

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87724; File No. SR-NYSE-2019-69)

December 12, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List

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 2, 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 (1) adopt a new Step Up Tier 3 Adding Credit in Tape A, B and C securities; (2) revise the requirements for the Remove Tier 1 for Tape B and C securities; and (3) revise the credits available to Supplemental Liquidity Providers (“SLPs”) under SLP Provide Tier 1 for adding liquidity to the Exchange in Tapes B and C securities. The Exchange also proposes certain non-substantive changes to the Price List. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 (1) adopt a new Step Up Tier 3 Adding Credit in Tape A, B and C securities; (2) revise the requirements for the Remove Tier 1 for Tape B and C securities; and (3) revise the credits available to SLPs under SLP Provide Tier 1 for adding liquidity to the Exchange in Tapes B and C securities. The Exchange also proposes certain non-substantive changes to the Price List.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective December 2, 2019.

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.”⁴

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”⁵ Indeed, equity trading is currently dispersed across 13 exchanges,⁶ 31 alternative trading systems,⁷ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).⁸ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, for the month of November 2019, the Exchange’s market share of intraday trading (*i.e.*, excluding auctions) in Tapes A, B and C securities was only 9.4%.⁹

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

⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

⁵ 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”).

⁶ 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/divisionsmarketregmrexchangeshtml.html>.

⁷ 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/atlist.htm>.

⁸ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

⁹ See *id.*

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 who submit orders that provide and remove liquidity on the Exchange, including cross-tape incentives for member organizations and SLPs based on submission of orders that provide displayed and non-displayed liquidity in Tapes B and C securities. The proposed fee change is designed to attract additional order flow to the Exchange by:

- offering a new pricing tier to incentivize member organizations to step up their liquidity-providing orders on the Exchange on all tapes;
- revising the requirements to achieve the current Remove Tier 1 rate in Tape B and C securities for removing liquidity from the Exchange to require that a percentage of the removing ADV requirement represent an increase over November 2019; and
- restructuring the credits for SLPs that provide displayed liquidity to the Exchange in Tapes B and C securities for Tapes B and C combined by lowering the credit for SLPs meeting the current requirements and requiring adding liquidity in all assigned securities of at least 0.30% of Tape B and Tape C CADV combined in order for SLPs to qualify for the current \$0.0033 credit per share per tape.

Proposed Rule Change

Proposed Step Up Tier 3 Adding Credit¹⁰

¹⁰ The Exchange proposes the non-substantive change to the current Step Up Adding Tier 2 Credit of deleting the Adding ADV requirements for the November 2019 billing month

The Exchange proposes to adopt a “Step Up Tier 3 Adding Credit” that would offer a credit to member organizations providing displayed liquidity to the Exchange in Tapes A, B and C securities.

As proposed, a member organization that sends orders, except Mid-Point Liquidity Orders (“MPL”) and Non-Displayed Limit Orders, that add liquidity (“Adding ADV”) in Tape A, B and C securities would receive a credit of \$0.0029 in Tape A, B and C securities if:

- the member organization quotes at least 15% of the National Best Bid or Offer (“NBBO”)¹¹ in 300 or more Tape A securities on a monthly basis, and
- the member organization’s Adding ADV in Tapes A, B and C securities as a percentage of Tapes A, B and C consolidated average daily volume (“US CADV”),¹² excluding any liquidity added by a Designated Market Maker (“DMM”), is at least two times more than the member organization’s July 2019 Adding ADV in Tapes A, B and C securities as a percentage of US CADV, and
- the member organization’s Adding ADV as a percentage of US CADV, excluding any liquidity added by a DMM, exceeds that member organization’s Adding ADV in Tapes A, B and C securities in July 2019 as a percentage of US CADV by at least 0.20% of US CADV, and
- add liquidity as an SLP in Tape A securities of at least 0.10% of NYSE CADV.

In addition, member organizations that meet these requirements and qualify for the \$0.0029 credit in Tape A, B and C securities would be eligible to receive an additional \$0.00005

from the first bullet of the rule and the introductory language in the second bullet as obsolete. The applicable requirements going forward will remain unchanged.

¹¹ See Rule 1.1(q) (defining “NBBO” to mean the national best bid or offer).

