

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101111; File No. SR-NYSE-2024-59)

September 19, 2024

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 13, 2024, 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 current Step Up Tier 3 Adding Credit, and (2) adopt a new pricing tier for Supplemental Liquidity Providers (“SLP”) based on Step Up Tier 3 that offers incremental tiered credits for SLP orders providing displayed liquidity in Tapes A, B and C Securities that set the National Best Bid and Offer (“NBBO”) or BBO. The Exchange proposes to implement the fee changes effective September 13, 2024. 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) eliminate the current Step Up Tier 3 Adding Credit, and (2) adopt a new pricing tier for SLPs based on Step Up Tier 3 that offers incremental tiered credits for SLP orders providing displayed liquidity in Tapes A, B and C Securities that set the NBBO or BBO.

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 liquidity to the Exchange, especially aggressively priced orders that improve the market by setting the NBBO or BBO on the Exchange.

The Exchange proposes to implement the fee changes effective September 13, 2024.⁴

Background

Current Market and Competitive Environment

⁴ The Exchange originally filed to amend the Price List on September 3, 2024 (SR-NYSE-2024-52). SR-NYSE-2024-52 was withdrawn on September 13, 2024 and replaced by this filing.

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 20% 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

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

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 this competitive environment, the Exchange has established incentives for its member organizations who submit orders that provide liquidity on the Exchange. The proposed change is designed to continue to attract additional order flow to the Exchange by further incentivizing member organizations that are SLPs 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 and remove the Step Up Tier 3 Adding Credit from the Price List and adopt tiered incremental credits for SLPs based on the Step Up Tier 3 Adding Credit that reflect streamlined requirements and higher credits.

Currently, 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

¹⁰ See id.

(“MPID”)¹¹ or mnemonic that sets the NBBO¹² or a new BBO¹³ if the MPID or mnemonic:

- has adding average daily volume (“ADV”) in Tapes A, B and C Securities as a percentage of Tapes A, B and C CADV,¹⁴ excluding any 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 Tapes A, B and C CADV, and
- is affiliated with an SLP that has an Adding ADV in Tape A securities at least 0.10% of NYSE CADV, and
- 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%

The credit is in addition to the MPID’s or mnemonic’s current credit for adding liquidity and 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 noted above, the Exchange proposes to eliminate this credit and related requirements in their entirety and adopt a more streamlined SLP incremental credit that would be set forth in the section of the Price List titled “Credit Applicable to Supplemental Liquidity Providers (“SLPs”)” under the new proposed heading titled “SLP Incremental Credit.”

As proposed, there would be two SLP setter tiers. Under proposed SLP Setter Tier 1, an

¹¹ The Exchange proposes to relocate the definition of MPID from the Step Up Tier 3 Adding Credit to the current Step Up Tier 5 Adding Credit.

¹² See Rule 1.1(q) (defining “NBBO” to mean the national best bid or offer).

¹³ See Rule 1.1(c) (defining “BBO” to mean the best bid or offer on the Exchange).

¹⁴ The terms “ADV” and “CADV” are defined in footnote * of the Price List.

SLP that has

- Adding ADV in Tape A securities of at least 0.08% of NYSE CADV, and
- Adding ADV setting the NBBO or BBO as a percentage of Tape A, B and C CADV combined of at least 0.35%

would be eligible to receive an incremental credit of \$0.0008 per share for adding orders that set the NBBO or BBO in Tape A securities and an incremental credit of \$0.0006 per share for adding orders that set the NBBO or BBO in Tape B and C Securities.

Under proposed SLP Setter Tier 2, an SLP that has Adding ADV in Tape A securities of at least 0.08% of NYSE CADV would receive an incremental credit of \$0.0007 per share for adding orders that set the NBBO or BBO in Tape A securities and an incremental credit of \$0.0006 per share for adding orders that set the NBBO or BBO in Tape B and C Securities.

Like the Step Up Tier 3 Adding Credit the Exchange would eliminate, the proposed incremental credits do not count toward the combined limit on SLP credits of \$0.0032 per share provided for in the SLP Adding Tiers whereby SLPs can qualify for incremental credits of \$0.0001, \$0.0002 or \$0.0003.

The purpose of this proposed change is to incentivize member organizations that are SLPs to increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO or BBO. The proposed SLP Incremental Credit is thus intended to encourage higher levels of liquidity, which would support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality. 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. Because the proposed tier enables an SLP to receive an per share credit if the SLP meets certain trading qualifications and establishes

the NBBO or BBO on the Exchange, the Exchange believes that the proposed credit would provide an incentive for SLPs and their affiliates to send additional liquidity to the Exchange to set the NBBO or BBO in order to qualify for it.

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 SLP incremental credit is new, the Exchange does not know how many SLPs could qualify for the proposed tiered credits based on their current trading profile on the Exchange. 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 SLP directing orders to the Exchange in order to qualify for the new setting tier.

Finally, the Exchange would relocate the cap for the maximum average number of shares per day for the billing month in calculating the average monthly CADV for purposes of the Step Up Adding Tier 3 to the General section at the end of the SLP section of the Price List without substantive change.

