

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90947; File No. SR-NYSE-2021-02)

January 19, 2021

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 January 4, 2021, 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) provide an alternative way to qualify for the adding tier for MPL orders; (2) eliminate current Adding Tier 4 and Step Up Tier 3; (3) introduce a new Step Up Adding Tier 4; (4) restrict Supplemental Liquidity Providers (“SLP”) National Best Bid and Offer (“NBBO”) Setter pricing tier credits to member organizations that are SLPs; and (5) eliminate the optional monthly per security credit payable to Designated Market Makers (“DMMs”) and make related non-substantive conforming changes. The Exchange proposes to implement the fee changes effective January 4, 2021. 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.

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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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) provide an alternative way to qualify for the adding tier for MPL orders; (2) eliminate current Adding Tier 4 and Step Up Tier 3; (3) introduce a new Step Up Adding Tier 4; (4) restrict SLP NBBO setter pricing tier credits to member organizations that are SLPs; and (5) eliminate the optional monthly per security credit payable to DMMs and make related non-substantive conforming changes.

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 January 4, 2021.

Background

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>

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.”<sup>5</sup> Indeed, equity trading is currently dispersed across 16 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 16% market share.<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 10%.

The Exchange believes that the ever-shifting market share among the exchanges from

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

<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/divisionsmarketregmrexcchangeshtml.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/atslist.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/).

month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 16 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.

#### Proposed Rule Change

##### Alternative Qualification Adding Tier for MPL Orders

Currently, a member organization that has an average daily trading volume (“ADV”) that adds liquidity to the Exchange during the billing month (“Adding ADV”) in MPL orders<sup>9</sup> that is at least 0.075% of Tapes A, B and C consolidated average daily volume (“CADV”),<sup>10</sup> excluding any liquidity added by a DMM, would be eligible for a \$0.00275 credit.

The Exchange proposes an alternative way for member organizations to qualify for this adding tier credit in MPL orders. As proposed, a member organization that has an Adding ADV

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<sup>9</sup> An MPL Order is defined in Rule 7.31 as a Limit Order that is not displayed and does not route, with a working price at the midpoint of the PBBO. See Rule 7.31(d)(3). Limit Order is defined in Rule 7.31(a)(2).

<sup>10</sup> Footnote 2 to the Price List defines ADV as “average daily volume” and “Adding ADV” as ADV that adds liquidity to the Exchange during the billing month. CADV is defined in footnote \* of the Price List.

in MPL orders of at least 7.25 million shares would also be eligible for a \$0.00275 credit for MPL Orders that add liquidity under this tier. The Exchange believes that the alternative method would enable more member organizations to qualify for the tier, especially in high volume months. The purpose of the proposed change is to incentivize member organizations to trade on the Exchange in MPL orders in Tapes A, B and C securities. Providing an alternative way for member organizations to qualify for the \$0.00275 credit would increase liquidity providing MPL orders in Tapes A, B and C securities, which would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders that take liquidity. The Exchange believes that by correlating the amount of credits to the level of MPL orders sent by a member organization that add liquidity, the Exchange's fee structure would incentivize member organizations to submit more MPL orders that add liquidity to the Exchange, thereby increasing the potential for price improvement and execution opportunities to incoming marketable orders submitted to the Exchange.

As noted above, the Exchange operates in a competitive and fragmented market environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional member organizations could qualify for the tiered rate under the new qualification criteria if they choose to direct order flow to, and increase quoting on, the Exchange. 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 the proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the tier under the new proposed requirements.

#### Elimination of Adding Tier 4 and Step Up Tier 3

Currently, a member organization qualifies for Tier 4 Adding Credit of \$0.0015 if the member organization

- has Adding ADV in MPL orders that is at least 4 million shares ADV, excluding any liquidity added by a DMM, and
- executes MOC and LOC orders of at least 0.10% of NYSE CADV,  
or
- has an Adding ADV that is at least 0.175% of NYSE CADV,
- ADV of the Member Organization's total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.05% of NYSE CADV, and
- an Adding ADV 25,000 shares in Orders designated as "retail" (i.e., orders that satisfy the Retail Modifier requirements of Rule 13) that add liquidity to the NYSE.

