

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91561; File No. SR-NYSE-2021-23)

April 14, 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)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 1, 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 introduce (1) a new Adding Tier in Tape A securities, and (2) a new Tier 5 for Supplemental Liquidity Providers (“SLP”) in Tape A securities. The Exchange proposes to implement the fee changes effective April 1, 2021. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 introduce (1) a new Adding Tier in Tape A securities, and (2) a new Tier 5 for SLPs in Tape A Securities.

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 April 1, 2021.

Background

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. 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.”⁴

While Regulation NMS has enhanced competition, it has also fostered a “fragmented”

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

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.”⁵ Indeed, equity trading is currently dispersed across 16 exchanges,⁶ 31 alternative trading systems,⁷ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange has more than 20% market share.⁸ 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 12%.

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

⁵ 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).

⁶ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

⁷ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

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

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 the Exchange.

Proposed Rule Change

New Adding Tier for Non-Displayed Providers

The Exchange proposes a new Adding Tier for Non-Displayed Providers. As proposed, the Exchange would provide credits in Tape A securities for all orders, other than MPL Orders, from qualifying member organizations that have at least

- an average daily trading volume (“ADV”) that adds liquidity to the Exchange during the billing month (“Adding ADV”) of 0.35% of Tape A consolidated ADV (“Tape A CADV”), excluding any liquidity added by a Designated Market Maker (“DMM”);⁹ and
- Adding ADV of Non-Displayed Limit Orders of at least 4 million shares; and
- 35% of the Member Organization’s Total Adding ADV is comprised of Non-Displayed Limit Orders.

A member organization that meets the above requirements would receive a credit of \$0.0023 per share (\$0.0006 per share for Non-Displayed Limit Orders) if the member organization has an Adding ADV of at least 0.35% of Tape A CADV or a credit of \$0.0026 per share (\$0.0007 per share for Non-Displayed Limit Orders) if the member organization has

⁹ 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.

Adding ADV of at least 0.45% of Tape A CADV.

In addition, the Exchange proposes that Member Organizations that meet the above requirements and add liquidity, excluding liquidity added as an SLP, in Tapes B and C Securities¹⁰ of at least 0.20% of Tape B and Tape C CADV combined will receive an additional \$0.00005 per share.

For example, assume member organization A has an adding ADV of 20 million shares and 0.40% of Tape A CADV in a billing month when Tape A CADV was 5 billion shares. Further assume that 15 million shares of member organization A's 40 million shares of Adding ADV were Non-Displayed Limit Orders, representing 37.5% of member organization A's Total Adding ADV during the billing month. Member organization A would accordingly qualify for the proposed Adding Credit of \$0.0023 per share (or \$0.0006 per share for Non-Displayed Limit Orders). If that member organization A had an adding ADV of at least 0.45% of Tape A CADV, then that member organization would qualify for the proposed Adding Credit of \$0.0026 per share (or \$0.0007 per share for Non-Displayed Limit Orders).

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 achieve a minimum volume of its

¹⁰ The Exchange proposes the non-substantive change in the Tier 1 Adding Credit, Tier 2 Adding Credit and Tier 3 Adding Credit to replace the phrase "securities traded pursuant to Unlisted Trading Privileges (Tapes B and C) on the Pillar Trading Platform" with "Tape B and C Securities."

trades in orders that add liquidity, the Exchange believes that the proposed credits would provide an incentive for all member organizations to send additional liquidity to the Exchange in order to qualify for them. 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 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.

New SLP Tier 5

The Exchange proposes a new SLP Tier designated "5" that would provide that an SLP adding liquidity in securities with a per share price of \$1.00 or more with orders, other than Mid-Point Liquidity ("MPL") orders, is eligible for a per share credit of \$0.0031 (or \$0.0012 if a Non-Displayed Reserve Order) if the SLP: (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.65% of Tape A CADV (for SLPs that are also DMMs and subject to Rule 107B(i)(2)(A), more than 0.65% after a discount of the percentage for the prior quarter of Tape A CADV in DMM assigned securities as of the last business day of the prior month); (3) has Adding ADV, including non-SLP Adding ADV but excluding any liquidity added by a DMM, that is at least 0.85% of Tape A CADV; and (4) executes an ADV,

including non-SLP Adding ADV but excluding any liquidity added by a DMM, of at least 250,000 shares in Retail Price Improvements Orders.

In addition, the Exchange proposes that SLPs that meet the proposed requirements for SLP Tier 5 and add liquidity in Tape B and C securities of at least 0.25% of Tape B and Tape C CADV combined, will receive an additional \$0.00005 per share in securities with a per share price of \$1.00 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). In addition, the Exchange proposes that SLPs would receive an additional \$0.00005 per share for adding liquidity, other than MPL and Non-Display Reserve orders, in securities where they are not assigned as an SLP or do not meet the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B.

