SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87551; File No. SR-NYSE-2019-58)

November 15, 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 Offer New Credits and Rebates

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 November 1, 2019, 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 offer (1) new tiered credits for member organizations providing additional liquidity in Non-Displayed Limit Orders across Tapes A, B and C, and (2) new incremental credits and rebates applicable to certain Designated Market Makers transactions. The Exchange proposes to implement the fee change effective November 1, 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.

1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to offer (1) new tiered credits for member organizations providing additional liquidity in Non-Displayed Limit Orders across Tapes A, B and C, and (2) new incremental credits and rebates applicable to certain Designated Market Makers ("DMM") transactions.

The proposed change responds to the current competitive environment by offering additional incentives to member organizations to provide additional liquidity in Non-Displayed Limit Orders[4] and to existing DMMs to increase their quoting at the National Best Bid or Offer ("NBBO") in their assigned More Active Securities and Less Active Securities.[5]

The Exchange proposes to implement the fee change effective November 1, 2019.

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4 "Non-Displayed Limit Orders" in Rule 7.31(d)(2) were previously known as "Non-Display Reserve orders." The Exchange proposes to use the new term and replace two outdated references to "Non-Display Reserve orders" on the first page of the Price List. The Exchange also proposes to capitalize the word "order" following MPL throughout.

5 "More Active Securities" are securities with an average daily consolidated volume ("Security CADV") in the previous month equal to or greater than 1,000,000 shares per month. "Less Active Securities" are securities that have a Security CADV of less than 1,000,000 shares per month in the previous month.

Competitive Environment

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[6]

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."[7] Indeed, equity trading is currently dispersed across 13 exchanges,[8] 31 alternative trading systems,[9] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 19% market share (whether including or excluding auction volume).[10] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, for the month of September 2019, the Exchange's market share of

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6 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) ("Regulation NMS").

7 See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) ("Transaction Fee Pilot").

8 See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.

9 *See* FINRA ATS Transparency Data, *available at* https://otctransparency.finra.org/otctransparency/AtsIssueData. A list of alternative trading systems registered with the Commission is *available at* https://www.sec.gov/foia/docs/atslist.htm.

10 See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

intraday trading (i.e., excluding auctions) in Tapes A, B and C securities was only 9.3%.[11]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to this competitive environment, the Exchange has established incentives for its member organizations and DMMs to quote and trade at specified levels. The proposed fee change is designed to encourage member organizations to provide additional liquidity to the Exchange in Non-Displayed Limit Orders and to encourage DMMs to increase their quoting at the NBBO in their assigned More Active Securities and Less Active Securities by offering a series of incremental enhanced credits and rebates, as follows.

Proposed Rule Change

Credits for Non-Displayed Limit Orders

Member organizations currently receive a Non-Tier Adding Credit for Non-Displayed Limit Orders when adding liquidity to the Exchange. The Price List instead reflects that member organizations are not charged. The Exchange proposes to replace "No Charge" in the current Price List with "No credit," add the phrase "unless a higher credit applies," and specify the following tiered credits for member organizations adding liquidity in Non-Displayed Limit Orders.

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11 See id.

The Exchange proposes that a member organization that has Adding ADV in Non-Displayed Limit Orders that is at least 0.12% of Tapes A, B and C CADV[12] combined, excluding any liquidity added by a DMM, would be eligible for a $0.0010 credit. In addition, the Exchange proposes that a member organization that has Adding ADV in Non-Displayed Limit Orders that is at least 0.15% of Tapes A, B and C CADV combined, excluding any liquidity added by a DMM, would be eligible for a $0.0018 credit.

For example, assume Member Organization B added an average of 7.8 million shares in Non-Displayed Limit Orders in a month where Tapes A, B and C CADV was 6.5 billion, or 0.12% of Tape A, B and C CADV. Member Organization B would qualify for the $0.0010 credit. If Member Organization B instead provided an average of 13 million shares in Non-Displayed Limit Orders, or 0.20%, Member Organization B would qualify for the higher $0.0018 credit.

