

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72805; File No. SR-NYSE-2014-42)

August 11, 2014

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Price List to Modify the Tier 2 Adding Credit

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 28, 2014, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Price List to modify the Tier 2 Adding Credit. The proposed credit will be operative on August 1, 2014. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 modify the Tier 2 Adding Credit. The proposed credit will be operative on August 1, 2014.

Under the current Tier 2 Adding Credit,<sup>4</sup> the Exchange provides an equity per share credit per transaction of \$0.0020 (\$0.0010 if a Non-Displayed Reserve Order or \$0.0015 if a Midpoint Passive Liquidity Order) when adding liquidity to the NYSE by one of the following three methods:

- 1) the member organization has Customer Electronic Adding ADV<sup>5</sup> that is at least 1.1% of NYSE consolidated ADV ("CADV") and executes market-on-close ("MOC") and limit-on-close ("LOC") orders of at least 0.375% of NYSE CADV;
- 2) the member organization has Adding ADV<sup>6</sup> that is at least 0.8% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and adds liquidity to the NYSE as an SLP for all assigned SLP securities in the aggregate (including shares of both an SLP proprietary trading unit ("SLP-Prop") and an

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<sup>4</sup> The credit applies to transactions in stocks with a per share stock price of \$1.00 or more.

<sup>5</sup> Customer Electronic Adding ADV is average daily trading volume ("ADV") that adds liquidity in customer electronic orders to the NYSE, but excludes any liquidity added by a Floor broker, Designated Market Maker ("DMM"), or Supplemental Liquidity Provider ("SLP"). For purposes of transactions fees and SLP credits, ADV calculations exclude early closing days.

<sup>6</sup> Adding ADV adds liquidity to the NYSE during the billing month but excludes any liquidity added by a DMM.

SLP market maker (“SLMM”) of the same member organization) of more than 0.15% of NYSE CADV; or

- 3) the member organization has Customer Electronic Adding ADV during the billing month that is at least 0.5% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and has Customer Electronic Adding ADV during the billing month that, taken as a percentage of NYSE CADV, is at least equal to the member organization’s Customer Electronic Adding ADV during September 2012 as a percentage of consolidated average daily volume in NYSE-listed securities during September 2012 plus 15%.

The Exchange proposes to amend the second method so that a member organization will be required either to execute MOC and LOC orders of at least 0.12% of NYSE CADV or alternatively to execute an ADV during the billing month of at least one million shares in Retail Price Improvement Orders (“RPIs”).<sup>7</sup> The other qualifications for the second method (Adding ADV that is at least 0.8% of NYSE CADV and adding liquidity to the NYSE as an SLP for all assigned SLP securities in the aggregate of more than 0.15% of NYSE CADV) will remain the same. The Exchange does not propose to change the qualifications for the first or third methods.

## 2. Statutory Basis

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

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<sup>7</sup> An RPI consists of non-displayed interest in NYSE-listed securities that is priced better than the best protected bid (“PBB”) or best protected offer (“PBO”), as such terms are defined in Regulation NMS Rule 600(b)(57), by at least \$0.001 and that is identified as such. For securities to which it is assigned, a Retail Liquidity Provider (“RLP”) may only enter an RPI in its RLP capacity. An RLP is permitted, but not required, to submit RPIs for securities to which it is not assigned, and is treated as a non-RLP member organization for those particular securities. Member organizations other than RLPs are permitted, but not required, to submit RPIs. See Rule 107C(a)(4).

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

The Exchange believes that amending the second method of qualifying for the Tier 2 Adding Credit to consider the submission of RPIs is reasonable because it would provide member organizations with an alternative way in which to qualify for the credit, thereby encouraging member organizations to provide higher volumes of RPIs, which will contribute to the quality of the Exchange's market, particularly for retail investors. The one-million-share threshold for RPIs is reasonable because it is the same level set as part of a qualification for a previously offered credit.<sup>10</sup> The Exchange believes that the proposed credit is equitable and not unfairly discriminatory because all member organizations are permitted to submit RPIs. Member organizations that choose not to submit RPIs can continue to qualify for the Tier 2 Adding Credit under the existing methods.

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

In accordance with Section 6(b)(8) of the Act,<sup>11</sup> the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate

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

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

<sup>10</sup> See Securities Exchange Act Release No. 71684 (March 11, 2014), 78 FR 14758 (March 17, 2014) (SR-NYSE-2014-09) (establishing a \$0.0019 per share credit per transaction for all non-Floor broker transactions that add liquidity to the Exchange if the member organization executes an ADV during the billing month of at least one million shares in RPIs and a Customer Electronic Adding ADV during the billing month of at least five million shares).

<sup>11</sup> 15 U.S.C. 78f(b)(8).

in furtherance of the purposes of the Act. The Exchange believes that the proposed Tier 2 Adding Credit will not place a burden on competition because the Exchange is establishing an alternative way for member organizations to earn the credit, which would allow more member organizations to compete and qualify for the fee. The proposed change also will create an incentive to submit RPIs to the Exchange, thereby promoting competition for retail orders. 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 or credit levels at a particular venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with 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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)<sup>14</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2014-42 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSE-2014-42. 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 Section, 100 F

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<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for website viewing and printing at the NYSE's principal office and on its Internet website at [www.nyse.com](http://www.nyse.com). 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-2014-42 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).