

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65062; File No. SR-NYSE-2011-39)

August 9, 2011

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Credits to Supplemental Liquidity Providers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on August 1, 2011, New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 amend the tiered structure of credits to Supplemental Liquidity Providers (“SLPs”) for adding liquidity to the Exchange in NYSE-listed securities with a per share stock price of \$1.00 or more, to include criteria based on an SLP’s Average Daily Volume (“ADV”) in added liquidity in the applicable month. The amended pricing will take effect on August 1, 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 at the Commission’s website at www.sec.gov.

¹ 15 U.S.C. 78s(b)(1).

² 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 tiered structure of credits to SLPs for adding liquidity to the Exchange in NYSE-listed securities. The Exchange proposes to change the tiered volume requirements in the Price List from numerical thresholds (e.g., 50 million shares) to a combination of numerical thresholds and percentage thresholds of US ADV (e.g., 1.25% of US ADV).³ The percentage threshold volume requirements to reach the tiered pricing levels will be fixed and not variable and will result in share volume that will adjust each month based on US average daily consolidated share volume in Tape A securities (“US Tape A ADV”) for that given month. US Tape A ADV is equal to the volume reported by all exchanges and trade reporting facilities to the Consolidated Tape Association (“CTA”) Plan for Tape A securities. The Exchange currently makes this data publicly available on a T + 1 basis from a link at <http://www.nyxdata.com/US-andEuropean-Volumes>. The percentage approach is in line with

³ For purposes of transaction fees and Supplemental Liquidity Provider liquidity credits, ADV calculations exclude early closing days.

those adopted by NYSE Arca, Inc. (“NYSE Arca”), NASDAQ Stock Market LLC and EDGX Exchange, Inc. for liquidity providers.⁴

Under the current tiered structure of credits, SLPs that meet the 10% average or more quoting requirement in an assigned security pursuant to NYSE Rule 107B 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:⁵

- \$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.⁶

The Exchange proposes to amend such credits with respect to SLP transactions as described below. SLPs that meet the 10% average or more quoting requirement in an assigned security pursuant to NYSE Rule 107B 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:

⁴ See Securities Exchange Act Release Nos. 64627 (June 8, 2011), 76 FR 34788 (June 14, 2011) (SR-NYSEArca-2011-35); 64453 (May 10, 2011), 76 FR 28252 (May 16, 2011) (SR-NASDAQ-2011-062); 64632 (June 8, 2011), 76 FR 34792 (June 14, 2011) (SR-EDGX-2011-17). In addition, other exchanges have included both percentage thresholds and minimum numeric thresholds as tier requirements. See, e.g., Securities Exchange Act Release No. 64820 (July 6, 2011, 76 FR 40974 (July 12, 2011) (SE-NYSEArca-2011-41).

⁵ See Securities Exchange Act Release No. 63642 (January 4, 2011), 76 FR 1653 (January 11, 2011) (SR-NYSE-2010-87).

⁶ For all other SLP transactions that add liquidity to the Exchange but do not qualify for any of the foregoing credits, the credit is \$0.0015 per share per transaction. In addition, in its first calendar month as an SLP, an SLP qualifies for the tiered credits regardless of whether it meets the requirement to provide liquidity with an ADV of more than 10 million shares.

- 0.0022 credit per share per transaction if added liquidity is the greater of (a) an ADV of more than 35 million shares or (b) more than 1.25% of US Tape A ADV (“SLP Tier 1”);
- \$0.0021 credit per share per transaction if added liquidity is the greater of (a) an ADV of more than 15 million shares but not more than 35 million shares or (b) more than 0.50% but not more than 1.25% of US Tape A (“SLP Tier 2”); and
- \$0.0020 credit per share per transaction if added liquidity is an ADV of more than 10 million shares but not more than the greater of 15 million shares or 0.50% of US Tape A ADV (“SLP Tier 3”).

The following table sets forth the differences between the current thresholds for the SLP credits as well as the proposed structure:

SLP Tier	SLP Credit per Share per Qualified Provide Share	Current Daily Provide ADV Requirement	Proposed New Daily Provide ADV Requirement
1	\$0.0022	More than 50,000,000 shares	More than 1.25% of US Tape A ADV or 35,000,000 shares, whichever is greater
2	\$0.0021	More than 20,000,000 shares but not more than 50,000,000 shares	More than 0.50% of US Tape A ADV or 15,000,000 shares, whichever is greater, but not more than 1.25% of US Tape A ADV or 35,000,000 shares, whichever is greater
3	\$0.0020	More than 10,000,000 shares but not more than 20,000,000 shares	More than 10,000,000 shares but not more than 0.50% of US Tape A ADV or 15,000,000 shares, whichever is greater

The proposed ADV thresholds for SLP Tiers 1 and 2 will fluctuate according to monthly market volumes, but will be subject to fixed minimum numerical thresholds as shown in the following example.

