SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92160; File No. SR-NYSE-2021-35)

June 11, 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 May 27, 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) introduce three adding credit tiers (Tiers 3, 5 and 6 Adding Credits) and re-number current Tier 3, and (2) relocate and modify certain fees, and introduce new fees, for transactions that remove liquidity from the Exchange in Tape A, B and C securities. The Exchange proposes to implement the fee changes effective June 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

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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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) introduce three adding credit tiers (Tiers 3, 5 and 6 Adding Credits) and re-number current Tier 3, and (2) relocate and modify certain fees, and introduce new fees, for transactions that remove liquidity from the Exchange in Tape A, B and C 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 liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective June 1, 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."[4]

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4 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499

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."[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 numerous currently operating registered exchanges

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(June 29, 2005) (S7-10-04) (Final Rule) ("Regulation NMS").

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/atslist.htm.

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

to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to this competitive environment, the Exchange has established incentives for its member organizations who submit orders that provide 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

Adding Tiers

The Exchange currently offers three adding tiers (Tier 1 Adding Credit, Tier 2 Adding Credit, and Tier 3 Adding Credit) that provide credits of $0.0022, $0.0020, and $0.0018 per share, respectively, for all orders, other than MPL and Non-Display Reserve orders, that add liquidity to the NYSE when certain requirements are met. The Exchange proposes to introduce three similar adding credit tiers numbered 3, 5 and 6 and re-number current Tier 3 as Tier 4, as follows.

Tier 3 Adding Credit

The Exchange proposes a new Tier 3 Adding Credit for orders, other than MPL and Non-Display Reserve orders, that add liquidity to the Exchange. As proposed, the Exchange would provide a $0.0019 credit in Tape A securities if a member organization has an average daily volume ("ADV") that adds liquidity to the Exchange during the billing month ("Adding ADV"),[9] excluding Supplemental Liquidity Provider ("SLP") and Designated Market Maker ("DMM") Adding ADV, that is at least 0.35% of NYSE CADV. In addition, member organizations that meet the above requirements and add liquidity, excluding liquidity added as an SLP, in Tape B

9 The terms "ADV" and "CADV" are defined in footnote * of the Price List.

and C Securities of at least 0.20% of Tape B and Tape C CADV combined, would receive an additional $0.0001 per share.

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 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. Since the proposed tier is new, the Exchange does not know how many member organizations could qualify for the new tiered rate based on their current trading profile on the Exchange and if they choose to direct order flow to the NYSE. 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.

In connection with this proposed change, current Tier 3 Adding Credit would become Tier 4 Adding Credit. The next proposed tier would follow current Tier 3 Adding Credit as renumbered in the Price List.

Tier 5 Adding Credit

The Exchange proposes a new Tier 5 Adding Credit for orders, other than MPL and Non-Display Reserve orders, that add liquidity to the Exchange. As proposed, the Exchange would provide a $0.0017 credit in Tape A securities if a member organization's Adding ADV, excluding liquidity added as an SLP and as a DMM, is at least 0.29% of NYSE CADV. Further, member organizations that meet the above requirements and add liquidity, excluding liquidity added as an SLP, in Tape B and C Securities of at least 0.20% of Tape B and Tape C CADV combined, would receive an additional $0.0001 per share.

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 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. Since the proposed tier is new, the Exchange does not know how many member organizations could qualify for the new tiered rate based on their current trading profile on the Exchange and if they choose to direct order flow to the NYSE. 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.

<u>Tier 6 Adding Credit</u>

The Exchange proposes a new Tier 6 Adding Credit for orders, other than MPL and Non-Display Reserve orders, that add liquidity to the Exchange. As proposed, the Exchange would provide a $0.0015 credit in Tape A securities if a member organization's Adding ADV, excluding liquidity added as an SLP and as a DMM, is at least either:

- 0.22% of NYSE CADV, or
- 0.15% of NYSE CADV that is at least 0.05% of NYSE CADV above the member organization's first quarter 2021 adding liquidity 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 Tape B and C Securities of at least 0.20% of Tape B and Tape C CADV combined, would receive an additional $0.0001 per share.

The following example illustrates how all of the proposed adding tiers would operate.

Assume Member Organization A has an Adding ADV as a percentage of Tape A CADV of 0.45% in the billing month of which 0.10% was DMM Adding ADV and 0.05% was SLP Adding ADV:

- Member Organization A would qualify for adding credit of $0.0017 for displayed adding liquidity, based on the Adding ADV of 0.30%, exceeding the 0.29% requirement.

