

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92615; File No. SR-NYSE-2021-41)

August 9, 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 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 2, 2021, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to eliminate the (1) underutilized monthly rebate payable to Designated Market Makers (“DMM”) with 30 or fewer assigned securities, and (2) expired waivers for equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations. The Exchange proposes to implement the rule change on August 2, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to eliminate the (1) underutilized monthly rebate payable to DMMs with 30 or fewer assigned securities, and (2) expired waivers for equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations.

The Exchange proposes to implement the rule change on August 2, 2021.

Proposed Rule Change

The Exchange proposes to eliminate an underutilized DMM rebate and obsolete waivers, as follows.

Underutilized DMM Rebate

The Exchange currently pays a DMM with 30 or fewer assigned securities a monthly rebate of \$1,500 per security, up to a maximum of \$10,000, for each security assigned to such a DMM in the previous month (regardless of whether the stock price exceeds \$1.00) for which that DMM provides quotes at the National Best Bid (“NBB”) and National Best Offer (“NBO,” together the “NBBO”) at least 25% of the time in the applicable month. The monthly rebate is in addition to the current rate on transactions and is prorated to the number of trading days in a

month that an eligible security is assigned to a DMM.

The Exchange proposes to eliminate this rebate in its entirety and to remove it from the Price List because the rebate has been underutilized by member organizations insofar as no DMMs with 30 or fewer assigned securities has qualified for the rebate in the past six months. As such, Exchange does not anticipate any member organization in the near future would qualify for the rebate that is the subject of this proposed rule change.

#### Expired Waivers

In response to the unprecedented events surrounding the spread of COVID-19 in 2020, the Exchange waived certain equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations beginning in June 2020 through the earlier of the first full month of a full reopening of the Trading Floor facilities to Floor personnel or June 2021.<sup>4</sup>

Specifically, the Exchange waived 50% of the Annual Telephone Line Charge of 400 per phone number; the \$129 fee for a single line phone, jack, and data jack; the related service charges (\$161.25 to install single jack (voice or data); \$107.50 to relocate a jack; \$53.75 to remove a jack; \$107.50 to install voice or data line; \$53.75 to disconnect data line; \$53.75 to

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<sup>4</sup> See Securities Exchange Act Release No. 89050 (March 25, 2021), 86 FR 16798 (March 31, 2021) (SR-NYSE-2021-19). See also Securities Exchange Act Release No. 89050 (June 11, 2020), 85 FR 36637 (June 17, 2020) (SR-NYSE-2020-49); Securities Exchange Act Release No. 89324 (July 15, 2020), 85 FR 44129 (July 21, 2020) (SR-NYSE-2020-59); Securities Exchange Act Release No. 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR-NYSE-2020-71); Securities Exchange Act Release No. 89798 (September 9, 2020), 85 FR 57263 (September 15, 2020) (SR-NYSE2020-72); Securities Exchange Act Release No. 90161 (October 13, 2020), 85 FR 66370 (October 19, 2020) (SR-NYSE-2020-81); Securities Exchange Act Release No. 90391 (November 10, 2020), 85 FR 73326 (November 17, 2020) (SRNYSE2020-92); Securities Exchange Act Release No. 90744 (December 21, 2020), 85 FR 85712 (December 29, 2020) (SR-NYSE-2020-102); Securities Exchange Act Release No. 91082 (February 9, 2021), 86 FR 9546 (February 16, 2021) (SR-NYSE-2021-10).

change a phone line subscriber; and miscellaneous telephone charges billed at \$106 per hour in 15 minute increments); and the monthly portion of all applicable annual fees for member organizations that (1) had at least one trading license, a physical trading Floor presence and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking and auction volumes during March 1 to March 20, 2020 or, if not a member organization during March 1 to March 20, 2020, based on the member organization's combined adding, taking, and auction volumes during its first month as a member organization on or after May 26, 2020, and (2) were unable to operate at more than 50% of their March 2020 on-Floor staffing levels or, for member organizations that began Floor operations after March 2020, are unable to operate at more than 50% of their Exchange-approved on-Floor staffing levels, both excluding part-time Floor brokers known as "flex brokers".

As set forth in footnotes 11 and 15 of the Price List, the waivers expired in June 2021 and have not been renewed. The Exchange accordingly proposes to delete footnote 11, which sets forth the equipment waivers described above, in its entirety, and to delete that portion of footnote 15 which addresses the waiver of the monthly portion of all applicable annual fees for member organizations, as obsolete.

## 2. Statutory Basis

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

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) & (5).

discriminate between customers, issuers, brokers or dealers.

#### The Proposed Change Is Reasonable

The Exchange believes that the proposed elimination of the monthly rebate of \$1,500 per security, up to a maximum of \$10,000, for DMMs with 30 or fewer assigned securities is reasonable because DMMs have underutilized the incentive. No DMM has qualified for the rebate in the past six months. The Exchange does not anticipate any member organization in the near future qualifying for the rebate that is the subject of this proposed rule change. The Exchange believes it is reasonable to eliminate requirements and credits when such incentives become underutilized. The Exchange also believes eliminating underutilized incentive programs would also simplify the Price List. The Exchange further believes that removing the optional DMM rebate and credit from the Price List would also add clarity and transparency to the Price List.

Further, the Exchange believes that it is reasonable to delete the expired waivers for NYSE Trading Floor-based member organizations from the Price List because the waivers are no longer offered and the fees are currently being charged. Deleting obsolete waivers would add greater clarity of the Exchange's rules and enable market participants to navigate the Exchange's Price List more easily.

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

The Exchange believes the proposal equitably allocates fees among its market participants because elimination of underutilized and ineffective 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. Similarly, the Exchange believes the proposal equitably allocates fees among its market participants because elimination of obsolete

waivers would apply to all similarly-situated member organizations on an equal basis. All such member organizations would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms.

#### The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal is not unfairly discriminatory because the proposed elimination of the optional DMM rebate and credits would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating optional DMM rebate and credits that are underutilized and ineffective would no longer be available to any DMM on an equal basis. Further, the proposal does not permit unfair discrimination because elimination of obsolete waivers would apply to all similarly situated member organizations on an equal basis. In addition, the Exchange believes that the proposed elimination of obsolete waivers would remove impediments to and perfect the mechanism of a free and open market by eliminating references to waivers that are no longer offered, thereby improving the clarity of the Exchange's rules and enabling market participants to more easily navigate the Exchange's Price List. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of underutilized and obsolete fees would make the Price List more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

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

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

Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>7</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 proposal relates solely to elimination of an underutilized rebate and obsolete waivers and, as such, would not have any impact on intra- or inter-market competition because the proposed change is solely designed to accurately reflect the services that the Exchange currently offers, thereby adding clarity to the Price List.

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>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</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>7</sup> 15 U.S.C. 78f(b)(8).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)<sup>10</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-2021-41 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-2021-41. 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>10</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-2021-41 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>11</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).