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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88874; File No. SR-NYSE-2020-39]

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

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 1, 2020, 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 to (1) revise the adding average daily volume ("ADV") requirement for the second way to qualify for the Tier 3 Adding Credit; (2) adopt a new Step Up Tier 3 Adding Credit; (3) adopt a new Incremental Rebate Per Share for Designated Market Makers ("DMM") in most active securities; (4) revise the adding liquidity requirement in Tape B and C securities for the Supplemental Liquidity Provider ("SLP") Tape A adding tiers; and (5) extend the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations to May 2020 in connection with the temporary closing of the Trading Floor. The proposed rule change is available on the

1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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) revise the ADV requirement for the second way to qualify for the Tier 3 Adding Credit; (2) adopt a new Step Up Tier 3 Adding Credit; (3) adopt a new Incremental Rebate Per Share for DMMs in most active securities; (4) revise the adding liquidity requirement in Tape B and C securities for the SLP Tape A adding tiers; and (5) extend the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations to May 2020 in connection with the temporary closing of the Trading Floor.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional displayed liquidity to the Exchange. The proposed changes also respond to the current volatile market environment that has resulted in unprecedented average daily volumes and the temporary closure of the Trading Floor, which are both related to the ongoing spread of the novel coronavirus ("COVID-19").

The Exchange proposes to implement the fee changes effective May 1, 2020.

Current Market and Competitive Environment

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."[4]

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."[5] Indeed, equity trading is currently dispersed across 13 exchanges,[6] 31 alternative trading systems,[7] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 20% market share (whether including or excluding auction volume).[8] Therefore, no exchange possesses significant pricing power in the execution of equity

4 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) ("Regulation NMS").

5 See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) ("Transaction Fee Pilot").

6 See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.

7 *See* FINRA ATS Transparency Data, available at https://otctransparency.finra.org/otctransparency/AtsIssueData. A list of alternative trading systems registered with the Commission is *available at* https://www.sec.gov/foia/docs/atslist.htm.

8 See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

order flow. More specifically, the Exchange's market share of trading in Tape A, B and C securities combined is less than 13%.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to the competitive environment described above, the Exchange has established incentives for its member organizations who submit orders that provide and remove liquidity on the Exchange, including cross-tape incentives for member organizations and SLPs based on submission of orders that provide displayed and non-displayed liquidity in Tapes B and C securities. The proposed fee change is designed to attract additional order flow to the Exchange by:

- lowering the adding ADV requirement for the second way to qualify for Tier 3 Adding Credit;
- offering a new pricing tier to incentivize member organizations to step up their liquidity-providing orders on the Exchange;
- offering an incremental rebate per share for DMMs in more active securities; and
- lowering the adding liquidity requirement in Tape B and C securities for the SLP Tape A adding tiers.

Moreover, beginning on March 16, 2020, in order to slow the spread of COVID-19 through social distancing measures, significant limitations were placed on large gatherings throughout the country. As a result, on March 18, 2020, the Exchange determined that beginning March 23, 2020, the physical Trading Floor facilities located at 11 Wall Street in New York City would close and that the Exchange would move, on a temporary basis, to fully electronic trading.[9] The proposed rule change responds to these unprecedented events by extending the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations for May 2020 in connection with the temporary closing of the Trading Floor. The proposed DMM incremental credit is also designed to incentivize DMM to increase their added liquidity on the Exchange during periods of high market volumes.

Proposed Rule Change

Tier 3 Adding Credit Adding ADV Requirement

Under current Tier 3, a member organization that adds liquidity to the Exchange in securities with a share price of $1.00 or more would be entitled to a per share credit of $0.0018 if the criteria in A or B are satisfied, as follows:

A.

(i) The member organization has an Adding ADV equal to at least 0.40% of NYSE CADV,[10] and

(ii) The member organization executes market at-the-close ("MOC") and limit at-the-close ("LOC") orders equal to at least 0.05% of NYSE CADV.

B.

