

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63642; File No. SR-NYSE-2010-87)

January 4, 2011

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange Price List

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on December 22, 2010, New York Stock Exchange LLC (“NYSE” or “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 Exchange. 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 2011 Price List (“Price List”) for equity transactions to (i) increase the credits to customers and floor brokers for transactions when adding liquidity in NYSE-listed securities, (ii) increase the fees charged to customers, floor brokers and Designated Market Makers (“DMMs”) for transactions when taking liquidity in NYSE-listed securities, (iii) create a second tier of charges for executions of Market-On-Close (“MOC”) and Limit-On-Close (“LOC”) orders in NYSE-listed securities, with a reduced charge per share for member organizations that execute an average daily trading volume (“ADV”) of greater than 14 million shares of MOC/LOC activity on the Exchange in the current month, (iv) create a tiered structure of credits to Supplemental Liquidity Providers (“SLPs”) for adding liquidity to the Exchange in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

NYSE-listed securities, based on an SLP's ADV in added liquidity in the applicable month, and (v) adopt a trading license fee for calendar year 2011. All of the foregoing changes will only apply to those NYSE-listed securities with a per share stock price of \$1.00 or more. The amended pricing will take effect on January 3, 2011. The text of the proposed rule change is available at the Exchange, at www.nyse.com, at the Commission's Public Reference Room, and on the Commission's website at www.sec.gov.

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 for equity transactions to increase the credits to customers and floor brokers for transactions when adding liquidity in NYSE-listed securities. Under the proposed new pricing for the trading of NYSE-listed securities, customers will receive a credit of \$0.0015 per share for adding liquidity, and floor brokers will receive a credit of \$0.0017 per share for adding liquidity. In each case, this is an increase of \$0.0002 per share from the currently applicable rate.

The Exchange proposes to further amend its Price List for equity transactions to increase the fees charged to customers, floor brokers and DMMs for transactions when taking liquidity in NYSE-listed securities. Under the proposed new pricing for the trading of NYSE-listed securities, customers and floor brokers will be charged a fee of \$0.0023 per share for taking liquidity, and DMMs will be charged a fee of \$0.0015 per share for taking liquidity. In each case, this is an increase of \$0.0002 per share from the currently applicable rate.

In addition, the Exchange is proposing to create a second tier of charges for executions of MOC and LOC orders in NYSE-listed securities, with a reduced charge of \$0.00055 per share for member organizations that execute an ADV of greater than 14 million shares of MOC/LOC activity on the Exchange in the current month. Otherwise, the current rate of \$0.00085 per share for executed MOC/LOC orders will be applicable. The Exchange notes that it has, in the past, had a tiered structure of charges for MOC/LOC orders based on ADV parameters.³ The proposed second tier of charges for executions of MOC and LOC orders will reduce charges for those member organizations executing greater volume at the NYSE close, thereby encouraging market participants to increase their MOC/LOC activity on the NYSE and facilitating greater liquidity and improved pricing at the close.⁴

The Exchange further proposes to create a tiered structure of credits to SLPs for adding liquidity to the Exchange in NYSE-listed securities, based on an SLP's ADV in

³ See Securities Exchange Act Release No. 60436 (August 5, 2009), 74 FR 40252 (August 11, 2009) (File No. SR-NYSE-2009-77) (notice of filing and immediate effectiveness of proposed rule change by NYSE adding a second MOC/LOC tier).

⁴ See e-mail from William Love, Chief Counsel, NYSE Euronext, to Nathan Saunders, Special Counsel, and Andrew Madar, Special Counsel, Commission, dated January 3, 2011 ("NYSE e-mail").

added liquidity in the applicable month. Under the proposal, SLPs that meet the SLP 10% quoting requirement will receive a credit per share per transaction for adding liquidity, based on total ADV of added liquidity in the applicable month for all assigned SLP securities, as follows:

- \$0.0022 credit per share per transaction if total ADV of added liquidity is more than 50 million shares
- \$0.0021 credit per share per transaction if total ADV of added liquidity is more than 20 million shares but not more than 50 million shares
- \$0.0020 credit per share per transaction if total ADV of added liquidity is more than 10 million shares but not more than 20 million shares

For all other SLP transactions that add liquidity to the Exchange but do not qualify for any of the foregoing credits, the credit will be \$0.0015 per share per transaction, representing an increased credit of \$0.0002 per share from the current rate for that lowest tier.

