

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-89324; File No. SR-NYSE-2020-59)

July 15, 2020

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

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 1, 2020, 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 and II 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 4 Adding Credit, and (2) extend through July 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April, May and June 2020. The Exchange proposes to implement the fee changes effective July 1, 2020. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 4 Adding Credit, and (2) extend through July 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April, May and June 2020.

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, especially aggressively priced orders that improve the market by setting the National Best Bid and Offer (“NBBO”) on the Exchange. The proposed changes also respond to the current volatile market environment that has resulted in unprecedented average daily volumes and the temporary closure of the Trading Floor, which are both related to the ongoing spread of the novel coronavirus (“COVID-19”).

The Exchange proposes to implement the fee changes effective July 1, 2020.

Current Market and Competitive Environment

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. 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.”<sup>4</sup>

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”<sup>5</sup> Indeed, equity trading is currently dispersed across 13 exchanges,<sup>6</sup> 31 alternative trading systems,<sup>7</sup> and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 20% market share (whether including or excluding auction volume).<sup>8</sup> Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange’s market share of trading in Tape A, B and C securities combined is less than 13%.

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

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

<sup>5</sup> 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”).

<sup>6</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangeshtml.html>.

<sup>7</sup> 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>.

<sup>8</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

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 the competitive environment described above, the Exchange has established incentives for its member organizations who submit orders that provide liquidity on the Exchange. The proposed fee change is designed to attract additional order flow to the Exchange by incentivizing member organizations to submit additional displayed liquidity to, and quote aggressively in support of the price discovery process on, the Exchange.

Moreover, beginning on March 16, 2020, in order to slow the spread of COVID-19 through social distancing measures, significant limitations were placed on large gatherings throughout the country. As a result, on March 18, 2020, the Exchange determined that beginning March 23, 2020, the physical Trading Floor facilities located at 11 Wall Street in New York City would close and that the Exchange would move, on a temporary basis, to fully electronic trading.<sup>9</sup> On May 14, 2020, the Exchange announced that on May 26, 2020 trading operations on the Trading Floor would resume on a limited basis to a subset of Floor brokers, subject to safety measures designed to prevent the spread of COVID-19.<sup>10</sup> On June 15, 2020, the Exchange announced that on June 17, 2020, the Trading Floor would reintroduce a subset of Designated Market Makers (“DMM”), also subject to safety measures designed to prevent the

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<sup>9</sup> See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/allcategories/2020/03-18-2020-204202110>.

<sup>10</sup> See Trader Update, dated May 14, 2020, available here: <https://www.nyse.com/traderupdate/history#110000251588>.

spread of COVID-19.<sup>11</sup>

The proposed rule change responds to these unprecedented events by extending the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations for July 2020.

### Proposed Rule Change

#### Step Up Tier 4 Adding Credit

The Exchange proposes to adopt a new “Step Up Tier 4 Adding Credit” that would offer an incremental credit for providing displayed liquidity to the Exchange in Tapes A, B and C Securities.

As proposed, the Exchange would provide an incremental \$0.0006 credit in Tapes A, B and C securities for all orders from a qualifying member organization market participant identifier (“MPID”) or mnemonic<sup>12</sup> that sets the NBBO<sup>13</sup> or a new BBO<sup>14</sup> if the MPID or mnemonic:

- has adding average daily volume (“ADV”) in Tapes A, B and C Securities as a

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<sup>11</sup> See Trader Update, dated June 15, 2020, available here: <https://www.nyse.com/trader-update/history#110000272018>.

<sup>12</sup> Member organizations enter orders and order instructions, and receive information from the Exchange, by establishing a connection to a gateway that uses communication protocols that map to the order types and modifiers described in Exchange rules. These gateway connections, also known as logical port connections, are referred to as “ports” on the Exchange’s Price List. Legacy ports connect with the Exchange via a Common Customer Gateway (known as “CCG”) that accesses its equity trading systems (“Phase I ports”). Since July 2019, the Exchange has also made available ports using Pillar gateways to its member organizations (“Phase II ports”). For purposes of the Step Up Tier 4 Adding Credit, references to an “MPID” means the unique identifier assigned to member organizations communicating with the Exchange using Phase II ports, and references to “mnemonic” means the unique identifier issued by the Exchange to member organizations communicating with the Exchange using Phase I ports

<sup>13</sup> See Rule 1.1(q) (defining “NBBO” to mean the national best bid or offer).

