

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90391; File No. SR-NYSE-2020-92)

November 10, 2020

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 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 2, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“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 extend through December 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April through October 2020. The Exchange proposes to implement the fee changes effective November 2, 2020. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to extend through December 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April through October 2020.

The proposed changes 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 November 2, 2020.

Background

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.⁴

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.⁵

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 health and safety measures designed to prevent the spread of COVID-19.⁶ On June 15, 2020, the Exchange announced that on June 17, 2020, the Trading Floor would reintroduce a subset of DMMs, also subject to health and safety measures designed to prevent the spread of COVID-19.⁷ Following this partial reopening of the Trading Floor, the Exchange extended the equipment fee

⁴ See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/allcategories/2020/03-18-2020-204202110>.

⁵ 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.

⁶ See Trader Update, dated May 14, 2020, available here: <https://www.nyse.com/traderupdate/history#110000251588>.

⁷ See Trader Update, dated June 15, 2020, available here: <https://www.nyse.com/traderupdate/history#110000272018>.

waiver for the months of June, July, August, September and October.⁸ The Trading Floor continues to operate with reduced headcount and additional health and safety precautions.⁹

Proposed Rule Change

The proposed rule change responds to the unprecedented events surrounding the spread of COVID-19 by extending the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations for the remainder of 2020.

As noted, for the months of April, May, June, July, August, September and October, 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.¹⁰ 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

⁸ See Securities Exchange Act Release No. 89050 (June 11, 2020), 85 FR 36637 (June 17, 2020) (SR-NYSE-2020-49); Securities Exchange Act Release No. 89324 (July 15, 2020), 85 FR 44129 (July 21, 2020) (SR-NYSE-2020-59); Securities Exchange Act Release No. 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR-NYSE-2020-71); Securities Exchange Act Release No. 89798 (September 9, 2020), 85 FR 57263 (September 15, 2020) (SR-NYSE-2020-72); and Securities Exchange Act Release No. 90161 (October 13, 2020), 85 FR 66370 (October 19, 2020) (SR-NYSE-2020-81).

⁹ 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.

¹⁰ The Service Charges also include an Internet Equipment Monthly Hosting Fee that the Exchange did not waive for April, May, June, July, August and September 2020 and that the Exchange does not propose to waive for November and December 2020.

volumes during March 1 to March 20, 2020, or, beginning in August 2020, if not a member organization during March 1 to March 20, 2020, based on the member organization's combined adding, taking, and auction volumes during its first month as a member organization on or after May 26, 2020, i.e., the date the Trading Floor re-opened on a limited basis, 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 continues to operate with reduced capacity, the Exchange proposes to extend the waiver of these Trading Floor-based fees through December 2020. To effectuate this change, the Exchange proposes to replace "October" with "December" after "through" and before "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, June, July, August, September and October 2020 monthly portion of all applicable annual fees 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, or, beginning in August 2020, if not a member organization during March 1 to March 20, 2020, based on the member organization's combined adding, taking, and auction volumes during its first month as a member organization on or after May 26, 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 2020.¹¹

¹¹ See notes 5-8, supra. See footnote 15 of the Price List. Beginning in August 2020, member organizations with a physical trading Floor presence that became member organizations on or after April 1, 2020 are eligible for a one-time credit for the member organization's indicated annual trading license fee for the months of April through July

The Exchange proposes to also waive the November and December 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 or, if not a member organization during March 1 to March 20, 2020, based on the member organization's combined adding, taking, and auction volumes during its first month as a member organization on or after May 26, 2020. The indicated annual trading license fees would also be waived for November and December 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 replace "October" with "December" after "through" and before "2020" in footnote 15 of the Price List.

The 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 a significant portion of trading 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.

2020 if the member organization meets the other requirements for the waiver described in 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,¹² in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹³ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange 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.”¹⁴

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”¹⁵

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) & (5).

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

¹⁵ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

Indeed, equity trading is currently dispersed across 15 exchanges,¹⁶ 31 alternative trading systems,¹⁷ 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.¹⁸ 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 14%.

The Proposed Change is Reasonable

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 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 health and safety measures designed to prevent the spread of COVID-19. The proposed change is designed to reduce costs for Floor participants for the end of 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.

¹⁶ 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/divisionsmarketregmrexc hangeshtml.html>.

¹⁷ 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>.

¹⁸ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

The Proposal is an Equitable Allocation of Fees

The Exchange believes 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 December 2020 are 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 remains partially open. The proposed change is equitable as it merely continues the fee waiver granted in April, May, June, July, August, September and October 2020, and is designed to reduce monthly costs for Trading Floor-based member organizations that are unable to fully conduct Floor operations while the Trading Floor remains partially open during the ongoing COVID-19 pandemic.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that 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 November and December 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 fees 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.

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,¹⁹ 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 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 "more efficient pricing of individual stocks for all types of orders, large and small."²⁰

Intramarket Competition. The proposed continued waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during November and December 2020 is designed to reduce monthly costs for those Floor participants whose operations continue to be impacted by the spread of COVID-19 despite the fact that the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would 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.

¹⁹ 15 U.S.C. 78f(b)(8).

²⁰ Regulation NMS, 70 FR at 37498-99.

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. The Exchange believes that the proposed rule change reflects this competitive environment because it permits impacted 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 equities markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²¹ of the Act and subparagraph (f)(2) of Rule 19b-4²² 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)²³ of the Act to determine whether the proposed rule change should be approved or disapproved.

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(2).

²³ 15 U.S.C. 78s(b)(2)(B).

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-2020-92 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-2020-92. 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-2020-92 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.²⁴

J. Matthew DeLesDernier
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).