The purpose of this proposed change is to incentivize member organizations to increase the liquidity-providing Non-Displayed Limit Orders in the Tapes A, B and C securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the credit to the level of orders sent by a member organization that add liquidity, the Exchange's fee structure would incentivize member organizations to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. There are currently no member

[12] The terms "ADV" and "CADV" are defined in footnote * of the Price List.

organizations that could qualify for the proposed credits based on their current trading profile on the Exchange, but believes that at least 5 member organizations could qualify for the tier if they so choose. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new tier.

Proposed DMM Credits

The section of the Exchange's Price List entitled "Fees and Credits applicable to Designated Market Makers ("DMMs")" sets out different monthly rebate amounts to DMMs depending on the CADV of the security and the DMM quoting percentage and size in any month in which the DMM meets the More Active Securities Quoting Requirement and the Less Active Securities Quoting Requirement, as well as DMM providing as a percent of the NYSE's total intraday adding liquidity, as those terms are defined in the Price List.[13] The Exchange also provides monthly rebates to DMMs depending on the Security CADV[14] and the DMM quoting percentage.

Incremental Credits for Increased DMM Quoting at the NBBO

More Active Securities

Currently, DMMs earn a rebate of $0.0027 per share when adding liquidity, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of $1.00 or

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13 See notes 15 and 23, infra.

14 The Price List uses "Security CADV" to mean the average daily consolidated volume for the applicable security, and to remove any confusion with the term "ADV" as defined and used elsewhere in the Price List.

more and the DMM meets the More Active Securities Quoting Requirement[15] and has a DMM Quoted Size[16] for an applicable month that is at least 5% of the NYSE Quoted Size, unless the more favorable rates set forth below in the Price List apply. DMMs electing the optional monthly rebate per security ("Rebate per Security") would receive a lower monthly rebate per share ("Optional Credit") of $0.0026 per share if the quoting requirements are met.[17]

The Exchange proposes that a DMMs that (1) meets the current requirements would receive an incremental credit of $0.0004 per share in each eligible DMM assigned More Active Security if the DMM also (2) increases their quoting at the NBBO by at least 5% over their quoting at the NBBO in September 2019 (the "Baseline Month") in at least 300 assigned securities (to be defined as the "DMM Additional Quoting Requirement"). The proposed incremental credit would be available to DMMs that qualify for the regular credit and those that elect the Rebate per Security and corresponding Optional Credit.

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15 The "More Active Securities Quoting Requirement" is met if the More Active Security has a stock price of $1.00 or more and the DMM quotes at the National Best Bid or Offer ("NBBO") in the applicable security at least 10% of the time in the applicable month. Both "More Active Securities" and the "More Active Securities Quoting Requirement" are defined in the current Price List. The Exchange is not proposing any changes to these definitions.

16 The "NYSE Quoted Size" is calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO. The "DMM Quoted Size" is calculated by multiplying the average number of shares of the applicable security quoted at the NBBO by the DMM by the percentage of time during which the DMM quoted at the NBBO. See Price List, n. 7.

17 The Exchange proposes non-substantive conforming changes to this section of the Price List. First, the Exchange would add the missing word "applies" following "set forth below." Second, the Exchange would add the following sentence that appears in the other sections of the Price List where the term "NYSE total intraday adding liquidity" is used to the end of the section: "Unless otherwise stated, the NYSE total intraday adding liquidity will be totaled monthly and includes all NYSE adding liquidity, excluding NYSE open and NYSE close volume, by all NYSE participants, including Supplemental Liquidity Providers, customers, Floor brokers, and DMMs."

Currently, DMMs earn a rebate of $0.0031 per share when adding liquidity, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of $1.00 or more and the DMM meets (1) the More Active Securities Quoting Requirement, (2) has a DMM Quoted Size for an applicable month that is at least 10% of the NYSE Quoted Size, and (3) the DMM quotes at the NBBO in the applicable security at least 20% of the time in the applicable month and for providing liquidity that is more than 5% of the NYSE's total intraday adding liquidity in each such security for that month. DMMs electing the optional Rebate per Security would instead receive an Optional Credit of $0.0003 per share if the quoting and providing requirements are met.[18]

A DMM that meets (1) these current requirements, and (2) the DMM Additional Quoting Requirement would receive an incremental credit of $0.0003 per share in each eligible assigned More Active Security. The proposed incremental credit would be available to DMMs that qualify for the regular credit and those that elect the Rebate per Security and corresponding Optional Credit.

