).

operate as SLPs. Moreover, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because a monthly volume requirement that is a percentage of NYSE CADV is fluid, and can therefore account for increases or decreases in overall trading activity across all markets, whereas the existing fixed monthly volume requirement is static. In this regard, the Exchange notes that a fixed monthly volume requirement, like the one that is currently in place, may become easier to achieve during more active trading months and, conversely, may become more difficult to reach during less active trading months. Accordingly, the proposed change may enable more SLPs to qualify for the increased credit in the Price List during months when overall activity across all markets is lower than normal. Similarly, during months when trading activity is higher, and the monthly volume requirement is therefore more difficult to reach, the proposed change would result in SLPs continuing to be required to engage in meaningful activity to qualify for the credit.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. The proposal will take overall liquidity trends into account when determining monthly volume requirements applicable to SLPs by shifting to a percentage based on NYSE CADV. The Exchange has represented that SLPs are currently being held to a higher relative volume requirement than was intended when the Exchange adopted the 10 million fixed monthly volume requirement in 2010. Waiving the operative delay will allow this proposal, which the Exchange believes imposes a more appropriate volume requirement for SLPs, to become effective immediately and operative on September 1, 2012. Therefore, the Commission designates the proposal operative on September 1, 2012.¹⁵

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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2012-38 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2012-38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSE-2012-38 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.¹⁶

Kevin M. O'Neill
Deputy Secretary

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¹⁶ 17 CFR 200.30-3(a)(12).