

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77604; File No. SR-NYSE-2016-29)

April 13, 2016

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List for Equity Transactions in Stocks with A Per Share Stock Price More than \$1.00

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 31, 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 default charge for transactions that remove liquidity from the Exchange; (2) make certain pricing changes applicable to Supplemental Liquidity Providers (“SLPs”) on the Exchange; and (3) eliminate the fee for additional electronic copies of the Merged Order Report. The Exchange proposes to implement these changes to its Price List effective April 1, 2016. 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, on the Commission’s website at <http://www.sec.gov>,

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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.

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 default charge for transactions removing liquidity from the Exchange for member firms whose adding liquidity falls below a specified threshold; and (2) add a new SLP Tier 1A; lower the credits for Non-Displayed Reserve Orders for existing SLP Tiers 1 through 3; and, for SLPs that are also Designated Market Makers ("DMMs"), replace the numeric benchmark for calculating tier-based credits. The proposed changes would only apply to credits in transactions in securities priced \$1.00 or more.

The Exchange also proposes to eliminate the fee for additional electronic copies of the Merged Order Report.

The Exchange proposes to implement these changes effective April 1, 2016.

Charges for Removing Liquidity

The Exchange currently charges a fee of \$0.00275 for non-Floor broker transactions that remove liquidity from the Exchange, including those of DMMs.

The Exchange proposes to retain this charge and introduce a slightly higher default charge of \$0.0030 for non-Floor broker transactions removing liquidity from the Exchange by member organizations with an Adding ADV<sup>4</sup>, excluding any liquidity added by a DMM, of less than 250,000 ADV<sup>5</sup> on the Exchange during the billing month.

#### Changes Applicable to SLPs

SLPs are eligible for certain credits when adding liquidity to the Exchange. The amount of the credit is currently determined by the “tier” for which the SLP qualifies, which is based on the SLP’s level of quoting and ADV of liquidity added by the SLP in assigned securities.

Currently, SLP Tier 3 provides that when adding liquidity to the NYSE in securities with a share price of \$1.00 or more, 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<sup>6</sup> of an ADV of more than 0.20% of NYSE consolidated ADV (“CADV”),<sup>7</sup> or with respect to an SLP that is also a DMM and subject to Rule

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<sup>4</sup> “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.

<sup>5</sup> The defined term, “ADV,” is used here as defined in footnote 2 to the Price List.

<sup>6</sup> Under Rule 107B, an SLP can be either a proprietary trading unit of a member organization (“SLP-Prop”) or a registered market maker at the Exchange (“SLMM”). For purposes of the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated. However, for purposes of adding liquidity for assigned SLP securities in the aggregate, shares of both an SLP-Prop and an SLMM of the same member organization are included.

<sup>7</sup> NYSE CADV is defined in the Price List as the consolidated average daily volume of NYSE-listed securities.

107B(i)(2)(a),<sup>8</sup> more than 0.15% of NYSE CADV. The SLP Tier 3 credit in the case of Non-Displayed Reserve Orders is \$0.0009.

SLP Tier 2 provides that an SLP adding liquidity in securities with a per share price of \$1.00 or more is eligible for a per share credit of \$0.0026 if the SLP: (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; and (2) adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.45% of NYSE CADV, or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a), more than 0.30% of NYSE CADV.<sup>9</sup> The SLP Tier 2 credit in the case of Non-Displayed Reserve Orders is \$0.0012.

SLP Tier 1 provides that an SLP adding liquidity in securities with a per share price of \$1.00 or more is eligible for a per share credit of \$0.0029 if the SLP: (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; and (2) adds liquidity for all for assigned SLP securities in the aggregate of an ADV of more than 0.90% of NYSE CADV, or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a), more than 0.65% of NYSE CADV. The SLP Tier 1 credit in the case of Non-Displayed Reserve Orders is \$0.0015.

The Exchange proposes the following changes applicable to SLPs on the Exchange.

#### Credits for Non-Displayed Reserve Orders

The Exchange proposes to decrease the credit for a Non-Displayed Reserve Order

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<sup>8</sup> Rule 107B(i)(2)(A) prohibits a DMM from acting as a SLP in the same securities in which it is a DMM.

<sup>9</sup> In determining whether an SLP meets the requirement to add liquidity in the aggregate of an ADV of more than 0.35% or 0.30% depending on whether the SLP is also a DMM, the SLP may include shares of both an SLP-Prop and an SLMM of the same member organization.

by \$0.0003. Specifically, for Non-Displayed Reserve Orders the SLP Tier 1 credit would decrease from \$0.0015 to \$0.0012; the SLP Tier 2 credit would decrease from \$0.0012 to \$0.0009; and the SLP Tier 3 credit would decrease from \$0.0009 to \$0.0006.