The Exchange is also adding a new footnote 4 to the Price List stating that the ADV calculations described above will exclude early closing days. The Exchange notes that it had this same footnote in its Price List in the recent past,⁵ but it was inadvertently eliminated when a paragraph containing it was deleted.

These changes are intended to be effective immediately for all transactions beginning January 3, 2011 and are only applicable to those NYSE-listed securities with a per share stock price of \$1.00 or more.

Finally, NYSE Rule 300(b) provides that, in each annual offering, up to 1366 trading licenses for the following calendar year will be sold annually at a price per trading license to be established each year by the Exchange pursuant to a rule filing

⁵ See, e.g., Exhibit 5, footnote 9, in File No. SR-NYSE-2010-34.

submitted to the Commission and that the price per trading license will be published each year in the Exchange's price list. The Exchange proposes to establish a trading license fee for calendar year 2011 of \$40,000. This is the same as the trading license fee charged in calendar years 2009 and 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),⁶ in general, and Section 6(b)(4) of the Act,⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations will be subject to the same fee structure and access to the Exchange's market is offered on fair and non-discriminatory terms. The Exchange believes that the proposed amendments to the Price List represent an equitable allocation of dues and fees in that the increase in the credit to customers and floor brokers when adding liquidity is the same (\$0.0002 per share) and such credits are intended to encourage greater liquidity at the NYSE quote and narrower spreads.⁸ The proposed increase in the charge for transactions

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ See NYSE e-mail, supra note 4. The Exchange notes that the reasons for the difference between floor broker and customer credits on the NYSE (the floor broker credit is currently \$0.0002 higher and will remain \$0.0002 higher after the proposed fee changes are effective) were originally discussed in a 2008 filing by the Exchange, SR-NYSE-2008-15. In that filing, which established a credit of \$0.0004 per share for execution of orders sent directly to the floor broker for representation on the NYSE when adding liquidity to the NYSE Display Book system, the Exchange stated: "Technological limitations make it impossible for floor brokers to post orders on other markets while at the point of sale on the

taking liquidity from the NYSE is the same for customers, floor brokers and DMMs (\$0.0002 per share) and corresponds to the increase in credits for providing liquidity.⁹

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of 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.

Exchange. Therefore, unlike other Exchange users, they are unable to benefit from the incentives certain other markets provide to customers who provide liquidity. The time that would elapse if a floor broker sent the order to his booth or upstairs trading desk for execution on another market means that, if the floor broker utilized this alternative, the trade would likely not get executed at the desired price. The Exchange believes this disparity places floor brokers at a competitive disadvantage to other Exchange customers and believes that the proposed credit will mitigate the effects of that disadvantage while also attracting additional liquidity to the Exchange.” The Statutory Basis section of that 2008 filing further stated that, “The Exchange believes that the proposed credit represents an equitable allocation of reasonable dues, fees, and other charges because floor brokers are integral to the Exchange’s market model and the proposed credit lessens the impact on floor brokers of the competitive disadvantage arising out of the difficulty they experience in availing themselves or their customers of liquidity credits on other markets.” See Securities Exchange Act Release No. 57433 (March 5, 2008), 73 FR 13064 (March 11, 2008) (File No. SR-NYSE-2008-15). The Exchange believes that the rationale stated in the 2008 filing applies equally to the current situation in which floor broker credits for adding liquidity are slightly higher than customer credits for adding liquidity. See NYSE e-mail, supra note 4.

⁹ See NYSE e-mail, supra note 4.

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)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder, because it establishes a due, fee, or other charge imposed on its members by the NYSE.

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 to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2010-87 on the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2010-87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSE-2010-87 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Elizabeth M. Murphy
Secretary

¹² 17 CFR 200.30-3(a)(12).