

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68377; File No. SR-NYSE-2012-72)

December 6, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Manner In Which New York Stock Exchange LLC Calculates Certain Volume, Liquidity and Quoting Thresholds Applicable to Billing on the Exchange in Relation to a Systems Issue Experienced by the Exchange on November 12, 2012

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 November 30, 2012, New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“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 modify the manner in which it calculates certain volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by the Exchange on November 12, 2012. The text of 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 is proposing to modify the manner in which it calculates certain volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by the Exchange on November 12, 2012 shortly after the opening of trading, which affected one of its matching engines handling trading for 216 securities (the “systems issue”).³ The Exchange halted trading in these 216 symbols and did not resume trading in the 216 affected symbols on November 12, 2012.

The halting of trading in the 216 securities affected by the systems issue resulted in a significant decrease in trading volume on the Exchange on November 12, 2012, not only for the 216 securities impacted by the systems issue, but also across a majority of the securities trading on the Exchange. It also affected the ability of member organizations on the Exchange, including Designated Market Makers (“DMMs”), Supplemental Liquidity Providers (“SLPs”) and Retail Liquidity Providers (“RLPs”), to demonstrate typical trading, quoting and liquidity in such securities.

As provided in the Exchange’s Price List, several of the Exchange’s transaction fees and credits are based on trading, quoting and liquidity thresholds that member organizations must satisfy in order to qualify for the particular rates. The Exchange believes that the halting of

³ The systems issue was limited to the Exchange’s market and did not impact the markets of its affiliates NYSE MKT LLC and NYSE Arca, Inc.

trading that resulted from the systems issue may affect the ability of member organizations to meet certain of these thresholds during November 2012.⁴ Accordingly, the Exchange proposes to exclude November 12, 2012 from such calculations, in order to reasonably ensure that a member organization that would otherwise qualify for a particular threshold during November 2012, and the corresponding transaction rate, would not be negatively impacted by the systems issue and the resulting halting of the securities.

First, for all securities traded on the Exchange, the Exchange proposes to exclude November 12, 2012 for purposes of determining transaction fees and credits that are based on average daily volume (“ADV”) during the billing month, either directly or as a percentage of consolidated average daily volume in NYSE-listed securities (“NYSE CADV”) or of September 2012 Adding ADV (“SLP Baseline ADV”). If the Exchange did not exclude November 12, 2012 when calculating ADV for November, as a result of the decreased trading volume on November 12, 2012, the numerator for the calculation (e.g., trading volume) would be correspondingly lower, but the denominator for the threshold calculations (e.g., the number of trading days) would not be decreased. The impacted billing rates in the Price List are as follows:

- the threshold for market at-the-close (“MOC”) and limit at-the-close (“LOC”) orders of an ADV of 0.375% of NYSE CADV that relates to the fee of \$0.00055 per share;
- the thresholds of ADV of 1.5%, 0.375%, 0.8%, 0.12%, 0.15%, 0.5%, 0.12% and 15% of NYSE CADV that relate to the credit of \$0.0018 per share;
- the thresholds of ADV of 0.20% and 0.10% of NYSE CADV that relate to the credit of \$0.0017 per share;

⁴ The Exchange notes that it does not perform the calculations necessary to determine whether these thresholds have been met until after the particular billing month has ended.

- the threshold of ADV of 0.22% of NYSE CADV that relates to the SLP credit of \$0.0023 (or \$0.0018 if a Non-Displayed Reserve Order) per share;
- the thresholds of ADV of 0.22% of NYSE CADV and 0.18% of SLP Baseline ADV, as well as the minimum provide ADV of 12 million shares that relate to the SLP credit of \$0.0025 per share;
- the threshold of ADV of 0.22% of NYSE CADV that relates to the SLP credit of \$0.0005 per share; and
- the 500,000-share ADV threshold that relates to the non-Retail Liquidity Provider (“RLP”) member organization rate of \$0.00.

Second, for the 216 securities impacted by the systems issue, the Exchange proposes to exclude November 12, 2012 for purposes of determining transaction fees and credits that are based on quoting and/or liquidity levels of DMMs, SLPs and RLPs. The calculations of such quoting and liquidity levels include the amount of time that the relevant DMM, SLP or RLP quoted at the National Best Bid or Offer (“NBBO”).⁵ If the Exchange did not exclude November 12, 2012 when calculating the quoting or liquidity levels for November, as a result of the decreased trading volume on November 12, 2012, the numerator for the calculation (e.g., time during which the DMM, SLP or RLP quoted at the NBBO) would be lower, but the denominator (e.g., total time that the U.S. equity markets quote during regular trading hours) would not be decreased. The impacted billing rates in the Price List are as follows:

- for DMMs, (1) the 10% “More Active Securities Quoting Requirement” that relates to the rebates of \$0.0025, \$0.0026, \$0.0030, \$0.0029 and \$0.0015, respectively, per share; and (2) the 15% “Less Active Securities Quoting Requirement” that relates to the rebates of

⁵ See Rules 107B(g) and 107C(f).

