

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69734; File No. SR-NYSE-2013-35)

June 11, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List Related to Certain Pricing Applicable to Supplemental Liquidity Providers on the Exchange

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 May 30, 2013, 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, 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 related to certain pricing applicable to Supplemental Liquidity Providers (“SLPs”) on the Exchange. The Exchange proposes to implement the fee change effective June 1, 2013. 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 received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 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 related to certain pricing applicable to SLPs on the Exchange. The Exchange proposes to implement the fee change effective June 1, 2013.

An SLP is a member organization that electronically enters orders or quotes from off the Floor of the Exchange into the systems and facilities of the Exchange and is obligated to maintain a bid or an offer at the National Best Bid (“NBB”) or the National Best Offer (“NBO”) in each assigned security in round lots averaging at least 10% of the trading day (the “percentage quoting requirement”).³ In addition, for all assigned SLP securities, an SLP is required to satisfy a “monthly volume requirement” by adding liquidity of an average daily volume (“ADV”) of more than a specified percentage (currently 0.22%) of consolidated ADV (“CADV”) in all NYSE-listed securities, as set forth in the Exchange’s Price List.⁴

³ See Rule 107B(a). An SLP can either be a proprietary trading unit of a member organization or a registered market maker at the Exchange. If an SLP does not satisfy the percentage quoting requirement, it may be subject to certain non-regulatory penalties. Specifically, if the SLP failed to satisfy the percentage quoting requirement during a particular month, it would be ineligible to receive higher SLP credits. If the SLP failed to satisfy the percentage quoting requirement for three consecutive calendar months in any assigned security, the SLP would be at risk of having its assignment in the affected security(ies) revoked or being disqualified from its status as an SLP. See Rule 107B(k).

⁴ An SLP’s failure to satisfy the monthly volume requirement would not result in the non-regulatory penalties described in Rule 107B(k). Rather, the monthly volume requirement only determines whether an SLP would be eligible for higher SLP credits.

SLPs are eligible for credits when adding liquidity to the Exchange.⁵ The amount of the credit is currently determined by the “tier” that the SLP qualifies for, which is generally based on the SLP’s level of quoting and the ADV of liquidity added by the SLP in assigned securities.⁶ The current rate for the base tier is \$0.0015 per share (or \$0.0010 if a Non-Displayed Reserve Order), which is applicable if an SLP does not satisfy the percentage quoting requirement or the monthly volume requirement and therefore does not qualify for the higher SLP tiers (and corresponding credits) in the Price List. The Exchange proposes that, instead of the static \$0.0015 rate, the applicable rate for the base SLP tier would be the rate that applies to the non-SLP activity of the member organization (i.e., a \$0.0015, \$0.0017, or \$0.0018 per share credit when adding liquidity to the Exchange). As a result, if an SLP did not qualify for one of the higher SLP tiers (e.g., a \$0.0023 or \$0.0025 per share credit), the SLP’s transactions that add liquidity would be subject to the same rate that applies to the non-SLP transactions of the SLP’s member organization. These rates are currently as follows:⁷

- a \$0.0015 per share credit (or \$0.0010 if a Non-Displayed Reserve Order) for adding liquidity to the Exchange, unless a higher credit applies;
- a \$0.0017 per share credit when adding displayed liquidity to the Exchange if the member organization has “Adding ADV”⁸ that is at least 0.20% of NYSE CADV

⁵ SLP credits are not applicable to executions of securities with a per share price of \$1.00 or more at the close.

⁶ For purposes of SLP liquidity credits, ADV calculations exclude early closing days.

⁷ The Exchange notes that the \$0.0010 rate for a Non-Displayed Reserve Order would not change as a result of this proposal.