If Member Organization A instead had Adding ADV as a percentage of Tape A CADV of 0.55% in the billing month, of which 0.10% was DMM Adding ADV and 0.05% was SLP Adding ADV:

- Member Organization A would qualify for adding credit of $0.0019 for displayed adding liquidity, based on the Adding ADV of 0.40%, exceeding the 0.35% requirement.

Also assume that Member Organization A had an Adding ADV, excluding SLP and DMM Adding ADV, of 0.05% in the baseline quarter of the first quarter 2021. If in another billing month, Member Organization A had an Adding ADV, excluding SLP and DMM Adding ADV, of 0.17%:

- Member Organization A would qualify for a credit of $0.0015 for displayed adding liquidity, exceeding the 0.05% step up with 0.12% over first quarter 2021 baseline and meeting the 0.015% Adding ADV requirement.

The purpose of this proposed change is also 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 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. Since the proposed tier is new, the Exchange does not know how many member organizations could qualify for the new tiered rate based on their current trading profile on the Exchange and if they choose to direct order flow to the NYSE. 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.

Charges for Removing Liquidity

Currently, the Exchange sets forth the fees for removing liquidity from the Exchange in Tape A securities in a different section of the Price List from fees for removing liquidity in Tape B and C securities, which are grouped with credits for adding liquidity in Tape B and C securities under their own heading in the Price List. The Exchange proposes to modify certain fees for removing liquidity in Tapes B and C securities and relocate them to section of the Price List setting forth the current fees for removing liquidity in Tape A securities. In addition, other fees for removing liquidity in Tape B and C securities would be deleted or relocated within the current section of the Price List where remove fees and adding credits in Tapes B and C securities are set forth.

First, the current base rate charged for non-Floor broker transactions that remove liquidity from the Exchange (i.e., unless one of the charges set forth immediately below this charge applies) is a fee of $0.0030. The Exchange proposes that this fee would apply to Tape B and C securities in addition to Tape A securities.

Second, under Remove Tier 2 for Tape B and C securities, the Exchange currently charges a per tape fee of $0.00285 per share to remove liquidity from the Exchange for member organizations with an at least 50,000 shares Per Tape of Non-SLP and Floor broker Adding

ADV. This fee would be deleted from Remove Tier 2 and incorporated into a new section under Tape A securities setting forth rates and new requirements for removing liquidity in Tape A, B and C securities, as follows.

As proposed, for non-Floor broker transactions if the member organization has an Adding ADV, excluding liquidity added by a DMM, that is at least 250,000 ADV on the NYSE in Tape A securities, the Exchange would offer a fee of $0.00295 for Tape A securities and $0.00285 for Tape B and C securities. For non-Floor broker transactions if the member organization has an Adding ADV, excluding liquidity added by a DMM, that is at least 3,500,000 ADV on the NYSE in Tape A securities, the Exchange would offer a fee of $0.00290 in Tape A securities and a fee of $0.00285 for Tape B and C securities.

Further, the Exchange currently charges $0.00285 for non-Floor broker transactions that remove liquidity from the Exchange by member organizations with an Adding ADV, excluding any liquidity added by a DMM, that is more than 250,000 ADV on the NYSE in Tape A Securities and less than 500,000 ADV on the NYSE in Tape B and Tape C securities combined during the billing month.

The Exchange proposes to revise the requirements and extend the same fee to Tape A, B and C securities. Specifically, the Exchange proposes a fee of $0.00285 in Tape A, B and C securities for non-Floor broker transactions if the member organization has Adding ADV, excluding liquidity added by a DMM, that is at least 7,000,000 ADV in Tape A securities and 500,000 ADV in Tape B and Tape C securities combined.

Similarly, the Exchange currently charges $0.00275 for non-Floor broker transactions that remove liquidity from the Exchange by member organizations with an Adding ADV, excluding any liquidity added by a DMM, that is at least 250,000 ADV on the NYSE in Tape A securities and at least 500,000 ADV on the NYSE in Tape B and C securities combined during the billing month.