DMMs currently earn a rebate of $0.0034 per share when adding liquidity with orders, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of $1.00 or more and the DMM meets (1) the More Active Securities Quoting Requirement, (2) has a DMM Quoted Size for an applicable month that is at least 15% of the NYSE Quoted Size, for providing liquidity that is more than 15% of the NYSE's total intraday adding liquidity in each such security for that month, and (3) the DMMs quotes at the NBBO in the applicable

18 In this section of the Price List, the Exchange proposes two non-substantive changes. In addition to capitalizing "order" following MPL, the Exchange would move the sentence describing calculation and composition of NYSE total intraday adding liquidity to end of the section and add "Unless otherwise stated" to the beginning the sentence.

security at least 30% of the time in the applicable month. DMMs electing the optional Rebate per Security would instead receive an Optional Credit of $0.0033 per share if the quoting and providing requirements are met.[19]

The Exchange proposes that a DMM that meets (1) these current requirements, and (2) the DMM Additional Quoting Requirement would receive an incremental credit of $0.0001 per share in each eligible assigned More Active Security.[20] The proposed incremental credit would be available to DMMs that qualify for the regular credit and those that elect the Rebate per Security and corresponding Optional Credit.

Finally, DMMs currently earn a rebate of $0.0015 per share when adding liquidity, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of $1.00 or more and the DMM does not meet the More Active Securities Quoting in the applicable month. DMMs electing the optional Rebate per Security would instead receive an Optional Credit of $0.0012 per share if the quoting requirements are met.[21]

The Exchange proposes that a DMM that (1) has DMM assigned securities that did not meet the More Active Securities Quoting Requirement in the applicable security, and (2) meets the DMM Additional Quoting Requirement would receive an incremental credit of $0.0012 per

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19 In this section of the Price List, the Exchange proposes the non-substantive change of moving the sentence describing the calculation and composition of NYSE total intraday adding liquidity to end of the section and add “Unless otherwise stated” to the beginning the sentence. In the following section setting forth the rebate of $0.0035 per share and $0.0034 if electing the Optional Credit, the Exchange would also add “Unless otherwise stated” to the beginning the same sentence describing calculation and composition of NYSE total intraday adding liquidity.

20 No incremental credit for current credit of $0.0035 for More Active Securities is proposed as that is the highest credit available.

21 In this section, the Exchange’s non-substantive conforming change would be to add the sentence describing the calculation and composition of NYSE total intraday adding liquidity to end of the section.

share in each eligible assigned DMM More Active Security. The proposed incremental credit would be available to DMMs that qualify for the regular credit and those that elect the Rebate per Security and corresponding Optional Credit.

Less Active Securities[22]

In the case of Less Active Securities, DMMs currently earn a rebate of $0.0035 per share when adding liquidity with orders, other than MPL Orders, in Less Active Securities if the Less Active Security has a stock price of $1.00 or more and the DMM meets the Less Active Securities Quoting Requirement.[23] DMMs electing the optional Rebate per Security would instead receive an Optional Credit of $0.0031 per share if the quoting requirements are met.

The Exchange proposes that a DMM that meets (1) these current requirements and (2) the DMM Additional Quoting Requirement will receive an incremental credit of $0.0010 per share in each eligible assigned Less Active Security.[24]

In addition, DMMs currently earn a rebate of $0.0015 per share when adding liquidity in shares of Less Active Securities if the Less Active Security has a stock price of $1.00 or more and the DMM does not meet the Less Active Securities Quoting Requirement in the applicable security in the applicable month. DMMs electing the optional Rebate per Security would instead receive an Optional Credit of $0.0011 per share if the quoting requirements are met.

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22 In this section, the Exchange's non-substantive conforming change would be to add "in" before "Less Active Securities."

