



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77929; File No. SR-NYSE-2016-36]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List

May 26, 2016

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 11, 2016, New York Stock Exchange LLC (“NYSE” 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 amend its Price List for equity transactions in stocks with a per share stock price more than \$1.00 to: (1) Add a new fee for verbal executions by Floor brokers at the close; (2) revise the fees for Midpoint Passive Liquidity (“MPL”) orders that remove liquidity from the Exchange and that are not designated with a “retail”

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

modifier as defined in Rule 13; (3) revise the requirements and credits for MPL orders that provide liquidity to the Exchange; and (4) make certain changes in the footnotes and tiers applicable to Supplemental Liquidity Providers (“SLPs”) on the Exchange. The Exchange proposes to implement these changes to its Price List effective May 11, 2016.⁴ The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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 Exchange proposes to amend its Price List to: (1) Add a new fee for verbal interest by Floor brokers at the close; (2) revise the fees for MPL orders that remove liquidity from the Exchange and that are not designated with a “retail” modifier as defined in Rule 13; (3) revise the requirements and credits for MPL orders that provide liquidity to the Exchange; and (4) make certain changes in the footnotes and tiers applicable to SLPs.

⁴ The Exchange originally filed to amend the Fee Schedule on May 2, 2016 (SR-NYSE-2016-32) and withdrew such filing on May 11, 2016.

The proposed changes would only apply to credits in transactions in securities priced \$1.00 or more.

The Exchange proposes to implement these changes effective May 11, 2016.

Verbal Interest at the Close

Currently, the Exchange does not charge a fee for verbal executions by Floor brokers at the close.⁵ The Exchange proposes a fee of \$0.0010 per share for verbal executions by Floor brokers at the close. The Exchange notes that the proposed fee is the same as the current fee (charged to both sides) for MOC and LOC orders (the Non-Tier MOC/LOC fee).⁶

The Exchange would also add the phrase “excluding verbal interest” to clarify that verbal interest at the close would not be counted for purposes of Floor Broker executions swept into the close that are subject to a charge of \$0.00035 per share for shares executed in excess of an ADV⁷ of 750,000 shares.

MPL Orders

An MPL Order is defined in Rule 13 as an undisplayed limit order that automatically executes at the mid-point of the best protected bid (“PBB”) or [sic] best protected offer (“PBO”), as such terms are defined in Regulation NMS Rule 600(b)(57)

⁵ The Exchange charges member organizations a fee for market at-the-close (“MOC”) and limit at-the-close (“LOC”) orders at the close and for Floor broker executions swept into the close. Member organizations that execute during the billing month average daily volume (“ADV”) in excess of 750,000 shares through orders executed at the close (except MOC and LOC orders) and Floor broker orders swept into the close, are charged \$0.00035 per share per transaction (charged to both sides). Such executions are not charged if the member organization executes an ADV on the Exchange during the billing month of fewer than 750,000 shares ADV.

⁶ See note 5, supra.

⁷ The defined term, “ADV,” is used here as defined in footnote 2 to the Price List.

(together, “PBBO”).⁸

MPL Orders that Remove Liquidity

The Exchange currently charges a fee of \$0.00275 per share per transaction for MPL Orders that remove liquidity from the NYSE and that are not designated with a “retail” modifier as defined in Rule 13.⁹ Floor brokers are currently charged the same price for MPL Orders that remove liquidity from the Exchange. The Exchange proposes to revise the fee for all MPL Orders that remove liquidity from the Exchange and that are not designated with a “retail” modifier as defined in Rule 13, including MPL Orders entered by Floor brokers, from \$0.00275 to \$0.0030. The Exchange will continue not to charge a fee for MPL Orders that remove liquidity from the Exchange and that are designated with a “retail” modifier as defined in Rule 13.

MPL Orders that Add Liquidity

The Exchange currently provides a credit of \$0.0030 per share credit for MPL Orders that provide liquidity from a member organization that has Adding ADV¹⁰ in MPL Orders that is at least 1.5 million shares, excluding any liquidity added by a Designated Market Maker (“DMM”). The Exchange provides a \$0.0015 per share transaction credit for MPL Orders that provide liquidity from a member organization that does not meet the Adding ADV threshold.

⁸ See Rule 14. See also 17 CFR 242.600(b)(57).

⁹ MPL Orders that take liquidity do not count toward a member’s or member organization’s overall level of providing volume for purposes of other pricing on the Exchange that is based on such levels (e.g., the Tier 1, Tier 2 and Tier 3 Adding Credits).

¹⁰ “Adding ADV” is when a member organization has ADV that adds liquidity to the Exchange during the billing month. Adding ADV excludes any liquidity added by a Designated Market Maker.

The Exchange proposes that member organizations qualifying for the \$0.0030 credit have an Adding ADV in MPL orders of at least 0.04% of NYSE consolidated ADV (“CADV”),¹¹ excluding liquidity added by a DMM. The Exchange also proposes to reduce the credit from \$0.0030 to \$0.00275.

Changes to Footnotes and Tiers Applicable to SLPs

Current footnote 8 applies to SLP Tiers 1, 1A, 2 and 3 and provides that in its first calendar month as an SLP, an SLP qualifies for the relevant credit regardless of whether it meets the requirement to provide liquidity with an ADV of more than the applicable threshold percentage of NYSE CADV in the applicable month. The Exchange proposes to delete footnote 8 and move the text of the footnote into the body of the Price List for SLP Tier 3, where an SLP is eligible for a credit of \$0.0023 per share traded if the SLP (1) meets the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, and (2) adds liquidity for assigned SLP securities in the aggregate of an ADV of more than 0.20% of NYSE CADV or, with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a),¹² more than the current 0.20% requirement after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. The Exchange does not propose to move the text of current footnote 8 into the body of the Price List for SLP Tier 2, SLP Tier 1 or SLP Tier 1A. Current footnote 8 would thus no longer apply to those tiers.