The Exchange proposes new fees and revised requirements. As proposed, the Exchange proposes a fee of $0.0028 in Tape A securities and a fee of $0.00285 Tape B and C securities for non-Floor broker transactions if the member organization has Adding ADV, excluding liquidity added by a DMM, that is at least 14,000,000 ADV in Tape A securities and 750,000 ADV in Tape B and Tape C securities combined.

Finally, in the section of the Price List setting forth fees for removing liquidity in Tape B and C securities, the Exchange would make the following additional changes.

First, for executions on the Exchange in Tape B and C securities that remove liquidity, the Exchange currently charges $0.0030 per share for securities priced at or above $1.00, including MPL Orders, unless the Floor broker fee or the Remove Tier fees applies. The Exchange proposes to delete this fee since it would be referenced in the above section.

Second, following the current $0.0026 fee for Floor broker Tape B and C executions that remove liquidity from the Exchange, which would remain unchanged, the Exchange would clarify that remove rates listed in the Tape A section of the Price List would apply unless a better rate set forth below apply.

Finally, the current Remove Tier 1 for Tape B and C securities, which provides a per tape fee of $0.0026 per share to remove liquidity from the Exchange for member organizations meeting its requirements, would be moved from its current place and moved up within the same section. The rate and requirements would remain unchanged.

As noted, the current Remove Tier 2 for Tape B and C securities would be deleted from its current place. The heading titled "Remove Tiers For Securities At or Above $1.00 Requirement Rate" would also be deleted.

The Exchange believes that the proposed changes, taken together, will incentivize submission of additional liquidity in Tape A, B and Tape C securities to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. 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 Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Because the proposed reconfiguration of the fees involves the introduction of new fees and/or new requirements, the Exchange does not know how many member organizations could qualify for the new remove fees based on their current trading profile on the Exchange and if they choose to direct order flow to the NYSE. 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.

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

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."[12] 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."[13]

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange.

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10 15 U.S.C. 78f(b).

11 15 U.S.C. 78f(b)(4) & (5).

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

13 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).

The Proposed Change is Reasonable

Adding Tiers

The proposed new Adding Tier Credits are reasonable. Specifically, the Exchange believes that the proposed adding tiers would provide additional incentives 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 the requirements for the proposed Tier 1 Adding Credit, Tier 2 Adding Credit, and Tier 3 Adding Credit are reasonable because each 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 credits of \$0.0019, \$0.0017 and \$0.0015 when the current adding tiers offer credits of \$0.0018 (current Tier 3, proposed Tier 4 Adding Credit) and \$0.0020 (Tier 2 Adding Credit) because the proposal would provide additional ways for member organizations to qualify for a tiered credit by adding liquidity, thereby encouraging member organizations to send orders that provide liquidity to the Exchange which in turn contributes to robust levels of liquidity and promoting price discovery and transparency which benefits all market participants,. In addition, the Exchange believes that the additional credit of \$0.0001 per share for member organizations that meet the proposed tier requirements and add liquidity, excluding liquidity added as an Supplemental Liquidity Provider, in Tape 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 Tiers would be new, no member organization currently qualifies for the proposed pricing tiers. 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.

Charges for Removing Liquidity

The Exchange believes that the proposal to relocate and modify certain fees, and introduce new fees, for transactions that remove liquidity from the Exchange in Tape A, B and C securities are reasonable. The purpose of these changes is to encourage additional liquidity on the Exchange because market participants benefit from the greater amounts of displayed liquidity present on a public exchange. The Exchange believes that the proposed new fees and modifications to qualification requirements will incentivize additional liquidity in Tape A, B and Tape C securities to a public exchange to qualify for lower fees for removing liquidity, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The proposal is thus reasonable because all member organizations would benefit from such increased levels of liquidity.

Non-Substantive Changes

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

The Proposal is an Equitable Allocation of Fees

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

Adding Tiers

The Exchange believes that the proposal to provide additional incremental tiered credits for adding liquidity to the Exchange in Tape A securities is equitable because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the greater amounts of displayed liquidity present on the Exchange. The Exchange believes that the magnitude of the additional credit is not unreasonably high compared to the current adding tier credits and also relative to the other adding tier credits, which range from $0.0015 to $0.0031, in comparison to the credits paid by other exchanges for orders that provide additional step up liquidity.[14]

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 Adding Tiers would be new, no member organization currently qualifies for them. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. As described above, member organizations with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that by offering alternate credits for member organizations to qualify for a tiered credit, more member

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

organizations will be able to choose to route their liquidity-providing orders to the Exchange to qualify for one of the proposed credits. 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 credits.

