

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99406; File No. SR-NYSE-2024-04)

January 22, 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 (the “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on January 12, 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) offer credits to member organizations providing non-displayed liquidity in Tape A, B, and C securities with a per share stock price below \$1.00; (2) modify the requirements and charges for D Orders above the first 750,000 average daily volume (“ADV”) of aggregate executions at the close last modified in the last 3 minutes before the scheduled close of trading and make a non-substantive conforming change in the same section of the Price List; (3) offer additional monthly rebates and incentives for Designated Market Maker (“DMM”) units with 150 or fewer assigned securities; (4) eliminate underutilized fees for transactions designated with a Retail Modifier as defined in Rule 13 (“Retail Modifier”); and (5) modify the rates for routing to NYSE American LLC in Tape B

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

and C securities below \$1.00. The Exchange proposes to implement the rule change on January 12, 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.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) offer credits to member organizations providing non-displayed liquidity in Tape A, B, and C securities with a per share stock price below \$1.00; (2) modify the requirements and charges for D orders above the first 750,000 ADV of aggregate executions at the close last modified in the last 3 minutes before the scheduled close of trading and make a non-substantive conforming change in the same section of the Price List; (3) offer an additional monthly rebate and incentive for DMM units with 150 or fewer assigned securities; (4) eliminate underutilized fees for transactions designated with a Retail Modifier; and (5) modify the rates for routing to NYSE American LLC (“NYSE American”) in Tape B and C securities below \$1.00.

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, including an additional incentive to smaller DMM units to increase quoting on the Exchange.

The Exchange proposes to implement the rule change on January 12, 2024.⁴

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

⁴ The Exchange originally filed to amend the Price List on January 2, 2024 (SR-NYSE-2024-01). SR-NYSE-2024-01 was withdrawn on January 12, 2024 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”).

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>.

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. 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 provide liquidity on the Exchange. 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 additional incentives to smaller DMM units to increase quoting on the Exchange.

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/.

¹⁰ See *id.*

Proposed Rule Change

The Exchange proposes to offer credits to member organizations providing non-displayed liquidity in Tape A, B, and C securities with a per share stock price below \$1.00. The Exchange also proposes to modify the requirements and charges for D Orders above the first 750,000 ADV of aggregate executions at the close last modified in the last 3 minutes before the scheduled close of trading and to provide an additional monthly rebate and incentive for DMM units with 150 or fewer assigned securities based on time at the National Best Bid (“NBB”) and National Best Offer (“NBO,” together the “NBBO”) in the applicable security in the applicable month. The Exchange further proposes to eliminate underutilized fees for transactions designated with a Retail Modifier as defined as defined in Rule 13 and to make non-substantive conforming changes. Finally, the Exchange proposes to modify the rates for routing to NYSE American in securities below \$1.00 to 0.08% of total dollar value of the transaction.

Credits for Non-Displayed Limit Orders

The Exchange currently provides a \$0.0010 credit to member organizations that send orders that add liquidity to the Exchange in Non-Displayed Limit Orders and that have Adding ADV¹¹ in Non-Displayed Limit Orders that is at least 0.12% of Tapes A, B, and C CADV combined, excluding any liquidity added by a DMM. The Exchange proposes that member organizations sending orders that add liquidity to the Exchange in Non-Displayed Limit Orders and that have Adding ADV in Non-Displayed Limit Orders that is at least 0.12% of Tapes A, B, and C CADV combined, excluding any liquidity added by a DMM, would also be eligible for a credit equal to 0.10% of the total dollar value of the transaction for securities with a per share

¹¹ Footnote 2 to the Price List defines ADV as “average daily volume” and “Adding ADV” as ADV that adds liquidity to the Exchange during the billing month.

stock price below \$1.00. In addition, the Exchange proposes to designate this credit as “Non Display Tier 2.”

Similarly, the Exchange currently provides a \$0.0018 credit to member organizations that send orders that add liquidity to the Exchange in Non-Displayed Limit Orders and that have Adding ADV in Non-Displayed Limit Orders that is at least 0.15% of Tapes A, B, and C CADV combined, excluding any liquidity added by a DMM. The Exchange proposes that member organizations sending orders that add liquidity to the Exchange in Non-Displayed Limit Orders and that have Adding ADV in Non-Displayed Limit Orders that is at least 0.15% of Tapes A, B, and C CADV combined, excluding any liquidity added by a DMM, would also be eligible for a credit equal to 0.18% of the total dollar value of the transaction for securities with a per share stock price below \$1.00. In addition, the Exchange proposes to designate this credit as “Non Display Tier 1.”