⁸ “Adding ADV” is when a member organization has ADV that adds liquidity to the Exchange during the billing month. Adding ADV excludes any liquidity added by a Designated Market Maker.

and executes market at-the-close (“MOC”) and limit at-the-close (“LOC”) orders of at least 0.10% of NYSE CADV; or

- an \$0.0018 per share credit when adding displayed liquidity to the Exchange if the member organization satisfies certain thresholds related to “Adding ADV,” MOC and LOC activity, SLP activity and “Customer Electronic Adding ADV.”⁹

In order to provide clarity regarding the applicable rates, the Exchange proposes to label these existing \$0.0015, \$0.0017, and \$0.0018 per share credits the “non-Tier Adding Credit,” the “Tier 2 Adding Credit” and the “Tier 1 Adding Credit,” respectively.¹⁰

The Exchange is proposing this change because the current pricing structure could result in an SLP’s transactions that add liquidity receiving a price that is inferior to that of the non-SLP transactions of the same member organization. The potential for this inferior pricing is the result of a pricing change that became effective October 1, 2012, through which the Exchange introduced the \$0.0017 and \$0.0018 rates in the Price List for non-SLP activity of a member

⁹ An \$0.0018 per share credit is provided per transaction when adding displayed liquidity to the Exchange if (i) the member organization has Adding ADV that is at least 1.5% of NYSE CADV, and executes MOC and LOC orders of at least 0.375% of NYSE CADV, (ii) the member organization has Adding ADV that is at least 0.8% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and adds liquidity to the NYSE as an SLP for all assigned SLP securities in the aggregate (including shares of both an SLP proprietary trading unit and an SLP market maker of the same member organization) of more than 0.15% of NYSE CADV, or (iii) the member organization has ADV that adds liquidity in customer electronic orders to the NYSE (“Customer Electronic Adding ADV,” which shall exclude any liquidity added by a Floor broker, Designated Market Maker, or SLP) during the billing month that is at least 0.5% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and has Customer Electronic Adding ADV during the billing month that, taken as a percentage of NYSE CADV, is at least equal to the member organization’s Customer Electronic Adding ADV during September 2012 as a percentage of CADV in NYSE-listed securities during September 2012 plus 15%.

¹⁰ This proposed change would have no impact on these existing rates or the Exchange’s method of determining applicability.

organization that adds liquidity.¹¹ Prior to the introduction of these two rates, the non-SLP rate for adding liquidity was \$0.0015 for all member organizations, which is the same as the base SLP credit rate.¹² Accordingly, prior to October 2012 it was not possible for an SLP to receive a rate for adding liquidity that was inferior to the rate applicable to non-SLP activity of a member organization, even if the SLP failed to satisfy the percentage quoting requirement or the monthly volume requirement. The Exchange notes that SLP volume is counted when determining whether a member organization has achieved the non-SLP pricing thresholds that correspond to the rates introduced in October 2012.

The SLP program provides incentives for quoting and adds competition to the existing group of liquidity providers. Specifically, by requiring SLPs to quote at the NBB or NBO a percentage of the regular trading day in their assigned securities, and by paying a rebate to SLPs, the Exchange believes that it rewards aggressive liquidity providers and encourages the additional utilization of, and interaction with, the Exchange and provides customers with the premier venue for price discovery, liquidity, competitive quotes and price improvement.¹³

The Exchange believes that it is inconsistent with the goal of the SLP program to continue to permit an SLP to receive a rate that is inferior to that received by non-SLP activity of a member organization, because it could disincentivize member organizations from participating as SLPs and therefore lead to decreased levels of liquidity. Accordingly, the Exchange proposes to amend the Price List to specify that the rate applicable to the base SLP tier would be the

¹¹ See Securities Exchange Act Release No. 68021 (October 9, 2012), 77 FR 63406 (October 16, 2012) (SR-NYSE- 2012-50).

¹² The \$0.0015 rate still applies for member organizations that do not qualify for the \$0.0017 or \$0.0018 rates.

¹³ See Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904-05 (November 5, 2008) (SR-NYSE- 2008-108).

applicable non-Tier Adding Credit, Tier 2 Adding Credit or Tier 1 Adding Credit (or \$0.0010 if a Non-Displayed Reserve Order).

