

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98666; File No. SR-NYSE-2023-35)

September 29, 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 September 28, 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 (1) modify fee rates and requirements for transactions that remove liquidity from the Exchange; (2) offer a monthly rebate for Designated Market Maker (“DMM”) units with 150 or fewer assigned securities along with incentives for affiliated Supplemental Liquidity Providers (“SLPs”); and (3) eliminate an underutilized fee for transactions that remove liquidity from the Exchange in Tape B and C securities. The Exchange proposes to implement the fee changes effective September 25, 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.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) modify fee rates and requirements for transactions that remove liquidity from the Exchange; (2) offer a monthly rebate for DMM units with 150 or fewer assigned securities along with incentives for affiliated SLPs; and (3) eliminate an underutilized fee for transactions that remove liquidity from the Exchange in Tape B and C securities.

The proposed changes respond to the current competitive environment by incentivizing submission of additional liquidity in Tape A, B and Tape C securities to a public exchange and offering an additional incentive to smaller DMM units and affiliated SLPs to quote on the Exchange. The proposed incentive also seeks to attract potential new DMM units and affiliated SLPs in order to expand and diversify the pool of Exchange marker makers.

The Exchange proposes to implement the fee changes effective September 28, 2023.⁴

⁴ The Exchange originally filed to amend the Price List on September 1, 2023 (SR-NYSE-2023-31). SR-NYSE-2023-31 was withdrawn on September 13, 2023 and replaced by SR-NYSE-2023-32. SR-NYSE-2023-32 was withdrawn on September 22, 2023 and replaced by SR-NYSE-2023-33. SR-NYSE-2023-33 was withdrawn on September 28, 2023 and replaced by this filing.

Background

Current Market and 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

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

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/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

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. 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 the competitive environment described above, the Exchange has established incentives for its member organizations who submit orders that remove liquidity on the Exchange. The Exchange believes that the proposed changes, taken together, will 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 for member organizations. The Exchange has also established incentives for DMM units to quote at specified levels. The proposed fee change is designed to encourage market maker quoting by offering an additional incentive to smaller DMM units and affiliated SLPs to quote on the Exchange. The proposed change could also have the added benefit of potentially attracting new DMM units and affiliated SLPs to the Exchange.

https://markets.cboe.com/us/equities/market_share/.

¹⁰ See id.

Proposed Rule Change

The Exchange proposes to revise the rates and requirements for fees for transactions that remove liquidity from the Exchange and pay DMM units with 150 or fewer assigned securities a new, monthly rebate based on the number of assigned securities and time at the National Best Bid (“NBB”) and National Best Offer (“NBO,” together the “NBBO”) in the applicable security in the applicable month, along with a minimum SLP credit for adding displayed liquidity. The Exchange also proposes to eliminate an underutilized fee for transactions that remove liquidity from the Exchange in Tape B and C securities.

Charges for Removing Liquidity

Currently, the Exchange sets forth the fees for removing liquidity from the Exchange in Tape A securities in a different section of the Price List from fees for removing liquidity in Tape B and C securities, which are grouped with credits for adding liquidity in Tape B and C securities under their own heading in the Price List.

The Exchange proposes to modify the rates and requirements for certain fees for removing liquidity in Tapes B and C securities.

First, for non-Floor broker transactions that remove liquidity from the Exchange (i.e., when taking liquidity from the NYSE), the Exchange currently offers a fee of \$0.00290 in Tape A securities and a fee of \$0.00295 for Tape B and C securities where the member organization has an Adding ADV,¹¹ excluding liquidity added by a DMM, that is at least 2,000,000 ADV on the NYSE in Tape A securities.

The Exchange proposes to change the fee for Tape A securities and revise the requirements to qualify for the fees, as follows. As proposed, for non-Floor broker transactions

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

that remove liquidity from the Exchange, the Exchange would offer a fee of \$0.00300 in Tape A securities and the current fee of \$0.00295 for Tape B and C securities where the member organization has 0.05% Adding ADV of Tape A CADV.