In addition, as described more fully below, member organizations operating a DMM unit would be eligible for Non Display Tier 1 and 2 credits for Non Display Limit Order volume sent to the Exchange on all Tapes when the DMM unit meets the incentive quoting requirements described in the Small DMM Incentive section of the Price List.

The following example demonstrates operation of the Non Display Tier credits as modified by the proposal.

Assume Member Organization A has Adding ADV in Non-Displayed Limit Orders of 14 million shares in Tape A, B and C securities, in a month where Tape A, B and C CADV is a combined 10 billion shares. Member Organization A would thus have Adding ADV in Non-Displayed Limit Orders of 0.14% of Tapes A, B, and C CADV combined, and would qualify for the credits under Non Display Tier 2 for the qualifying 14 million shares of Non-Displayed Limit

Orders. Further, assume that 4 million of Member Organization A's 14 million Adding ADV was in securities with a per share stock price below \$1.00. As a result, that 4 million Adding ADV would receive a credit equal to 0.10% of the total dollar value of the transaction, and the remaining 10 million ADV would receive a credit of \$0.0010 per share for securities with a per share stock price of \$1.00 or more.

The purpose of the proposed changes to credits for non-displayed orders is to incentivize member organizations to increase the liquidity-providing Non-Displayed Limit Orders in the Tapes A, B and C securities with a per share stock price below \$1.00 that they send to the Exchange, which would improve liquidity on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the credit to the level of orders sent by a member organization that adds non-displayed liquidity, the Exchange's fee structure would incentivize member organizations to submit more of those orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to other incoming marketable orders. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. There are currently 1-2 member organizations that could qualify for the proposed credits based on their current trading profile on the Exchange. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new credit in sub-dollar securities.

D Orders at the Close

Currently, the Exchange does not charge member organizations for the first 750,000 ADV of the aggregate of executions at the close for D Orders, Floor broker executions swept

into the close, including verbal interest, and executions at the close, excluding market at-the-close (“MOC”) Orders, limit at-the-close (“LOC”) Orders and Closing Offset (“CO”) Orders. In 2020, the ability of Floor brokers to represent verbal interest intended for the Closing Auction was eliminated.¹² The Exchange accordingly proposes to delete the phrase “including verbal interest” from this section of the Price List as obsolete.

Further, the Exchange currently charges certain fees differentiated by time of entry (or last modification) for D Orders at the close after the first 750,000 ADV of aggregate of executions at the close by a member organization. Specifically, the Exchange currently charges \$0.0008 per share for executed D Orders last modified in the last 3 minutes before the scheduled close of trading for firms in MOC/LOC Tiers 1 and 2, both with Adding ADV of at least 0.50% of Tape A CADV; all other firms are charged \$0.0010 per share.

The Exchange proposes to add an alternative way to qualify for the \$0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading. As proposed, member organizations in MOC/LOC Tiers 1, 2 or 3 that have Adding ADV of at least 1.05% of Tape A CADV would also be eligible for the \$0.0008 per share fee.

In addition, the Exchange proposes a new fee of \$0.0009 for executed D Orders last modified in the last 3 minutes before the scheduled close of trading for member organizations in MOC/LOC Tiers 1, 2 and 3 and that have Adding ADV of at least 0.65% of Tape A CADV.

¹² See Securities Exchange Act Release No. 92480 (July 23, 2021), 86 FR 40885 (July 29, 2021) (SR-NYSE2020-95) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2, To Make Permanent Commentaries to Rule 7.35A and Commentaries to Rule 7.35B and To Make Related Changes to Rules 7.32, 7.35C, 46B, and 47).

All other member organizations with executed D Orders last modified in the last 3 minutes before the scheduled close of trading would continue to be charged the current rate of \$0.0010.