In addition, member organizations that meet the above requirements and add liquidity, excluding liquidity added as an SLP, in securities traded pursuant to Unlisted Trading Privileges (Tapes B and C) on the Pillar Trading Platform of at least 0.20% of Tape B and Tape C CADV combined, are eligible for an additional \$0.0001 per share.

Similarly, the current Step Up Tier 3 Adding Credit offers a credit to member organizations providing displayed liquidity to the Exchange in Tape A securities. As proposed, a member organization that has Adding ADV, excluding any liquidity added by a DMM, that is at least 0.05% of NYSE CADV over that member organization's Fourth Quarter 2019 adding liquidity taken as a percentage of NYSE CADV (the "Baseline Tape A Share") would receive a credit of \$0.0015 for adding liquidity, except MPL and Non-Displayed Limit Orders, if the increase in Adding ADV over the Baseline Tape A Share is at least 0.05% and less than 0.10%.

If the increase in Adding ADV over the Baseline Tape A Share is at least 0.10% or more, a member organization meeting the above requirements would receive a credit of \$0.0018 for adding liquidity, except MPL and Non-Displayed Limit Orders.

In addition, member organizations that meet these requirements and qualify for the \$0.0015 or \$0.0018 credit in Tape A securities would be eligible to receive an additional \$0.0001 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.

The Exchange proposes to eliminate the Adding Tier 4 and Step Up Tier 3 pricing tiers in their entirety and to remove both from the Price List because each pricing tier has been underutilized by member organizations insofar as no member organization has qualified for either tier. As such, Exchange does not anticipate any member organization in the near future would qualify for either tier that is the subject of this proposed rule change.

With the proposed elimination of the Step Up Tier 3 Adding Credit, the Exchange proposes to rename the current Step Up Tier 4 Adding Credit as Step Up Tier 3 Adding Credit. The Exchange also proposes a new Step Up Tier 4 Adding Credit, as discussed below.

#### New 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 a \$0.0015 credit in Tape A securities for all orders, other than MPL and Non-Displayed Limit Orders, if the member organization:

- has an Adding ADV that is at least 0.20% of NYSE CADV, and

- has an Adding ADV, excluding any liquidity added by a DMM, that is at least 0.05% of NYSE CADV over that Member Organization's November 2020 adding liquidity taken as a percentage of NYSE CADV.

In addition, member organizations that meet the above requirements and add liquidity, excluding liquidity added as an SLP, in Tapes B and C Securities of at least 0.20% of Tape B and Tape C CADV combined would be eligible to receive an additional \$0.0001 per share.

For example, assume a Member Organization A has an adding ADV of 0.16% of NYSE CADV in the baseline month of November 2020. Further assume that Member Organization A has an adding ADV of 0.21% of US CADV in the billing month. Member Organization A would meet both the requirement of Adding ADV of at least 0.20% of NYSE CADV and the requirement of an Adding ADV that is at least 0.05% of NYSE CADV over that member organization's November 2020 adding liquidity taken as a percentage of NYSE CADV.

The purpose of this proposed change is to incentivize member organizations to increase the liquidity-providing orders in the Tape A securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. 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 the proposed tier requires a member organization to increase the volume of its trades in orders that add liquidity over that member organization's November 2020 baseline, the Exchange believes that the proposed credit would provide an incentive for all 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. Based on the profile of liquidity-adding firms generally,



the Exchange believes that additional member organizations could qualify for the tiered rate under the new qualification criteria if they choose to direct order flow to, and increase quoting on, the Exchange. 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.