(i) The member organization has an Adding ADV equal to at least 0.35% of

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9 See Press Release, dated March 18, 2020, available here: https://ir.theice.com/press/press-releases/allcategories/2020/03-18-2020-204202110.

10 The terms "ADV" and "CADV" are defined in footnote * of the Price List.

NYSE CADV,

(ii) The member organization executes MOC and LOC orders equal to at least 0.05% of NYSE CADV, and

(iii) The member organization has an Adding ADV in MPL orders of at least 200,000 shares.

The Exchange proposes to reduce the adding ADV requirement in the second of the two alternative methods described above to qualify for the credit by requiring member organization to have an Adding ADV equal to at least 0.30% of NYSE CADV. As proposed, the first method to qualify for the credit and the amount of the credit would remain unchanged.

The purpose of the proposed change is to increase the incentive for order flow providers to send liquidity-providing orders to the Exchange. As described above, member organizations with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that by reducing the Adding ADV requirement to qualify for a tiered credit, more member organizations will choose to route their liquidity-providing orders to the Exchange to qualify for the credit. The Exchange cannot predict with certainty how many member organizations would avail themselves of this opportunity, but believes that at least three member organizations could qualify for the tier. Additional liquidity-providing orders benefits all market participants because it provides greater execution opportunities on the Exchange.

<u>Step Up Tier 3 Adding Credit</u>

The Exchange proposes to adopt a "Step Up Tier 3 Adding Credit" that would offer a credit to member organizations providing displayed liquidity to the Exchange in Tape A securities.

As proposed, a member organization that

- sends orders, except Mid-Point Liquidity Orders ("MPL") and Non-Displayed Limit Orders, that add liquidity to the NYSE in Tape A securities, and
- that has Adding ADV, excluding any liquidity added by a DMM, that is at least 0.05% of NYSE CADV over that member organization's Fourth Quarter 2019 adding liquidity taken as a percentage of NYSE CADV (the "Baseline Tape A Share")

would receive a credit of $0.0015 for adding liquidity, except MPL and Non-Displayed Limit Orders, if the increase in Adding ADV over the Baseline Tape A Share is at least 0.05% and less than 0.10%. If the increase in Adding ADV over the Baseline Tape A Share is at least 0.10% or more, a member organization meeting the above requirements would receive a credit of $0.0018 for adding liquidity, except MPL and Non-Displayed Limit Orders.

In addition, member organizations that meet these requirements and qualify for the $0.0015 or $0.0018 credit in Tape A securities would be eligible to receive an additional $0.0001 per share for adding liquidity in Tape A securities if trades in Tapes B and C securities against the member organization's orders that add liquidity, excluding orders as an SLP, equal to at least 0.20% of Tape B and Tape C CADV combined.

For example, Member Organization A averages an Adding ADV in Tape A securities of 3.5 million shares in the Fourth Quarter of 2019 where the NYSE CADV was 3.5 billion shares. Member Organization A's adding percentage of NYSE CADV for the Fourth Quarter 2019 would be 0.10%. In the billing month, Member Organization A has an adding ADV of 5.25 million shares when NYSE CADV was again 3.5 billion shares. Member Organization A's adding percentage of NYSE CADV for that billing month would thus be of 0.15%. Since

Member Organization A's Adding ADV for the billing month was is 0.05% of NYSE ADV over Member Organization A's Fourth Quarter 2019 adding percentage of NYSE CADV, Member Organizations A qualifies for the $0.0015 credit. If Member Organization A had instead had an Adding ADV of 7 million shares in that same billing month for an Adding percent of NYSE CADV of 0.20%, then Member Organization A would have instead qualified for the $0.0018 credit.

The purpose of this proposed change is to incentivize member organizations to increase the liquidity-providing orders in the Tape A securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Because the proposed tier requires a member organization to increase the volume of its trades in orders that add liquidity over that member organization's Fourth Quarter 2019 baseline, the Exchange believes that the proposed credit would provide an incentive for all member organizations to send additional liquidity to the Exchange in order to qualify for it. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. There are currently no firms that could qualify for the proposed Step Up Tier 3 Adding Credit based on their current trading profile on the Exchange, but the Exchange believes that at least six member organizations could qualify for the tier if they so choose. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new tier.

