

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67814; File No. SR-NYSE-2012-41)

September 10, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the New York Stock Exchange LLC Price List to Make Changes to Certain Transaction Fees to Eliminate the Step-Up Rate for Non-Floor Broker Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on August 31, 2012, New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to make changes to certain transaction fees within its Price List to eliminate the step-up rate for non-Floor broker transactions. 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> 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make changes to certain transaction fees within its Price List to eliminate the step-up rate for non-Floor broker transactions. The Exchange proposes to make the rule change operative on September 1, 2012.

Member organizations are currently charged \$0.0023 per share for all non-Floor broker transactions (i.e., when taking liquidity from the NYSE) that are not otherwise specified in the Price List. In addition, non-Floor broker member organizations that add specified amounts of liquidity to the NYSE above their normal amount ("step-up") are charged a lower rate of \$0.0022 per share per transaction. The lower rate applies to non-Floor broker member organizations if the member organization's ADV adds liquidity to the NYSE during the billing month ("Adding ADV")<sup>3</sup> that is at least the greater of (i) the member organization's January 2012 Adding ADV ("Baseline ADV") plus 0.075% of consolidated average daily volume in NYSE-listed securities during the billing month ("NYSE CADV") or (ii) the member organization's Baseline ADV plus 20%. Additionally, if a member organization's ratio of Baseline ADV-to-total ADV during January 2012 is less than 10%, this rate only applies to the member organization's shares that are executed in an amount up to and including 0.75% of NYSE CADV. The rate of \$0.0023 per share applies to the member organization's remaining shares that are executed, unless the member organization's Adding ADV is greater than its Baseline ADV by at least 0.25% of

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<sup>3</sup> With respect to this lower rate, calculations of Adding ADV exclude early closing days as well as any liquidity added by a Designated Market Maker.

NYSE CADV.

The Exchange proposes to eliminate this step-up rate so that member organizations are charged \$0.0023 per share for all non-Floor broker transactions that are not otherwise specified in the Price List, regardless of the level of adding liquidity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>5</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would streamline the Price List with respect to determining the particular credit applicable to non-Floor broker transactions that are not otherwise specified in the Price List. Specifically, the Exchange believes that eliminating the step-up rate would simplify the method by which member organizations are charged for non-Floor broker transactions. In addition, the criteria for non-Floor broker transactions are transparent and quantitative. The Exchange also believes that eliminating the step-up rate is reasonable because member organizations will be charged the same fee that was previously charged by Exchange for all transactions that are not otherwise specified in the Price List.<sup>6</sup> The Exchange believes that the proposed rule change is reasonable because eliminating the step-up rate would remove a

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

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

<sup>6</sup> See Securities Exchange Act Release No. 63642 (January 4, 2011), 76 FR 1653 (January 11, 2011) (SR-NYSE-2010-87).

pricing tier from the Price List that member organizations have generally not utilized. The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to charge \$0.0023 for non-Floor broker transactions that take liquidity and \$0.0022 for Floor broker transactions that take liquidity, because Floor brokers have slower access to the Exchange via handheld technology, and Floor brokers are prohibited from routing directly to other market centers from handheld devices, which prevents them from accessing any associated pricing opportunities that might exist at those away markets.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

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

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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.

#### 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-2012-41 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSE-2012-41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2012-41 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>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).