#### SLP NBBO Setter Tier

In September 2020, the Exchange adopted the SLP NBBO Setter Tier for securities with a per share price of \$1.00 or above that offers four sets of tiered credits for orders that set the NBBO or provide other displayed liquidity in Tape A, B and C Securities, on a monthly basis, from SLPs and member organizations affiliated with SLPs in addition to the tiered or non-tiered SLP credit for adding displayed liquidity.<sup>11</sup> As adopted, both SLPs and affiliated member organizations are eligible for the SLP NBBO Setter Tier credits. The Exchange proposes to restrict eligibility for the credits under this tier to member organizations that are SLPs. To effectuate this change, the Exchange would add text describing SLPs are those member organizations that meet the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B (quotes of an SLP Prop and an SLMM of the same member organization shall not be aggregated). The Exchange proposes no additional changes to the SLP NBBO Setter Tier.

The purpose of this proposed change is to restrict the incentives to increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO to member

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<sup>11</sup> See Securities Exchange Act Release No. 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR-NYSE-2020-71).

organizations that are SLPs. 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. The SLP NBBO Setter Tier is designed to encourage higher levels of liquidity, which support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality. By limiting eligibility for the SLP setter credits to SLPs, the Exchange brings these credits in line with other SLP credits that are only credited to the SLP, and not the affiliated member organizations.

#### Elimination of the Monthly Rebate per Security and Optional Credit for DMMs

Currently, the Exchange offers an optional monthly rebate per security (“Rebate Per Security”) to DMMs with 100 or more assigned securities, up to a maximum credit of \$100,000 per month across all DMM assigned securities, that elect to receive a lower monthly rebate per share credit (“Optional Credit”) for all assigned securities. DMMs electing the Rebate per Security and corresponding Optional Credit for all assigned securities are required to notify the Exchange prior to the start of a calendar quarter to be effective for that and subsequent quarters. Similarly, DMMs electing to suspend the Rebate per Security and corresponding Optional Credit for that suspension to be effective for that and subsequent quarters are required to notify the Exchange prior to the start of that calendar quarter. The Rebate Per Security is currently available for the start of a calendar quarter for assigned securities that meet the following quoting requirements:

First, in More Active Securities,<sup>12</sup> if the DMM that elects the Optional Credit meets the

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<sup>12</sup> “More Active Securities” are securities with an average daily consolidated volume (“Security CADV”) in the previous month equal to or greater than 1,000,000 shares per month.

More Active Securities Quoting Requirement in an assigned security,<sup>13</sup> that DMM's assigned security is eligible for a

- \$100.00 Rebate per Security if the DMM quotes at the NBBO in the applicable security 30% of the time or more in the applicable month;
- \$75.00 Rebate Per Security if the DMM quotes at least 20% and up to 30% of the time in the applicable month; and
- \$50.00 if the DMM quotes at least 10% and up to 20% of the time in the applicable month.

Second, in Less Active Securities,<sup>14</sup> if the DMM that elects the Optional Credit meets the Less Active Securities Quoting Requirement<sup>15</sup> in an assigned security, that DMM's assigned security is eligible for a:

- \$200.00 Rebate per Security if the DMM quotes at the NBBO in the applicable security 60% of the time or more in the applicable month;

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<sup>13</sup> The "More Active Securities Quoting Requirement" is met if the More Active Security has a stock price of \$1.00 or more and the DMM quotes at the National Best Bid or Offer ("NBBO") in the applicable security at least 10% of the time in the applicable month. Both "More Active Securities" and the "More Active Securities Quoting Requirement" are defined in the Price List. The Exchange is not proposing any changes to these definitions and proposes to relocate them from the text describing the optional rebate that the Exchange proposes to delete.

<sup>14</sup> "Less Active Securities" are securities with Security CADV of less than 1,000,000 shares per month in the previous month.

<sup>15</sup> The "Less Active Securities Quoting Requirement" is met if the Less Active Security has a stock price of \$1.00 or more and the DMM quotes at the NBBO in the applicable security at least 15% of the time in the applicable month. Both "Less Active Securities" and the "Less Active Securities Quoting Requirement" are defined in the current Price List. As with the definitions of More Active Securities and the More Active Securities Quoting Requirement, the Exchange is not proposing any changes to these definitions and proposes to relocate them from the text describing the optional rebate.

- \$125.00 if the DMM quotes at least 40% and up to 60% of the time in the applicable month; and
- \$100.00 if the DMM quotes at least 15% and up to 40% of the time in the applicable month.