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,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁶ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) & (5).

charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

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.”¹⁷ 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.”¹⁸

The Proposed Change is Reasonable

The Exchange believes that a new SLP Incremental Credit is reasonable. Specifically, the Exchange believes that the proposed incremental credits offer streamlined requirements and higher credits than the current Step Up Tier 3 Adding Credit, and thus would provide an additional incentive for more SLPs to receive an incremental per share credit if the SLP sets the NBBO or BBO on the Exchange and meet certain Adding ADV requirements. The proposed incremental credit would thus provide incentives to member organizations that are SLPs to

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

¹⁸ 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).

provide aggressively priced orders that improve the market by setting the NBBO or BBO on the Exchange and to send additional liquidity providing orders to the Exchange in Tape A, B and C securities. To the extent that the proposed change leads to an increase in overall liquidity activity on the Exchange and more competitive pricing, this will improve the quality of the Exchange's market, improve quote spreads and increase its attractiveness to existing and prospective participants.

As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on a public exchange. The Exchange believes it is reasonable to provide higher credits for orders that provide additional liquidity. Moreover, the Exchange believes that providing an incrementally higher credit for adding orders that set the NBBO or the BBO is reasonable because it would encourage additional aggressively priced displayed liquidity on the Exchange and because market participants benefit from the greater amounts of liquidity and narrower spreads present on the Exchange. Further, the Exchange believes that requiring member organizations to meet specific Adding ADV requirements as an SLP in order to qualify for the incremental credit is also reasonable because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the greater amounts of liquidity and narrower spreads present on the Exchange.

Since the proposed SLP Incremental Credit 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 SLP qualifying for the tiers. The Exchange believes the proposed credit is reasonable as it would provide an additional incentive for SLPs to direct their order flow to the Exchange and provide meaningful added

levels of liquidity in order to qualify for the higher incremental credits, thereby contributing to depth and market quality on the Exchange. Finally, the Exchange believes that excluding the proposed incremental credits for NBBO and BBO setting adding volume from the \$0.0032 limit for SLP credits will continue to incentivize improved quoting and tighter spreads. The Exchange notes that all other adding orders from those qualifying SLPs will continue to subject to the \$0.0032 limit.

The Proposal is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates fees and credits among market participants because all member organizations that participate on the Exchange may qualify for the proposed credits and fees on an equal basis. The Exchange believes its proposal equitably allocates its fees and credits among its market participants by fostering liquidity provision and stability in the marketplace.

The Exchange believes that by streamlining the requirements, the proposed SLP Incremental Credit will better allocate the proposed credits fairly among market participants and will incentivize more member organizations to send adding SLP liquidity to the Exchange, which in turn supports the quality of price discovery on the Exchange. The proposed tier will allow SLPs to qualify for a credit by adding liquidity and setting the NBBO or BBO at the stated levels in the requirements. The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery. It is equitable for the Exchange to add additional incentives for member organizations to receive a credit when their orders add liquidity to the Exchange as a means of incentivizing increased liquidity adding activity. An increase in overall liquidity on the Exchange will improve the quality of the

Exchange's market and increase its attractiveness to existing and prospective participants.

The Exchange believes that requiring a member organization's SLP to have specific Adding and Setting ADV requirements in order to qualify for the proposed credits would also encourage additional displayed liquidity on the Exchange. Since the proposed SLP Incentive Tier would be new, no SLP currently qualifies for it. As noted, without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any SLP qualifying for the tiers. All member organizations that are SLPs or apply to be SLPs would be eligible to qualify for the proposed incremental credits if their SLP liquidity meets the Adding ADV requirements in Tapes A, B and C securities. Any market participant that is dissatisfied with the proposed new credit is free to shift order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria. 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 Exchange believes that offering an incremental credit for setting the NBBO or BBO will encourage higher levels of liquidity provision in the price discovery process and is consistent with the overall goals of enhancing market quality, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the adding liquidity credits, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Proposal is Not Unfairly Discriminatory

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 it is not unfairly discriminatory to provide additional per share credits for activity that encourages the setting of the NBBO or BBO on the Exchange as the proposed credits would be provided on an equal basis to all member organizations that are SLPs or that choose to become SLPs and that add liquidity by meeting the new proposed requirements, who would all be eligible for the same credits 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. As noted, the Exchange intends for the proposal to improve market quality on the Exchange and by extension attract more liquidity to the market, thereby improving market wide quality and price discovery. 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. Further, as noted, the Exchange believes the proposal would provide an incentive for member organizations that are SLPs to continue to send orders that provide liquidity to the Exchange, to the benefit of all market participants. Further, 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. 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,¹⁹ 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."²⁰

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes 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 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 proposed 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 changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the

¹⁹ 15 U.S.C. 78f(b)(8).

²⁰ See Regulation NMS, 70 FR at 37498-99.

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)²¹ of the Act and paragraph (f)(2) of Rule 19b-4 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.

²¹ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-59 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-2024-59. 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 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-2024-59 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.²²

Sherry R. Haywood,

Assistant Secretary.

²² 17 CFR 200.30-3(a)(12).