¹² The terms “ADV” and “CADV” are defined in footnote * of the Price List.

per share for adding liquidity in Tape A securities if trades in Tapes B and C securities against the member organization's orders that add liquidity, excluding orders as an SLP, equal to at least 0.20% of Tape B and Tape C CADV combined.

For example, Member Organization A has an Adding ADV of 18 million shares when US CADV (Tape A) was 6.0 billion, or 0.30% of US CADV in all securities, in the baseline month of July 2019 (the "Baseline Month"). Member Organization A also has an Adding ADV of 33 million shares or 0.55% of US CADV in Tape A securities in December 2019 when US CADV was also 6.0 billion.

Based on the foregoing, Member Organization A would meet the 0.20% step up requirement for December 2019 with an increase of 0.25% but fall short of the two times Adding ADV as a percentage of US CADV requirement in order to qualify for the proposed tier. In order to qualify for the proposed rate in December 2019, Member Organization A would need two times its 0.20% of US CADV in the Baseline Month or at least 0.60% of US CADV.

The purpose of this proposed change is to incentivize member organizations to increase the liquidity-providing orders in the Tape A, B and C securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. The Exchange notes that this tier provides an alternative way for Member Organizations to qualify for a \$0.0029 credit in Tape A Securities, in addition to Step Up Adding Tier 2. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Because, as proposed, the tier requires a member organization to increase the volume of its trades in orders that add liquidity over that member organization's July 2019 baseline and add liquidity as an SLP in Tape A securities of at least 0.10% of NYSE CADV, the Exchange

believes that the proposed credit would provide an incentive for member organizations to send additional liquidity to the Exchange in order to qualify for it.

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 firms that qualify for the proposed higher Step Up Tier 3 Adding Credit based on their current trading profile on the Exchange, but the Exchange believes that at least 4 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.

Tape B and C Securities¹³

For Tape B and C securities, the Exchange currently offers a Remove Tier for securities at or above \$1.00 for member organizations that have a minimum amount of Adding ADV in non-SLP and Floor broker order flow. Further, the Exchange offers several levels of credits for SLP orders that provide liquidity to the Exchange in Tape B and C securities priced at or above \$1.00 based on the volume of orders that member organizations send to the Exchange. The SLP Provide Tier credits (Non Tier, Tier 2, Tier 1 and Tape A Tier) range from \$0.00005 to \$0.0033.

¹³ The Exchange proposes two additional non-substantive changes to the Price List. First, under the heading "Credit Applicable to Supplemental Liquidity Providers ('SLPs')," the Exchange proposes to replace the current list of applicable credits with the general phrase "applicable Non-Tier or Tiered non-SLP Adding Credit" to reference current and future non-SLP Non-Tiered and Tiered credits, rather than specifying each such credit. Second, the Exchange proposes to delete "Traded Pursuant to Unlisted Trading Privileges (Tapes B and C) on the Pillar Trading Platform" from the heading relating to fees and credits applicable to trading in Tape B and C securities.

Remove Tier 1 Fee For Securities At or Above \$1.00

Currently, under Remove Tier 1 for securities at or above \$1.00 in Tape B and C securities, the Exchange charges a per tape fee of \$0.0026 per share to remove liquidity from the Exchange for member organizations that either have:

- 0.175% of Removing ADV in Tapes B and C combined as a percentage of Tape B and C CADV, or
- 0.075% of Removing ADV in Tapes B and C combined as a percentage of Tape B and C CADV, and execute an ADV of Market-on-Close (“MOC”) and Limit-on-Close (“LOC”) Orders combined on the NYSE in Tape A securities of at least 0.35% of NYSE CADV.

In order for member organizations to achieve the current Remove Tier 1 per tape fee of \$0.0026 per share to remove liquidity from the Exchange, the Exchange proposes the additional requirement that the member organization’s removing ADV in Tapes B and C combined as a percentage of Tape B and C CADV represent an increase of at least 0.050% over the member organization’s removing ADV in November 2019, taken as a percentage of Tape B and C combined.