The Exchange proposes to eliminate the monthly Rebate Per Security and the associated Optional Credits in their entirety and remove them from the Price List because the credits have been underutilized by DMMs. As noted, the definitions of More Active Securities, More Active Securities Requirement, Less Active Securities and Less Active Securities Requirement would be relocated with no substantive changes to the section of the Price List describing DMM rebates where these terms are also utilized.

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,<sup>16</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>17</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 competitive market. The

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<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(4) & (5).

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>18</sup> 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.”<sup>19</sup>

#### Additional MPL Adding Tier Requirement

The proposed alternative way to qualify for the Adding Tier for MPL orders is reasonable because an additional way to qualify for the tier would make it easier for member organizations to qualify for the credit, thereby encouraging the submission of additional liquidity by more member organizations to a national securities exchange. As noted, the Exchange believes that the alternative method would enable more member organizations to qualify for the tier, especially in high volume months. Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance 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

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<sup>18</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>19</sup> 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).

Exchange, which would provide greater execution opportunities

New Step UP Tier 4 Adding Credit

The new proposed 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 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 have adding ADV, excluding any liquidity added by a DMM, that is at least 0.20% of NYSE CADV and to add liquidity to the NYSE if the member organization has Adding ADV, excluding any liquidity added by a DMM, that is at least 0.05% of NYSE CADV over that member organization's November 2020 adding liquidity taken as a percentage of NYSE CADV in order to qualify for the proposed Step Up Tier 4 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. Finally, the Exchange believes it's reasonable to provide an additional \$0.0001 per share for adding liquidity in Tape A securities for member organizations meet the proposed tier requirements and qualify for the \$0.0015 credit 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, is reasonable as this same incentive is offered in the NYSE's other adding tiers (Tier 1-3 Adding Credits).

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, 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.

#### SLP NBBO Setter Tier

Clarifying that the SLP NBBO Setter Tier credits are not available for member organizations that are affiliated with SLPs is also reasonable as it brings those credits in line with other SLP tiers and credits. It is also reasonable to limit the higher credits available under this tier to SLP adding ADV given the SLP's additional quoting requirements, which non-SLP member organizations do not have.

#### Elimination of Pricing Tiers and Optional DMM Rebates and Credits

The Exchange believes that the proposed elimination of the Adding Tier 4 and Step Up Tier 3 pricing tiers is reasonable because each of these pricing tiers have been underutilized and have generally not incentivized member organizations to bring liquidity and increase trading on the Exchange. The Exchange does not anticipate any member organization in the near future to qualify for any of the tiers that are the subject of this proposed rule change. Similarly, the Exchange believes eliminating the option for DMMs to receive lower per share transaction credits in exchange for monthly rebates per assigned security is reasonable because DMMs have underutilized these incentives. The Exchange believes it is reasonable to eliminate requirements and credits, and even entire pricing tiers, when such incentives become underutilized. The Exchange believes eliminating underutilized incentive programs would also simplify the Price

List. The Exchange further believes that removing reference to the pricing tiers and the optional DMM rebates and credits from the Price List would also add clarity and transparency to the Price List.

The Proposal is an Equitable Allocation of Fees

Additional MPL Adding Tier Requirement

The Exchange believes its proposal to offer an alternative way for member organizations to qualify for the Adding Tier for MPL orders equitably allocates its fees among its market participants. The Exchange is not proposing to adjust the amount of the Adding Tier Credit for MPL orders that add liquidity, which will remain at the current level for all market participants. Rather, by providing an alternative way for member organizations to qualify for the adding credit, the proposal would continue to encourage member organizations to send orders that provide liquidity to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants, and promoting price discovery and transparency. The proposal would also enhance 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. The Exchange believes that offering an alternate way for member organizations to qualify for a tiered credit, more member organizations will be able to choose to route their liquidity-providing orders to the Exchange to qualify for the credit. As previously noted, based on the profile of liquidity-providing member organizations generally, the Exchange believes additional member organizations could qualify for the adding credit if they choose to direct order flow to, and increase quoting on, the Exchange. Additional liquidity-providing orders benefits all market participants because it provides greater execution opportunities on the



Exchange.