The purpose of this change is to continue to encourage additional liquidity provision on the Exchange both during the trading day and in the Closing Auction. The Exchange believes that it is reasonable to offer member organizations in MOC/LOC Tiers 1, 2 and 3 2 differentiated fees based on the percentage of Adding ADV of Tape A CADV because it would encourage member organizations to direct their liquidity-providing orders in Tape A securities to the Exchange, as well as encourage greater marketable and other liquidity at the closing auction. The Exchange believes that providing an alternative way for member organizations to qualify for lower fees for executed D Orders last modified in the last 3 minutes before the scheduled close of trading as proposed will allow a greater number of member organizations to qualify for the lower fees, and will incentivize more member organizations to send adding liquidity to the Exchange, which in turn supports the quality of price discovery on the Exchange.

Small DMM Incentive

The Exchange currently pays DMM units with 150 or fewer assigned securities a monthly rebate based on the number of assigned securities and time at the NBBO in the applicable security in the applicable month. The rebate is 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, defined in the Price List as the “Incentive Quoting Requirement”).¹³ This monthly rebate is in

¹³ 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

addition to the rate on transactions and is be prorated to the number of trading days in a month that an eligible security is assigned to a DMM.

The Exchange propose an additional monthly rebate for DMM units with 150 or fewer assigned securities in the previous month for assigned securities payable per symbol in securities where qualified DMMs quote at the NBBO 25% of the time. The new proposed incentive quoting requirement would be defined in the Price List as “Incentive Quoting Requirement 2” and the current incentive quoting requirement would be re-named “Incentive Quoting Requirement 1.” Conforming changes would also be made to the Price List. In addition, the Exchange would delete “at least” before “15% of the time” in the current incentive quoting requirement as unnecessary in light of the proposed incentives for quoting at the NBBO 25% of the time. In addition, the Exchange proposes an alternative way for member organizations that operate DMM units of a certain size to qualify for the Non-Display Tiers described above as modified by this proposal.

As proposed, a DMM unit that has at least 1 and not more than 24 assigned securities that meets proposed Incentive Quoting Requirement 2 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 Incentive Quoting Requirement 1 or 2 would be eligible for a monthly rebate of \$1,250 per symbol that qualifies for Incentive Quoting Requirement 2, instead of the current \$500 per symbol credit, and symbols qualifying for Incentive Quoting Requirement 1 would receive \$500 per symbol credit. In addition, the Exchange proposes that a member organization that operates

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.

a DMM unit that has a least 25 and no more than 74 assigned securities meeting these requirements would qualify for proposed “Non Display Tier 2” as described above.

Finally, a DMM unit that has at least 75 but no more than 150 assigned securities that meets Incentive Quoting Requirement 1 or 2 would be eligible for a monthly rebate of \$1,500 per symbol that qualifies for Incentive Quoting Requirement 2 , instead of the current \$1,000 per symbol credit, and symbols qualifying for Incentive Quoting Requirement 1 would receive \$1,000 per symbol credit. In addition, the Exchange proposes that such that a member organization that operates a DMM unit that has a least 75 and no more than 150 assigned securities meeting these requirements would be eligible for proposed “Non Display Tier 1” as described above.

For example, assume DMM unit A has 35 assigned securities. Further assume the DMM quotes at the NBBO 25% of the time in 30 of those assigned securities and quotes at 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 2, DMM unit A would receive a per qualified symbol credit of \$1,250, with a total combined credit of \$37,500 (30 securities x \$1,250). In addition, for the billable month in the 5 assigned securities that meet current Incentive Quoting Requirement 1, DMM unit A would receive a per qualified symbol credit of \$500, with a total combined credit of \$2,500 (5 securities x \$500). In addition, the member organization operating such a qualifying DMM unit A would be eligible for a \$0.0010 credit and the proposed credit equivalent to 0.10% of the total dollar value of the transaction for securities with a per share stock price below \$1.00 under Non Display Tier 2 credits for that member organization’s Non Display Limit Order volume in all Tapes.

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 25% 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 by providing an incentive for member organizations that operate a DMM unit to qualify for the Non-Display Tiers rates as modified by this proposal. The Exchange believes that eligibility for the Non Display Tier rates for member organizations that operate a DMM unit with a certain number of registrations that meet the incentive quoting requirements is not unfairly discriminatory because member organizations that do not operate a DMM unit can still qualify for the Non-Display Tiers rates by sending adding liquidity to the Exchange and meeting the ADV requirements set out in the Price List.