<sup>14</sup> See Rule 1.1(c) (defining “BBO” to mean the best bid or offer on the Exchange).

percentage of Tapes A, B and C CADV,<sup>15</sup> excluding any liquidity added by a DMM, that is at least 50% more than the MPID's or mnemonic's Adding ADV in Tapes A, B and C securities in June 2020 as a percentage of Tapes A, B and C CADV, and

- is affiliated with an Supplemental Liquidity Provider (“SLP”) that has an Adding ADV in Tape A securities at least 0.10% of NYSE CADV, and
- has Adding ADV in Tape A securities as a percentage of NYSE CADV, excluding any liquidity added by a DMM, that is at least 0.20%.

The proposed credit would be in addition to the MPID's or mnemonic's current credit for adding liquidity. The proposed credit also would not count toward the combined limit on SLP credits of \$0.0032 per share provided for in the Incremental Credit per Share for affiliated SLPs whereby SLPs can qualify for incremental credits of \$0.0001, \$0.0002 or \$0.0003.

For example, assume Member Organization A has two MPIDs, MPID1 and MPID2, and that MPID1 is a SLP with at least 0.10% SLP Adding ADV of NYSE CADV in the billing month. Further assume that MPID2 has an Adding ADV in Tape A, B and C Securities of 15 million shares when US CADV is 10 billion shares, or .15%.

If in the billing month MPID2 has an Adding ADV of 22.5 million shares with 10 million shares in Tape A securities, and that US CADV is again 10 billion shares, with 4 billion shares in NYSE CADV, Member Organization A's MPID2 would qualify for the incremental credit of \$0.0006 per share for setting the NBBO and NYSE BBO because:

- MPID2's Adding ADV of 22.5 million shares when US CADV is 10 billion gives MPID2 an Adding ADV % of US CADV of 0.225%, a 50% increase over

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<sup>15</sup> The terms “ADV” and “CADV” are defined in footnote \* of the Price List.

their 0.15% baseline;

- the 4 million shares in Adding ADV in Tape A when NYSE CADV is 4 billion shares gives MPID2 an Adding ADV of 0.25%; and
- MPID2 is affiliated with MPID1, which has at least 0.10% Adding ADV as a SLP in Tape A securities.

Further assume MPID2 meets the current Adding Tier 1 credit of \$0.0022. In that case, Member Organization A would receive a credit of \$0.0028 for MPID2 orders that set the NBBO or BBO, and \$0.0022 for all other orders. If MPID2 was a SLP that qualified for the SLP Tier 1 adding credit of \$0.0029, and also qualified for SLP Step Up credit of \$.0003, MPID2 would receive \$0.0038 for orders that set the NBBO or NYSE BBO, and \$0.0032 for all other SLP orders that add liquidity to the Exchange.

The purpose of this proposed change is to incentivize member organizations to increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO or a new BBO on the Exchange. The proposed step up tier is thus intended to encourage higher levels of liquidity, which would support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, that adds liquidity to the Exchange. Because the proposed tier requires a member organization to receive an incremental per share credit if the member organization's eligible unique identifiers establish the NBBO or a new BBO on the Exchange and meet certain Adding ADV requirements directly and through affiliation with an SLP, the Exchange believes that the proposed credit would provide an incentive for such 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. Insofar as the tier, as proposed, requires a step up in Adding ADV from June 2020, there are currently no member organizations that would qualify for the proposed Step Up Tier 4 Adding Credit based on their current trading profile on the Exchange. The Exchange believes, however, 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 for their MPIDs or mnemonics to qualify for the new tier.

