

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66138; File No. SR-NYSE-2011-70)

January 11, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Price List to Revise Its Schedule of Rebates Paid to Designated Market Makers for Providing Liquidity on the Exchange and to Delete References to Round and Odd Lot Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 30, 2011, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“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 Price List to revise its schedule of rebates paid to Designated Market Makers (“DMMs”) for providing liquidity on the Exchange and to delete references to round and odd lot transactions. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 revise its schedule of rebates paid to DMMs for providing liquidity on the Exchange and to delete references to round and odd lot transactions.

Currently, DMMs earn a rebate of \$0.0030 per share when adding liquidity in More Active Securities<sup>3</sup> if the More Active Security has a stock price of \$1 or more and the DMM meets (i) the More Active Securities Quoting Requirement<sup>4</sup> and (ii) the More Active Securities Quoted Size Ratio Requirement.<sup>5</sup> The Exchange proposes to modify this rebate as follows:

- DMMs will continue to earn a rebate of \$0.0030 per share for adding liquidity that is 20% or less than NYSE’s total intraday adding liquidity in shares of each More Active Security for that month if the More Active Security has a stock price of \$1 or more and the DMM meets (i) the More Active Securities Quoting Requirement and (ii) the More Active Securities Quoted Size Ratio Requirement.

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<sup>3</sup> “More Active Securities” are securities with an average daily consolidated volume (“ADV”) in the previous month equal to or greater than 1,000,000 shares per month.

<sup>4</sup> The “More Active Securities Quoting Requirement” is met if the More Active Security has a stock price of \$1.00 or more and the DMM quotes at the National Best Bid or Offer (“NBBO”) in the applicable security at least 10% of the time in the applicable month.

<sup>5</sup> A DMM meets the “More Active Securities Quoted Size Ratio Requirement” when the DMM Quoted Size for an applicable month is 15% of the NYSE Quoted Size. The “NYSE Quoted Size” is calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO. The “DMM Quoted Size” is calculated by multiplying the average number of shares of the applicable security quoted at the NBBO by the DMM by the percentage of time during which the DMM quoted at the NBBO.

- DMMs adding liquidity in those same securities will earn a rebate of \$0.0026 per share for any incremental adding liquidity in each such security for that month that exceeds 20% of NYSE’s total intraday adding liquidity.
- For the purposes of paying the DMM rebate, the NYSE total intraday adding liquidity will be totaled monthly<sup>6</sup> and will include all NYSE adding liquidity, excluding NYSE open and NYSE close volume, by all NYSE participants, including Supplemental Liquidity Providers (“SLP”), customers, Floor brokers, and DMMs.

Rebates will be applied when (i) posting displayed and non-displayed orders on Display Book, including s-quote and s-quote reserve orders; (ii) when providing liquidity on non-displayed interest using the Capital Commitment Schedule; and (iii) when executing trades in the crowd and at Liquidity Replenishment Points.<sup>7</sup>

For example, in a More Active Security (with a stock price of \$1 or more) in a given month where the DMM meets the More Active Securities Quoting Requirement and the More Active Securities Quoted Size Ratio Requirement, if a DMM’s intraday adding liquidity for that month is 30,000,000 shares, and total NYSE intraday adding liquidity is 100,000,000 shares, the DMM will earn a rebate of \$0.0030 per share for the first 20,000,000 shares of adding liquidity because those shares are at or below the 20% intraday adding share threshold. The DMM will earn a rebate of \$0.0026 per share for the remaining 10,000,000 shares because those shares exceed the 20% intraday adding share threshold. For other More Active Securities, with a stock price of \$1 or more, where the DMM meets the More Active Securities Quoting Requirement and the More Active Securities Quoted Size Ratio Requirement, and the DMM’s share of

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<sup>6</sup> The Exchange currently sends each DMM a daily file with that DMM’s daily and month to date volumes and quoting performance for each individual DMM stock. The Exchange includes in that daily file the DMM’s intraday providing volume and NYSE intraday providing volume by DMM stock, which will allow each DMM to track their month to date status for the monthly rebates, which will be totaled on a monthly basis.

<sup>7</sup> See n. 6 of the Price List.

intraday adding liquidity is at or below the 20% intraday adding share threshold, the DMM will earn a rebate of \$0.0030 per share for all adding liquidity for the More Active Securities.

Finally, the Exchange proposes to delete references to round and odd lot transactions in the Price List, which are outdated in light of the decommissioning of the odd lot system.<sup>8</sup> Since the decommissioning of the odd lot system, all per share transaction fees and credits have been applied at the round lot rate.

The proposed rule filing will be effective January 1, 2012[.] [sic]

## 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”),<sup>9</sup> in general, and Section 6(b)(4)<sup>10</sup> of the Act, 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 proposed rebates are equitably allocated and not unfairly discriminatory because they will apply equally to all DMMs. NYSE believes that the rebate of \$0.0026 for intraday adding liquidity that exceeds 20% share of NYSE total adding liquidity as described above is reasonable because DMMs have greater obligations than SLPs,<sup>11</sup> so it is reasonable to pay DMMs a \$0.0026 rebate, which is still slightly higher than the SLPs’ rebate of up to \$0.0022. Additionally, the \$0.0026 rebate is reasonable because it is still higher than the \$0.0025 rebate that DMMs receive when they only meet the More Active Securities Quoting

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<sup>8</sup> See Securities Exchange Act Release No. 62578 (July 27, 2010), 75 FR 45185 (August 2, 2010) (SR-NYSE-2010-43).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> Compare NYSE Rule 104 (obligations for DMMs) versus NYSE Rule 107B (obligations for SLPs).

Requirement, but not the More Active Securities Quoted Size Ratio Requirement. At the same time, the Exchange believes the proposed rule change will encourage multiple sources of market liquidity (e.g. SLPs, Floor Brokers, and other market participants), which will help to promote a more robust, fair, and orderly market. The Exchange believes that removing outdated references to round and odd lots in the Price List will add clarity to the Price List.

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)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2011-70 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-2011-70. 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 such 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 publicly available. All submissions should refer to File Number SR-NYSE-2011-70 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.<sup>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).