Currently, the Exchange has three DMM units, only one of which has fewer than 150 assigned securities and therefore could qualify for the rebate.¹⁴ The Exchange cannot predict with certainty whether and how many member organizations would avail themselves of the opportunity to become an Exchange DMM unit and qualify for the proposed tiers. However, the

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

Exchange believes that the proposed additional rebate for higher quoting in assigned securities, along with the proposed rebate for adding non-displayed liquidity for member organizations that operate a qualifying DMM unit, could incentivize additional firms to become DMM units on the Exchange by increasing incentives for new and smaller entrants. The Exchange notes that the small DMM incentive currently includes an incentive for non-DMM adding liquidity (e.g., SLP Minimum Add Credit).

Deletion of Underutilized Fees for Orders with a Retail Modifier

In May 2021, the Exchange introduced a fee of \$0.0005 for executions at the open designated with a Retail Modifier as defined in Rule 13.1.¹⁵ In addition, the Exchange introduced a \$0.0008 fee per share for MOC and LOC Orders with a Retail Modifier, unless a lower tiered fee applies.¹⁶ The purpose of the change was to incentivize member organizations to submit additional displayed retail liquidity to the Exchange.

The Exchange proposes to eliminate and remove both fees per share and the associated requirements. The fees have been underutilized by member organizations insofar as they have not encouraged member organizations to increase their retail liquidity volume in response to these lower fees as the Exchange had anticipated it would since the fees were adopted. The Exchange does not anticipate that any additional member organization in the near future would increase their retail liquidity volume in response to either fee that is the subject of this proposed rule change.

¹⁵ As Rule 13 makes clear, orders with a “retail” modifier are separate and distinct from a “Retail Order” under Rule 7.44. The Exchange proposes to relocate the definition of Retail Modifier to the section of the Price List setting forth the fee for MPL orders that remove liquidity from the NYSE immediately following the section setting forth the rates for executions at the close.

¹⁶ See Securities Exchange Act Release No. 91948 (May 20, 2021), 86 FR 28399 (May 26, 2021) (SR-NYSE-2021-33).

Routing Fees to NYSE American For Tape B and C Securities Below \$1.00

Currently, the Exchange charges a fee of \$0.0005 per share for executions in securities with a price below \$1.00 that route to and execute in an NYSE American auction and 0.30% of total dollar value of the transaction for all other orders routed to and executed on NYSE American (i.e., non-auction).

The Exchange proposes to charge a fee equivalent to 0.08% of total dollar value of the transaction for all orders in securities below \$1.00 that route to NYSE American (i.e., both auction and non-auction).¹⁷ The proposed fee is intended to simplify the Price List by charging one rate for both types of executions routed to NYSE American. The Exchange notes that the fee of 0.008% is at or lower than other routing fees charged by other Exchanges for securities with a price below \$1.00.¹⁸

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 6(b)(5) of the Act,²⁰ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

¹⁷ The Exchange would also add a missing period at the end of the preceding full paragraph after the word “combined.”

¹⁸ For example, NYSE Arca charges a routing fee of 0.35% of the dollar value of the transaction for securities below \$1.00. See https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf, at 3.

¹⁹ 15 U.S.C. 78f(b).

²⁰ 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.

The Proposed Change Is Reasonable

In light of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors. The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of orders transacted on the Exchange by member organizations by aligning incentives for trading both on the close and intraday, which would benefit all market participants by offering greater price discovery and an increased opportunity to trade on the Exchange, both intraday and during the closing auction.

Credits for Non-Displayed Limit Orders

As described 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. 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."²¹

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, in response to fee changes. With respect to non-

²¹ 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").

marketable order flow that would provide liquidity on the Exchange, member organizations can choose from any one of currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange fees that relate to providing incentives for such order flow. Given this competitive environment, the proposal to offer tiered credits for member organizations providing non-displayed liquidity in Tape A, B, and C securities with a per share stock price below \$1.00 equal to a percentage of the total dollar value of the transaction for those securities is a reasonable means to improve opportunities for price improvement, 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.

D Orders at the Close

The Exchange believes that charging different rates for D Orders that execute in the close based on time of entry or last modification encourages all member organizations to enter or modify d-Quotes as early possible, beginning with as early as 25 minutes before the close of trading, in order to build up liquidity going into the closing auction. Further, it is reasonable to charge member organizations a higher rate for entering or modifying their interest in the final minutes of regular trading hours because such interest most benefits from the flexibility afforded the order type.