\$0.0035 and \$0.0015, respectively, per share;

- for SLPs, the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B that relates to the credits of \$0.0023 (or \$0.0018 if a Non-Displayed Reserve Order) and \$0.0025, respectively, per share; and
- for RLPs, the applicable percentage requirement of Rule 107C that relates to the fees of \$0.00 and \$0.0003, respectively, per share.

The Exchange notes that the proposed exclusions would be similar to the current provision in the Price List whereby, for purposes of transaction fees and SLP credits, ADV calculations exclude early closing days.⁶ Generally, this applies to certain days before or after a holiday observed by the Exchange.⁷

Finally, the Exchange does not propose to exclude November 12, 2012 for purposes of the DMM thresholds in the Price List that are based solely on consolidated ADV (“CADV”), quoted size or intraday adding liquidity.⁸ The thresholds that are based solely on CADV consider volume across all markets, not only the Exchange’s, and, unlike the transaction fees and credits discussed above that are based on ADV during the billing month as a percentage of NYSE CADV or SLP Baseline ADV, the DMM thresholds based solely on CADV do not take CADV as a percentage of another metric. Therefore the systems issue and the resulting halting of securities on the Exchange would not necessarily have had a significant impact on CADV for these securities. This is also true for the thresholds that are based on quoted size or intraday adding liquidity because, while the numerator of the related threshold calculation (e.g., the

⁶ See footnote 4 in the Price List.

⁷ For example, the Exchange is closed on Thanksgiving Day and closes early on the Friday immediately following Thanksgiving Day (e.g., Friday, November 23, 2012).

⁸ CADV includes all volume reported to the Consolidated Tape Association Plan for Tapes A, B and C securities.

DMM's quoted size or DMM intraday adding liquidity) may have decreased because of the systems issue and the resulting trading halts, so too would the denominator of the related threshold calculation (e.g., the NYSE quoted size or NYSE total intraday adding liquidity). These billing rates in the Price List, for which the Exchange is not excluding activity on November 12, 2012 for purposes of determining transaction fees and credits, are as follows:

- the ADV threshold of 1,000,000 shares or more that determines “More Active Securities” and that relates to the rebates of \$0.0025, \$0.0026, \$0.0030, \$0.0029, \$0.0015 and \$0.0004, respectively, per share;
- the ADV threshold of less than 1,000,000 shares that determines “Less Active Securities” and that relates to the rebates of \$0.0035, \$0.0015 and \$0.0004, respectively, per share;
- the “More Active Securities Quoted Size Ratio Requirement” that relates to the rebates of \$0.0026, \$0.0030 and \$0.0029, respectively, per share;⁹ and
- the 15% and 30% thresholds of NYSE total intraday adding liquidity in each security that relate to the rebates of \$0.0026, \$0.0030 and \$0.0029 per share.

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding billing for activity on the Exchange and the Exchange is not aware of any negative impact on member organizations that would result from the proposed change.

2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁰ in general, and furthers the objectives of Section

⁹ See footnote 7 in the Price List.

¹⁰ 15 U.S.C. 78f(b).

6(b)(4) of the Act,¹¹ 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.

Specifically, the Exchange believes that excluding November 12, 2012 for all securities traded on the Exchange for purposes of determining transaction fees and credits that are based on ADV during the billing month, either directly or as a percentage of NYSE CADV or of SLP Baseline ADV, is reasonable because the halting of trading in the 216 securities impacted by the systems issue resulted in a significant decrease in trading volume on the Exchange on November 12, 2012, not only for the 216 securities impacted by the systems issue, but also across a majority of the securities trading on the Exchange. This is reasonable because, without this exclusion, as a result of the decreased trading volume on November 12, 2012, the numerator for the calculations of ADV (e.g., trading volume) would be correspondingly lower, but the denominator for the calculations (e.g., the number of trading days) would not be decreased. The Exchange believes that excluding activity on November 12, 2012 for purposes of determining transaction fees and credits that are based on ADV during the billing month is equitable and not unfairly discriminatory because, in addition to applying equally to all market participants on the Exchange, it will apply to all securities traded on the Exchange, including the 216 securities impacted by the systems issue. In this regard, excluding November 12, 2012 from such ADV calculations is equitable and not unfairly discriminatory because the exclusion would reasonably ensure that a member organization that would otherwise qualify for a particular threshold for November 2012, and the corresponding transaction rate, would not be negatively impacted by the systems issue and the resulting halting of securities. As noted above, the impact of the

¹¹ 15 U.S.C. 78f(b)(4).

systems issue on trading volume on the Exchange was not isolated to the 216 securities, but also affected a majority of the securities trading on the Exchange.

