

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96583; File No. SR-NYSE-2022-56)

December 23, 2022

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 December 12, 2022, 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 and II 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) eliminate the underutilized alternative Tier 2 Adding Credit qualification requirements and the underutilized alternative Step Up Adding Tier 3 credits and requirements, and (2) revise and streamline the Supplemental Liquidity Provider (“SLP”) Adding Tiers by eliminating and combining the SLP step up tier and incremental tiers and replacing the discount for SLPs that are also Designated Market Makers (“DMMs”) with fixed levels. 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.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) eliminate the underutilized alternative Tier 2 Adding Credit qualification requirements and the underutilized alternative Step Up Adding Tier 3 credits and requirements, and (2) revise and streamline the SLP Adding Tiers by eliminating and combining the SLP step up tier and incremental tiers and replacing the discount for SLPs that are also DMMs with fixed levels.

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 December 12, 2022.⁴

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,

⁴ The Exchange originally filed to amend the Price List on December 1, 2022 (SR-NYSE-2022-55). On December 12, 2022, SR-NYSE-2022-55 was withdrawn and replaced by this filing.

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.”⁵

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.”⁶ Indeed, cash equity trading is currently dispersed across 16 exchanges,⁷ numerous alternative trading systems,⁸ and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.⁹ Therefore, no exchange possesses significant pricing power in the execution of

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

⁶ 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).

⁷ See Cboe U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangeshtml.html>.

⁸ 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>.

⁹ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

cash equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.¹⁰

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. 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.

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 changes are designed to continue to attract additional order flow to the Exchange by streamlining and revising the SLP Adding Tiers in order to further incentivize member organizations to submit additional displayed liquidity to, and quote aggressively in support of the price discovery process on, the Exchange.

Proposed Rule Change

The Exchange proposes to eliminate underutilized alternative requirements and credits and revise and streamline the SLP Adding Tiers by eliminating and combining the SLP step up tier and incremental tiers and replacing the current DMM discount with fixed levels. The Exchange believes that the proposed changes to the SLP Adding Tiers, taken together, will make the SLP Adding Tiers easier for member organizations that are SLPs, including member organizations that are also DMMs, to utilize and will continue incentivizing submission of

¹⁰ See id.

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.

Deletion of Underutilized Requirements and Credits

Current Tier 2 Adding Credit provides a \$0.0020 credit for orders, other than MPL and Non-Display Reserve orders, that add liquidity to the Exchange if a member organization (1) has an average daily volume (“ADV”) that adds liquidity to the Exchange during the billing month (“Adding ADV”),¹¹ that is at least 0.75% of NYSE CADV, and (2) executes MOC and LOC orders of at least 0.10% of NYSE CADV or executes an ADV during the billing month of at least one million shares in Retail Price Improvements Orders (“RPIs”). The purpose of providing an alternative way to qualify for the Tier 2 Adding Credit was to encourage member organizations to provide higher volumes of RPIs, which would contribute to the quality of the Exchange’s market, particularly for retail investors.¹²

The Exchange proposes to eliminate and remove the second method qualifying for the Tier 2 Adding Credit from the Price List. The method has been underutilized by member organizations insofar as member organizations qualifying for this tier are choosing not to provide higher volumes of RPIs. Currently, no member organizations qualify for the tiered credit based on the submission of RPIs. The Exchange does not anticipate that any other member organization in the near future would qualify for the tiered credit based on the alternative criteria proposed to be eliminated and that elimination of the alternative method is therefore appropriate.

¹¹ The terms “ADV” and “CADV” are defined in footnote * of the Price List.

¹² See Securities Exchange Act Release No. 72805 (August 11, 2014), 79 FR 48274 (August 15, 2014) (SR-NYSE-2014-42).

In addition, member organizations meeting the current Step Up Adding Tier 3 Adding Credit requirements¹³ and that also have (1) an adding ADV that is at least 0.45% of US CADV, and (2) Adding ADV setting the NBBO that is at least 0.18% of US CADV, qualify for the following credits instead of the existing credit combined with the incremental \$0.0006 credit:

- a \$0.0036 for adding orders that set the NBBO, or
- a \$0.0031 for all other displayed adding orders in Tape A, B and C Securities.

