

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81791; File No. SR-NYSE-2017-50)

October 2, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Price List to Permit Affiliated Member Organizations that are Supplemental Liquidity Providers

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 September 25, 2017, 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 permit affiliated member organizations that are Supplemental Liquidity Providers (“SLPs”) on the Exchange to obtain the most favorable rate when (1) at least one affiliate satisfies the quoting requirements for SLPs in assigned securities, and (2) the combined SLPs’ aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered and non-tiered rates. The Exchange proposes to implement the proposed changes on September 25, 2017.⁴ 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Price List on August 31, 2017 (SR-NYSE-2017-46), withdrew such filing on September 13, 2017, and refiled the same day (SR-NYSE-2017-48). SR-NYSE-48 [sic] was subsequently withdrawn and replaced by this filing.

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 permit affiliated member organizations that are SLPs on the Exchange to obtain the most favorable rate when (1) at least one affiliate satisfies the quoting requirements for SLPs in assigned securities, and (2) the combined SLPs' aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered and non-tiered rates.

The proposed changes would be applicable to all SLP transactions, regardless of price of the security.

The Exchange proposes to implement these changes to its Price List effective September 25, 2017.

Proposed Rule Change

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 an assigned security pursuant to Rule 107B and (2) adds liquidity for all assigned SLP securities in the aggregate⁵ of an ADV of more than 0.20% of NYSE consolidated ADV (“CADV”),⁶ or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a),⁷ more than 0.20% of NYSE CADV 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 SLP Tier 3 credit in the case of Non-Displayed Reserve Orders is \$0.0006.

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 0.45% of NYSE CADV 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.⁸ The

⁵ 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.

⁶ NYSE CADV is defined in the Price List as the consolidated average daily volume of NYSE-listed securities.

⁷ Rule 107B(i)(2)(A) prohibits a DMM from acting as a SLP in the same securities in which it is a DMM.

⁸ In determining whether an SLP meets the requirement to add liquidity in the aggregate of an ADV of more than 0.20% depending on whether the SLP is also a DMM, the SLP

SLP Tier 2 credit in the case of Non-Displayed Reserve Orders is \$0.0009.

SLP Tier 1A 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 \$0.00275 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 SLP Tier 1A credit in the case of Non-Displayed Reserve Orders is \$0.00105.

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 0.90% 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 SLP Tier 1 credit in the case of Non-Displayed Reserve Orders is \$0.0012.

Finally, a SLP adding liquidity in securities with a per share price of less than \$1.00 is eligible for a per share credit of \$0.0005 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 0.22% of NYSE CADV in the applicable month.

may include shares of both an SLP-Prop and an SLMM of the same member organization.

The Exchange proposes to amend the Price List to permit affiliated member organizations that are SLPs to obtain the most favorable rate when (1) at least one affiliate satisfies the quoting requirements for SLPs in assigned securities, and (2) the combined SLPs' aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered (i.e., SLP Tier 1, SLP Tier 1A, SLP Tier 2 and SLP Tier 3) and non-tiered rates.

To effect this change, for each of the SLP tiered and non-tiered rates, the Exchange proposes to: (i) replace the phrase "Credit per share – per transaction – for SLPs" with the phrase "Credit per share – per transaction for affiliated SLPs;" (ii) add a footnote that provides that affiliated member organizations that are SLPs would be eligible for the most favorable rate for any such security traded in an applicable month provided that one or both affiliated member organizations request and are approved for aggregation of eligible activity pursuant to the requirements set forth in the Price List; (iii) replace the phrase "the SLP," with the phrase "an SLP;" and (iv) add the phrase "or an affiliated" before the term "member organization."⁹

In order to qualify as affiliates for purposes of obtaining the more favorable rate and aggregating the adding liquidity of an ADV volumes, one or both member organizations that are SLPs would be required to follow the procedures set forth in the Price List for requesting that the Exchange aggregate its eligible activity with the eligible activity of its affiliates.¹⁰

For example, assume a member organization with a SLP (SLP1) is affiliated with another

⁹ The Exchange also proposes to add a hyphen between "SLP" and "Prop" following "quotes of an" in the SLP Tier 2 fee.

¹⁰ For purposes of applying any provision of the Exchange's Price List where the charge assessed, or credit provided, by the Exchange depends on the volume of a member organization's activity, a member organization may request that the Exchange aggregate its eligible activity with activity of such member organization's affiliates. A member organization requesting aggregation of eligible affiliate activity is required to (1) certify to the Exchange the affiliate status of member organizations whose activity it seeks to aggregate prior to receiving approval for aggregation, and (2) inform the Exchange immediately of any event that causes an entity to cease being an affiliate.

member organization that also has a SLP (SLP2). If the adding liquidity for all for assigned SLP securities is 0.40% of NYSE CADV for SLP1 in the billing month and 0.10% of NYSE CADV for SLP2, the combined adding liquidity for SLP1 and SLP2 would be 0.50% of NYSE CADV, and both SLP1 and SLP2 would meet the 0.45% NYSE CADV adding requirement. If in that same billing month, SLP1 has 8.0% quoting in SLP symbol XYZ and SLP2 has 12.0% quoting in that same symbol XYZ, both SLP1 and SLP2 would qualify for the SLP Tier 2 credit of \$0.0026 in symbol XYZ, by way of SLP2's 12.0% quoting and the combined adding liquidity of SLP1 and SLP 2 of 0.50% of NYSE CADV. If SLP2 did not quote in symbol XYZ at least 10%, then SLP1 would not qualify for the SLP Tier 2 credit due to their 8.0% quoting being short of the 10% requirement, and then SLP1 and SLP2 would instead receive the applicable non-Tier Adding Credit, Tier 3 Adding Credit, Tier 2 Adding Credit or Tier 1 Adding Credit.

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,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹² 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 and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) & (5).

remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is reasonable because the SLP credit rates, established in previous rule filings, would remain the same.¹³ The Exchange further believes that the proposed rule change is equitable because it establishes a manner for the Exchange to treat affiliated member organizations that are approved as SLPs for purposes of assessing charges or credits that are based on volume. The provision is also equitable because all member organizations seeking to aggregate their activity are subject to the same parameters, in accordance with established procedures set forth on the Price List regarding aggregation across affiliated member organizations.

The Exchange further believes that the proposal is not unfairly discriminatory because it would serve to reduce disparity of treatment between member organizations with regard to the pricing of different services and reduce any potential for confusion on how SLP activity can be aggregated. The Exchange believes that the proposed rule change avoids disparate treatment of member organizations that have divided their various business activities between separate corporate entities as compared to member organizations that operate those business activities within a single corporate entity. The Exchange further believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market because it aligns how affiliated member organizations that are approved as SLPs may aggregate volume in the same manner that affiliated member organizations currently aggregate non-SLP trading volume.

¹³ See, e.g., Securities Exchange Act Release No. 77604 (April 13, 2016), 81 FR 23043 (April 19, 2016) (SR-NYSE-2016-29), for the most recent pricing changes applicable to SLPs.

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,¹⁴ the Exchange believes that the 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 proposed rule change is designed to 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 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

¹⁴ 15 U.S.C. 78f(b)(8).

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)¹⁵ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁶ 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)¹⁷ 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:

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ 15 U.S.C. 78s(b)(2)(B).

- 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-NYSE-2017-50 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-2017-50. 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-2017-50 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.¹⁸

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Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).