

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68283; File No. SR-NYSE-2012-45)

November 21, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List to Specify Pricing that is Currently Applicable to Certain Executions on the Exchange, but That Is Not Currently Included in the Price List

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 November 9, 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 amend its Price List to specify pricing that is currently applicable to certain executions on the Exchange, but that is not currently included in the Price List. 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 specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and

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

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

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 is proposing to amend its Price List to specify pricing that is currently applicable to certain executions on the Exchange, but that is not currently included in the Price List. The Exchange proposes to make the changes immediately effective and operative.

Specifically, the Exchange proposes to include the following changes to the Price List to reflect pricing that is currently being assessed for the following intraday transactions: (1) a \$0.0005 fee for a Floor broker discretionary e-Quote ("d-Quote") that takes liquidity in a security priced \$1 or above; (2) no charge (i.e., free) for a non-electronic agency transaction of a Floor broker that executes against the Book, both in a security priced \$1 or above and in a security priced below \$1; (3) no charge for a non-electronic agency transaction between Floor brokers in the crowd in a security priced below \$1; and (4) no charge for an agency cross trade (i.e., a trade where a member organization has customer orders to buy and sell an equivalent amount of the same security) in a security priced below \$1.

d-Quotes

The Exchange proposes to specify in the Price List that a d-Quote that removes liquidity from the Book is charged \$0.0005 per share if the security is priced \$1 or above.<sup>3</sup> A d-Quote that adds liquidity to the Book in a security priced \$1 or above will continue to receive a credit of \$0.0019 per share.<sup>4</sup> Similarly, a d-Quote that adds liquidity to the Book in a security priced

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<sup>3</sup> The Exchange has charged for d-Quotes that removed liquidity since October 2007.

<sup>4</sup> This is in accordance with the current Price List and therefore the Exchange is not proposing a new or separate line item therein for this type of transaction.

below \$1 will continue to receive a credit of \$0.0004 per share.<sup>5</sup> Also, a d-Quote that removes liquidity from the Book in a security priced below \$1 will continue to be charged a fee equal to 0.3% of the total dollar volume of the transaction.<sup>6</sup>

#### Non-Electronic Agency Transactions

The Exchange proposes to specify in the Price List that a non-electronic agency transaction of a Floor broker that executes against the Book is not charged (i.e., it is free),<sup>7</sup> both for a security priced \$1 or above and for a security priced below \$1.<sup>8</sup> This is the same rate (i.e., free) that is currently specified in the Price List for non-electronic agency transactions between Floor brokers in the crowd in securities priced \$1 or above. In this regard, the Exchange also proposes to specify in the Price List that there is no charge for a non-electronic agency transaction between Floor brokers in the crowd in a security priced below \$1.<sup>9</sup>

#### Agency Cross Trades

The Price List currently specifies that an agency cross trade is not charged for a security priced \$1 or above.<sup>10</sup> Similarly, the Exchange proposes to specify in the Price List that there is

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<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Because of the nature of non-electronic trading interest (i.e., verbal/manual interest), the concept of adding and removing liquidity is not applicable.

<sup>8</sup> The Exchange began charging for a non-electronic agency transaction of a Floor broker that executed against the Book in October 2007. Beginning in March 2009, the Exchange no longer charged for this type of transaction.

<sup>9</sup> The Exchange has not charged for a non-electronic agency transaction between Floor brokers in the crowd in a security priced below \$1 since October 2007, if the transaction was for 10,000 shares or more, and since March 2009, if the transaction was for fewer than 10,000 shares.

<sup>10</sup> Because of the nature of an agency cross trade (i.e., the member organization already has customer orders to buy and sell an equivalent amount of the same security), the concept of adding and removing liquidity is not applicable.

no charge for an agency cross trade in a security priced below \$1.<sup>11</sup>

## 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>12</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>13</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 the proposed d-Quote rate of \$0.0005 per share for securities priced \$1 or above is reasonable because, when compared to the rate that would otherwise apply (i.e., \$0.0024 per share for all other Floor broker transactions that take liquidity from the Exchange) it may encourage additional liquidity during the trading day and may incentivize Floor brokers to provide additional intra-quote price improved trading, which would contribute to the quality of the Exchange’s market. The Exchange also believes that the proposed rate of \$0.0005 per share is equitable and not unfairly discriminatory because it may provide opportunities for Floor brokers to attract additional liquidity to the Floor and thereby increase the quality of order execution on the Exchange’s market, which benefits all market participants.

Additionally, the Exchange believes that not charging for a non-electronic agency transaction of a Floor Broker that executes against the Book, in both securities priced \$1 or above as well as securities priced below \$1, is reasonable because it would be set at a level that would align the rate with certain other non-electronic agency Floor broker interest that is

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<sup>11</sup> The Exchange has not charged for an agency cross trade in a security priced below \$1 since October 2007, if the transaction was for 10,000 shares or more, and since March 2009, if the transaction was for fewer than 10,000 shares.

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

<sup>13</sup> 15 U.S.C. 78f(b)(4).

similarly not charged. In this regard, and as noted above, the Exchange does not charge for executions of non-electronic agency transactions between Floor brokers in the crowd.<sup>14</sup>

Additionally, the Exchange believes that this is equitable and not unfairly discriminatory because a non-electronic agency transaction of a Floor broker would be used, for example, at a time of the trading day when a Floor broker is physically present at the point of sale and requires flexibility to represent customer interest, which is unique to a Floor broker, but which may also result in added opportunity cost and uncertainty for the Floor broker when compared to an electronic execution.

The Exchange also believes that it is reasonable to specify that a non-electronic agency transaction between Floor brokers in the crowd is not charged for securities priced below \$1 because doing so will add greater specificity to the Price List by reflecting that it is the same as the rate charged for such transactions in securities priced \$1 or above. This is also equitable and not unfairly discriminatory because it would provide greater certainty regarding the applicable rates for transactions in securities priced below \$1. The Exchange believes that not charging for these transactions is further reasonable because it may incentivize additional liquidity in these low-priced securities, which typically are more thinly-traded and less liquid than securities priced \$1 or above. Accordingly, it is also equitable and not unfairly discriminatory to not charge for these transactions because the increased liquidity that may result in these securities would increase the quality of order execution on the Exchange's market, which benefits all market participants. Finally, and as described above for a non-electronic agency transaction of a Floor broker that executes against the Book, the Exchange believes that this is equitable and not

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<sup>14</sup> The Commission notes that the Exchange does not charge for executions of non-electronic agency transactions between Floor brokers in the crowd for transactions in stocks with a per share stock price of \$1.00 or more.

unfairly discriminatory because non-electronic agency transactions between Floor brokers in the crowd occur, for example, at a time of the trading day when a Floor broker is physically present at the point of sale and requires flexibility to represent customer interest, which is unique to a Floor broker, but which may also result in added opportunity cost and uncertainty for the Floor broker when compared to an electronic execution.

The Exchange also believes that it is reasonable to specify that an agency cross trade is not charged for securities priced below \$1 because doing so will add greater specificity to the Price List by reflecting that it is the same as the rate charged for such transactions in securities priced \$1 or above. This is also equitable and not unfairly discriminatory because it would provide greater certainty regarding the applicable rates for transactions in securities priced below \$1. The Exchange believes that not charging for these transactions is further reasonable because of the nature of an agency cross trade, in that it is a trade where a member organization has customer orders to buy and sell an equivalent amount of the same security.<sup>15</sup>

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.

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<sup>15</sup> See supra note 10.

### 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 NYSE.

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-2012-45 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-2012-45. 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

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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).

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-2012-45 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>18</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).