The purpose of these incremental credits was to continue incentivizing member organizations to increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO or a new BBO on the Exchange and encourage higher levels of liquidity,

¹³ Under current Step Up Adding Tier 3, the Exchange provides an incremental \$0.0006 credit in Tapes A, B and C securities for all orders from a qualifying member organization market participant identifier (“MPID”) or mnemonic that sets the National Best Bid or Offer (“NBBO”) or a new Best Bid or Offer (“BBO”) if the MPID or mnemonic: (1) has adding ADV in Tapes A, B and C Securities as a percentage of Tapes A, B and C CADV (“US CADV”), excluding liquidity added by a DMM, that is at least 50% more than the MPID’s or mnemonic’s Adding ADV in Tapes A, B and C securities in June 2020 as a percentage of US CADV, and (2) is affiliated with a SLP that has an Adding ADV in Tape A securities at least 0.10% of NYSE CADV, and (3) has Adding ADV in Tape A securities as a percentage of NYSE CADV, excluding any liquidity added by a DMM, that is at least 0.20%. For MPIDs or mnemonics of qualifying member organizations that are SLPs in a month where Tape A, Tape B and Tape C CADV combined equals or exceeds 13.0 billion shares per day for the billing month, CADV for that month will be subject to a cap of 13.0 billion shares per day for the billing month, and in a month where NYSE CADV equals or exceeds 5.5 billion shares per day for the billing month, NYSE CADV for that month will be subject to a cap of 5.5 billion shares per day for the billing month. Step Up Adding Tier 3 currently provides that the credit is in addition to the MPID’s or mnemonic’s current credit for adding liquidity and also does not count toward the combined limit on SLP credits of \$0.0032 per share provided for in the Incremental Credit per Share for affiliated SLPs whereby SLPs can qualify for incremental credits of \$0.0001, \$0.0002 or \$0.0003. As discussed below, the Exchange proposes to delete the incremental credits and retain the combined limit on SLP credits of \$0.0032 per share as set forth in current Bullet 2 associated with the SLP Adding Tiers. The phrase “Incremental Credit per Share for affiliated SLPs whereby SLPs can qualify for incremental credits of \$0.0001, \$0.0002 or \$0.0003” will accordingly be deleted from Step Up Adding Tier 3.

which supports the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality.¹⁴

The Exchange proposes to eliminate and remove the Step Up Tier 3 Adding Credit alternative requirements and associated credits from the Price List. The credits have been underutilized by member organizations insofar as the member organizations that have qualified for the alternative credits achieve higher credits under the current Step Up Tier 3 Adding tier and thus does not benefit from the incremental credits. The Exchange does not anticipate that any additional member organization in the near future would qualify for the incremental credits that are the subject of this proposed rule change.

Consolidation and Revision of SLP Adding Tiers

The Exchange proposes to streamline and revise the SLP Adding Tiers to make it easier for member organizations that are SLPs, including member organizations that are also DMMs, to utilize and to further 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. Specifically, the revision would consist of the elimination of the SLP Step Up Tier, the three SLP incremental tiers, the alternative method to qualify for current SLP Tier 5 (proposed SLP Tier 7), and the replacement of the current discount for SLPs that are also DMMs based on a DMM's percentage of NYSE CADV in DMM assigned securities for the prior quarter with fixed rates, the introduction of a new SLP Tier 1 and a new SLP Tier 5, and a revision of the credits for current SLP Tier 1, Tier 2, Tier 3 (proposed new SLP Tier 2, Tier 3 and Tier 4). The step up credits previously available pursuant to the

¹⁴ See Securities Exchange Act Release No. 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR-NYSE-2020-71).

deleted Step Up Tier and SLP incremental tiers would be subsumed in the revised SLP Adding Tiers to be substantially in line with the combined credits SLPs currently receive in order not to disadvantage any SLPs currently qualifying for the deleted SLP incremental tiers.

Deletion of Tiers and Alternative Qualification and Credits

The current SLP Step Up tier provides that an SLP adding liquidity to the Exchange receive a credit of \$0.0018, or \$0.0001 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, and (2) adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.085% of NYSE CADV over that SLPs' April 2018 adding liquidity for all assigned SLP securities in the aggregate taken as a percentage of NYSE CADV.¹⁵ The step up tier was intended to provide greater incentives for SLPs to add liquidity to the Exchange.¹⁶ The Exchange proposes to remove the separate SLP Step Up Tier from the Price List. The credits have been underutilized by SLPs insofar as the only SLPs that qualified for the Step Up Tier credits achieve higher credits under other SLP tiers. In addition, as discussed below, the

¹⁵ SLPs that are also DMMs and subject to Rule 107B(i)2)(A) must add 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 0.085% of NYSE CADV over that SLPs' April 2018 adding 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) taken as a percentage of NYSE CADV after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. As discussed below, as part of the streamlining of the SLP requirements, the Exchange proposes to replace the discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month with the requirement that SLPs that are also DMMs be registered as a DMM in at least 500 Tape A issues.