DMM Incremental Rebate Per Share for More Active Securities

The Exchange proposes to adopt an incremental rebate per share that would offer an additional per share credit to DMMs in each eligible assigned More Active Security with a stock price of at least $1.00 on current rebates of $0.0034 or less.

As proposed, DMMs would earn an incremental rebate $0.0002 per share in each eligible assigned More Active Security with a stock price of at least $1.00 where NYSE CADV is equal to or greater than 4.5 billion shares, when adding liquidity with orders, other than MPL Orders, in such securities and the DMM either:

(1) has providing liquidity in all assigned securities as a percentage of NYSE CADV that is an increase of 0.30% more than the DMM's April 2020 providing liquidity in all assigned securities as a percentage of NYSE CADV, or

(2) has providing liquidity in all assigned securities as a percentage of NYSE CADV that is an increase of at least 40% more than the DMM's April 2020 providing liquidity in all assigned securities as a percentage of NYSE CADV for DMMs with 750 or fewer assigned securities in the previous month.

As noted, the proposed incremental credit would be payable in addition to the DMM regular Most Activity Security credits for those credits up to $0.0034 per share or less, specifically adding credits of $0.0015, $0.0027, $0.0031, and $0.0034 per share.

For example, DMM A with more than 750 assigned securities in the billing month has providing liquidity in those securities of 35 million shares in April 2020. Assume Tape A was 3.5 billion shares in April 2020. DMM A would thus have providing liquidity of 1.00% of NYSE CADV for April 2020. If DMM A averages 75 million shares in a month when NYSE CADV is 5 billion shares, for a providing liquidity of 1.50%, DMM A would then qualify for the incremental rebate of $0.0002 per share in More Activity Securities with an increase of 0.50%.

If DMM B had less than 750 assigned securities in that same billing month with a providing liquidity of 3.5 million shares in April 2020, for providing liquidity of 0.10% of NYSE CADV, then DMM B would need to increase its providing liquidity by 40%, or 0.14% of NYSE CADV, in order to qualify in that billing month when NYSE CADV was 5 billion shares. If NYSE CADV was instead 4 billion shares in that billing month, both DMM A and DMM B would not be eligible for any incremental credits.

The purpose of this proposed change is to incentivize DMM to increase their added liquidity on the Exchange during a period of high market volumes, which would improve quoting and increase adding liquidity across securities where there may be more liquidity providers.

The Exchange believes that higher quoting obligations provide higher volumes of liquidity, which contributes to price discovery and benefits all market participants. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Because, as proposed, the first way to qualify for the proposed credit requires providing liquidity in all assigned securities as a percentage of NYSE CADV that is an increase of 0.30% more than the DMM's April 2020 providing liquidity in all assigned securities as a percentage of NYSE CADV while the way for DMMs with less than 750 issues to qualify requires an increase of at least 40% more than the DMM's April 2020 providing liquidity in all assigned securities as a percentage of NYSE CADV, the Exchange believes that the proposed credit would provide an incentive for all DMMs to send additional liquidity to the Exchange in order to qualify for it.

Moreover, the Exchange believes that the second way to qualify for the incremental credit is designed to provide smaller market makers (i.e., DMMs with 750 or fewer assigned securities in the previous month) with an added incentive to add liquidity in their assigned securities in a given month. A DMM with providing share of NYSE CADV of 0.10% would otherwise have to quadruple its providing ADV, for an increase of 0.30% to 0.40% of NYSE CADV, in order to qualify for the incremental credit. As described above, member organizations have a choice of where to send order flow. The Exchange believes that incentivizing DMMs on the Exchange to add liquidity could contribute to price discovery and improve quoting on the Exchange. In addition, additional liquidity-providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation.

