

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85037; File No. SR-NYSE-2018-67)

February 1, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Price List to Modify the Incremental Step Up Tier for 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 December 26, 2018, 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 the incremental step up tier for Supplemental Liquidity Providers (“SLPs”) (“Incremental SLP Step Up Tier”). The Exchange proposes to implement the fee change to its Price List effective January 2, 2019. 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 discussed any comments it

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 modify the Incremental SLP Step Up Tier. The Exchange proposes to implement the fee change to its Price List effective January 2, 2019.

Pursuant to the Incremental SLP Step Up Tier, the Exchange currently provides an incremental credit to a SLP in addition to the SLP’s tiered or non-tiered credit for adding displayed liquidity if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B (quotes of an SLP-Prop and an SLMM of the same member organization shall not be aggregated) (the “Quoting Requirement”), and (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an average daily trading volume (“ADV”)⁴ of a NYSE consolidated average daily volume (“CADV”) in the billing month over the SLP’s adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in the second quarter of 2018, as follows:

- SLPs that (1) meet the Quoting Requirement, and (2) add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an

⁴ Footnote 2 to the Price List defines ADV as “average daily volume”. The Exchange is not proposing to change this definition

SLMM of the same or an affiliated member organization) of an ADV of more than 0.10% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in the second quarter of 2018, receive an incremental credit of \$0.0001 per share.

- SLPs that (1) meet the Quoting Requirement, and (2) add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.15% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in the second quarter of 2018, receive an incremental credit of \$0.0002 per share.
- SLPs that (1) meet the Quoting Requirement, and (2) add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.25% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in the second quarter of 2018, receive an incremental credit of \$0.0003 per share.

SLPs can only qualify for one of the three credits in a billing month. Further, the combined SLP credits are currently capped at \$0.0032 per share in a billing month.

The Exchange proposes to modify the second prong of the Incremental SLP Step Up Tier by adopting an alternative qualification basis for SLPs to qualify for the incremental credit. As proposed, SLPs would continue to qualify for the one of the incremental credits if the SLP adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.10%, 0.15%, or 0.25% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV either in the second quarter of 2018 or the third quarter of 2018, whichever is lower. The proposed change, which would allow the Exchange to use the lower or more favorable (to the SLP) of the two baseline benchmarks, is intended to allow a greater number of SLPs to qualify for the incremental credits.

For example, assume a SLP adds liquidity of 0.50% in the second quarter of 2018 (the "2Q Baseline"), and adds liquidity of 0.45% in the third quarter of 2018 (the "3Q Baseline"). With this proposed rule change, the Exchange would use the 3Q Baseline to determine whether the SLP qualifies for the incremental credit because the 3Q Baseline is more favorable to the SLP than the SLP's 2Q Baseline. If that same SLP adds liquidity of 0.57% in the billing month, that SLP would qualify for the incremental \$0.0001 per share credit with a step up of 0.12% over the lessor of the two baselines, or 0.45% using the 3Q Baseline.

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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,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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 providing an additional way to qualify for the Incremental SLP Step Up Tier is reasonable, equitable and not an unfairly discriminatory allocation of fees because it would encourage additional liquidity on the Exchange and because members and member organizations benefit from the substantial amounts of liquidity that are present on the Exchange. The Exchange believes the proposed change to adopt an alternate baseline benchmark for the Incremental SLP Step Up Tier is reasonable because it provides existing SLPs (including SLPs that are also DMMs) with added incentive to bring additional order flow to a public market. In particular, the Exchange believes that making an alternate baseline benchmark available to SLPs would provide SLPs with an increased opportunity to qualify for the incremental credit, and would continue to provide an incentive for SLPs to add liquidity to the Exchange, to the benefit of the investing public and all market participants. The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they would continue to encourage member organizations to send orders, thereby contributing to robust levels

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) & (5).

of liquidity, which benefits all market participants. The proposed changes would also encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange. The proposed changes would also encourage the submission of additional orders that add liquidity, thus providing price improving liquidity to market participants and increasing the quality of order execution on the Exchange's market, which would benefit all market participants. Moreover, the proposed changes are equitable and not unfairly discriminatory because they would apply equally to all qualifying SLPs that submit orders to the NYSE and add liquidity to the Exchange.

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,⁷ 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 Exchange believes that the proposed change would foster liquidity provision and stability in the marketplace, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. In this regard, the Exchange believes that the transparency and competitiveness of attracting additional executions on an exchange market would encourage competition. The

⁷ 15 U.S.C. 78f(b)(8).

Exchange also believes that the proposed rule change is designed to provide the public and investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

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)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4⁹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁰ 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-NYSE-2018-67 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-2018-67. 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

¹⁰ 15 U.S.C. 78s(b)(2)(B).

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2018-67 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Eduardo A. Aleman
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).