¹⁶ See Securities Exchange Act Release No. 83929 (August 23, 2018), 83 FR 44115 (August 29, 2018) (SR-NYSE-2018-37).

Exchange proposes a new SLP Tier 1 and SLP Tier 5 that, along with current SLP tiers, provide greater incentives for more SLPs to add more liquidity to the Exchange.

The Exchange similarly proposes to eliminate the three current SLP Incremental Tiers that provide incremental credits of \$0.0001, \$0.0002 and \$0.0003 to SLPs that (1) meet the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B, and (2) add liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.10%, 0.15%, or 0.25% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate as a percent of NYSE CADV in either the second quarter of 2018, the third quarter of 2018 or the month of January 2021, whichever is lowest. The current combined SLP credits are currently capped at \$0.0032 per share in a billing month as set forth in current footnote * in the column heading titled "Tiered Display Incremental Credit." Current footnote * would be deleted as well.

As discussed below, new SLP Tiers 1 and 5 along with renumbered SLP Tiers 2 (current SLP Tier 1), 3 (current SLP Tier 2) and 4 (current SLP Tier 3) reflect increased rates of \$.0001, \$.0002 and/or \$.0003 that seek to incorporate the deleted step up rates in a way that does not disadvantage current SLPs by providing a combined credit that is in line with the combined credits SLPs are qualifying for under the current tiers. Renumbered SLP Tiers 6 (current SLP Tier 4) and 7 (current SLP Tier 5) do not reflect the deleted SLP incremental credits.

Finally, under current SLP Tier 5 (proposed new SLP Tier 7), an SLP that is either (1) is in the first two calendar months as an SLP, or (2) adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.03% of NYSE CADV after averaging less an adding ADV of than 0.01% in each of the prior 3 months, after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior

month,¹⁷ would receive a credit of \$0.0029, or \$0.00105 if a Non-Displayed Reserve Order, if the SLP meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B. The alternative qualification method was intended to provide greater incentives for less active SLPs to add liquidity to the Exchange.¹⁸ The Exchange proposes to delete the alternative qualification as underutilized insofar as no SLP has qualified for current SLP Tier 5 based on this alternative criteria. The Exchange does not anticipate that any additional member organization in the near future would qualify for the incremental credits that are the subject of this proposed rule change.

DMM Fixed Rates For Calculating Tier-Based Credits

For SLPs that are also DMMs and subject to Rule 107B(i)(2)(A), the current SLP Tier 1, Tier 1A,¹⁹ Tier 2, Tier 3, Tier 4, Tier 5 and Step Up Tier requirements are after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month.

The Exchange proposes to replace the dynamic discount with fixed rates that would be set forth in a new column titled “SLP Adding ADV % Tape A CADV If DMM.” As discussed below in connection with the individual SLP tiers, the requirements would range from 0.08% to 0.55%. The Exchange believes that fixed percentages represent a clearer and easier to understand benchmark for determining the appropriate credit for SLPs that provide liquidity to

¹⁷ As discussed below, the Exchange proposes to eliminate the discount for SLPs that are also DMMs.

¹⁸ See Securities Exchange Act Release No. 83424 (June 13, 2018), 83 FR 28479 (June 19, 2018) (SR-NYSE-2018-27). When adopted, current SLP Tier 5 was SLP Tier 4.

¹⁹ SLP Tier 1A was merged into current SLP Tier 2 in 2021. See Securities Exchange Act Release No. 92898 (September 8, 2021), 86 FR 51201 (September 14, 2021) (SR-NYSE-2021-49). The bullets in the Price List referencing SLP Tier 1A were inadvertently not updated.

the Exchange rather than a monthly rolling calculation utilizing the most recent quarter's percentage of DMM CADV.

In addition, the Exchange proposes that the fixed rates would apply to SLPs that are also DMMs subject to Rule 107B(i)(2)(A) and that are registered as a DMM in at least 500 Tape A securities. Bullet 1 immediately beneath the chart setting forth the SLP Adding Tiers currently sets forth the requirements for SLPs that are also DMMs. As amended, Bullet 1 would become new footnote * in the new proposed column.