The Exchange believes the proposed credits are reasonable as they 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 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 would be eligible to qualify for the proposed credits if they meet the proposed adding liquidity requirements for each proposed tier. 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 would provide a lower entry point and revised requirements that could allow those member organizations to qualify for a credit. The proposal will also not adversely impact their ability to qualify for other credits provided by the Exchange.

<u>Charges for Removing Liquidity</u>

The Exchange believes that, for the reasons discussed above, the proposed changes taken together, will incentivize member organizations to send additional adding liquidity to achieve lower fees when removing liquidity in Tape A, B and Tape C securities from the Exchange, thereby increasing the number of orders that are executed on the Exchange, promoting price discovery and transparency and enhancing order execution opportunities and improving overall liquidity on a public exchange. The Exchange also believes that the proposed change is equitable because it would apply to all similarly situated member organizations that remove liquidity in Tape A, B or Tape C securities. The proposed change also is equitable because it would be consistent with the applicable rate on other marketplaces. For example, Nasdaq PSX provides a fee per share for removing liquidity, $0.0028 in Tape A and B securities and $0.0029 in Tape C securities, if a firm removes 0.065% or more of Consolidated Volume; otherwise, Nasdaq PSX imposes a charge of $0.0030 per share for removing liquidity.[15] The Exchange notes that since the requirement is for Tape B and Tape C securities combined, member organizations can meet the requirement by adding liquidity in either Tape B or Tape C securities, or both. The Exchange further notes that other marketplaces have tiers with adding requirements in specific tapes to qualify for a rate in securities on another tape. For example, to be eligible for a $0.0020 adding credit in Tape C securities on Nasdaq, firms are required to average a minimum of 250,000 shares added per day in Tape A or Tape B securities (combined); otherwise, the Tape C credit for adding liquidity is $0.0015.[16]

As previously noted, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add 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. Because the proposed reconfiguration of the fees involves the introduction of new fees and/or new requirements, the Exchange does not know how many member organizations could qualify for the new remove fees based on their current trading

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15 See https://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing.

16 See hhttps://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.

profile on the Exchange and if they choose to direct order flow to the NYSE. 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.

The Proposal is Not Unfairly Discriminatory

Adding Tiers

The Exchange believes it is not unfairly discriminatory to provide an additional adding tiers and corresponding credits 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. For the same reason, the Exchange believes it is not unfairly discriminatory to provide an additional credit of $0.0001 per share for member organizations that meet the proposed tier requirements and add a minimum liquidity as a percentage of Tape B and Tape C CADV. Further, the Exchange believes the proposed adding tier credits would incentivize member organizations that meet the new tiered requirements to send more orders to the Exchange. Since the proposed credits would be new, no member organization currently qualifies for them. 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 credit 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.

Charges for Removing Liquidity

The Exchange believes that that reconfiguring the charges for member organizations that remove liquidity in all three tapes will incentivize submission of additional liquidity in Tape A, B and Tape C securities to a public exchange to qualify for the fees for removing liquidity, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations.

The proposal does not permit unfair discrimination because the new rates for removing liquidity in Tape A, B and C securities would be applied to all similarly situated member organizations and other market participants, who would all be eligible for the same credit on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. The Exchange believes it is not unfairly discriminatory to provide lower fees for removing liquidity as the proposed fee and credits would be provided on an equal basis to all member organizations that remove liquidity by meeting the tiered requirements. Further, the Exchange believes the proposed fee would provide an incentive for member organizations to remove additional liquidity from the Exchange in Tape A, B and C securities. 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. As noted, the proposed change also is not unfairly discriminatory because it would be consistent with the applicable rate on other marketplaces.

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

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[17] 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."[18]

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

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17 15 U.S.C. 78f(b)(8).

18 Regulation NMS, 70 FR at 37498-99.

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 robust levels of liquidity, which benefits all market participants on the Exchange. The current and proposed fees and 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)[19] of the Act and subparagraph (f)(2) of Rule 19b-4[20] 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)[21] 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-2021-35 on the subject line.

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19 15 U.S.C. 78s(b)(3)(A).

20 17 CFR 240.19b-4(f)(2).

21 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-2021-35. 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-2021-35, 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.[22]

Jill M. Peterson
Assistant Secretary

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22 17 CFR 200.30-3(a)(12), (59).