Adding Liquidity Requirement for SLP Tape A Tiers

The Exchange currently offers tiered and non-tiered credits in Tape A securities to SLPs that meet certain quoting obligations in assigned securities based upon the total percent of NYSE CADV executed.

Each of the current adding liquidity tiers (SLP Tiers 1, 1A, 2, 3, 4, and the SLP Step Up Tier) offer a cross-tier incentive. Specifically, in addition to the credit specified for each tier, SLPs are eligible for an additional incremental per share credit[11] in securities with a per share price of $1.00 that meet the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B (quotes of an SLP-Prop and an SLMM of the same member organization shall not be aggregated) where the SLP:

- meets the applicable tier requirements, and

11 The incremental credits are $0.0001 (SLP Tiers 1A, 2, 3 and the SLP Step Up Tier) and $0.00005 (SLP Tier 1 and 4).

- adds liquidity in Tape B and C securities[12] of at least 0.30% of Tape B and Tape C CADV combined.

For each cross-tier incentive in SLP Tiers 1, 1A, 2, 3, 4, and the SLP Step Up Tier, the Exchange proposes to require that SLPs add liquidity in Tape B and C securities of at least 0.25% of Tape B and Tape C CADV combined. The other requirements to qualify for SLP Tiers 1, 1A, 2, 3, 4, and the SLP Step Up Tier, as well as the associated credits, would remain unchanged.

The proposed fee change is designed to attract additional order flow to the Exchange by making it easier to qualify for cross-tier incentive in SLP Tiers 1, 1A, 2, 3, 4, and the SLP Step Up Tier based on adding liquidity to the Exchange in Tape B and C Securities. There are currently no SLPs that qualify for the cross tier incentives based on their current trading profile on the Exchange, but the Exchange believes that at least two more SLPs could qualify if they so choose. However, without having a view of SLP's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any SLP directing orders to the Exchange in order to qualify for these incentives.

Fee Waivers for Trading Floor-Based Member Organizations

As noted above, on March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective March 23, 2020, as a precautionary measure to prevent the potential spread of COVID-19. Following the temporary closure of the Trading Floor, the

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12 In SLP Tiers 1, 1A, 2, 3, 4, and the SLP Step Up Tier, the Price List uses the phrase "securities traded pursuant to Unlisted Trading Privileges (Tapes B and C) on the Pillar Trading Platform." The Exchange proposes the non-substantive change of replacing that phrase with "Tape B and C securities" in each place in SLP Tiers 1, 1A, 2, 3, 4, and the SLP Step Up Tier where it appears by adding "Tape B and C" before "securities" and deleting each use of "traded pursuant to Unlisted Trading Privileges (Tapes B and C) on the Pillar Trading Platform."

Exchange waived certain equipment fees for the booth telephone system on the Trading Floor and associated service charges.[13]

Specifically, the Exchange waived the Annual Telephone Line Charge of $400 per phone number and the $129 fee for a single line phone, jack, and data jack. The Exchange also waived related service charges, as follows: $161.25 to install single jack (voice or data); $107.50 to relocate a jack; $53.75 to remove a jack; $107.50 to install voice or data line; $53.75 to disconnect data line; $53.75 to change a phone line subscriber; and miscellaneous telephone charges billed at $106 per hour in 15 minute increments.[14] These fees were waived for (1) member organizations with at least one trading license, a physical Trading Floor presence, and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020, and (2) member organizations with at least one trading license that are Designated Market Makers with 30 or fewer assigned securities for the billing month of March 2020.

Because the Trading Floor at 11 Wall Street remains temporarily closed, the Exchange proposes to waive these Trading Floor-based fees for May 2020. To effectuate this change, the Exchange proposes to add "and May" between "April" and "2020" in footnote 11 to the Price List.

The proposed change is designed to reduce monthly costs for member organizations with a Trading Floor presence that are unable to use the services associated with the fees while the Trading Floor is temporarily closed. The Exchange believes that extension of the fee waiver

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13 See Securities Exchange Act Release No. 88602 (April 8, 2020), 85 FR 20730 (April 14, 2020) (SR-NYSE-2020-27). See footnote 11 of the Price List.