Proposed SLP Tier 1

Proposed SLP Tier 1 would be new and would seek to incorporate the equivalent the SLP Incremental Tier rates. As proposed, under new SLP Tier 1 an SLP adding liquidity to the Exchange in Tape A securities would receive a credit of \$0.0032, 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, and (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)²⁰ of an ADV of more than 1.00% (or 0.080% for SLPs that meet the SLP Cross Tape Tier 1 Incentive) of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and that is registered in at least 500 Tape A issues, more than 0.55% of NYSE CADV.

²⁰ Under Rule 107B, an SLP can be either a proprietary trading unit of a member organization ("SLP-Prop") or a registered market maker at the Exchange ("SLMM"). For purposes of the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated. However, for purposes of adding liquidity for assigned SLP securities in the aggregate, shares of both an SLP-Prop and an SLMM of the same member organization are included.

The Exchange believes that the new tier will continue to provide 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.

Proposed SLP Tier 2

Proposed SLP Tier 2 is current SLP Tier 1. Under current SLP Tier 1, an SLP adding liquidity to the Exchange in Tape A securities would receive a credit of \$0.0029, 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, and (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 0.90% (or 0.75% for SLPs that meet the SLP Cross Tape Tier 1 Incentive) of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a), more than 0.90% (or 0.75% for SLPs that are also DMMs and meet the SLP Cross Tape Tier 1 Incentive) after a discount of the percentage for the

prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month.

The Exchange proposes to increase the credit for displayed orders by \$.0002 to \$.0031. The credit for Non-Displayed Reserve Orders would remain unchanged. The higher credit is generally in line with the credit for SLPs that qualify with the current SLP Tier 1 and SLP Incremental Tier credits.

In addition, as proposed, an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and that is registered in at least 500 Tape A issues, would be required to add 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 0.45% of NYSE CADV. The tier's other requirements would remain unchanged.

Proposed SLP Tier 3

Proposed SLP Tier 3 is current SLP Tier 2. Under current SLP Tier 2, an SLP adding liquidity to the Exchange in Tape A securities would receive a credit of \$.00275, or \$.00105 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, and (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 0.60% of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a), more than 0.60% after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month.

The Exchange proposes to increase the credit by \$.0002 to \$0.00305. The credit for Non-Displayed Reserve Orders would remain unchanged. The higher credit is generally in line with the credit for SLPs that qualify with the current SLP Tier 3 and SLP Incremental Tier credits.

In addition, as proposed, an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and that is registered in at least 500 Tape A issues, would be required to add 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 0.36% of NYSE CADV. The tier's requirements and credit would otherwise remain unchanged.

Proposed SLP Tier 4

Proposed SLP Tier 4 is current SLP Tier 3. Under current SLP Tier 3, an SLP adding liquidity to the Exchange in Tape A securities would receive a credit of \$0.0026, or \$0.0009 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, and (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 0.45% of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a), more than 0.45% after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month.

The Exchange proposes to increase the credit by \$.0003 to 0.0029 credit. The credit for Non-Displayed Reserve Orders would remain unchanged. The higher credit is generally in line with the credit for SLPs that qualify with the current SLP Tier 3 and SLP Incremental Tier credits.

In addition, as proposed, an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and that is registered in at least 500 Tape A issues, would be required to add 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 0.24% of NYSE CADV. The tier's requirements and credit would otherwise remain unchanged.

Proposed SLP Tier 5

Proposed SLP Tier 5 would be new and would seek to incorporate credits from the current SLP Incremental Tier credits. As proposed, under new SLP Tier 5 an SLP adding liquidity to the Exchange in Tape A securities would receive a credit of \$0.0026, or \$0.0006 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, and (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 0.025% of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and that is registered in at least 500 Tape A issues, more than 0.18% of NYSE CADV.

The Exchange believes that the new tier will continue to provide 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.

Proposed SLP Tier 6

Proposed SLP Tier 6 is current SLP Tier 4. The requirements and credits for qualifying under proposed SLP Tier 6 would remain unchanged.

As proposed, an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and that is registered in at least 500 Tape A issues, would be required to add 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 0.08% of NYSE CADV in order to qualify for the credit of \$0.0023 or \$0.0006 if a Non-Displayed Reserve Order.