Second, the Exchange currently offers a fee of \$0.00285 in Tape A securities and a fee of \$0.00290 in Tape B and C securities for non-Floor broker transactions if the member organization has Adding ADV, excluding liquidity added by a DMM, that is at least 7,000,000 in Tape A and 500,000 ADV in Tape B and Tape C combined during the billing month.

The Exchange proposes to change the fee for Tape A securities and revise the requirements to qualify for the fees, as follows. As proposed, for non-Floor broker transactions that remove liquidity from the Exchange, the Exchange would offer a fee of \$0.00295 in Tape A securities and the current fee of \$0.00290 for Tape B and C securities where the member organization has 0.10% Adding ADV of Tape A CADV and 0.007% Adding ADV in Tape B and Tape C CADV combined during the billing month.

Third, the Exchange currently offers a fee of \$0.0028 in Tape A securities and a fee of \$0.00285 Tape B and C securities for non-Floor broker transactions if the member organization has Adding ADV, excluding liquidity added by a DMM, that is at least 14,000,000 ADV in Tape A securities and 750,000 ADV in Tape B and Tape C securities combined during the billing month.

The Exchange proposes to change the fee for Tape A securities and revise the requirements to qualify for the fees, as follows. As proposed, for non-Floor broker transactions that remove liquidity from the Exchange, the Exchange would offer a fee of \$0.00290 in Tape A securities and the current fee of \$0.00285 for Tape B and C securities where the member

organization has 0.30% Adding ADV in Tape A CADV and 0.01% Adding ADV in Tape B and Tape C CADV combined during the billing month.

Finally, the Exchange proposes a new tier for non-Floor broker transactions that remove liquidity from the Exchange. As proposed, member organizations would be eligible for a fee of \$0.00285 in Tape A, Tape B and Tape C securities for non-Floor broker transactions if the member organization (1) has 1.05% Adding ADV in Tape A CADV and 0.01% Adding ADV in Tape B and Tape C CADV combined during the billing month, or (2) is affiliated¹² with a DMM.

The purpose of this proposed change is to encourage member organizations to send liquidity to the Exchange. Specifically, the first proposed qualification method seeks to encourage member organizations to send adding liquidity as way to achieve eligibility for a lower remove fee, which could in turn incentivize those member organizations to send removing liquidity to the Exchange in response to the lower remove fee. The second proposed qualification method seeks to encourage member organizations that are affiliated with new and existing DMM units to send removing liquidity to the Exchange as a way to capture the lower remove fee. Because the tier would be new, the Exchange does not know how many member organizations could qualify based on the proposed Adding ADV criteria set out in the first prong. Similarly, there are 3 member organizations affiliated with a DMM unit that would be eligible for the lower remove based on that affiliation. The Exchange does not know, however, whether any of these member organizations would send sufficient Adding ADV volume to the Exchange to be eligible for the proposed fee based on the first qualification method. Whether member organizations become eligible for the proposed fee based on the proposed Adding ADV criteria

¹² For purposes of the Price List, “affiliate” means any member organization under 75% common ownership or control of that member organization. See NYSE Price List, General, II(c), available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

or DMM affiliation, the Exchange believes that both ways incentivize greater participation on the Exchange and are thus reasonable. In particular, the Exchange believes that it is reasonable to offer a lower remove fee based on affiliation with a DMM unit because if the affiliated member organization does not qualify for the fee based on adding liquidity, the member organization's eligibility based on affiliation could provide an incentive to send removing liquidity to the Exchange in response to the lower remove fee. The Exchange believes that eligibility for the proposed fee based on affiliation with a DMM unit is not unfairly discriminatory because member organizations that are not affiliated with a DMM unit can still qualify for the lower remove fee by sending adding liquidity to the Exchange and meeting the ADV requirements for all Tapes set out in the first qualification method. The Exchange also notes that it currently offers discounts to member organizations affiliated with DMM units through its SLP tiered pricing. Specifically, SLPs that are also DMMs subject to Rule 107B(h)(2)(A)¹³ and that are registered as a DMM in at least 500 Tape A issues have lower requirements for Adding Liquidity to qualify for SLP Adding Tiers 1-6.¹⁴

The Exchange proposes an approach for the removing tiers that will compare the liquidity added by member organizations from one based on ADV to a percentage threshold based on Tape A CADV and combined Tape B and C CADV. As proposed, the percentage threshold will adjust each calendar month based on the US average daily consolidated share volume in Tape A securities and Tape B and Tape C securities CADV for that month. By allowing tiers to move in sync with consolidated volume, the proposed change will provide a more consistent floor against

¹³ Rule 107B(h)(2)(A) prohibits a DMM from acting as a SLP in the same securities in which it is registered as a DMM. The Exchange proposes to correct the reference in the Price List, which incorrectly cites subsection (i).