Example: In a month in which the US Tape A ADV is 3.5 billion shares, the requirement for SLP Tier 1 would be 1.25% or 43.75 million shares ADV, and the requirement for SLP Tier 2 would be 0.5% or 17.5 million shares ADV. In a month in which US Tape ADV falls to 2

billion shares, the requirement for Tier 1 would be the greater of 35 million shares and 1.25% of US Tape A ADV, or 25 million shares, so the minimum would be 35 million shares. In that same month, the requirement for SLP Tier 2 would be the greater of 15 million shares ADV and 0.5% of US Tape A, or 10 million shares, so the minimum ADV would be 15 million shares.

The minimum numerical thresholds for SLP Tier 2 of 15 million and for SLP Tier 1 of 35 million are set lower than the current numerical thresholds of 20 million for SLP Tier 2 and 50 million for SLP Tier 1 because current equity market volume has declined from recent historical levels.

The Exchange is proposing to add numerical minimum ADV thresholds to the percentage ADV thresholds in SLP Tier 1 and SLP Tier 2 in order to facilitate the determination of the applicable credits per share and prevent crossing between tiers in low volume months. For example, in a month with less than 2 billion US Tape A ADV, SLP Tier 2's 0.50% percentage ADV threshold would fall below the SLP Tier 3 requirement (e.g., 0.50% of 1.5 billion US Tape A ADV is equal to 7.5 million ADV, which is less than the 10 million SLP Tier 3 requirement.)

The Exchange believes that the SLP Tier 3 minimum requirement of 10 million ADV, which remains unchanged and not tied to any percentage ADV threshold, continues to be an appropriate minimum requirement for the SLP program, given that it is a reasonable requirement to get a significantly larger increase of \$.0005 over the client rebate of \$.0015, and that the larger volume requirements needed for SLP Tier 2 and SLP Tier 1 are likely to be more sensitive to fluctuations in market volumes. In addition, the SLP Tier 3 maximum requirement is being lowered from 20 million ADV to 15 million ADV in order to correspond to, and avoid overlap with, the minimum 15 million ADV requirement in SLP Tier 2.

For two of its SLP Tiers, NYSE is moving to an approach that will compare the liquidity added by an SLP to the greater of a numerical threshold or a percentage threshold based upon the average daily traded volume of the relevant security, for several reasons. The percentage threshold will adjust each calendar month based on the US average daily consolidated share volume in Tape A Securities for that month, while the numerical threshold remains unchanged from month to month, thereby providing a consistent floor against which to measure the SLPs' performance. The Exchange also believes that the proposed approach will provide a more straightforward way to communicate floating volume tiers, while maintaining a minimum threshold, which, as noted above, is an approach similar to that adopted by other exchanges.⁷ The Exchange notes that the combined approach will allow tiers to move in sync with consolidated volume while maintaining a numerical threshold. While the percentage thresholds will result in lower minimum share volume requirements for SLP Tier 1 and SLP Tier 2 when consolidated volumes are lower, they will also result in higher minimum share volume requirements when consolidated volumes are higher. Such higher and lower consolidated volumes will have a similar impact on the maximum share requirements for SLP Tier 2 and SLP Tier 3; however, the minimum share requirement for SLP Tier 3 will remain unchanged at 10 million shares.

These changes are intended to be effective immediately for all transactions beginning August 1, 2011 and are only applicable to those NYSE-listed securities with a per share stock price of \$1.00 or more.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of

⁷ See note 2, supra.

Section 6 of the Securities Exchange Act of 1934 (the “Act”), in general, and Section 6(b)(4) of the Act,⁸ 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 and other market participants will be subject to the same fee structure, and access to the Exchange’s market is offered on fair and non-discriminatory terms.

With respect to the addition of percentage ADV thresholds to the existing share thresholds for certain of NYSE’s existing pricing tiers, NYSE believes that the change is reasonable, because the levels of liquidity provision required to receive the applicable credits will move month to month with respect to the levels of market volumes. NYSE believes the levels of activity required to achieve higher tiers will be generally consistent with existing requirements for these tiers. Moreover, like existing pricing tiers tied to volume levels, as in effect at NYSE and other markets, the proposed pricing tiers are equitable and non-discriminatory because they are open to all SLPs on an equal basis and provide discounts that are reasonably related to the value to an exchange’s market quality associated with higher volumes.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The Exchange

⁸ 15 U.S.C. 78f(b)(4).

believes that the proposed rule change reflects this competitive environment because it will broaden the conditions under which customers may qualify for higher liquidity provider credits.

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.

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)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder, because it establishes or changes a due, fee, or other charge imposed on its members by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2011-39 on the subject line.

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-2011-39. 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-2011-39 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Elizabeth M. Murphy
Secretary

¹¹ 17 CFR 200.30-3(a)(12).