The Exchange also believes that excluding November 12, 2012 for the 216 securities impacted by the systems issue for purposes of determining transaction fees and credits that are based on quoting and/or liquidity levels of DMMs, SLPs and RLPs is reasonable because, unlike general order flow that is sent to the Exchange, DMM, SLP and RLP activity is typically specific to particular securities. The calculations of such quoting and liquidity levels include the amount of time that the relevant DMM, SLP or RLP quoted at the NBBO. In this regard, excluding November 12, 2012 from these quoting and liquidity calculations is reasonable because, without this exclusion, as a result of the decreased trading volume on November 12, 2012, the numerator for the calculations (e.g., time during which the DMM, SLP or RLP quoted at the NBBO) would be lower, but the denominator for the threshold calculations (e.g., total time that the U.S. equity markets quote during regular trading hours) would not be decreased. As a result, without this exclusion, a member organization that would otherwise qualify for a particular threshold for November 2012, and the corresponding transaction rate may be negatively impacted by the systems issue. This is equitable and not unfairly discriminatory because DMMs, SLPs and RLPs have specific performance metrics that must be satisfied for assigned securities in order to qualify for the particular rates in the Price List.

Finally, the Exchange believes that not excluding activity on November 12, 2012 for purposes of determining transaction fees and credits related to the DMM thresholds in the Price List that are based solely on CADV and quoted size is reasonable. This is because the thresholds that are based solely on CADV consider volume across all markets, not only the Exchange's, and, unlike the transaction fees and credits discussed above that are based on ADV during the

billing month as a percentage of NYSE CADV or SLP Baseline ADV, the DMM thresholds based solely on CADV do not take CADV as a percentage of another metric. Therefore the systems issue and the resulting halting of securities on the Exchange would not necessarily have had a significant impact on CADV for these securities. This is also true for the thresholds that are based on quoted size or intraday adding liquidity because, while the numerator of the related threshold calculation (e.g., the DMM's quoted size or DMM intraday adding liquidity) may have decreased because of the systems issue and the resulting trading halts, so too would the denominator of the related threshold calculation (e.g., the NYSE quoted size or NYSE intraday adding liquidity). This is equitable and not unfairly discriminatory because, in addition to applying to all DMMs on the Exchange, the Exchange believes that the systems issue did not have a significant impact on these thresholds and, therefore, including activity on November 12, 2012 will have an equal impact for all DMMs.

The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed exclusions would remove impediments to and perfect the mechanism of a free and open market and a national market system because they

¹² 15 U.S.C. 78f(b)(5).

would reasonably ensure that a member organization that would otherwise qualify for a particular threshold during the month, and the corresponding transaction rate, would not be negatively impacted by the systems issue and the resulting halting of securities. In particular, the Exchange believes that the proposed exclusions promote just and equitable principles of trade because they account for the impact on trading volume, liquidity and quoting that resulted from the systems issue, for the 216 securities impacted by the systems issue and, more broadly, for all securities traded on the Exchange. The Exchange further believes that the proposed exclusions remove impediments to and perfect the mechanism of a free and open market and a national market system because they provide transparency for member organizations and the public regarding the manner in which the Exchange will calculate certain volume, liquidity and quoting thresholds related to billing for activity on the Exchange on November 12, 2012 and for the month of November 2012. In this regard, the Exchange believes that the proposed exclusions are consistent with the Act because they address inquiries from member organizations regarding how the Exchange will treat November 12, 2012 for purposes of billing. Also, the proposed exclusions are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, but are instead designed to provide transparency for all member organizations and the public regarding the manner in which the Exchange will calculate certain volume, liquidity and quoting thresholds in relation to the systems issue. The Exchange is not aware of any negative impact on member organizations that would result from the proposed change.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal will allow the Exchange to immediately implement the proposed change, thereby reducing the potential for confusion among member organizations and the public regarding how the Exchange will calculate certain volume, liquidity and quoting thresholds related to billing for activity on the Exchange during November 2012 and, more specifically, on November 12, 2012. The Commission believes that the requested waiver will also assist the Exchange in determining transaction fees and credits for member organizations in a timely manner after the end of the billing month of November 2012.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Therefore, the Commission designates the proposal operative upon filing.¹⁵

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.

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-2012-72 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-2012-72. 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

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2012-72 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.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).