Proposed SLP Tier 7

Proposed SLP Tier 7 is current SLP Tier 5. As described above, the alternative method to qualify for this tier would be eliminated. The Exchange proposes no other changes to this tier. Since there is no volume requirement for the tier, there would be no associated NYSE ADV requirement for a SLP that is also a DMM. The Exchange would therefore add "No requirement in first 2 calendar months if DMM" to the new SLP Adding ADV column.

Changes to Chart Bullets

The Exchange proposes the following changes to the general information bullets immediately following the SLP Adding Tiers chart. As noted above, the current first bullet would become new footnote *.

The Exchange would add a new first bullet restating the first sentence in footnote * to the incremental tiers that the Exchange proposes to delete. The bullet would provide that combined SLP credits, including additional credits above, shall not exceed \$0.0032 per share in a billing month.

The current second bullet provides that SLPs that meet the requirements of one of the above tiers (Tiers 1A, 2, 3, 4 and the SLP Step Up Tier) and add liquidity in Tapes B and C securities of at least 0.25% of Tape B and Tape C CADV combined, will receive an additional credit of \$0.0001 if at SLP Step Up Tier, SLP Tier 3, SLP Tier 2, SLP Tier 1A or \$0.00005 if at SLP Tier 1, SLP Tier 4 and SLP Tier 5.

The Exchange would amend the bullet as follows. First, the clause enumerating the tiers would be deleted. Second, the tiers eligible for the \$0.0001 additional credit would be updated to reflect new SLP Tiers 3, 4, 5, 6, or 7. Finally, the tiers eligible for the \$0.00005 additional credit would be updated to reflect new SLP Tier 1 or 2. Further, the Exchange would add a new clause providing that these additional credits of \$0.0001 or \$0.00005, along with the credit for the SLP Tape A Tier in Tape B and C Securities that appears in the “Transaction Fees and Credits for Tape B and C Securities” section of the Price List, would be subject to a limit of \$0.0032 per share.

Finally, the current third bullet provides that in current SLP Tier 1 and Tier 5, SLPs 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 proposes to add SLP Tier 2 and update current SLP Tier 5 to proposed SLP Tier 7. As

proposed, Bullet 3 would provide that the additional \$0.00005 would be available to SLPs in SLP Tier 1, Tier 2 and Tier 7.

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,²¹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,²² 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, is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable Deletion of Underutilized Requirements and Credits

The Exchange believes that the proposed elimination of the underutilized alternative Tier 2 Adding Credit qualification requirements, the underutilized alternative Step Up Adding Tier 3 credits and requirements, and the underutilized alternative qualification requirements of current SLP Tier 5 are reasonable because member organizations have underutilized these incentives. As noted, the second method qualifying for the Tier 2 Adding Credit from the Price List has been underutilized by member organizations insofar as member organizations qualifying for this tier are choosing not to provide higher volumes of RPIs. Currently, no member organizations qualify

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(4) and (5).

for the tiered credit based on the submission of RPIs. Similarly, the Step Up Tier 3 Adding Credit alternative requirements and associated credits have been underutilized by member organizations insofar as the member organizations that qualified for the alternative credits achieve higher credits under the current Step Up Tier 3 Adding tier and thus does not benefit from the incremental credits. Finally, current SLP Tier 5 alternative qualification method has been underutilized insofar as no SLP has qualified for current SLP Tier 5 based on this alternative criteria. In each case, the Exchange does not anticipate that any additional member organization in the near future would qualify for the 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 also add clarity and transparency to the Price List.

Consolidation and Revision of the SLP Adding Tiers

The Exchange believes that the proposed changes to the SLP Adding Tiers, taken together, are reasonable. The Exchange believes that subsuming the separate step up and incremental tiers in the SLP adding tiers would make the SLP Adding Tiers easier for member organizations that are SLPs to utilize and will continue to provide an incentive for member organizations to send additional liquidity providing orders to the Exchange in Tape A securities. In addition, the Exchange believes that introducing new SLP Tiers 1 and 5 as part of the revision in order to subsume some of the deleted credits is also reasonable and would continue to provide an incentive for member organizations to send additional liquidity providing orders to the Exchange in Tape A securities. Since the proposed 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 either tier. The Exchange believes the proposed credits are 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. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange.

Similarly, replacing the dynamic discount with fixed rates in DMM assigned securities is reasonable. As noted above, the Exchange believes that fixed percentages represent a fairer benchmark for determining the appropriate credit for market participants that provide liquidity to the Exchange rather than a calculation utilizing the most recent quarter's percentage of DMM CADV. The Exchange believes that more accurate and fairer discounts would incentivize these market participants to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. Further, the Exchange believes that the proposed benchmark is equitable because it would apply to all similarly situated SLPs and provide credits that are reasonably related to the value of an exchange's market quality associated with higher volumes.