The Exchange believes that offering an alternative way to qualify for the \$0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading and a new fee of \$0.0009 for member organizations in MOC/LOC Tiers 1, 2 and 3 and that have Adding ADV of at least 0.65% of Tape A CADV is reasonable because the proposed change would encourage greater marketable and other liquidity at the closing auction, and encourage better liquidity and price discovery during the trading day.

Small DMM Incentive

The Exchange believes that offering DMMs with 150 or fewer assigned securities an additional monthly rebate for assigned securities payable per symbol in securities where qualified DMMs quote at the NBBO 25% of the time, as well as making them eligible for the Non Display Tier 1 and 2 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 further 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 additional financial incentives for smaller firms to become DMM units.

Deletion of Underutilized Fees for Orders with a Retail Modifier

The Exchange believes that the proposed elimination of the underutilized fees for orders designated with a Retail Modifier is reasonable because member organizations have underutilized these fees. As noted, the fees have been underutilized by member organizations insofar as they have not encouraged member organizations to increase their retail liquidity in response to these lower fees as the Exchange had anticipated it would since they were adopted . The Exchange does not anticipate that any additional member organization in the near future would increase their retail liquidity in response to either fee that is the subject of this proposed rule change. The Exchange believes it is reasonable to eliminate fees when such incentives become underutilized. The Exchange also believes eliminating underutilized incentives would add clarity and transparency to the Price List.

Routing Fees to NYSE American For Tape B and C Securities Below \$1.00

The Exchange believes that its proposed routing fee of 0.08% of total dollar value of the transaction for orders that route to NYSE American is reasonable because the fee would be comparable to the current fee of \$0.0005 per share for orders that route to the Exchange's affiliate NYSE American. Moreover, the proposed fee would be consistent with or lower than fees charged on other exchanges.²² The Exchange notes that operates in a highly competitive market in which market participants can readily select between various providers of routing services with different product offerings and different pricing.

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.

Credits for Non-Displayed Limit Orders

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace. The Exchange believes that the proposed tiered credits for member organizations adding non-displayed liquidity in Tape A, B, and C securities with a per share stock price below \$1.00 is equitable because the proposed credits would create incentives for adding greater liquidity and providing price improvement. The Exchange believes the proposed rule change would attract more liquidity to the Exchange, thereby improving market-wide liquidity.

²² See note 17, supra.

D Orders at the Close

The Exchange believes that offering an alternative way to qualify for the \$0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading and a new fee of \$0.0009 for member organizations in MOC/LOC Tiers 1, 2 and 3 and that have Adding ADV of at least 0.65% of Tape A CADV is not unfairly discriminatory because the proposed change would encourage greater marketable and other liquidity at the closing auction. Moreover, the proposed fees are equitable because all similarly situated member organizations will be subject to the same fee structure, which will automatically adjust based on prevailing market conditions.

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 obligations. As such, it is equitable to offer smaller DMM units an additional flat, per 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. In addition, the proposed alternative way for member organizations that operate a DMM unit to qualify for the Non Display Tier rebates is equitable because a member organization that would not qualify for the rebates operation of a DMM unit with a certain number of registrations that meet the incentive quoting requirements would have the ability to qualify for the rebates based on adding volume in Non-Displayed Limit Orders in Tapes A, B and C as set forth under the modified qualification criteria.

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.

Deletion of Underutilized Fees for Orders with a Retail Modifier

The Exchange believes the proposal equitably allocates fees among its market participants because the underutilized fees the Exchange proposes to eliminate would be eliminated in their entirety, and would no longer be available to any member organization in any form. Similarly, the Exchange believes the proposal equitably allocates fees among its market participants because elimination of the underutilized fees would apply to all similarly-situated member organizations that send orders, including MOC and LOC orders, to the Exchange with a Retail Modifier 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.

Routing Fees to NYSE American For Tape B and C Securities Below \$1.00

The Exchange believes its proposal equitably allocates its fees among market participants. The Exchange believes that the proposal represents an equitable allocation of fees because it would apply uniformly to all member organizations that route orders in securities below \$1.00 to NYSE American, and each such member organization would be charged the proposed fee when utilizing the functionality. Without having a view of member organizations' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed fee would result in any member organization from reducing or

discontinuing its use of the routing functionality. Moreover, the proposed fee would be equitable because it is consistent with or lower than fees charged on other exchanges.²³

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.