¹⁴ See NYSE Price List, SLP Adding Tiers, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

which to measure member organizations' adding volume on the Exchange. In addition, the proposed change will provide a more straightforward way to communicate floating volume tiers while maintaining a minimum threshold, an approach similar to that adopted by other exchanges.¹⁵ Although the percentage thresholds will result in lower minimum share volume requirements for the removing tiers when consolidated volumes are lower, they will also result in higher minimum share volume requirements when consolidated volumes are higher.

The Exchange notes the proposed percentages of CADV are comparable to the current ADV levels. For example, Tape A CADV in May 2023 was 4 billion shares. The current Tape A Add ADV requirements of 14 million shares ADV, 7 million shares ADV, and 2 million shares ADV would equate to 12 million shares ADV (using 0.30% of Tape A CADV), 4.0 million shares ADV (using 0.10% of Tape A CADV), and 2 million shares ADV (using 0.05% of Tape A CADV), respectively. The Exchange further notes that changing the 7 million share requirement to 0.10% of Tape A CADV represents a significant reduction in the requirement, which the Exchange believes should encourage more member organizations to participate in that tiered pricing.

The Exchange believes that the proposed changes, taken together, will incentivize submission of 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. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange.

¹⁵ For example, NYSE Arca, Inc. ("NYSE Arca") charges fees for removing liquidity of \$0.0030, or \$0.0029 in Tape B securities for ETP Holders meeting the requirements of Adding Tiers 1 - 4, or \$0.0029 in Tape C securities for ETP Holders meeting the requirements of Tape C Tier 1. See NYSE Arca Equities Fees and Charges, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Because the proposed reconfiguration involves the introduction of new fees, incentives, and/or new requirements, the Exchange does not know how many member organizations could qualify for the new remove fees based on their current trading profile on the Exchange and if they choose to direct order flow to the NYSE. In short, 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. 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.

Small DMM Incentive

The Exchange proposes to pay DMM units with 150 or fewer assigned securities a new, monthly rebate based on the number of assigned securities and time at the NBBO in the applicable security in the applicable month. The proposed rebate would be payable for each security assigned to such a DMM in the previous month (regardless of whether the stock price exceeds \$1.00) for which that DMM provides quotes at the NBBO at least 15% of the time in the applicable month, which the Exchange proposes to define in the Price List as the "Incentive Quoting Requirement").¹⁶ The proposed monthly rebate would be in addition to the current rate on transactions and would be prorated to the number of trading days in a month that an eligible security is assigned to a DMM.

¹⁶ For purposes of the Price List, DMM NBBO Quoting means DMM quoting at the NBBO. See NYSE Price List, General, third bullet, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf. Time at the NBBO or "inside" is calculated as the average of the percentage of time the DMM unit has a bid or offer at the inside. Reserve or other non-displayed orders entered by the DMM are not included in the inside quote calculations.

As proposed, a DMM unit that has at least 1 and not more than 24 assigned securities that meets the Incentive Quoting Requirement would be eligible for a monthly rebate of \$250 per qualifying symbol.

A DMM unit that has a least 25 and no more than 74 assigned securities that meets the Incentive Quoting Requirement would be eligible for a monthly rebate of \$500 per qualifying symbol. SLPs affiliated with a DMM unit that has between 25 and 74 assigned securities that meet the Incentive Quoting Requirement are eligible for a minimum display credit for SLP Adding of \$0.0023 in SLP symbols that meet the 10% average quoting requirement in an assigned security pursuant to Rule 107B.¹⁷

Finally, a DMM unit that has at least 75 but no more than 150 assigned securities that meets the Incentive Quoting Requirement would be eligible for a monthly rebate of \$1,000 per qualifying symbol. SLPs affiliated with a DMM unit that has between 75 and 150 assigned securities that meet the Incentive Quoting Requirement are eligible for a minimum display credit for SLP Adding of \$0.0026 in SLP symbols that meet the 10% average quoting requirement in an assigned security pursuant to Rule 107B.