The Exchange believes that the new tier will provide greater incentives for SLPs to add more liquidity to the Exchange. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Since the proposed tier is new, the Exchange does not know how many SLPs and their affiliates could qualify for the proposed tiered credits based on their current trading profile on the Exchange. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange believes that additional SLPs and affiliated firms could qualify for the new tier if they choose 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.

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,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹² 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.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) & (5).

As discussed above, 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.”¹³ 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.”¹⁴

The Proposed Change is Reasonable

New Adding Tier Credit

The new proposed Adding Tier Credit is reasonable. Specifically, the Exchange believes that the proposed 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 organization to have at least an Adding ADV of 0.35% of Tape A CADV, Adding ADV of Non-Displayed Limit Orders of at least 4

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

¹⁴ 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).

million shares, and 35% of the member organization's total Adding ADV is comprised of Non-Displayed Limit Orders, in order to qualify for the proposed Adding Credit is reasonable because it would encourage additional displayed and non-displayed liquidity on the Exchange and because market participants benefit from the greater amounts of displayed and non-displayed liquidity present on the Exchange. Further, the Exchange believes it's reasonable to provide credit of \$0.0023 per share (\$0.0006 per share for Non-Displayed Limit Orders) if the member organization has an Adding ADV of at least 0.35% of Tape A CADV or a credit of \$0.0026 per share (\$0.0007 per share for Non-Displayed Limit Orders) if the member organization has Adding ADV of at least 0.45% of Tape A CADV because this would 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. In addition, the Exchange believes that the additional credit of \$0.00005 per share for Member Organizations that meet the proposed tier 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 is reasonable as a similar incentive is offered in the NYSE's other adding tiers (Tier 1-3 Adding Credits).

Since the proposed Adding Credit would be new, 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 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 credits, thereby contributing to

depth and market quality on the Exchange.

New SLP Tier 5

The Exchange believes that the proposal to introduce a new SLP Tier 5 is reasonable because it provides SLPs as well as SLPs that are also DMMs with an additional way to qualify for a rebate, thereby providing SLPs with greater flexibility and creating an added incentive for SLPs to bring additional order flow to a public market. In particular, as noted above, the Exchange believes that the new tier will provide greater incentives for SLPs to add more liquidity to the Exchange, to the benefit of the investing public and all market participants. Since the proposed tier would be new, no SLP currently qualifies for the proposed pricing tier. As previously noted, based on the profile of liquidity-providing SLPs generally, the Exchange believes that a number of SLPs and affiliated firms could qualify for the credits if they choose to direct order flow to, and increase quoting on, the Exchange.

Finally, the Exchange also believes the proposed non-substantive change in the Tier 1 Adding Credit, Tier 2 Adding Credit and Tier 3 Adding Credit is reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency on the Price List, thereby reducing potential confusion.

The Proposal is an Equitable Allocation of Fees

New Adding Tier Credit

The Exchange believes that the proposed Adding Credit is equitable because 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 Adding Credit would be new, 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 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 credits, 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 proposed credits if meet the proposed adding liquidity requirements. The Exchange believes that offering credits for providing liquidity 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.

New SLP Tier 5

The Exchange believes its proposal to offer a new SLP tier equitably allocates its fees among its market participants. The proposed changes would encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange. The proposed changes would also encourage the submission of additional orders that add liquidity, thus providing price improving liquidity to market participants and increasing the quality of order execution on the Exchange's market, which would benefit all market participants. Moreover, the proposed

changes are equitable because they would apply equally to all qualifying SLPs that submit orders to the NYSE and add liquidity to the Exchange.

The Proposal is Not Unfairly Discriminatory

New Adding Tier Credit

The Exchange believes it is not unfairly discriminatory to provide credits for adding liquidity as the proposed credits would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed Adding Tier requirements and would equally encourage all member organizations to provide displayed and non-displayed liquidity on the Exchange. As noted, the Exchange believes that the proposed credits 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.

New SLP Tier 5

The Exchange believes its proposal to offer a new SLP 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. 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 qualification criteria would be applied to all

similarly situated member organizations, who would all be eligible for the same credits on an equal basis. Finally, 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.

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,¹⁵ 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."¹⁶

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 and non-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

¹⁵ 15 U.S.C. 78f(b)(8).

¹⁶ Regulation NMS, 70 FR at 37498-99.

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 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)¹⁷ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁸ 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)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2021-23 on the subject line.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(2).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-2021-23. 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-2021-23, 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).