

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93263; File No. SR-NYSE-2021-58)

October 5, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reformat the Designated Market Makers Section of the NYSE 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 September 30, 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 Exchange. 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 reformat the section of the NYSE Price List setting forth Fees and Credits Applicable to Designated Market Makers (“DMMs”) without any substantive changes. The Exchange proposes to implement the fee changes effective immediately.⁴ The Exchange proposes to implement the fee changes effective immediately. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on September 24, 2021 (SR-NYSE-2021-55). SR-NYSE-2021-55 was subsequently withdrawn and replaced by this filing.

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 reformat the section of the NYSE Price List setting forth Fees and Credits Applicable to DMMs without any substantive changes. The Exchange proposes to implement the fee changes effective immediately.

The Exchange proposes the following non-substantive changes to reorganize and enhance the presentation in the Price List in order to add clarity and transparency, thereby making the Price List easier to navigate.

First, the Exchange would delete the current presentation of the DMM rates and requirements in its entirety. The Exchange would also delete footnotes 5, 6, 7, and * that would be relocated to new footnotes or the new section marked “General.” In order to maintain the current numbering of the footnotes, the Exchange would mark footnotes 5, 6 and 7 “Reserved.”

Second, the Exchange proposes a table presentation of the current DMM rates and requirements. The proposed changes would appear in the Price List in six tables.

Under the existing heading “Fees and Credits applicable to Designated Market Makers (“DMMs”)” and before the first table, the Exchange would include a heading marked “General” followed by 7 bullets, as follows.

Bullet 1 would clarify that “DMM Additional Quoting” refers to DMM increased quoting at the National Best Bid or Offer (“NBBO”) by at least 5% over the DMM’s quoting at the NBBO in September 2019, in at least 300 assigned securities. This information is unchanged from the current Price List.

Bullet 2 would clarify that “DMM Providing Liquidity” refer to DMM orders that provide liquidity to the NYSE as a percentage of the NYSE’s total intraday adding liquidity. This information is also unchanged from the current Price List.

Bullet 3 would clarify that “DMM NBBO Quoting” means DMM quoting at the NBBO.

Bullet 4 would clarify that “DMM Quoted Size” is calculated by multiplying the average number of shares of the applicable security quoted at the NBBO by the DMM by the percentage of time during which the DMM quoted at the NBBO.

Bullet 5 would clarify that “Less Active Securities” refers to securities that have an average daily consolidated volume (“Security CADV”) of less than 1,000,000 shares per month in the previous month.

Bullet 6 would clarify that “NYSE Quoted Size” is calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO.

The final bullet would clarify that “More Active Securities” refers to securities with a Security CADV in the previous month at least 1,000,000 (shares per month).

The information in these bullets would be transposed from the current Price List without change.

The first table would follow the proposed General section and appear under the phrase “Rebate Per Share”^{*} when adding liquidity, other than MPL Orders for stock price of at least

\$1.00 for DMM symbols that meet the following requirements:” from the current Price List. The table would summarize the current DMM rebates and requirements for providing liquidity to the Exchange as well as the additional credits available to DMMs if the additional quoting requirements are met. The requirements and credits are unchanged. The proposed table would appear as follows in the Price List:

	Minimum Requirements				
Security	DMM NBBO Quoting	DMM Quoted Size	DMM Providing Liquidity	Credit	Additional Credit if DMM Meets Additional Quoting Requirement
	10%	5%		\$0.0027	\$0.0004
	20%	10%	5% **	\$0.0031	\$0.0003
	30%	15%	15% **	\$0.0034	\$0.0001
	50%	25%	15% **	\$0.0035	
More Active Securities				\$0.0015	\$0.0012
Less Active Securities	15%			\$0.0035	\$0.0010
	30%			\$0.0045	
				\$0.0015	\$0.0020

Current footnote 6 would be transposed to new footnote * without change. The DMM providing liquidity requirement to qualify for the three eligible credits in a month where NYSE CADV is at least 5.5 billion shares and the notation that, unless otherwise stated, the NYSE total

intraday adding liquidity will be totaled monthly and includes all NYSE adding liquidity, by all NYSE participants, would be consolidated into a new footnote ** without substantive change.

The second table would set forth the rates and requirements for the DMM incremental rebate for more active securities. The chart and presentation would be unchanged from the current Price List, as follows:

<p>Incremental Rebate Per Share for each More Active Security with a stock price of at least \$1.00 on current rebates of \$0.0034 or less, in a month where NYSE CADV is equal to or greater than 4.0 billion shares, when adding liquidity with orders, other than MPL Orders, in such securities and the DMM has providing liquidity in all assigned securities as a percentage of NYSE CADV that is an increase of 0.30% more than the DMM’s April 2020 providing liquidity in all assigned securities as a percentage of NYSE CADV.</p>	<p>\$0.0002 per share in each eligible assigned More Active Security</p>
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The third table would appear under the phrase “DMM NBBO Setter Tier Credit – Incremental Rebate Per Share for securities with a stock price of at least \$1.00 in Tape A, B and C Securities, when adding liquidity, other than MPL Orders, for DMMs with providing liquidity in all assigned securities as a percentage of NYSE CADV of all assigned securities as follows” and would set forth the current DMM setter tier credits and requirements unchanged from the current Price List, as follows:

Minimum Requirement as a Percentage of NYSE CADV		Credit for Adding orders that set the NBBO	Credit for Adding orders that set the BBO	Credit for all other adding orders, other than MPL Orders
Providing liquidity	Providing liquidity setting the NBBO or BBO combined	Liquidity Indicator: ASP	Liquidity Indicator: ASB, AJP	
0.65%	0.120%		\$0.00005	
0.90%	0.225%	\$0.0002	\$0.000075	\$0.00005
1.25%	0.375%	\$0.0003	\$0.0001	\$0.0001

The fourth table would set forth other equity per share charges unchanged from the current Price List and would appear as follows under the heading “Other Equity Per Share Charges”:

Taking liquidity	\$0.00275
At the opening, at the opening only orders or executions at the close	No Charge
Routing Fee ^{***}	\$0.0030
Routing Fee – in any stock with a per share stock price below \$1.00	0.3% of the total dollar value of the transaction
Rebate per Share [*] – for all MPL orders in securities with a per share price of at least \$1.00 that add liquidity	\$0.00275
Rebate [*] when adding liquidity in shares of More Active Securities if the More Active Security has a stock price of less than \$1.00	\$0.0004
Rebate [*] when adding liquidity in shares of Less Active Securities if the Less Active Security has a stock price of less than \$1.00	\$0.0004

Current footnotes * and 5 would be transposed to footnote + and ***, respectively, without change. As noted above, footnote 6 would be transposed from the current Price List to new footnote * without change.

The fifth table would set forth the rates and requirements for the DMM rebate for less active securities. The rates and requirements would be unchanged from the current Price List and would appear as follows:

Security CADV in the previous month	Minimum Requirement for DMM Quoting at the NBBO and Credit per Symbol				
	15%	20%	30%	40%	50%
250,000 up to 1,500,000 shares	\$200.00	\$275.00	\$350.00	\$425.00	\$500.00

100,000 up to 250,000 shares	\$150.00	\$225.00	\$300.00	\$375.00	\$450.00
less than 100,000 shares	\$100.00	\$175.00	\$250.00	\$325.00	\$400.00

The final table would set forth the DMM share of the market data quote revenue, known as the Quoting Share, received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS unchanged from the current Price List and would appear as follows:

DMM share of the market data quote revenue (the “Quoting Share”) received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS with respect to any security that has a Security CADV of less than 1,500,000 shares in the previous month (regardless of whether the stock price exceeds \$1.00) in any month in which the DMM quotes at the NBBO at least 20% of the time in the applicable month as follows:		
Minimum requirement: DMM NBBO Quoting	15%	20%
DMM share of the Quoting Share if meeting the above DMM NBBO Quoting Requirement	50%	100%

As noted above, the Exchange is not proposing any substantive change to any current DMM fee, credit or requirement. The purpose of the proposed rule change is to make a non-substantive change to reorganize the presentation of the Price List in order to enhance its clarity and transparency, thereby making the Price List easier to comprehend and navigate.

The proposed changes are not otherwise intended to address any 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 the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes are reasonable and equitable because they are clarifying and non-substantive, and the Exchange is not changing any current fees or credits that apply to DMM trading activity on the Exchange or to routed executions. The changes are designed to make the Price List easier to read and more user-friendly. The Exchange believes that this proposed format will provide additional transparency of Exchange fees and credits for DMMs, to the benefit of market participants and the investing public. The Exchange believes the change 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.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

The Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all member organizations that are DMMs, and again, the Exchange is not making any changes to existing fees and credits. Finally, the Exchange believes that the reformatted Price List, as proposed, will be clearer and less confusing for investors and will eliminate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange believes that the proposed reformatted the Price List is equitable and not unfairly discriminatory because the resulting streamlined Price List would continue to apply to all DMMs as it does currently because the Exchange is not adopting any new fees or credits or removing any current fees or credits that impact DMMs. All DMMs would continue to be subject to the same fees and credits that currently apply to them.

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,⁸ 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.

Intramarket Competition. The Exchange's proposal to reformat its Price List will not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all DMMs would continue to be subject to the same fees and credits that currently apply to them. The Exchange notes that the proposal does

⁸ 15 U.S.C. 78f(b)(8).

not change the amount of any current fees or rebates, but rather makes clarifying and formatting changes, and therefore does not raise any competitive issues. To the extent the proposed rule change places a burden on competition, any such burden would be outweighed by the fact that a streamlined Price List would promote clarity and reduce confusion with respect to the fees and credits that DMMs would be subject to. 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 believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. Market share statistics provide ample evidence that price competition between exchanges is fierce, with liquidity and market share moving freely from one execution venue to another in reaction to pricing changes.

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)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

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)¹¹ 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-2021-58 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-2021-58. 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

¹¹ 15 U.S.C. 78s(b)(2)(B).

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-2021-58, 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).