#### Fee Waivers for Trading Floor-Based Member Organizations

As noted above, on March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective March 23, 2020, as a precautionary measure to prevent the potential spread of COVID-19. Following the temporary closure of the Trading Floor, the Exchange waived certain equipment fees for the booth telephone system on the Trading Floor and associated service charges for the months of April and May.<sup>16</sup> On May 26, 2020, the Trading Floor reopened on a limited basis to a reduced number of Floor brokers to accommodate health-focused considerations. Following the partial reopening, the Exchange extended the equipment fee waiver for the month of June.<sup>17</sup> As noted above, on June 15, 2020, a limited number of DMMs returned to the Trading Floor. The Trading Floor

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<sup>16</sup> See Securities Exchange Act Release No. 88602 (April 8, 2020), 85 FR 20730 (April 14, 2020) (SR-NYSE-2020-27); Securities Exchange Act Release No. 88874 (May 14, 2020), 85 FR 30743 (May 20, 2020) (SR-NYSE-2020-29). See footnote 11 of the Price List.

<sup>17</sup> See Securities Exchange Act Release No. 89050 (June 11, 2020), 85 FR 36637 (June 17, 2020) (SR-NYSE-2020-49).



continues to operate with reduced headcount and additional health and safety precautions.<sup>18</sup>

For the months of April, May and June, the Exchange waived the Annual Telephone Line Charge of \$400 per phone number and the \$129 fee for a single line phone, jack, and data jack. The Exchange also waived related service charges, as follows: \$161.25 to install single jack (voice or data); \$107.50 to relocate a jack; \$53.75 to remove a jack; \$107.50 to install voice or data line; \$53.75 to disconnect data line; \$53.75 to change a phone line subscriber; and miscellaneous telephone charges billed at \$106 per hour in 15 minute increments.<sup>19</sup> These fees were waived for (1) member organizations with at least one trading license, a physical Trading Floor presence, and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020, and (2) member organizations with at least one trading license that are Designated Market Makers with 30 or fewer assigned securities for the billing month of March 2020.

Because the Trading Floor will continue to operate with reduced capacity, the Exchange proposes to extend the waiver of these Trading Floor-based fees through July 2020. To effectuate this change, the Exchange proposes to add "and July" between "June" and "2020" in footnote 11 to the Price List.

In order to further reduce costs for member organizations with a Trading Floor presence, the Exchange also waived the April, May and June 2020 monthly portion of all applicable annual fees for (1) member organizations with at least one trading license, a physical Trading Floor

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<sup>18</sup> See Trader Update, dated June 15, 2020, available here: <https://www.nyse.com/trader-update/history#110000272018>. DMMs continue to support a subset of NYSE-listed securities remotely.

<sup>19</sup> The Service Charges also include an Internet Equipment Monthly Hosting Fee that the Exchange did not waive for April, May and June 2020 and that the Exchange does not propose to waive for July 2020.

presence and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020, and (2) member organizations with at least one trading license that are DMMs with 30 or fewer assigned securities for the billing month of March 2020.<sup>20</sup>

The Exchange proposes to also waive the July 2020 monthly portion of all applicable annual fees for member organizations with at least one trading license, a physical Trading Floor presence and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020. The indicated annual trading license fees would also be waived for July 2020 for member organizations with at least one trading license that are DMMs with 30 or fewer assigned securities for the billing month of March 2020. To effectuate this change, the Exchange proposes to add "and July" between "June" and "2020" in footnote 15.

This proposed extension of the fee waivers would reduce monthly costs for member organizations with a Trading Floor presence whose operations were disrupted by the Floor closure, which lasted approximately two months, and remains partially closed. The Exchange believes that extension of the fee waiver would ease the financial burden associated with the ongoing partial Trading Floor closure. The Exchange believes that all member organization that conduct business on the Trading Floor would benefit from this proposed fee change.

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.

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<sup>20</sup> See notes 16-17, supra. See footnote 15 of the Price List.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>22</sup> 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.”<sup>23</sup>

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 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

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<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(4) & (5).

<sup>23</sup> See Regulation NMS, 70 FR at 37499.

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.