Credits for Non-Displayed Limit Orders

The Exchange believes that offering the proposed credits to member organizations based on the amount of liquidity provided to the Exchange in non-displayed liquidity in Tape A, B, and C securities with a per share stock price below \$1.00 would provide a further incentive for all member organizations to provide additional liquidity to the Exchange.

D Orders at the Close

The Exchange believes that offering an alternative way to qualify for the lower \$0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading and a new fee of \$0.0009 for member organizations in MOC/LOC Tiers 1, 2 and 3 and that have Adding ADV of at least 0.65% of Tape A CADV is not unfairly discriminatory because the proposed change would encourage greater marketable and other liquidity at the closing auction. The Exchange believes that the proposal is not unfairly discriminatory because all similarly situated member organizations that submit D Orders last modified in the last 3 minutes before the scheduled close of trading above the first 750,000 ADV of the aggregate of executions at the close by a member organization will be subject to the same fee structure, which will automatically adjust based on prevailing market conditions.

²³ See note 17, supra.

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 proposed 25% NBBO quoting requirement. The Exchange believes that offering an additional 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 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.²⁴ The Exchange believes that the proposal would provide an equal incentive to any member organization to operate and 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. Similarly, the proposal does not permit unfair discrimination because the proposed alternative way for member organizations that operate a

²⁴ For instance, as noted above, 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.

DMM unit to qualify for the Non Display Tier rebates would be applied to all similarly situated member organizations, who would all be eligible for the same credits on an equal basis. Member organizations could qualify the Non Display Tier rebates either by operating a DMM unit that meets the existing and proposed incentive quoting requirements at the NBBO or meeting the requirements of the Non Display Tiers as modified by this proposal. 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 rebates under either criteria would be eligible for the same credits on an equal and non-discriminatory basis.

Moreover, the Exchange does not believe that offering a lower remove fee to member organizations that operate a DMM unit and meet Adding ADV requirements would be unfairly discriminatory given that member organizations operating a DMM unit have greater risks and heightened quoting and other obligations than other market participants. As such, it is equitable and not unfairly discriminatory to offer member organizations operating a DMM unit that also meet incentive quoting requirements the ability to receive the Non Display Tier rebates as other member organizations that do not operate a DMM unit and thus do not have the same quoting and trading obligations as DMM units. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

Deletion of Underutilized Fees for Orders with a Retail Modifier

The Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal is not unfairly discriminatory because the proposed elimination of the underutilized fees would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating fees that are

underutilized and ineffective would no longer be available to any member organization on an equal basis. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of an underutilized fee would make the Price List more accessible and transparent.

Routing Fees to NYSE American For Tape B and C Securities Below \$1.00

The Exchange believes its proposed routing fee is not unfairly discriminatory because the fee would be applicable to all member organizations on an equal and non-discriminatory basis.

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes it is not unfairly discriminatory as the proposal to charge a fee would be assessed on an equal basis to all member organizations that route orders in securities below \$1.00 to NYSE American. Moreover, the proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated member organizations. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed rule change would not permit unfair discrimination among member organizations because the ability to route to NYSE American would remain available to all member organizations on an equal basis and each such participant would be charged the same fee for using the functionality.

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

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

the Act,²⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²⁶ 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

In light of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors. The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of orders transacted on the Exchange by member organizations by aligning incentives for trading both on the close and intraday, which would benefit all market participants by offering greater price discovery and an increased opportunity to trade on the Exchange, both intraday and during the closing auction.

Credits for Non-Displayed Limit Orders

As described 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. 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."²⁷

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(4) & (5).

²⁷ 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").

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, in response to fee changes. With respect to non-marketable order flow that would provide liquidity on the Exchange, member organizations can choose from any one of currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange fees that relate to providing incentives for such order flow. Given this competitive environment, the proposal to offer tiered credits for member organizations providing non-displayed liquidity in Tape A, B, and C securities with a per share stock price below \$1.00 equal to a percentage of the total dollar value of the transaction for those securities is a reasonable means to improve opportunities for price improvement, 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.

