

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76789; File No. SR-NYSE-2015-66)

December 29, 2015

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List to Modify Certain Fees for Executions at the Close

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 December 16, 2015, 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 modify certain fees for executions at the close, effective January 4, 2016. The proposed rule change is available on the 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 change certain fees for executions at the close, effective January 4, 2016. The proposed change would only apply to transactions in securities priced \$1.00 or more.

Other than for market at-the-close ("MOC") and limit at-the-close ("LOC") orders, the Exchange does not charge for orders executed at the close, including Floor broker orders swept into the close. However, member organizations that execute during the billing month average daily volume ("ADV") of at least 1,000,000 shares through orders executed at the close (except MOC and LOC orders) and Floor broker orders swept into the close, are charged \$0.0003 per share for such orders. The Exchange proposes to increase this fee to \$0.00035 per share, but to apply that fee only to shares executed in excess of 750,000 ADV during the billing month. For example, a member organization that has an ADV of 3 million shares during a billing month consisting of 20 trading days would pay the \$0.00035 per share fee on the 2.25 million shares that exceed 750,000 on average each day. For the 20 trading days, this would be a total of 45 million shares for that month, and a total fee of \$15,750. By comparison with the current fee, the member organization that has an ADV of 3 million shares would pay the \$0.0003 per share fee on an ADV of 3 million shares over 20 trading days, or a total of 60 million

shares for that month, for a total fee of \$18,000. Member organizations with execution volumes below an ADV of 750,000 shares during the billing month would continue not to be charged for these trades.

The proposed change is 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,⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁵ 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 fee increases for certain executions at the close are reasonable. The Exchange's closing auction is a recognized industry benchmark,⁶ and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis.

The Exchange believes that it is equitable and not unfairly discriminatory to modify fees for executions at the close (other than MOC and LOC orders) and Floor broker executions swept into the close for member organizations that execute an ADV of at least 750,000 of such executions on a combined basis, by increasing the applicable fee

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

⁶ For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

but to apply that fee only to shares executed over 750,000 ADV during the billing month, because member organizations that reach 750,000 ADV threshold are generally larger member organizations that are deriving a substantial benefit from this high volume of closing executions. Nonetheless, the Exchange must continue to encourage liquidity from multiple sources. Allowing member organizations with execution volumes of an ADV below 750,000 shares during the billing month to continue to obtain executions at the close at no charge, and to charge the fee only with respect to shares executed over 750,000 ADV during the billing month, continues to encourage member organizations to send orders to the Exchange for the closing auction. The Exchange believes that its proposal would equitably balance these interests and continue to encourage order flow from multiple sources, which helps to maintain the quality of the Exchange's closing auctions for the benefit of all market participants. The proposed fee is also reasonable, in that it is lower than applicable closing rates on the NASDAQ Stock Market, LLC ("NASDAQ").⁷ For example, the default fee for executions in NASDAQ's "Closing Cross" is \$0.0008 per share.

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 these 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,⁸ the Exchange believes that the

⁷ See NASDAQ Rule 7018(d).

⁸ 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)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ 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)¹¹ 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-

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B).

NYSE-2015-66 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-2015-66. 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 will also be available for inspection and copying at the NYSE's principal office and on its Internet website at 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-2015-66 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.¹²

Jill M. Peterson
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).