#### Numeric Benchmark for Calculating Tier-Based Credits

For SLP Tier 3, SLP Tier 2, and SLP Tier 1, the Exchange proposes to replace the ADV percentage benchmark for credits for SLPs that are also DMMs and subject to Rule 107B(i)(2)(A) representing a fixed discount of NYSE CADV with a dynamic discount based on the DMM's percentage of NYSE CADV in DMM assigned securities for the prior quarter. More specifically, the Exchange proposes that the current ADV percentage requirement for each tier would be discounted by the DMM's percentage of NYSE CADV for the prior quarter in DMM assigned securities as of the last business day of the prior month. The Exchange believes that a calculation utilizing the most recent quarter's percentage of DMM CADV would result in a fairer discount for SLPs that are also DMMs than the current fixed percentage, and thus represent a fairer benchmark for determining the appropriate credit for market participants that provide liquidity to the Exchange. SLPs that have DMM assigned securities with a larger percentage of NYSE CADV will receive a larger discount than SLPs with DMM assigned securities with a smaller percentage of NYSE CADV.

For SLP Tier 3, the Exchange proposes that the ADV percentage requirement for SLPs that are also DMMs and subject to Rule 107B(i)(2)(A) change from more than 0.15% of NYSE CADV to 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. For SLP Tier 2, the Exchange proposes that the

requirement change from more than 0.30% to more than the current 0.45% 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. Finally, for SLP Tier 1, the Exchange proposes that the requirement change from more than more than 0.65% to more than the current 0.90% 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.

As proposed, the NYSE CADV in DMM assigned securities would be on a prior quarter basis and the DMM assigned securities list applied to the quarter would be as of the last business day of the prior month. This would enable the Exchange to measure stock transfers in the prior month and among DMMs. For example, for April 2016, the calculation for each tier would be based on the 1<sup>st</sup> quarter of 2016 by reference to the DMM stock list for March 31, 2016, the last business day of the prior month. A DMM security that did not trade in prior quarter would not be used in measuring the discount. Securities assigned to the SLP's DMM in the current month will also not be used in measuring the discount. Further, days on which the Exchange closes early would be included in calculating the discount. This is consistent with the way in which the Exchange calculates other fees.<sup>10</sup> If a SLP has no DMM assigned securities as of the last day of the prior month or if the DMM assigned securities did not have any NYSE CADV in the prior quarter, then the SLP will not be assigned a discount for the current month.

The following is an example of how the proposed change would operate by reference to SLP Tier 3. Assume an SLP that is also a DMM has DMM assigned

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<sup>10</sup> See Fee Schedule, footnote 4.

securities with a NYSE CADV in the prior quarter of 570 million shares. Assume that total NYSE CADV was 3.8 billion shares for the prior quarter. Under these circumstances, the requirement for SLP Tier 3 for such a SLP would be 0.17%, using a 15% discount based on 570 million shares of NYSE CADV in the SLPs DMM assigned securities divided by 3.8 billion shares of total NYSE CADV, applied to the current 0.20% SLP Tier 3 requirement for all SLPs.

The Exchange also proposes to add a footnote designated with an asterisk providing that SLPs that become DMMs on the Exchange after the beginning of a billing month would not be eligible until the next full billing month.

The Exchange does not propose any changes to the SLP Non-Tier.

#### New SLP Tier 1A

The Exchange proposes a new, fourth SLP Tier designated “1A” that would provide that an SLP adding liquidity in securities with a per share price of \$1.00 or more is eligible for a per share credit of \$0.00275 if the SLP: (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; and (2) adds liquidity for all for assigned SLP securities in the aggregate of an ADV of more than 0.60% of NYSE CADV, or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a), more than 0.60% 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 proposed SLP Tier 1A credit in the case of Non-Displayed Reserve Orders would be \$0.00105. The Exchange believes that the new tier will provide greater incentives for member organizations between Tier 1 (.90%) and Tier 2 levels (.45%) to add liquidity to the Exchange.

### Merged Order Report

The Exchange currently charges member organizations \$3.00 per copy (the first copy is provided at no charge) per 1,000 records for machine readable output and print image transmission copies of the Merged Order Report (the “Report”). The Exchange no longer provides the Report in these formats, which required individual transmissions each time a member organization wanted to access the Report. Instead, the Exchange provides a single, web-based transmission of the Report. Since the first copy of the Report is not charged, the Exchange proposes to eliminate the fee. The Exchange proposes to retain the current charge for hard copies of the Report.