D Orders at the Close

The Exchange believes that charging different rates for D Orders that execute in the close based on time of entry or last modification encourages all member organizations to enter or modify d-Quotes as early possible, beginning with as early as 25 minutes before the close of trading, in order to build up liquidity going into the closing auction. Further, it is reasonable to charge member organizations a higher rate for entering or modifying their interest in the final minutes of regular trading hours because such interest most benefits from the flexibility afforded the order type.

The Exchange believes that offering an alternative way to qualify for the \$0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading and a new fee of \$0.0009 for member organizations in MOC/LOC Tiers 1, 2 and 3 and

that have Adding ADV of at least 0.65% of Tape A CADV is reasonable because the proposed change would encourage greater marketable and other liquidity at the closing auction, and encourage better liquidity and price discovery during the trading day.

Small DMM Incentive

The Exchange believes that offering DMMs with 150 or fewer assigned securities an additional monthly rebate for assigned securities payable per symbol in securities where qualified DMMs quote at the NBBO 25% of the time, as well as making them eligible for the Non Display Tier 1 and 2 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 further 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 additional financial incentives for smaller firms to become DMM units.

Deletion of Underutilized Fees for Orders with a Retail Modifier

The Exchange believes that the proposed elimination of the underutilized fees for orders designated with a Retail Modifier is reasonable because member organizations have underutilized these fees. As noted, the fees have been underutilized by member organizations insofar as they have not encouraged member organizations to increase their retail liquidity in response to these lower fees as the Exchange had anticipated it would since they were adopted . The Exchange does not anticipate that any additional member organization in the near future would increase their retail liquidity in response to either fee that is the subject of this proposed

rule change. The Exchange believes it is reasonable to eliminate fees when such incentives become underutilized. The Exchange also believes eliminating underutilized incentives would add clarity and transparency to the Price List.

Routing Fees to NYSE American For Tape B and C Securities Below \$1.00

The Exchange believes that its proposed routing fee of 0.08% of total dollar value of the transaction for orders that route to NYSE American is reasonable because the fee would be comparable to the current fee of \$0.0005 per share for orders that route to the Exchange's affiliate NYSE American. Moreover, the proposed fee would be consistent with or lower than fees charged on other exchanges.²⁸ The Exchange notes that operates in a highly competitive market in which market participants can readily select between various providers of routing services with different product offerings and different pricing.

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.

Credits for Non-Displayed Limit Orders

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace. The Exchange believes that the proposed tiered credits for member organizations adding non-displayed liquidity in Tape A, B, and C securities with a per share stock price below \$1.00 is equitable because the

²⁸ See note 17, supra.

proposed credits would create incentives for adding greater liquidity and providing price improvement. The Exchange believes the proposed rule change would attract more liquidity to the Exchange, thereby improving market-wide liquidity.

D Orders at the Close

The Exchange believes that offering an alternative way to qualify for the \$0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading and a new fee of \$0.0009 for member organizations in MOC/LOC Tiers 1, 2 and 3 and that have Adding ADV of at least 0.65% of Tape A CADV is not unfairly discriminatory because the proposed change would encourage greater marketable and other liquidity at the closing auction. Moreover, the proposed fees are equitable because all similarly situated member organizations will be subject to the same fee structure, which will automatically adjust based on prevailing market conditions.

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 obligations. As such, it is equitable to offer smaller DMM units an additional flat, per 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. In addition, the proposed alternative way for member organizations that operate a DMM unit to qualify for the Non Display Tier rebates is equitable because a member organization that would not qualify for the rebates operation of a DMM unit with a certain number of registrations that meet the incentive quoting requirements would have

the ability to qualify for the rebates based on adding volume in Non-Displayed Limit Orders in Tapes A, B and C as set forth under the modified qualification criteria.

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.

Deletion of Underutilized Fees for Orders with a Retail Modifier

The Exchange believes the proposal equitably allocates fees among its market participants because the underutilized fees the Exchange proposes to eliminate would be eliminated in their entirety, and would no longer be available to any member organization in any form. Similarly, the Exchange believes the proposal equitably allocates fees among its market participants because elimination of the underutilized fees would apply to all similarly-situated member organizations that send orders, including MOC and LOC orders, to the Exchange with a Retail Modifier 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.