For example, if Member Organization B averaged a Removing ADV in Tape B and C securities of 6 million shares in a month where the Tape B and C CADV is 3 billion shares, Member Organization B would have a Removing ADV of 0.20% of Tape B and C CADV and would previously qualify for the reduced fee of \$0.0026 per share for removing liquidity from the Exchange in both Tapes B and C. Further assume that Member Organization B averaged also Removing ADV of 0.20% of Tape B and C CADV in the baseline month of November 2019. Under the proposed change, Member Organization B would need a Removing ADV of at

least 7.5 million shares in the billing month to qualify, assuming Tape B and C CADV was again 3 billion shares.

Assume that Member Organization B instead averaged a Removing ADV in Tape B and C securities of 3 million shares in a month where the Tape B and C CADV is 3 billion shares, or 0.10% of Tape B and C CADV, and an ADV of MOC and LOC Orders in Tape A securities of 14 million shares in a month where NYSE CADV was 3.5 billion shares, or 0.40% of NYSE CADV. Under the proposed change, Member Organization B would need a Removing ADV of at least 4.5 million shares in the billing month to qualify, assuming Tape B and C CADV was again 3 billion shares, for an increase in Removing ADV of 0.05%.

There are currently 5 member organizations that qualify for the current Removing Tier 1 based on their current trading profile on the Exchange. There are currently no firms that qualify for the proposed Removing Tier 1 as the additional requirement requires a step up in Removing ADV over November 2019, but the Exchange believes that at least 12 additional member organizations could qualify for the proposed 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 this tier.

Displayed Liquidity under SLP Provide Tier 1

Under current SLP Provide Tier 1, SLPs that add displayed liquidity to the Exchange in securities with a per share price at or above \$1.00 and that:

- add liquidity for all assigned Tape B securities of a CADV of at least 0.10% for Tape B or for all assigned Tape C Securities of a CADV of at least 0.075% for Tape C, and

- meet the 10% average or more quoting requirement in 400 or more assigned securities in Tapes B and C combined pursuant to Rule 107B are eligible for a \$0.0033 per share credit per tape in an assigned Tape B or C security.

The Exchange proposes that SLPs meeting the above current requirements would be eligible for a \$0.0031 per share credit per tape in an assigned Tape B or C security. Further, as proposed, SLPs that meet the additional requirement of adding liquidity for all assigned securities of at least 0.30% of Tape B and Tape C CADV combined, would be eligible for a \$0.0033 per share credit per tape in an assigned Tape B or C security.

For example, assume in the billing month that SLP C adds an average of 1.0 million shares in Tape B securities and 1.5 million shares in Tape C securities in a month where Tape B CADV was 1 billion shares and Tape C CADV was 2 billion shares. SLP C would meet the current requirements by having an Adding ADV of 0.10% of Tape B and 0.075% in Tape C securities. SLP C would then need an Adding ADV of at least 9 million shares across both Tape B and Tape C securities combined to meet the proposed 0.30% Adding ADV requirement of Tapes B and C.

There are currently 2 SLPs that qualify for the proposed SLP Tier 1 based on their current trading profile on the Exchange, but the Exchange believes that at least 5 more SLPs could qualify for the tier if they so choose. However, without having a view of SLP'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 SLP directing orders to the Exchange in order to qualify for this tier.

The proposed changes are not otherwise intended to address 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,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁵ 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

As discussed above, the Exchange operates in a highly fragmented and 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.”¹⁶

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 orders which provide liquidity on an Exchange, member organizations can choose

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) & (5).

¹⁶ See Regulation NMS, 70 FR at 37499.

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 displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. As noted, the Exchange's market share of intraday trading (i.e., excluding auctions) for the month of November 2019, in Tapes A, B and C securities was only 9.4%.¹⁷

Specifically, the Exchange believes that the proposed Step Up Tier 3 Adding Credit would provide an incentive for member organizations to send additional liquidity providing orders to the Exchange in Tape A securities. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange. The Exchange believes that requiring member organizations to quote at least 15% of the NBBO in 300 or more securities on a monthly basis in order to qualify for the proposed Step Up Tier 3 Adding Credit is reasonable because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the greater amounts of displayed liquidity present on the Exchange. The Exchange notes that this tier provides an alternative way for Member Organizations to qualify for a \$0.0029 credit in Tape A Securities, in addition to Step Up Tier 2. Similarly, the Exchange believes that it is reasonable to provide an incremental credit to member organizations that meet the requirements of the proposed Step Up Tier 3 that add additional liquidity in Tapes B and C securities.