#### New Step UP Tier 4 Adding Credit

The Exchange believes that the proposed Step Up Tier 4 is equitable because the magnitude of the additional credit is less than the current Step Up Tier 2 credit in Tape A securities. Moreover, the proposed credit is not unreasonable relative with the other non-SLP adding tier credits, which as range from \$0.0015 to \$0.0031, in comparison to the credits paid by other exchanges for orders that provide additional step up liquidity.<sup>20</sup>

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. Since the proposed Step Up Tier 4 would be new and includes a step up Adding ADV requirement, no member organization currently qualifies for it. As noted, 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 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 that provide liquidity could be eligible to qualify for the credit proposed in Step Up Tier 4 if they increase their Adding ADV over their own baseline of order flow. The Exchange believes that offering a step up credit

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<sup>20</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/).

for providing liquidity if the step up requirements for Tape A securities are met 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.

#### SLP NBBO Setter Tier

The Exchange believes that limiting the incentives available under the SLP NBBO Tier only to SLPS is not unfairly discriminatory because the tier will continue to allocate the credits fairly among market participants. The tier will continue to allow SLPs to qualify for a credit by adding liquidity and setting the NBBO on the Exchange, thereby continuing to 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 limit additional incentives to SLPs to receive a credit when their orders add liquidity to the Exchange as a means of incentivizing increased liquidity adding activity by SLPs, given the SLP's additional quoting requirements, which non-SLP member organizations do not have. 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.

#### Elimination of Pricing Tiers and Optional DMM Rebates and Credits

The Exchange believes that eliminating requirements and credits, and even entire pricing tiers, from the Price List when such incentives become ineffective is equitable because the two pricing tiers and DMM rebate and credits the Exchange proposes to eliminate would be eliminated in their entirety, and would no longer be available to any member organization in any

form.

### The Proposal is Not Unfairly Discriminatory

#### Additional MPL Adding Tier Requirement

The Exchange believes its proposal to offer an alternative way for member organizations to qualify for the MPL Adding Tier is not unfairly discriminatory because the proposal would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed alternative requirements, 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, as noted, the Exchange believes the proposal would provide an incentive for member organizations to continue to send orders that provide liquidity to the Exchange, to the benefit of all market participants.

#### New Step Up Tier 4 Adding Credit

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 Tier 4's requirements and would equally encourage all member organizations to provide additional displayed liquidity on the Exchange. As noted, 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 the additional 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.

### SLP NBBO Setter Tier

The Exchange believes that modifying the tiers in that member organizations affiliated with SLPs are not eligible for the incentives under the SLP NBBO Setter Tier is not unfairly discriminatory because the requirements to achieve the fees would be applied to all similarly situated member organizations, who would all be eligible for the same credit based on the revised requirement on an equal basis. Limiting the credits to SLPs is reasonable given the SLP's additional quoting requirements, which non-SLP member organizations do not have. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the existing qualification criteria would be applied to all similarly situated member organizations, who would all be eligible for the same credit on an equal basis.

### Elimination of Pricing Tiers and Optional DMM Rebates and Credits

The Exchange believes that the proposal is not unfairly discriminatory because the proposed elimination of two pricing tiers and optional DMM rebate and credits would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating requirements and credits, and even entire pricing tiers, from the Price List when such incentives become ineffective is not unfairly discriminatory because the pricing tiers the Exchange proposes to eliminate would no longer be available to any member organization on an equal basis. Similarly, eliminating optional DMM rebate and credits that are underutilized and ineffective would no longer be available to any DMM on an equal basis.

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>21</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 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."<sup>22</sup>

*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 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. 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

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<sup>21</sup> 15 U.S.C. 78f(b)(8).

<sup>22</sup> Regulation NMS, 70 FR at 37498-99.

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. 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.

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>23</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>24</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>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)<sup>25</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-2021-02 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-2021-02. 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>25</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-2021-02, 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>26</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12), (59).