14 The Service Charges also include an Internet Equipment Monthly Hosting Fee that the Exchange did not waive for April 2020 and that the Exchange does not propose to waive for May 2020.

would ease the financial burden associated with the temporary Trading Floor closure.

In order to further reduce costs for member organizations with a Trading Floor presence, the Exchange also waived the April 2020 monthly portion of all applicable annual fees for (1) member organizations with at least one trading license, a physical Trading Floor presence and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020, and (2) member organizations with at least one trading license that are DMMs with 30 or fewer assigned securities for the billing month of March 2020.[15]

The Exchange proposes to also waive the May 2020 monthly portion of all applicable annual fees for member organizations with at least one trading license, a physical Trading Floor presence and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020. The indicated annual trading license fees would also be waived for May 2020 for member organizations with at least one trading license that are DMMs with 30 or fewer assigned securities for the billing month of March 2020. To effectuate this change, the Exchange proposes to add "and May" between "April" and "2020" in footnote 15.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

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[15] See note 13, supra. See footnotes 15 of the Price List.

the Act,[16] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[17] 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 Change is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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."[18]

Tier 3 Adding Credit Adding ADV Requirement

The Exchange believes that lowering the ADV requirement for the second way to qualify for the Tier 3 Adding Credit is reasonable because it would make it easier for member organizations to qualify for the credit, thereby encouraging the submission of additional liquidity by more member organizations to a national securities exchange. Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for member organizations from the substantial amounts of liquidity present on the Exchange. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution

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16 15 U.S.C. 78f(b).

17 15 U.S.C. 78f(b)(4) & (5).

18 See Regulation NMS, 70 FR at 37499.

opportunities.

Step Up Tier 3 Adding Credit

The Exchange believes that a new Step Up Tier 3 Adding Credit is reasonable. Specifically, the Exchange believes that the proposed Step Up Tier 3 Adding Credit would provide an incentive for member organizations to send additional liquidity providing orders to the Exchange in Tape A securities. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange.

The Exchange believes that requiring member organizations to have adding ADV, excluding any liquidity added by a DMM, that is at least 0.05% of NYSE CADV over that member organization's Fourth Quarter 2019 adding liquidity taken as a percentage of NYSE CADV in order to qualify for the proposed Step Up Tier 3 Adding Credit is reasonable because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the greater amounts of displayed liquidity present on the Exchange.

The Exchange believes that it is reasonable to offer a lower credit of $0.0015 if the increase in adding ADV over that member organization's Fourth Quarter 2019 adding liquidity taken as a percentage of NYSE CADV is 0.05% or more up to 0.09%, and to offer a higher credit of $0.0018 if the adding ADV increase is 0.10% or more, because it is reasonably related to the value to the Exchange's market quality associated with higher volume.

Finally, the Exchange believes it's reasonable to provide an additional $0.0001 per share for adding liquidity in Tape A securities for member organizations meet the proposed tier requirements and qualify for the $0.0015 or $0.0018 credit in Tape A securities if trades in Tapes B and C securities against the member organization's orders that add liquidity, excluding orders as an SLP, equal to at least 0.20% of Tape B and Tape C CADV combined, is reasonable as this same incentive is offered in the NYSE ‘s other adding tiers (Tier 1-4 Adding Credits).

Since the proposed Step Up Tier 3 would be new with a step up requirement, no member organization currently qualifies for the proposed pricing tier. As previously noted, there are a number of member organizations that could qualify for the proposed higher credit but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed credit is reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

<u>DMM Incremental Rebate Per Share for More Active Securities</u>

The Exchange believes that the proposed incremental rebate for DMMs is a reasonable way to incentivize DMM to increase their added liquidity on the Exchange, which would improve quoting and increase adding liquidity across securities when market volumes are high. The Exchange believes that the incremental rebate will provide incentives for DMMs to provide higher volumes of liquidity, which contributes to price discovery and benefits all market participants. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Because, as proposed, the first way to qualify for the proposed credit requires providing liquidity in all assigned securities as a percentage of NYSE CADV that is an increase of 0.30% more than the DMM’s April 2020 providing liquidity in all assigned securities as a percentage of NYSE CADV while the second way to qualify requires an increase of at least 40% more than the DMM’s April

2020 providing liquidity in all assigned securities as a percentage of NYSE CADV, the Exchange believes that the proposed credit would provide an incentive for DMMs to send additional liquidity to the Exchange in order to qualify for it.