¹⁷ See note 9 supra.

Since the proposed Step Up Tier 3 would be new with a step up requirement, no member organization currently qualifies for the proposed pricing tier. As previously noted, there are a number of member organizations that could qualify for the proposed higher credit but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed credit is reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

The Exchange also believes that revising the requirements for the current Remove Tier 1 rate for removing liquidity from the Exchange to require that a percentage of the removing ADV requirement represent an increase over November 2019 is reasonable because it would incentivize member organizations to remove additional liquidity from the Exchange, thereby increasing the number of orders adding liquidity that are executed on the Exchange and improving overall liquidity on a public exchange and resulting in lower costs for member organizations that qualify for the rates.

Without having a view of a member organization's activity on other markets and off-exchange venues, the Exchange believes the proposed revised Remove Tier 1 would provide an incentive for member organizations to remove additional liquidity from the Exchange in Tape B and C securities. As previously noted, a number of member organizations can qualify for the Remove Tier fee and additional member organizations could qualify for the new tiered rate under either proposed criteria if they choose to direct order flow to, and increase quoting on, the Exchange

The Exchange believes lowering the credit under SLP Provide Tier 1 for member organizations that are SLPs that meet the current requirements and requiring adding liquidity in all assigned securities of at least 0.30% of Tape B and Tape C CADV combined in order for SLPs to qualify for the current \$0.0033 credit per share per tape is reasonable because it would provide further incentives for such member organizations to provide additional liquidity to a public exchange in Tape B and C securities to reach the proposed Adding ADV requirement of 0.30%, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities. The Exchange believes the proposal would provide an incentive for member organizations that are SLPs to route additional liquidity-providing orders to the Exchange in Tape B and C securities. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange. The Exchange believes it is reasonable to provide a higher credit for orders that provide additional liquidity.

Without having a view of a member organization's activity on other markets and off-exchange venues, the Exchange believes the proposed additional requirement to qualify for the higher SLP credit would provide an incentive for member organizations who are SLPs to submit additional adding liquidity to the Exchange in Tape B and C securities. As previously noted, a number of SLPs are qualifying for the SLP Provide Tier 1 credit for adding. Based on the profile of liquidity-providing SLPs generally, the Exchange believes additional SLPs could qualify for the displayed and non-displayed SLP Provide Tier 1 credits if they choose to direct order flow to, and increase quoting on, the Exchange.

The Exchange notes that the proposed credits remains in line with the credits the Exchange currently credits SLPs for adding displayed and non-displayed liquidity in Tape A securities. The Exchange notes that in Tape A securities, SLPs can qualify for an adding credit of \$0.0032 per share by qualifying for the SLP Tier 1 credit of \$0.0029 per share and also qualifying for the Step Up Tier 1 credit of \$0.0003, for a combined credit of \$0.0032.¹⁸

Finally, the Exchange also believes the proposed non-substantive changes are reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency on the Price List, thereby reducing potential confusion.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. The Exchange believes its proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace. Moreover, the proposal is an equitable allocation of fees because it would reward SLPs for their increased risks and heightened quoting and other obligations.

The Exchange believes that the proposed Step Up Tier 3 is equitable because the magnitude of the additional credit is the same as the current Step Up Tier 2 credit in Tape A securities. Moreover, the proposed credit is not unreasonably high relative to the other non-SLP adding tier credits, which as range from \$0.0015 to \$0.0026, in comparison to the credits paid by other exchanges for orders that provide additional step up liquidity.¹⁹ The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange

¹⁸ See page 5 of the current NYSE Price List, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

¹⁹ See Cboe BZX Fee Schedule, which has adding credits ranging from \$0.0025 to \$0.0032, at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

and, as a consequence, attract more liquidity to the Exchange, thereby improving market wide quality and price discovery. The Exchange believes that requiring member organizations to quote at least 15% of the NBBO in 300 or more Tape A securities on a monthly basis in order to qualify for the proposed credit would also encourage additional displayed liquidity on the Exchange and is same as the current Step Up Tier 2 quoting requirement.