23 The "Less Active Securities Quoting Requirement" is met when a security has a consolidated ADV of less than 1,000,000 shares per month in the previous month and a stock price of $1.00 or more, and the DMM quotes at the NBBO in the applicable security at least 15% of the time in the applicable month.

24 No incremental credit for current credit of $0.0045 for Less Active Securities is proposed as that is the highest credit available.

The Exchange proposes that a DMM that (1) has DMM assigned securities that did not meet the Less Active Securities Quoting Requirement in the applicable security, and (2) meets the DMM Additional Quoting Requirement will receive an incremental credit of $0.0020 per share in each eligible assigned Less Active Security.[25]

The following example demonstrates how the proposed incremental credits would operate.

In the Baseline Month, assume DMM Y has 500 assigned securities, 300 of which are More Active Securities and 200 of which are Less Active Securities. Further assume that the DMM's quoting at the NBBO was as follows:

- 50% time at the NBBO each in 100 securities in the Baseline Month, and 60% time at the NBBO each in the billing month for those same securities;
- 20% time at the NBBO each in 250 securities in the Baseline Month and 40% time at the NBBO each in the billing month for those same securities; and
- 30% time at the NBBO each in 150 securities in the Baseline Month and 20% time at the NBBO each in the billing month for those same securities.

DMM Y would qualify for the DMM Additional Quoting Requirement since DMM Y had 100 securities that had 10% higher quoting over the Baseline Month and 250 securities that had 20% higher quoting over the Baseline Month, for a total of 350 securities, regardless of whether those securities were More Active or Less Active Securities.

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[25] If a DMM is assigned a security after the Baseline Month, the DMM quoting for the Baseline Month would be assigned as 0%. If a DMM quoted at the NBBO over 95% in the Baseline Month in an assigned security, that same security would count toward the DMM Additional Quoting Requirement since the maximum quoting, or 100%, would less than 5% over the quoting in the Baseline Month.

The other 150 securities with 20% time at the NBBO would not count towards the requirement since their time at the NBBO was 10% lower, or less than the 5% increase required.

Further assume that DMM Y's 300 More Active Securities and 200 Less Active Securities were eligible for the following credits in the billing month:

- If 175 of DMM Y's More Active Securities were eligible for $0.0031 in credits, the DMM Additional Quoting Requirement would qualify those securities for an additional credit of $0.0003 or $0.0034, combined.
- If 125 of DMM Y's More Active Securities were eligible for $0.0035 in credits, the DMM Additional Quoting Requirement would not qualify those securities for an additional credit since $0.0035 would be the highest credit.
- If 125 of DMM Y's Less Active Securities were eligible for $0.0015 in credits, the DMM Additional Quoting Requirement would qualify those securities for an additional credit of $0.0020 or $0.0035, combined.
- If 75 of DMM Y's Less Active Securities were eligible for $0.0045 in credits, the DMM Additional Quoting Requirement would not qualify those securities for a higher credit since $0.0045 is the highest credit.

The proposed rule change is designed to incentivize DMMs to increase trading volume in their assigned More Active Securities on the Exchange.

Enhanced DMM Monthly Rebates

Currently, the Exchange provides additional monthly rebates to DMMs in addition to the current rate on transactions, prorated to the number of trading days in a month that a stock is assigned to a DMM, depending on the Security CADV and the DMM quoting percentage, as follows.

The monthly rebates payable to DMMs for securities with a Security CADV of 250,000 up to 1,500,000 shares in the previous month, applicable in any month in which the DMM meets the Less Active Securities Quoting Requirement in an applicable security, are as follows:

- $500 rebate if the DMM quotes at the NBBO 50% of the time or more in an applicable security.
- $425 rebate if the DMM quotes at the NBBO at least 40% and up to 50% of the time in an applicable month in an applicable security.
- $350 rebate if the DMM quotes at the NBBO at least 30% and up to 40% of the time in an applicable month in an applicable security.
- $275 rebate if the DMM quotes at the NBBO at least 20% and up to 30% of the time in an applicable month in an applicable security.
- $200 rebate if the DMM quotes at the NBBO at least 15% and up to 20% of the time in an applicable month in an applicable security.

