

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97170; File No. SR-NYSE-2023-18)

March 20, 2023

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 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on March 13, 2023, 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 amend the charges for transactions that remove liquidity from the Exchange. The Exchange proposes to implement the fee changes effective March 13, 2023. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 amend the charges for transactions that remove liquidity from the Exchange.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-removing orders by offering further incentives for member organizations to send additional liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective March 13, 2023.⁴

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, 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

⁴ The Exchange originally filed to amend the Price List on March 1, 2023 (SR-NYSE-2023-16). SR-NYSE-2023-16 was withdrawn on March 13, 2023 and replaced by this filing.

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”).

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 17% market share.⁹ Therefore, no exchange possesses significant pricing power in the execution of 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. While it is not possible to know a firm’s reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow.

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/divisionsmarketregmrexchangesshtml.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/.

¹⁰ See *id.*

Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

In response to this competitive environment, the Exchange has established incentives for member organizations who submit orders that remove liquidity from the Exchange. These incentives offer a base remove fee that decreases as the member organization provides additional removing liquidity to the Exchange. As detailed below, the proposed higher fees are intended to encourage additional liquidity removing order flow to a public exchange, which benefits all market participants.

Proposed Rule Change

The Exchange currently offers a fee of \$0.00290 in Tape A securities and a fee of \$0.00285 for Tape B and C securities for non-Floor broker transactions if the member organization has an average daily volume (“ADV”) that adds liquidity to the Exchange during the billing month (“Adding ADV”),¹¹ excluding liquidity added by a Designated Market Maker (“DMM”), that is at least 2,000,000 ADV on the NYSE in Tape A securities. The Exchange proposes to increase the fee for removing in Tape B and C securities to \$0.00295. The current fee for removing in Tape A securities of \$0.00290 and the requirements to qualify for the fees would remain unchanged. Member organizations that do not qualify for the proposed fee based on the current requirements would receive the \$0.0030 base remove rate for all tapes.

In addition, the Exchange currently offers a fee of \$0.00285 in Tape A, B and C securities for non-Floor broker transactions if the member organization has an Adding ADV, excluding liquidity added by a DMM, that is at least 7,000,000 ADV in Tape A securities and

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

500,000 ADV in Tape B and Tape C securities combined during the billing month. The Exchange proposes to increase the fee for removing in Tape B and C securities to \$0.00290. The current fee for removing in Tape A securities of \$0.00285 and the requirements to qualify for the fees would remain unchanged. Member organizations that do not qualify for the current and proposed fees based on the current requirements would receive the \$0.0030 base remove rate for all tapes.

The Exchange believes that the proposed changes, taken together, will encourage submission of additional removing liquidity in Tape A, B and C securities to qualify for lower fees, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The proposal seeks to encourage member organizations that are meeting or exceeding current ADV requirements to send additional removing liquidity in order to meet the next level requirements and therefore qualify for lower fees. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, that remove 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. 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 increasing or decreasing their directing of orders to the Exchange.

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 that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹³ 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

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.”¹⁴

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Member organizations can choose from any one of the 16 currently operating registered exchanges, and numerous off-exchange venues, to route such order flow. Accordingly, competitive forces constrain exchange

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

¹⁴ See Regulation NMS, supra note 3, 70 FR at 37499.

transaction fees that relate to orders on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange by adjusting the incentives for all market participants to send additional order flow to a public exchange and increase the quality of order execution on the Exchange's market, which benefits all market participants.

More specifically, the Exchange believes that the proposed increase to the fees for transactions that remove liquidity from the Exchange in Tape A, B and C securities are reasonable. The purpose of these changes is to encourage additional liquidity on the Exchange by providing incentives for member organizations to send additional liquidity to qualify for the next incentive level, which would result in lower fees for removing liquidity for the member organization. The Exchange believes that the proposal will continue to encourage additional liquidity to a public exchange to qualify for lower fees for removing liquidity in Tape A, B and Tape C securities, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The proposal is thus reasonable because all member organizations would benefit from such increased levels of liquidity and from lower fees.

The Proposed Change Is an Equitable Allocation of Fees and Credits

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

The Exchange believes that, for the reasons discussed above, the proposed changes taken together, will encourage member organizations to send additional removing liquidity to achieve lower fees when removing liquidity in Tape A, B and Tape C securities from the Exchange, thereby increasing the number of orders that are executed on the Exchange, promoting price

discovery and transparency and enhancing order execution opportunities and improving overall liquidity on a public exchange. The Exchange also believes that the proposed change is equitable because it would apply to all similarly situated member organizations that remove liquidity in Tape A, B or Tape C securities. As previously noted, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Without having a view of member organization's 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 increasing or decreasing orders to the Exchange. The Exchange notes that the proposed fees from removing liquidity in Tape B and C securities are in line with what the Exchange charges in Tape A securities. The proposed fees are also in line with or better than what other exchanges charge. For example, the fee to remove liquidity at Cboe BZX is \$0.0030 per share.¹⁵ On MEMX, the fee to remove liquidity is \$0.0030 per share and \$0.00295 per share if the member (1) has an adding ADV of at least 0.50% of CADV and a removing ADV of at least 0.25% of CADV, or (2) a total ADV of at least 1.00% of CADV.¹⁶

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believe that the proposed rule is not unfairly discriminatory for the following reasons.

The Exchange believes that that the proposed increased fees for member organizations that remove liquidity in Tapes B and C securities will, taken together, encourage submission of

¹⁵ See Cboe BZX Equities Fee Schedule, available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.

¹⁶ See MEMX Fee Schedule, available at <https://info.memxtrading.com/fee-schedule/>.

additional liquidity in Tape A, B and Tape C securities to a public exchange in order to qualify for lower fees for removing liquidity, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The proposal does not permit unfair discrimination because the proposed fees for removing liquidity would be applied to all similarly situated member organizations and other market participants, who would all be eligible for the same fees on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. The Exchange believes it is not unfairly discriminatory to increase fees for removing liquidity in as the proposed fees would be provided on an equal basis to all member organizations. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume.

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

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

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

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

In accordance with Section 6(b)(8) of the Act,¹⁷ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that

¹⁷ 15 U.S.C. 78f(b)(8).

the proposed fee change 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 market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁸

Intramarket Competition. The Exchange believes the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to attract additional orders to the Exchange. The Exchange believes that the proposed changes would encourage market participants to direct their liquidity-removing orders to the Exchange. Greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage member organizations to send orders, thereby contributing towards a robust and well-balanced market ecosystem. The current and proposed fees would be available to all similarly situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

¹⁸ See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

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.

The Exchange believes that the proposed change 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.

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 has become effective upon filing pursuant to Section 19(b)(3)(A)¹⁹ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the 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.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

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-2023-18 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-2023-18. 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-2023-18 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.²⁰

Sherry R. Haywood
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).