Moreover, the Exchange believes that the second way to qualify for the incremental credit is designed to provide smaller market makers (i.e., DMMs with 750 or fewer assigned securities in the previous month) with an added incentive to add liquidity in their assigned securities in a given month is a reasonable means to improve market quality, attract additional order flow to a public market, and enhance execution opportunities for member organizations on the Exchange, to the benefit of all market participants. The Exchange notes that the proposal would also foster liquidity provision and stability in the marketplace during periods of high volumes. The proposal would also reward DMMs, who have greater risks and heightened quoting and other obligations than other market participants.

Adding Liquidity Requirement for SLP Tape A Tiers

In addition, lowering the adding liquidity requirement to 0.25% of Tape B and Tape C CADV combined in order for member organizations that are SLPs to qualify for the applicable credit in SLP Tiers 1, 1A, 2, 3, 4, and the SLP Step Up Tier is reasonable because it would provide further incentives for such member organizations to provide additional liquidity to a public exchange in Tape B and C securities to reach the proposed Adding ADV requirement, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposal would provide an incentive for member organizations that are SLPs to route additional liquidity-providing orders to the Exchange in Tape B and C securities. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange. Without having a view of a member organization's activity on other markets and off-exchange venues, the Exchange believes the proposed additional requirement to qualify for the SLP Adding Tier credits would provide an incentive for member organizations who are SLPs to submit additional adding liquidity to the Exchange in Tape B and C securities. As previously noted, there are currently no SLPs that qualify for the cross tier incentives based on their current trading profile on the Exchange, but the Exchange believes that at least 2 more SLPs could qualify if they choose to direct order flow to, and increase quoting on, the Exchange.

<u>Fee Waivers for Trading Floor-Based Member Organizations</u>

The proposed extension of the waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations is reasonable in light of the temporary closure of the NYSE Trading Floor. Beginning March 2020, markets worldwide have experienced unprecedented declines and volatility because of the ongoing spread of COVID-19 that has also resulted in the temporary closure of the NYSE Trading Floor. The proposed change is designed to reduce costs for Floor participants for the month of May 2020 that are unable to conduct Floor operations while the Trading Floor remains temporarily closed. The Exchange believes that this fee waiver would ease the financial burden faced by member organizations that conduct business on the Trading Floor and benefit all such member organizations.

Finally, the Exchange also believes the proposed non-substantive changes are reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency on the Price List, thereby reducing potential confusion.

The Proposal is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace.

Tier 3 Adding Credit Adding ADV Requirement

The Exchange is not proposing to adjust the amount of the Tier 3 Adding Credit, which will remain at the current level for all market participants. Rather, the proposal to lower the ADV requirement for the second way to qualify for the Tier 3 Adding Credit would continue to encourage more member organizations to send add liquidity to the Exchange by making it more attainable, thereby contributing to robust levels of liquidity, which benefits all market participants. As described above, member organizations with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that, for the reasons discussed above, lowering the Adding ADV requirement to qualify for a tiered credit, would make it easier for additional liquidity providers to qualify for the Tier 3 Adding Credit, thereby encouraging submission of additional liquidity to the Exchange. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity present on the Exchange. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

Step Up Tier 3 Adding Credit

The Exchange believes that the proposed Step Up Tier 3 is equitable because the magnitude of the additional credit is less than the current Step Up Tier 2 credit in Tape A securities. Moreover, the proposed credits are not unreasonable relative with the other non-SLP adding tier credits, which as range from $0.0015 to $0.0029, in comparison to the credits paid by other exchanges for orders that provide additional step up liquidity.[19] The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market wide quality and price discovery.

