

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93748; File No. SR-NYSE-2021-70)

December 10, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Price List to Eliminate the Underutilized Supplemental Liquidity Provider National Best Bid and Offer Setter Tier Credits

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 November 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 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 underutilized Supplemental Liquidity Provider (“SLP”) National Best Bid and Offer (“NBBO”) Setter Tier credits. 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 received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 eliminate the underutilized SLP NBBO Setter Tier credits.

The Exchange proposes to implement the rule change on December 1, 2021.

The Exchange adopted the SLP NBBO Setter Tier in August 2020 for securities with a per share price of \$1.00 or above that offers four sets of tiered credits for orders from SLPs that set the NBBO or provide other displayed liquidity in Tape A, B and C Securities, on a monthly basis, in addition to the tiered or non-tiered SLP credit for adding displayed liquidity. The purpose of the change was to incentivize member organizations that are SLPs to increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO, thereby encouraging higher levels of liquidity that would support the quality of price discovery on the Exchange consistent with the overall goal of enhancing market quality.⁴

The Exchange proposes to eliminate and remove the SLP NBBO Setter Tier credits from the Price List. The credits have been underutilized by member organizations insofar as only one SLP has achieved any of the four tiers since the tiers were adopted and that firm’s volume has declined over time. Moreover, no SLP has achieved the higher levels of liquidity or sent in

⁴ See Securities Exchange Act Release No. 89754 (September 2, 2020), 85 FR 55550, 55554 (September 8, 2020) (SR-NYSE-2020-71) (adopting SLP NBBO Setter credits applicable to SLPs and member organizations affiliated with SLPs); Securities Exchange Act Release No. 90947 (January 19, 2021), 86 FR 7138 (January 26, 2021) (SR-NYSE-2021-02) (restricting SLP NBBO Setter credits to member organizations that are SLPs).

additional liquidity to support the quality of price discovery on the Exchange that the Exchange expected when adopting the tiers. The Exchange does not anticipate that any additional member organization in the near future would qualify for the tiered credits that are the subject of this proposed rule change.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations 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,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed elimination of the underutilized SLP NBBO Setter Tier credits for member organizations that are SLPs is reasonable because member organizations have underutilized these incentives. As noted, only one SLP has achieved any of the four tiers since the tiers were adopted and that firm's volume has declined over time. Moreover, no SLP has achieved the higher levels of liquidity or sent in additional liquidity to support the quality of price discovery on the Exchange that the Exchange expected when adopting the tiers. The Exchange does not anticipate that any additional member organization in

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) & (5).

the near future would qualify for the tiered credits that are the subject of this proposed rule change. The Exchange believes it is reasonable to eliminate credits when such incentives become underutilized. The Exchange also believes eliminating underutilized incentives would add clarity and transparency to the Price List.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates fees among its market participants because the underutilized 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 the underutilized credits would apply to all similarly-situated member organizations that are SLPs 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 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 underutilized NBBO Setter Tier credits would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating credits that are underutilized and ineffective would no longer be available to any member organization on an equal basis. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of underutilized credits would make the Price List more accessible and transparent.

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,⁷ 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 to the elimination of an underutilized credits 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)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4⁹ 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

⁷ 15 U.S.C. 78f(b)(8).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

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)¹⁰ 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-2021-70 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-2021-70. 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

¹⁰ 15 U.S.C. 78s(b)(2)(B).

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-2021-70, 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.¹¹

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).