For example, assume a DMM has 35 assigned securities. Further assume the DMM quotes at the NBBO at least 15% of the time in 30 of those assigned securities and quotes under the NBBO 15% of the time in the remaining 5 assigned securities. For a billable month in those 30 assigned securities that meet the Incentive Quoting Requirement, the DMM would receive a

¹⁷ Under Rule 107B, a 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. SLPs affiliated with a DMM unit that has between 1 and 24 assigned securities would not be eligible for a minimum display credit for SLP Adding. It should be noted that eligible SLPs would receive the better of the proposed minimum display credit or the applicable current SLP tiered credit.

per qualified symbol credit of \$500, with a total combined credit of \$15,000 (30 securities x \$500). In addition, a SLP affiliated with that DMM would receive a minimum credit of \$0.0023 for displayed adding, and would receive a higher credit if that SLP qualified for higher credits under the SLP Tiers.

The proposed rule change is designed to provide smaller market makers (i.e., DMM units with 150 or fewer assigned securities) with an added incentive to quote in their assigned securities at the NBBO at least 15% of the time in a given month and increase SLP displayed adding volume. As described above, member organizations have a choice of where to send order flow. The Exchange believes that incentivizing DMM units on the Exchange to quote at the NBBO more frequently could attract additional orders to the Exchange and contribute to price discovery which benefits all market participants. In addition, additional liquidity-providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation. Moreover, the Exchange believes the proposed change could have the added benefit of attracting additional DMM units to the Exchange. Currently, the Exchange has three DMM units, only one of which has fewer than 150 assigned securities and therefore could qualify for the rebate.¹⁸ The Exchange cannot predict with certainty whether and how many member organizations would avail themselves of the opportunity to become an Exchange DMM unit. However, the Exchange believes that the proposed rebate could incentivize additional firms to become DMM units on the Exchange by increasing incentives for new and smaller entrants. Finally, the Exchange believes that the proposed minimum display credits for SLPs affiliated with a DMM unit is reasonable because it

¹⁸ In contrast, there are 14 competing Lead Marker Makers on NYSE Arca. See <https://www.nyse.com/markets/nyse-arca/membership>.

would incentivize greater adding liquidity by SLPs affiliated with a DMM unit, thereby contributing to depth and market quality on the Exchange.

Deletion of Underutilized Remove Tier Fee

In August 2019, the Exchange adopted a new, lower fee of \$0.0026 per share for removing liquidity from the Exchange in both Tapes B and C securities as an alternative way for member organizations to qualify for the Remove Tier for Tape B and C Securities. The purpose of the change was to incentivize member organizations to remove additional liquidity from the Exchange, thereby increasing the number of orders adding liquidity that are executed on the Exchange and improving overall liquidity on a public exchange, resulting in lower costs for member organizations that qualify for the rate.

The Exchange proposes to eliminate and remove the fee of \$0.0026 per share for removing liquidity from the Exchange in both Tapes B and C and the associated requirements. The fee has been underutilized by member organizations insofar as only three have achieved the fee since it was adopted. The Exchange does not anticipate that any additional member organization in the near future would qualify for the tiered fee that is the subject of this proposed rule change.

The proposed change is 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,¹⁹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,²⁰ 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

As discussed above, 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.”²¹ 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.”²²

Charges for Removing Liquidity

The Exchange believes that the proposal to revise the rates and requirements for fees for transactions that remove liquidity from the Exchange are reasonable. The purpose of these

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4) & (5).

²¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

²² 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).

changes is to encourage additional liquidity on the Exchange because market participants benefit from the greater amounts of displayed liquidity present on a public exchange. The Exchange believes that the proposed modifications to the qualification requirements, including replacing a fixed volume number with a percentage of Adding ADV, and the new fees will incentivize additional liquidity in Tape B and Tape C securities to a public exchange to qualify for lower fees for removing liquidity on those tapes, 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. As noted, the Exchange believes that replacing a fixed volume number with a percentage of Adding ADV is reasonable because the proposed percentages of Adding ADV are comparable to the current levels with one exception that represents a significant reduction in the requirement, which the Exchange believes is reasonable because it should encourage more member organizations to participate in that tiered pricing.

With respect to the addition of percentage ADV thresholds to the existing share thresholds for the remove pricing tiers, the Exchange believes that the change is reasonable because the levels of liquidity provision required to receive the applicable credits will move month to month with respect to the levels of market volumes. The Exchange believes the levels of activity required to achieve higher tiers will be generally consistent with existing requirements for these tiers.

For the same reasons, the Exchange believes that it is reasonable to offer a lower fee of \$0.00285 fee in Tape A, B and C securities for non-Floor broker transactions if the member organization has 1.05% Adding ADV in Tape A CADV and 0.01% Adding ADV in Tape B and Tape C CADV combined during the billing month, or is affiliated with a DMM unit. As noted

above, the proposed fee is designed to encourage member organizations to send liquidity to the Exchange, which would be accomplished by member organizations sending adding liquidity to the Exchange to meet the proposed tier requirements, or based on affiliation with a DMM unit. In either case, by qualifying for the lower remove fee, the Exchange believes the member organization would have an incentive to send removing liquidity to the Exchange. The Exchange believes both methods are a reasonable way to increase liquidity on a public exchange. As noted, because the proposed fee is new, the Exchange does not know how many member organizations would qualify for the proposed fee based on their current Exchange trading profile. Offering the proposed fee to a small number of member organizations based on affiliation with a DMM unit would be a reasonable way to encourage those member organizations to send removing liquidity to the Exchange in order to qualify for the lower fee irrespective of their trading profile. Moreover, the Exchange believes the alternative qualification method based on affiliation alone is reasonable and fair because member organizations that do not qualify for the proposed lower fee based on DMM affiliation can still qualify by meeting the proposed adding ADV requirements for all Tapes. As noted above, the Exchange currently has lower requirements for SLPs that are also DMMs subject to Rule 107B(h)(2)(A) and that are registered as a DMM in at least 500 Tape A issues in order to qualify for SLP Adding Tiers 1 - 6.²³ In addition, DMM units are currently eligible for a 0.00275 charge for removing liquidity from the Exchange.²⁴ The Exchange believes that offering the proposed tiered remove fee to member

²³ See NYSE Price List, SLP Adding Tiers, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

²⁴ See NYSE Price List, Other Equity Per Share Charges, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

organizations that are affiliated with a DMM unit could incentivize other member organizations to become DMM units in order for their DMM unit affiliates to become eligible for the fee.

Small DMM Incentive

The Exchange believes that the proposal to offer an additional rebate to a DMM with 150 or fewer assigned securities if it increases its quoting at the NBBO, and associated incentives for affiliated SLPs, is a reasonable means to improve market quality, attract additional order flow to a public market, and enhance execution opportunities for member organizations on the Exchange, to the benefit of all market participants. The Exchange notes that the proposal would also foster liquidity provision and stability in the marketplace and reduce smaller DMM's reliance on transaction fees. The proposal would also reward DMM units, who have greater risks and heightened quoting and other obligations than other market participants. The proposed change is also a reasonable attempt to potentially attract additional DMM units to the Exchange by providing financial incentives for smaller firms to become DMM units. Moreover, offering minimum display credits for SLPs affiliated with a DMM unit is a reasonable method to incentivize greater adding liquidity by SLPs that are affiliated with a DMM unit, thereby contributing to depth and market quality on the Exchange. The Exchange further believes that it is reasonable to offer the proposed minimum display credits to SLPs affiliated with an DMM unit because the proposed credits are in line with the current adding credits for all SLPs.²⁵

Deletion of Underutilized Remove Tier Fee

The Exchange believes that the proposed elimination of the underutilized remove tier fee is reasonable because member organizations have underutilized this fee. As noted, only three