Since the proposed Step Up Tier 3 would be new and includes a step up Adding ADV requirement, no member organization currently qualifies for it. As noted, there are currently a number of member organizations that could qualify for the proposed tier, but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed credit is reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All member organizations that provide liquidity could be eligible to qualify for the credit proposed in Step Up Tier 3 if they increase their Adding ADV over their own baseline of order flow. The Exchange believes that offering a step up credit for providing liquidity if the step up requirements for Tape A securities are met will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and

19 See Cboe BZX Fee Schedule, which has adding credits ranging from $0.0025 to $0.0032, at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

benefiting investors generally. As to those market participants that do not presently qualify for the adding liquidity credits, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

DMM Incremental Rebate Per Share for More Active Securities

The Exchange believes that the proposed incremental rebate to DMMs is an equitable allocation of fees because it would reward DMMs for their increased risks and heightened quoting and other obligations. As such, it is equitable to offer DMMs an incremental rebate for increased adding liquidity in addition to current rates of $0.0034 or less. The proposed rule change is also equitable because it would apply equally to all existing and potential DMM firms.

The Exchange notes that all five DMM firms could qualify for the proposed incremental rebate. The Exchange believes that the proposal would provide an equal incentive to all DMMs to add liquidity in more active securities, and that the proposal constitutes an equitable allocation of fees because all similarly situated DMMs would be eligible for the same incremental rebate.

Adding Liquidity Requirement for SLP Tape A Tiers

The Exchange believes that lowering the adding liquidity requirement in order for member organizations that are SLPs to qualify for the applicable credit in SLP Tiers 1, 1A, 2, 3, 4, and the SLP Step Up Tier equitably allocates its fees among its market participants. The Exchange is not proposing to adjust the amount of any of the SLP Adding Tier credits, which will remain at current levels for all market participants. For the reasons discussed above, the Exchange believes that the proposed change to the SLP Adding Tier requirements would encourage the SLPs to add liquidity to the market in Tape B and C securities, thereby providing customers with a higher quality venue for price discovery, liquidity, competitive quotes and price improvement. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity present on the Exchange. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities. As previously noted, there are currently no SLPs that qualify for the cross tier incentives based on their current trading profile on the Exchange, but the Exchange believes that at least two more SLPs could qualify if they choose to direct order flow to, and increase quoting on, the Exchange.

Fee Waivers for Trading Floor-Based Member Organizations

Finally, the proposed extension of the waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations to May 2020 are also an equitable allocation of fees. The proposed waivers apply to all Trading Floor-based firms meeting specific requirements during the period that the Trading Floor is temporarily closed. The proposed change is equitable as it is designed to reduce monthly costs for Trading Floor-based member organizations that are unable to conduct Floor operations.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant.

Tier 3 Adding Credit Adding ADV Requirement

The Exchange believes that the proposal to lower the ADV requirement for the Tier 3

Adding Credit does not permit unfair discrimination because the lower threshold would be applied to all similarly situated member organizations and other market participants, who would all be eligible for the same credit on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees.

<u>Step Up Tier 3 Adding Credit</u>

The Exchange believes it is not unfairly discriminatory to provide an additional per share step up credit, as the proposed credits would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed Step Up 3 Tier's requirements. For the same reason, the Exchange believes it is not unfairly discriminatory to provide a higher credit of $0.0018 for increased adding ADV over the member organization's Fourth Quarter 2019 adding liquidity taken as a percentage of NYSE CADV because the proposed higher credit would equally encourage all member organizations to provide additional displayed liquidity on the Exchange. As noted, the Exchange believes that the proposed credit would provide an incentive for member organizations to send additional liquidity to the Exchange in order to qualify for the additional credits.