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations, including SLPs, would have in complying with the proposed change.

The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ 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 Exchange believes that the proposed change is reasonable because the current pricing structure could result in an SLP's transactions that add liquidity receiving a price that is inferior to that of the non-SLP transactions of the same member organization. This is inconsistent with the goal of the SLP program, because it could disincentivize member organizations from participating as SLPs and therefore lead to decreased levels of liquidity.¹⁶

For example, an SLP must satisfy both the percentage quoting requirement and the monthly volume requirement in order to qualify for the higher SLP credits. However, only satisfaction of the percentage quoting requirement is required to avoid the non-regulatory

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ See supra note 13.

penalties that are applicable to SLPs (i.e., the monthly volume requirement only determines whether the SLP is eligible for higher SLP credits). Accordingly, an SLP that satisfied the percentage quoting requirement would have satisfied its SLP “obligations,” but if it did not satisfy the monthly volume requirement it would not receive the higher SLP credits and therefore could receive a lower credit than the non-SLP activity of the same member organization.

The Exchange believes that this proposed change is also equitable and not unfairly discriminatory because it would result in a rate being applied to an SLP that does not qualify for the higher SLP tiers (and corresponding credits) that is the same as the rate applied to the non-SLP activity of the member organization. Therefore, an SLP’s transactions that add liquidity would not be subject to a price that is inferior to that of the non-SLP transactions of the same member organization. The proposed change is also equitable and not unfairly discriminatory because it would eliminate the potential for this inferior SLP pricing that resulted from a pricing change that became effective October 1, 2012, through which the Exchange introduced the \$0.0017 and \$0.0018 rates in the Price List for non-SLP activity of a member organization that adds liquidity.¹⁷ Prior to the introduction of these two rates, the non-SLP rate for adding liquidity was \$0.0015, which is the same as the base SLP credit rate. The proposed change is also equitable and not unfairly discriminatory because SLP volume is counted when determining whether a member organization has achieved the non-SLP pricing thresholds that correspond to the rates introduced in October 2012.

Finally, the Exchange believes that the proposed change would not result in any unnecessary burden on competition. Instead, the Exchange believes that the proposed change will eliminate a disincentive to participation as an SLP, and therefore prevent decreased levels of

¹⁷ See supra note 11.

liquidity, by resulting in a rate being applied to an SLP that does not qualify for the higher SLP tiers (and corresponding credits) that is the same as the rate applied to the non-SLP activity of the member organization when adding liquidity.

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

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

In accordance with Section 6(b)(8) of the Act,¹⁸ 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. Rather, the Exchange believes that the proposed change will eliminate a disincentive to participation as an SLP, and therefore prevent decreased levels of liquidity, by resulting in a rate being applied to an SLP that does not qualify for the higher SLP tiers (and corresponding credits) that is the same as the rate applied to the non-SLP activity of the member organization when adding liquidity.

The Exchange notes that the potential for this inferior pricing is the result of a pricing change that became effective October 1, 2012, through which the Exchange introduced the \$0.0017 and \$0.0018 rates in the Price List for non-SLP activity of a member organization that adds liquidity.¹⁹ Prior to October 2012 it was not possible for an SLP to receive a rate for adding liquidity that was inferior to the rate applicable to non-SLP member organizations, even if the SLP failed to satisfy the percentage quoting requirement or the monthly volume requirement.

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 review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the

¹⁸ 15 U.S.C. 78f(b)(8).

¹⁹ See supra note 11.

reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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)²⁰ of the Act and subparagraph (f)(2) of Rule 19b-4²¹ thereunder, because it establishes a due, fee, or other charge imposed by 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²² 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 (<http://www.sec.gov/rules/sro.shtml>); or

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(2).

²² 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2013-35 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-2013-35. 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-2013-35 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.²³

Kevin M. O'Neill
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).