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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,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>12</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.

### Charges for Removing Liquidity

The Exchange believes that introducing a slightly higher default charge for non-

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

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

Floor broker transactions removing liquidity from the Exchange for member organizations with an Adding ADV, excluding DMM liquidity, of less than 250,000 ADV during a billing month is reasonable. The Exchange believes that the proposed rate change will incentivize submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange also believes that the proposed fee is equitable because it would apply to all similarly situated member organizations.

The proposed fee also is equitable and not unfairly discriminatory because it would be consistent with the applicable rate on other marketplaces. For example, EDGA Exchange, Inc. (“EDGA”) provides a credit for removing liquidity, subject to Footnote 1 to EDGA’s fee schedule, which imposes a charge of \$0.0030 per share for removing liquidity on members that do not add and/or route a minimum ADV, measured monthly, of 50,000 shares on EDGA.<sup>13</sup> Given the Exchange’s and EDGA’s relative size and market share, the Exchange believes that EDGA’s 50,000 share requirement is comparable to the proposed 250,000 ADV requirement.

#### New SLP Tier 1A

The Exchange believes that proposal to introduce a new SLP Tier 1A is reasonable because it provides SLPs as well as SLPs that are also DMMs with an additional way to qualify for a rebate, thereby providing SLPs with greater flexibility and creating an added incentive for SLPs to bring additional order flow to a public market. In particular, as noted above, the Exchange believes that the new tier will provide greater incentives for member organizations between Tier 1 (.90%) and Tier 2 levels (.45%) to

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<sup>13</sup> See [http://www.bats.com/us/equities/membership/fee\\_schedule/edga/](http://www.bats.com/us/equities/membership/fee_schedule/edga/).

add liquidity to the Exchange.

#### Credits for Non-Displayed Reserve Orders

The Exchange believes that the proposed rule change to reduce the credit for Non-Displayed Reserve Orders that provide liquidity is reasonable, equitable and not unfairly discriminatory because it strengthens the relative incentive for SLPs to submit displayed liquidity versus non-displayed liquidity to the Exchange. The Exchange also believes that the proposed lower credit is equitable and not unfairly discriminatory because it would apply equally to all SLPs.

#### Numeric Benchmark for Calculating Tier-Based Credits

The Exchange believes that replacing the numeric benchmark representing a fixed discount of NYSE CADV for calculating tier-based credits for SLPs that are also DMMs and subject to Rule 107B(i)(2)(A) with the current numeric benchmark applicable to other SLPs for each tier discounted by the DMM's percentage of NYSE consolidated average daily volume for the prior quarter in DMM assigned securities is reasonable. As noted above, the Exchange believes that the proposed benchmark would result in a more accurate discount for market participants that provide liquidity to the Exchange and would thus be fairer. The Exchange notes that for some SLPs with DMMs, the proposed change may result in a lower requirement than the current tier requirement, and for some SLPs the change may result in a higher requirement, based on the NYSE CADV in the SLP's DMM assigned securities than the current tier requirement. The Exchange believes that more accurate and fairer discounts would incentivize these market participants to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency.

Further, the Exchange believes that the proposed benchmark is equitable because it would apply to all similarly situated SLPs and provide credits that are reasonably related to the value of an exchange's market quality associated with higher volumes. The Exchange further believes that the proposal is reasonable, equitable and not unfairly discriminatory because other exchanges have implemented multiple step up tiers based on a firm's individual trading activity rather than a market baseline.<sup>14</sup>

#### Merged Order Report

The Exchange believes that eliminating the per copy fee for the Merged Order Report is reasonable because the Exchange does not charge for the first copy and, in light of the Exchange's utilization of web-based transmission of the Report, the need to transmit multiple copies to the member organizations has been eliminated. The Exchange believes that the proposed elimination of the per copy fee is equitable as the costs it was designed to defray have been eliminated by the web-based method of publishing the Report. As noted above, the Exchange proposes to retain the current charge for hard copies of the Report.

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,<sup>15</sup> the Exchange believes that the

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<sup>14</sup> See, e.g., Securities Exchange Act Release No. 34-76084 (October 6, 2015), 80 FR 61529 (October 13, 2015) (SR-NYSEArca-2015-87).

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

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 change 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.

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)<sup>16</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>17</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 Commission shall institute proceedings under Section 19(b)(2)(B)<sup>18</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-

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

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

<sup>18</sup> 15 U.S.C. 78s(b)(2)(B).

NYSE-2016-29 on the subject line.

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-2016-29. 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-2016-29 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>19</sup>

Robert W. Errett  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).