The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

<u>DMM Incremental Rebate Per Share for More Active Securities</u>

The proposed incremental rebate for DMM more active securities during periods of high volumes is also not unfairly discriminatory because the proposed rebates would provide an additional incentive to DMMs to quote and trade their assigned securities on the Exchange in very active months, and will generally allow the Exchange and DMMs to better compete for order flow, thus enhancing competition. The Exchange believes that the requirement that DMMs increase adding liquidity over the Baseline Month in order to qualify for the credits is not unfairly discriminatory because it would apply equally to all DMMs. The Exchange believes that requiring a higher percentage increase of at least 40% more than the DMM's April 2020 providing liquidity in all assigned securities as a percentage of NYSE CADV for DMMs with 750 or fewer assigned securities in the previous month is not unfairly discriminatory because it would apply equally to all similarly situated DMMs.

Moreover, the Exchange believes that the second way to qualify for the incremental credit is designed to provide smaller market makers (i.e., DMMs with 750 or fewer assigned securities in the previous month) with an added incentive to add liquidity in their assigned securities in a given month. As described above, member organizations have a choice of where to send order flow. The Exchange believes that incentivizing DMMs on the Exchange to add more liquidity during period of high volumes could contribute to greater price discovery on the Exchange. In addition, additional liquidity-providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation.

Adding Liquidity Requirement for SLP Tape A Tiers

Lowering the adding ADV requirement for the SLP Adding Tiers is not unfairly discriminatory because the proposal would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed alternative requirement, who would all be eligible for the same credits on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. Further, as noted, the Exchange believes the proposal would provide an incentive for member organizations to continue to send orders that provide liquidity to the Exchange, to the benefit of all market participants.

Fee Waivers for Trading Floor-Based Member Organizations

The proposed waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during May 2020 is not unfairly discriminatory because the proposed waivers would benefit all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange is not proposing to waive the Floor-related fixed indefinitely, but rather during the period that the Trading Floor is temporarily closed. The proposed fee change is designed to ease the financial burden on Trading Floor-based member organizations that cannot conduct Floor operations while the Trading Floor remains closed.

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,[20] 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, as discussed above, the Exchange believes that the proposed changes would encourage the continued participation of member organizations on

[20] 15 U.S.C. 78f(b)(8).

the Exchange by providing certainty and fee relief during the unprecedented volatility and market declines caused by the continued spread of COVID-19. 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."[21]

Intramarket Competition. The Exchange believes that lowering the adding ADV requirement for the second way to qualify for Tier 3 Adding Credit, offering a new pricing tier to incentivize member organizations to step up their liquidity-providing orders on the Exchange, offering an incremental rebate per share for DMMs in more active securities, and lowering the adding liquidity requirement in Tape B and C securities for the SLP Tape A adding tiers are designed to respond to the current competitive environment and to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The current and proposed credits and incentives and revised qualification requirements would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. Further, the proposed continued waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during May 2020 provide a degree of certainty to DMMs and SLPs adding liquidity to the Exchange during high volatility and to ease

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21 Regulation NMS, 70 FR at 37498-99.

the financial burden on Trading Floor-based member organizations impacted by the temporary closing of the Trading Floor. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As previously noted, the Exchange's market share of trading in Tape A, B and C securities combined is less than 13%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. 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 does not believe its proposed fee change can impose any burden on intermarket competition. The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to provide a degree of certainty and ease the financial burdens of the current unsettled market environment, and permit affected member organizations to continue to conduct market-making operations on the Exchange and avoid unintended costs of doing business on the Exchange while the Trading Floor is inoperative, which could make the Exchange a less competitive venue on which to trade as compared to other options exchanges.

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[22] of the Act and subparagraph (f)(2) of Rule 19b-4[23] 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)[24] 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-2020-39 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.

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22 15 U.S.C. 78s(b)(3)(A).

23 17 CFR 240.19b-4(f)(2).

24 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSE-2020-39. 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-NYSE-2020-39 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.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[25] 17 CFR 200.30-3(a)(12).

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