The monthly rebates payable to DMMs for securities with a Security CADV of 100,000 up to 250,000 shares in the previous month (regardless of whether the stock price exceeds $1.00) in any month in which the DMM meets the Less Active Securities Quoting Requirement, are as follows:

- $450 rebate if the DMM quotes at the NBBO 50% of the time or more in an applicable security.
- $375 rebate if the DMM quotes at the NBBO at least 40% and up to 50% of the time in an applicable month in an applicable security.
- $300 rebate if the DMM quotes at the NBBO at least 30% and up to 40% of the time in an applicable month in an applicable security.

- $225 rebate if the DMM quotes at the NBBO at least 20% and up to 30% of the time in an applicable month in an applicable security.
- $150 rebate if the DMM quotes at the NBBO at least 15% and up to 20% of the time in an applicable month in an applicable security.

Finally, the current monthly rebate payable to DMMs for securities with a Security CADV of less than 100,000 shares in the previous month in the previous month (regardless of whether the stock price exceeds $1.00) in any month in which the DMM meets the Less Active Securities Quoting Requirement, are as follows:

- $400 rebate if the DMM quotes at the NBBO 50% of the time or more in an applicable security.
- $325 rebate if the DMM quotes at the NBBO at least 40% and up to 50% of the time in an applicable month in an applicable security.
- $250 rebate if the DMM quotes at the NBBO at least 30% and up to 40% of the time in an applicable month in an applicable security.
- $175 rebate if the DMM quotes at the NBBO at least 20% and up to 30% of the time in an applicable month in an applicable security.
- $100 rebate if the DMM quotes at the NBBO at least 15% and up to 20% of the time in an applicable month in an applicable security.

In each case, the Exchange proposes that DMMs meeting the Less Active Securities Quoting Requirement as well as the DMM Additional Quoting Requirement in the billing month would qualify for the next highest monthly rebate in each tier. For example, using DMM Y with 500 assigned securities and qualified for the DMM Additional Quoting Requirement in the billing month in the previous example, assume DMM Y had 200 assigned securities with a

Security CADV under 1,500,000 shares as follows:

- 125 securities with Security CADV between 250,000 and 1,500,000, that each had a DMM quote at the NBBO of 40%. Those securities would each receive a rebate for the month of $500, the next highest rebate over the current $425 rebate.
- 75 securities with Security CADV between 100,000 and 250,000, that each had a DMM quote at the NBBO of 20%. Those securities would each receive a rebate for the month of $300, the next highest rebate over the current $225 rebate.

<u>DMM Quoting Share</u>

Currently, the Exchange provides all of the market data quote revenue (the "Quoting Share") received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS with respect to any security that has a Security CADV of less than 1,500,000 shares in the previous month (regardless of whether the stock price exceeds $1.00) in any month in which a DMM quotes at the NBBO at least 20% of the time in the applicable month. If the DMM quotes at the NBBO at least 15% of the time in the applicable month in a security that has a Security CADV of less than 1,500,000 shares in the previous month but quotes less than 20% of the time in the applicable month, the DMM receives 50% of the Quoting Share.

The Exchange proposes that DMMs that quote at the NBBO at least 15% of the time in the applicable month in a security that has a Security CADV of less than 1,500,000 shares in the previous month but quote less than 20% of the time in the applicable month and meet the DMM Additional Quoting Requirement would also receive 100% of the Quoting Share.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[26] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[27] 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 Proposed Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[28]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-

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26 15 U.S.C. 78f(b).

27 15 U.S.C. 78f(b)(4) & (5).

28 See Regulation NMS, 70 FR at 37499.

marketable order flow that would provide displayed liquidity on an Exchange against which market makers can quote, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange fees that relate to providing incentives for market makers to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. The Exchange believes that the proposal to offer tiered credits for member organizations that add additional liquidity in Non-Displayed Limit Orders to the Exchange is a reasonable means to improve market quality, attract additional order flow to a public market, and enhance execution opportunities for member organizations on the Exchange, to the benefit of all market participants. Further, the proposal to offer enhanced credits, rebates, and quoting share to DMMs in order to increase their quoting at the NBBO in their assigned More Active Securities and Less Active Securities is a reasonable means to increase DMM quoting at the NBBO in their assigned securities more frequently, which could attract additional orders to the Exchange and contribute to price discovery. In addition, additional liquidity-providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation. The proposal would also reward DMMs, who have greater risks and heightened quoting and other obligations than other market participants.