Since the proposed Step Up Tier 3 would be new and includes a step up Adding ADV requirement, no member organization currently qualifies for it. As noted, there are currently a number of member organizations that could qualify for the proposed tier, but without a view of member organization 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 qualifying for the tier. The Exchange believes the proposed credit is reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All member organizations would be eligible to qualify for the credit proposed in Step Up Tier 3 if they increase their Adding ADV over their own baseline of order flow. The Exchange believes that offering a step up credit for providing liquidity if the step up requirements for Tape A, B and C securities are met, along with the SLP and quoting requirements, will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the adding liquidity credits, the

proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Exchange believes that, for the reasons discussed above, the proposed changes to the Remove Tier 1 fee would incentivize member organizations to remove additional liquidity from the Exchange, thereby increasing the number of orders adding liquidity that are executed on the Exchange and improving overall liquidity on a public exchange. As previously noted, a number of member organizations are qualifying for the Remove Tier 1 fee. Based on the profile of liquidity-removing firms generally, the Exchange believes additional member organizations could qualify for the new tiered rate under either proposed criteria if they choose to direct order flow to, and increase quoting on, the Exchange.

The Exchange believes that revising the credits for SLPs for adding displayed liquidity to the Exchange in Tapes B and C securities will encourage the SLPs to add liquidity to the market in Tape B and C securities, thereby providing customers with a higher quality venue for price discovery, liquidity, competitive quotes and price improvement. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity present on the Exchange. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities. As the Exchange previously noted that, a number of the current SLP firms are qualifying for the SLP Provide Tier 1 credit based on adding displayed liquidity and adding non-displayed liquidity. Based on the profile of liquidity-providing SLPs generally, the Exchange believes that additional SLPs could

qualify for the displayed and non-displayed SLP Provide Tier 1 credits if they choose to direct order flow to, and increase quoting on, the Exchange.

The proposed rebates are also equitable because they would apply equally to all existing and potential SLPs. The Exchange believes the proposed rebates could provide an incentive for other market participants to become SLPs on the Exchange. The Exchange believes that the proposal would provide an equal incentive to all member organizations to become SLPs, and that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations would be eligible for the same rebates.

The Proposal is Not Unfairly Discriminatory

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 it is not unfairly discriminatory to provide an additional per share step up credit, as the proposed credit would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed Step Up 3 Tier's requirements. For the same reason, the Exchange believes it is not unfairly discriminatory to provide a higher adding credit to member organizations that satisfy the Step Up Tier 3 requirements and add liquidity that include Tapes B and C securities, as the higher credit of \$0.0029 applies in Tape A, B and C securities and is in line with the \$0.0029 Tape A credit for Step Up 2 tier. Further, the Exchange believes the proposed Step Up Tier 3 credit would incentivize member organizations that meet the current tiered requirements to send more orders to the Exchange to qualify for higher credits. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality

associated with higher volume. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

The proposed changes to the Remove Tier 1 fee are also not unfairly discriminatory because the enhanced step up requirement to achieve the fee would be applied to all similarly situated member organizations and other market participants, who would all be eligible for the same credit on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. Further, the Exchange believes the proposal would provide an incentive for member organizations to remove additional liquidity from the Exchange in Tape B and C securities, to the benefit of all market participants.

Similarly, the Exchange believes that the proposed credits for SLP Provide Tier 1 would incentivize member organizations that are SLPs to send more orders to the Exchange to qualify for higher credits. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

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,²⁰ 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 encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission's goal in 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."²¹

Intramarket Competition. The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The current and proposed credits 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 their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted,

²⁰ 15 U.S.C. 78f(b)(8).

²¹ Regulation NMS, 70 FR at 37498-99.

the Exchange's market share of intraday trading (i.e., excluding auctions) for the month of November 2019, in Tapes A, B and C securities was only 9.4%.²² 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 practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change 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. The Exchange also believes that the proposed 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.

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)²³ of the Act and subparagraph (f)(2) of Rule 19b-4²⁴ 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

²² See note 9 supra.

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(2).

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)²⁵ 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-2019-69 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-2019-69. 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

²⁵ 15 U.S.C. 78s(b)(2)(B).

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-2019-69 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.²⁶

J. Matthew DeLesDernier
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).