²⁵ See NYSE Price List, SLP Provide Tiers, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf. See note 16, *infra*.

member organizations have achieved the fee since it was adopted. The Exchange does not anticipate that any additional member organization in the near future would qualify for the tiered fee that is the subject of this proposed rule change. The Exchange believes it is reasonable to eliminate fee 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

Charges for Removing Liquidity

The Exchange believes that, for the reasons discussed above, the proposed changes taken together, will incentivize member organizations to send additional adding liquidity to achieve lower fees when removing liquidity in Tape A, Tape 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 from the Exchange. Moreover, the Exchange believes that providing a new lower fee when removing liquidity from the Exchange based on Adding ADV in all Tapes or affiliation with a DMM is equitable because it the proposed lower fee would apply equally to all similarly situated member organizations. The Exchange believes that alternatively providing the lower fee based on affiliation with a DMM unit is also equitable because it would apply to all similarly situated member organizations that are affiliated with a DMM unit. Further, the proposed alternative qualification is equitable because a member organization that would not qualify for the lower fee based on affiliation has the ability to qualify for the lower fee based on the proposed Adding ADV criteria.

The proposed change also is equitable because it would be in line with the applicable rates on other marketplaces.²⁶ As previously noted, the Exchange operates in a competitive environment, particularly as it relates to attracting orders, which add or 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. Because the proposed reconfiguration of the fees involves the introduction of new requirements and/or new fees, the Exchange does not know how many member organizations could qualify for the new remove fees based on their current trading profile on the Exchange and if they choose to direct order flow to the NYSE. As noted, although there are currently 3 member organizations affiliated with a DMM unit that could qualify for the proposed new \$0.00285 fee in all Tapes, the Exchange does not know whether any of these member organizations or how many additional member organizations could qualify for the proposed rate based on the member organization's trading profile on the Exchange. Hence, 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.

Small DMM Incentive

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace and reducing smaller DMM's reliance on transaction fees. Moreover, the proposal is an equitable allocation of fees because it would reward DMM units for their increased risks and heightened quoting and other

²⁶ For example, NYSE Arca, Inc. ("NYSE Arca") charges fees for removing liquidity of \$0.0030, or \$0.0029 in Tape B securities for ETP Holders meeting the requirements of Adding Tiers 1 - 4, or \$0.0029 in Tape C securities for ETP Holders meeting the requirements of Tape C Tier 1. See NYSE Arca Equities Fees and Charges, available at https://www.nyse.com/publicdocs/nyse/markets/nysearca/NYSE_Arca_Marketplace_Fees.pdf.

obligations. As such, it is equitable to offer smaller DMM units an additional flat, per security credit for orders that add liquidity. Moreover, the proposal is an equitable allocation of fees because it would reward DMM units for their increased risks and heightened quoting requirements and other obligations. As such, it is equitable to offer smaller DMM units an additional flat, per qualified security credit for orders that add liquidity. The proposed rebate is also equitable because it would apply equally to any DMM unit of a certain size. The Exchange notes that at this time there is currently only one DMM unit that could qualify for the proposed rebate based on its number of assigned securities. The Exchange believes that the proposal would provide an equal incentive to any member organization to maintain a DMM unit, and that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations would be eligible for the same rebate. Similarly, the Exchange believes that it is equitable to offer minimum display credits to SLPs affiliated with a DMM because the proposed credits would apply to all similarly situated member organizations that are affiliated with a DMM unit on a full and equal basis. Further, the Exchange believes the proposed minimum display credits are equitable because, as noted, the proposed rates are in line with the current adding tiered rates for all SLPs and thus an SLP that is not affiliated with a DMM unit could qualify for comparable rates by satisfying the current SLP adding requirements.