<u>The Proposal is an Equitable Allocation of Fees</u>

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace.

The Exchange believes that the proposed tiered credits for member organizations adding liquidity in Non-Displayed Limit Orders is equitable because the proposed credits would create incentives for adding greater liquidity and providing price improvement. The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery. The Exchange notes that it currently provides similar non-tiered and tiered credits for Mid-Point Limit orders of $0.0010, $0.0020, $0.0025 and $0.00275.

The Exchange believes that the proposed enhanced credits and rebates to DMMs is an equitable allocation of fees because it would reward DMMs for their increased risks and heightened quoting and other obligations. As such, it is equitable to offer DMMs an incremental credits for increased quoting at the NBBO in addition to the current rates.

The proposed rule change is also equitable because it would apply equally to all existing and potential DMM firms. The Exchange notes that 3 of the 5 DMM firms could qualify for the proposed incremental credits and enhanced rebates. The Exchange believes that the proposal would provide an equal incentive to all DMMs to increase quoting at the NBBO in their assigned securities, and that the proposal constitutes an equitable allocation of fees because all similarly situated DMMs would be eligible for the same incremental rebates.

<u>The Proposal is Not Unfairly Discriminatory</u>

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange believes that offering the proposed credits to member organizations based on the amount of liquidity provided to the

Exchange in Non-Displayed Limit Orders would provide a further incentive for all member organizations to provide additional liquidity to the Exchange. Similarly, the proposed additional credits and enhanced rebates for DMMs would provide an additional incentive to DMMs to quote and trade their assigned securities on the Exchange, and will generally allow the Exchange and DMMs to better compete for order flow, thus enhancing competition. The Exchange also believes that the requirement that DMMs increase quoting that is at least 5% over the DMM's quoting in at least 300 DMM assigned securities over the Baseline Month in order to qualify for the credits is not unfairly discriminatory because it would apply equally to all DMMs.

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,[29] 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, as discussed above, the Exchange believes that the proposed changes would incentivize member organizations to provide additional liquidity in Non-Displayed Limit Orders to a public exchange and incentivize DMMs to quote and trade in their DMM assigned securities, which could attract additional liquidity and contribute to price discovery. Additional liquidity on a public exchange benefits all market participants because they provide greater execution opportunities on the Exchange and improves the public quotation. As a result, the Exchange believes that the proposed change furthers the Commission's goal in

[29] 15 U.S.C. 78f(b)(8).

adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[30]

*Intramarket Competition.* The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed credits for member organizations providing liquidity in Non-Displayed Limit Orders would incentivize all member organizations submit additional liquidity to the Exchange, contributing to greater liquidity on the Exchange. Similarly, the proposed incremental credits and enhanced rebates would continue to incentivize DMMs to quote and trade at the NBBO more frequently, which could attract additional liquidity and contribute to price discovery. Greater liquidity benefits all market participants because it provides greater execution opportunities on the Exchange. The proposed credits and rebates would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. The Exchange notes that for the month of September 2019, the Exchange's market share of intraday trading (excluding auctions) in Tapes A, B and C securities was only 9.3%.[31] In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing

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30 Regulation NMS, 70 FR at 37498-99.

31 See note 11, supra.

practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

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)[32] of the Act and subparagraph (f)(2) of Rule 19b-4[33] 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)[34] 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:

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32 15 U.S.C. 78s(b)(3)(A).

33 17 CFR 240.19b-4(f)(2).

34 15 U.S.C. 78s(b)(2)(B).

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-2019-58 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-2019-58. 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. 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-2019-58 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.[35]

Jill M. Peterson
Assistant Secretary

[35] 17 CFR 200.30-3(a)(12).