Routing Fees to NYSE American For Tape B and C Securities Below \$1.00

The Exchange believes its proposal equitably allocates its fees among market participants. The Exchange believes that the proposal represents an equitable allocation of fees because it would apply uniformly to all member organizations that route orders in securities below \$1.00 to NYSE American, and each such member organization would be charged the proposed fee when utilizing the functionality. Without having a view of member organizations'

activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed fee would result in any member organization from reducing or discontinuing its use of the routing functionality. Moreover, the proposed fee would be equitable because it is consistent with or lower than fees charged on other exchanges.²⁹

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.

Credits for Non-Displayed Limit Orders

The Exchange believes that offering the proposed credits to member organizations based on the amount of liquidity provided to the Exchange in non-displayed liquidity in Tape A, B, and C securities with a per share stock price below \$1.00 would provide a further incentive for all member organizations to provide additional liquidity to the Exchange.

D Orders at the Close

The Exchange believes that offering an alternative way to qualify for the lower \$0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading and a new fee of \$0.0009 for member organizations in MOC/LOC Tiers 1, 2 and 3 and that have Adding ADV of at least 0.65% of Tape A CADV is not unfairly discriminatory because the proposed change would encourage greater marketable and other liquidity at the closing auction. The Exchange believes that the proposal is not unfairly discriminatory because all similarly situated member organizations that submit D Orders last modified in the last 3 minutes before the scheduled close of trading above the first 750,000 ADV of the aggregate of

²⁹ See note 17, *supra*.

executions at the close by a member organization will be subject to the same fee structure, which will automatically adjust based on prevailing market conditions.

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 proposed 25% NBBO quoting requirement. The Exchange believes that offering an additional 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 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.³⁰ The Exchange believes that the proposal would provide an equal incentive to any member organization to operate and 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

³⁰ For instance, as noted above, 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.

all similarly situated member organizations. Similarly, the proposal does not permit unfair discrimination because the proposed alternative way for member organizations that operate a DMM unit to qualify for the Non Display Tier rebates would be applied to all similarly situated member organizations, who would all be eligible for the same credits on an equal basis. Member organizations could qualify for the Non Display Tier rebates either by operating a DMM unit that meets the existing and proposed incentive quoting requirements at the NBBO or meeting the requirements of the Non Display Tiers as modified by this proposal. 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 rebates under either criteria would be eligible for the same credits on an equal and non-discriminatory basis.

Moreover, the Exchange does not believe that offering a lower remove fee to member organizations that operate a DMM unit and meet Adding ADV requirements would be unfairly discriminatory given that member organizations operating a DMM unit have greater risks and heightened quoting and other obligations than other market participants. As such, it is equitable and not unfairly discriminatory to offer member organizations operating a DMM unit that also meet incentive quoting requirements the ability to receive the Non Display Tier rebates as other member organizations that do not operate a DMM unit and thus do not have the same quoting and trading obligations as DMM units. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

Deletion of Underutilized Fees for Orders with a Retail Modifier

The Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal is not unfairly discriminatory because the proposed

elimination of the underutilized fees would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating fees that are underutilized and ineffective would no longer be available to any member organization on an equal basis. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of an underutilized fee would make the Price List more accessible and transparent.

Routing Fees to NYSE American For Tape B and C Securities Below \$1.00

The Exchange believes its proposed routing fee is not unfairly discriminatory because the fee would be applicable to all member organizations on an equal and non-discriminatory basis. The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes it is not unfairly discriminatory as the proposal to charge a fee would be assessed on an equal basis to all member organizations that route orders in securities below \$1.00 to NYSE American. Moreover, the proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated member organizations. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed rule change would not permit unfair discrimination among member organizations because the ability to route to NYSE American would remain available to all member organizations on an equal basis and each such participant would be charged the same fee for using the functionality.

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

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)³¹ of the Act and subparagraph (f)(2) of Rule 19b-4³² thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)³³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>);
- or
- Send an email to rule-comments@sec.gov. Please include file number

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f)(2).

³³ 15 U.S.C. 78s(b)(2)(B).

SR-NYSE-2024-04 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-2024-04. 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-2024-04 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.³⁴

Sherry R. Haywood,

Assistant Secretary.

³⁴ 17 CFR 200.30-3(a)(12).