Deletion of Underutilized Remove Tier Fee

The Exchange believes the proposal equitably allocates fees among its market participants because the underutilized fee the Exchange proposes to eliminate would be eliminated in its 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 fee would apply to all similarly-situated

member organizations that remove liquidity from the Exchange 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

Charges for Removing Liquidity

The Exchange believes that that reconfiguring the fee for member organizations that remove liquidity from the Exchange will incentivize submission of additional liquidity in Tape B and Tape C securities to a public exchange to qualify for the 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 new rates for removing liquidity in Tape A, B and C securities would be applied to all similarly situated member organizations and other market participants, who would all be eligible for the same credits on an equal basis. Moreover, the new lower fee when removing liquidity also 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 proposed alternative criteria would be applied to all similarly situated member organizations, who would all be eligible for the same credit on an equal basis. Member organizations could qualify the new lower rate either by meeting the proposed Adding ADV requirements in all Tapes or based on affiliation with a DMM unit. In both cases, the proposal does not permit unfair discrimination because the proposed criteria apply equally to all similarly situated member organizations, and all member organizations eligible for the new fee under either criteria would be eligible for the same credit on an equal and non-discriminatory basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

The Exchange believes it is not unfairly discriminatory to provide higher fees for removing liquidity in Tape A securities insofar as the proposed fees would be provided on an equal basis to all member organizations that remove liquidity by meeting the tiered requirements. Further, the Exchange believes the proposed fee would provide an incentive for member organizations to remove additional liquidity from the Exchange in Tape B and C securities. 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. As noted, the proposed change also is not unfairly discriminatory because it would be in line with the applicable rates on other marketplaces.²⁷ It should be noted that 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. Lastly, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

Small DMM Incentive

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. For example, member organizations could display quotes on competing exchanges rather than quoting sufficiently on the Exchange to meet the 15% NBBO quoting requirement. The Exchange believes that offering a rebate for DMM units with 150 or fewer assigned securities in the previous month would provide a further incentive for smaller DMM units to quote and trade their assigned securities on the Exchange, and will generally allow the Exchange and DMM units to better compete for order flow, thus

²⁷ See note 13, supra.

enhancing competition. The Exchange also believes that the requirement of 150 or fewer assigned securities to qualify for the credit is not unfairly discriminatory because it would apply equally to all existing and prospective member organizations with 150 or fewer assigned securities that choose to maintain a DMM unit on the Exchange. The Exchange does not believe that it is unfairly discriminatory to offer incentives based on a maximum threshold. The Exchange notes that it currently offers incentives that apply equally to all member organizations that cannot or choose not to exceed a certain volume threshold.²⁸ The Exchange believes that the proposal would provide an equal incentive to any member organization to maintain a DMM unit, and that the proposal would not be unfairly discriminatory because the threshold-based incentive would be offered on equal terms to all similarly situated member organizations. Finally, the proposed minimum display credits for SLPs affiliated with a DMM unit 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 proposed minimum display credits would be applied to all similarly situated SLPs that are affiliated with a DMM unit, who would all be eligible for the same credit on an equal and non-discriminatory basis. Moreover, the proposal does not permit unfair discrimination because SLPs that are not affiliated with a DMM unit can qualify for comparable rates by satisfying the current SLP adding requirements. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

Deletion of Underutilized Remove Tier Fee

The Exchange believes that the proposal is not unfairly discriminatory because it neither

²⁸ For instance, the first 750,000 ADV of the aggregate of executions at the close by a member organization are not charged. See NYSE Price List, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

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 fee would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating a fee that is 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 an underutilized fee would make the Price List more accessible and transparent.

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,²⁹ 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 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. 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."³⁰

Intramarket Competition. The proposed change is designed to attract additional order

²⁹ 15 U.S.C. 78f(b)(8).

³⁰ Regulation NMS, 70 FR at 37498-99.

flow and new potential DMM units to the Exchange. The Exchange believes that the proposed changes, including the DMM rebate that would continue to incentivize smaller DMM units to quote at the NBBO more frequently, would continue to incentivize market participants to direct order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more execution opportunities on the Exchange and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed fees and rebate would be available to all similarly-situated market participants, and, as such, the proposed changes 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 has become effective upon filing pursuant to Section

19(b)(3)(A)³¹ 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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2023-35 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-2023-35. This file number should be included on the subject line if email 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 (<https://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

³¹ 15 U.S.C. 78s(b)(3)(A).

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2023-35 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,

Assistant Secretary.

³² 17 CFR 200.30-3(a)(12).