The Exchange also proposes that current footnote ** would become new footnote 8. Accordingly, each reference in the Price List to footnote ** would be replaced with a

¹¹ NYSE CADV is defined in the Price List as the consolidated average daily volume of NYSE-listed securities.

¹² Rule 107B(i)(2)(A) prohibits a DMM from acting as a SLP in the same securities in which it is a DMM.

reference to footnote 8. The substance of footnote ** would remain unchanged. The Exchange believes that this change will add greater specificity and clarity to the Exchange's Price List.

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The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁴ 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.

Verbal Interest at the Close

The Exchange believes that charging a fee for verbal executions at the close is reasonable. The Exchange's closing auction is a recognized industry benchmark,¹⁵ and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis. The proposed fee is also reasonable, equitable and not unfairly discriminatory because it would be the same

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) & (5).

¹⁵ For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

as the current fee (charged to both sides) for MOC and LOC orders (the Non-Tier MOC/LOC fee). Further, the proposed fee change is also equitable and not unfairly discriminatory because it will apply uniformly to all Floor brokers, who are the only market participants that can enter verbal interest at the close.

MPL Orders

The Exchange believes that (1) increasing the fee for MPL Orders that remove liquidity from the Exchange and that are not designated as “retail,” and (2) requiring Adding ADV in MPL orders of at least 0.04% of NYSE CADV rather than a fixed share number and offering a credit of \$0.00275 for MPL Orders that add liquidity to the NYSE is reasonable. MPL Orders provide opportunities for market participants to interact with orders priced at the midpoint of the PBBO, thus providing price improving liquidity to market participants and increasing the quality of order execution on the Exchange’s market, which benefits all market participants.

The new credit is also reasonable because it would be similar or higher than the rates on the NASDAQ Stock Market, LLC (“NASDAQ”). For example, on NASDAQ, firms that average 1 million or more shares of midpoint liquidity receive a credit of \$0.0010 per share in Tape C securities and \$0.0018 in Tape A and B securities to execute against resting midpoint liquidity, which is lower than the proposed \$0.00275 per share rate for MPL orders that is at least 0.04% of NYSE CADV, excluding any liquidity added by a DMM.¹⁶

The proposed change is equitable and not unfairly discriminatory because MPL Orders increase the quality of order execution on the Exchange’s market, which benefits

¹⁶ See NASDAQ Price List, available at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

all market participants. The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory because all market participants – customers, Floor brokers, DMMs, and SLPs – may use MPL Orders on the Exchange and because all market participants that use MPL Orders may receive credits for MPL Orders, as is currently the case.

Changes to Footnotes Applicable to SLPs

The Exchange believes it is reasonable to (1) eliminate current footnote 8 and the related Tier 1, Tier 1A, and Tier 2 credits for SLPs during their first calendar month as a SLP irrespective of whether the SLP meets the requirement to provide liquidity with an ADV of more than the applicable threshold percentage of NYSE CADV, and (2) retain the Tier 3 credit for SLPs during their first calendar month irrespective of whether the the [sic] SLP meets the requirement to provide liquidity with an ADV of more than the applicable threshold percentage of NYSE CADV by moving the text of current footnote 8 to the body of the Price List in Tier 3. The Exchange believes that eliminating the higher tiers during a SLP's first calendar month without regard to the applicable requirement is reasonable because SLPs have not increased their activity to qualify for these tiers as significantly as the Exchange anticipated that they would. The Exchange notes that new SLPs can still qualify for the higher rates during their first calendar month of operation as a SLP by meeting the applicable tier volume requirements. The Exchange also believes that retaining the \$0.0023 credit for SLP Tier 3 for SLPs in their first calendar month as an SLP is reasonable because the \$0.0023 credit is equal to or higher than the applicable non-Tier Adding Credit, Tier 3 Adding Credit, Tier 2 Adding Credit or Tier 1 Adding Credit for SLPs that don't meet the requirements of SLP Tier 3. The Exchange believes

that the proposed changes are equitable and not unfairly discriminatory because they would apply uniformly to all SLPs during their first calendar month. The Exchange notes that there are currently no SLPs in the first calendar month of operation.

Further, the Exchange believes that the proposed change to its Price List whereby current footnote ** would become new footnote 8 is reasonable because it is designed to provide greater specificity and clarity to the Price List, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting 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.

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

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

In accordance with Section 6(b)(8) of the Act,¹⁷ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. Further, the

¹⁷ 15 U.S.C. 78f(b)(8).

Exchange believes that the proposed non-substantive change relating to footnote ** applicable to SLPs would not affect intermarket nor intramarket competition because the proposed change is not designed to amend any fee or rebate or alter the manner in which the Exchange assesses fees or calculates rebates. Instead, this change is intended to provide greater specificity and clarity to the Exchange's Price List for the benefit of member organizations and investors.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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)¹⁸ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁹ 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)²⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2016-36 on the subject line.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ 15 U.S.C. 78s(b)(2)(B).

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2016-36. 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-2016-36 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

Brent J. Fields,
Secretary.

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²¹ 17 CFR 200.30-3(a)(12).