#### Step Up Tier 4 Adding Credit

The Exchange believes that a new Step Up Tier 4 Adding Credit is reasonable. Specifically, the Exchange believes that the proposed Step Up Tier 4 Adding Credit would provide an incentive for member organizations to receive an incremental per share credit if the unique identifiers associated with the member organization for order entry and execution identification purposes establish the NBBO or a new BBO on the Exchange and meet certain Adding ADV requirements directly and through affiliation with an SLP. The proposed incremental credit would thus provide incentives to member organizations to provide aggressively priced orders that improve the market by setting the NBBO or a new BBO on the Exchange and to send additional liquidity providing orders to the Exchange in Tape A, B and C Securities. To the extent that the proposed change leads to an increase in overall liquidity activity on the Exchange and more competitive pricing, this will improve the quality of the Exchange's market, improve quote spreads and increase its attractiveness to existing and prospective participants.

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 higher credits for orders that provide additional liquidity. Moreover, the Exchange believes that providing an incrementally higher credit for adding orders that set the NBBO or a new BBO is reasonable because it would encourage additional aggressively priced displayed liquidity on the Exchange and because market participants benefit from the greater amounts of liquidity and price improvement present on the Exchange. Further,

the Exchange believes that requiring member organizations to meet specific Adding ADV requirements at the MPID and mnemonic level in order to qualify for the incremental credit is also reasonable. Specifically, requiring all eligible unique identifiers to (1) have Adding ADV in Tapes A, B and C Securities as a percentage of Tapes A, B and C CADV, excluding any liquidity added by a DMM, that is at least 50% more than the MPID's or mnemonic's Adding ADV in Tapes A, B and C securities in June 2020 as a percentage of Tapes A, B and C CADV; (2) be affiliated with an SLP that has an Adding ADV in Tape A securities at least 0.10% of NYSE CADV; and (3) have Adding ADV in Tape A securities as a percentage of NYSE CADV, excluding any liquidity added by a DMM, that is at least 0.20%, is reasonable because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the greater amounts of liquidity and price improvement present on the Exchange.

Since the proposed Step Up Tier 4 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 incremental credit, thereby contributing to depth and market quality on the Exchange.

The Exchange believes that requiring member organization's unique identifiers be affiliated with an SLP with an Adding ADV of at least 0.10% of NYSE CADV will encourage members to act as a SLP, which will benefit market participants from increased quoting as

required for SLPs. The Exchange notes that Step Up Tier 2 has a similar SLP affiliation requirement.

Finally, the Exchange believes that excluding the incremental \$0.0006 credit for NBBO and BBO setting adding volume from the \$0.0032 limit for SLP Step Up credits will incentivize improved quoting and tighter spreads. The Exchange notes that all other adding orders from those qualifying MPIDs and mnemonics will continue to subject to the \$0.0032 limit.

#### Fee Waivers for Trading Floor-Based Member Organizations

The proposed extension of the waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations is reasonable in light of the partial continued closure of the NYSE Trading Floor. Beginning March 2020, markets worldwide have experienced unprecedented declines and volatility because of the ongoing spread of COVID-19 also resulted in the temporary closure of the NYSE Trading Floor. As noted, the Trading Floor was recently partially reopened on a limited basis to a subset of Floor brokers and DMMs, subject to safety measures designed to prevent the spread of COVID-19. The proposed change is designed to reduce costs for Floor participants for the month of July 2020 and therefore ease the financial burden faced by member organizations that conduct business on the Trading Floor while it continues to operate with reduced capacity.

#### The Proposal is an Equitable Allocation of Fees

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

#### Step Up Tier 4 Adding Credit

The Exchange believes that the proposed Step Up Tier 4 will allocate the proposed credits fairly among market participants. The proposed tier will allow member organizations to

qualify for a credit by adding liquidity and setting the NBBO or a new BBO. 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. It is equitable for the Exchange to add additional incentives for member organizations to receive a credit when their orders add liquidity to the Exchange as a means of incentivizing increased liquidity adding activity. An increase in overall liquidity on the Exchange will improve the quality of the Exchange's market and increase its attractiveness to existing and prospective participants.