Finally, the Exchange believes that requiring SLPs that are DMMs subject to Rule 107B(i)(2)(A) to be registered as a DMM in at least 500 Tape A securities is also reasonable. Rule 107B(i)(2)(A) prohibits a DMM from acting as a SLP in the same securities in which it is a DMM, so requiring a SLP that is also a DMM to be registered as a DMM in at least 500 securities could incentivize smaller and new DMMs to register as a DMM in more securities. In

addition, two of the Exchange's three DMMs already meet the requirement, and the Exchange believes that the third DMM, plus future DMMs, could reach that number.

The Proposed Change Is an Equitable Allocation of Fees and Credits

Deletion of Underutilized Requirements and Credits

The Exchange believes the proposed elimination of the underutilized qualification requirements and credits equitably allocates fees among its market participants because the underutilized requirements 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 the underutilized requirements and 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.

Consolidation and Revision of the SLP Adding Tiers

The Exchange believes the proposal to consolidate and revise the SLP Adding Tiers equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace. As noted, the proposed changes will eliminate step up and incremental tiers and subsume those credits into seven adding tiers that the Exchange believes will make it easier for member organizations to utilize and will continue to provide an incentive for member organizations to send additional liquidity providing orders to the Exchange in Tape A securities. The Exchange believes that offering two new SLP adding tiers as part of the revision 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.

In addition, as noted, the Exchange believes that the proposed fixed rates for DMMs would result in a fairer benchmark for market participants that provide liquidity to the Exchange. The Exchange believes that that the proposed benchmark is equitable because it would apply to all similarly situated SLPs and provide credits that are reasonably related to the value of an exchange's market quality associated with higher volumes. Similarly, the Exchange believes that requiring SLPs that are DMMs subject to Rule 107B(i)(2)(A) to be registered as a DMM in at least 500 Tape A securities is also equitable since it would apply to all similarly situated SLPs that are also DMMs. As noted, two of the Exchange's three DMMs already meet the requirement, and the Exchange believes that the third could also reach that number.

The Proposed Fee Change Is Not Unfairly Discriminatory

Deletion of Underutilized Requirements and Credits

The Exchange believes that the proposed elimination of underutilized requirements and credits 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 alternative Tier 2 Adding Credit qualification requirements, the underutilized alternative Step Up Adding Tier 3

credits and requirements, and the underutilized alternative qualification requirements of current SLP Tier 5 would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating requirements and 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.

Consolidation and Revision of the SLP Adding Tiers

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

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 proposed cap for calculating monthly combined CADV for Step Up Adding Tier 3 credits for adding liquidity to the Exchange also does not permit unfair discrimination because the proposed changes would apply to all similarly situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating requirements and 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.

The Exchange believes its proposal to offer two new SLP adding tiers 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 requirements, who would all be eligible for the same credits 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.

The Exchange believes that the proposed fixed rates for DMMs is equitable because it would apply to all similarly situated SLPs that are also DMMs and provide credits that are reasonably related to the value of an exchange's market quality associated with higher volumes. 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 requirement on an equal basis. For similar reasons, the Exchange believes that requiring SLPs that are DMMs subject to Rule 107B(i)(2)(A) to be registered as a DMM in at least 500 Tape A securities is also not unfairly discriminatory. The proposed requirement would apply to all similarly situated SLPs that are also DMMs. As noted, two of the Exchange's three DMMs already meet the requirement, and the Exchange believes that the third could also reach that number.

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,²³ 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 relating to the elimination of an underutilized requirements and 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. Moreover, the proposed changes to SLP Adding Tiers 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. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. 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.”²⁴

Intramarket Competition. The proposed changes are in part designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to

²³ 15 U.S.C. 78f(b)(8).

²⁴ Regulation NMS, 70 FR at 37498-99.

incentivize market participants to direct 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 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 proposed change 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)²⁵ of the Act and subparagraph (f)(2) of Rule 19b-4²⁶ 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)²⁷ 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-2022-56 on the subject line.

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(2).

²⁷ 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-2022-56. 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-2022-56, 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.²⁸

Sherry R. Haywood,

Assistant Secretary.

²⁸ 17 CFR 200.30-3(a)(12).