The Exchange believes that requiring member organization's unique identifiers to have specific Adding ADV requirements in order to qualify for the proposed credit would also encourage additional displayed liquidity on the Exchange. Moreover, it is equitable for the Exchange to require the unique identifiers to be affiliated with an SLP that meets an Adding ADV requirement in Tape A securities due to the Exchange's goal to specifically promoting increased liquidity in securities in Tape A. Since the proposed Step Up Tier would be new, no member organization currently qualifies for it. As noted, there are currently no 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 this proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed incremental credit is reasonable as it would incentivize activity that encourages the setting of the NBBO or a new BBO, thereby contributing to depth and market quality and increased price improvement 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 incremental credit

proposed in Step Up Tier 4 if their unique identifier meets the Adding ADV requirements in Tapes A, B and C securities on its own and through affiliation with an SLP. Any market participant that is dissatisfied with the proposed new credit is free to shift order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

The Exchange believes that offering an incremental step up credit for setting the NBBO or a new BBO will encourage higher levels of liquidity provision into the price discovery process and is consistent with the overall goals of enhancing market quality, 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.

#### Fee Waivers for Trading Floor-Based Member Organizations

Finally, the proposed extension of the waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations to July 2020 are also an equitable allocation of fees. The proposed waivers apply to all Trading Floor-based firms meeting specific requirements during the period that the Trading Floor is partially open. The proposed change is equitable as it merely continues the fee waiver granted in April, May and June 2020, and is designed to reduce monthly costs for Trading Floor-based member organizations that are unable to fully conduct Floor operations.

#### 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 proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant.

#### Step Up Tier 4 Adding Credit

The Exchange believes it is not unfairly discriminatory to provide an additional per share step up credits for activity that encourages the setting of the NBBO or a new BBO 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 Tier's requirements. As noted, the Exchange intends for the proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, thereby improving market wide quality and price discovery. The Exchange notes that there are currently tiers offering similar incentives. For example, NYSE Arca, Inc. ("NYSE Arca") offers a BBO Setter tier for qualifying ETP IDs that provides an incremental credit of \$0.0004 per share in Tape A and Tape C securities and an incremental credit of \$0.0002 in Tape B securities for orders that set a new NYSE Arca BBO.<sup>24</sup> 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.

#### Fee Waivers for Trading Floor-Based Member Organizations

The proposed continuation of the waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during

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<sup>24</sup> See NYSE Arca Equities Fees and Charges, available [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf).

July 2020 is not unfairly discriminatory because the proposed waivers would benefit all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange is not proposing to waive the Floor-related fixed indefinitely, but rather during the period that the Trading Floor is not fully open. The proposed fee change is designed to ease the financial burden on Trading Floor-based member organizations that cannot fully conduct Floor operations.

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,<sup>25</sup> 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 further discussed above, the Exchange believes that the proposed changes would encourage the continued participation of member organizations on the Exchange by providing certainty and fee relief during the unprecedented volatility and market declines caused by the continued spread of COVID-19. 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

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<sup>25</sup> 15 U.S.C. 78f(b)(8).

“more efficient pricing of individual stocks for all types of orders, large and small.”<sup>26</sup>

*Intramarket Competition.* The proposed changes are designed to respond to the current competitive environment and 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. Further, the proposed continued waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during July 2020 provide a degree of certainty and ease the financial burden on Trading Floor-based member organizations impacted by the temporary closing and partial reopening of the Trading Floor. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, 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 previously noted, the Exchange’s market share of trading in Tape A, B and C securities combined is less than 13%. In such an environment, the Exchange must continually adjust its

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<sup>26</sup> Regulation NMS, 70 FR at 37498-99.

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 rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to provide a degree of certainty and ease the financial burdens of the current unsettled market environment, and permit affected member organizations to continue to conduct market-making operations on the Exchange and avoid unintended costs of doing business on the Exchange while the Trading Floor is not fully open, which could make the Exchange a less competitive venue on which to trade as compared to other options exchanges.

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)<sup>27</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>28</sup> 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

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>28</sup> 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)<sup>29</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2020-59 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-2020-59. 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

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<sup>29</sup> 15 U.S.C. 78s(b)(2)(B).

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-2020-59 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.<sup>30</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>30</sup> 17 CFR 200.30-3(a)(12).