

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71890; File No. SR-NYSE-2014-18)

April 7, 2014

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List for Certain Executions at the Opening

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 26, 2014, 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 self-regulatory organization. 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 for certain executions at the opening. The Exchange proposes to implement the fee change effective April 1, 2014. 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 15 U.S.C. 78a.

³ 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List for certain executions at the opening.⁴

The Exchange proposes to implement the fee change effective April 1, 2014.

The Exchange currently charges a fee of \$0.0005 per share for executions at the opening or at the opening only orders, subject to a monthly fee cap of \$15,000 per member organization for such executions. The Exchange proposes to raise the fee to \$0.0010 per share and the monthly fee cap to \$20,000 per member organization.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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.

⁴ The proposed pricing would only apply to securities priced \$1.00 or greater. The existing pricing for executions at the opening in securities priced below \$1.00 would remain unchanged (i.e., 0.3% of the total dollar value of the transaction). Designated Market Maker ("DMM") executions at the opening would continue to not be charged.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that it is reasonable to increase the fee and corresponding fee cap for executions at the opening because members and member organizations benefit from the substantial amounts of liquidity that are present on the Exchange during such time. The proposed new rate of \$0.0010 for the fee is reasonable because it will strike a more appropriate balance between encouraging liquidity at the opening and generating adequate revenues for the Exchange. The Exchange notes that it has not increased the fee in nearly five years or the fee cap in more than two years.⁷ The increase to the fee cap is also reasonable in light of the proposed increase in the fee because member organizations would otherwise reach the fee cap twice as quickly. The Exchange believes that it is reasonable to increase the fee cap for executions at the opening because a member organization that reaches the cap would continue to be charged a marginal [sic] rate for its transactions at the opening that is lower than the \$0.0010 rate that would be applicable without the cap (i.e., once a member organization reaches the cap, its per-transaction rate thereafter will be zero and its marginal rate [sic] will decrease for each additional transaction at the open thereafter). The proposed new rate for the fee and the corresponding new level for the fee cap are also reasonable because they are comparable to those for executions at the opening on other markets.⁸

The proposed new rate of \$0.0010 for the fee and the increased fee cap of \$20,000 are equitable and not unfairly discriminatory because, even at such increased levels, this pricing would continue to encourage robust levels of liquidity at the opening, which benefits all market

⁷ See Securities Exchange Act Release Nos. 60436 (August 5, 2009), 74 FR 40252 (August 11, 2009) (SR-NYSE-2009-77); and 66600 (March 14, 2012), 77 FR 16298 (March 20, 2012) (SR-NYSE-2012-07).

⁸ For example, the Nasdaq Stock Market, LLC (“NASDAQ”) similarly charges \$0.0010 per share for certain orders executed in the NASDAQ Opening Cross and applies a \$20,000 fee cap per month per firm for such executions. See NASDAQ Rule 7018(e).

participants. This pricing is also equitable and not unfairly discriminatory because it would apply equally to all similarly situated member organizations.⁹

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

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,¹⁰ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would contribute to the Exchange's market quality and ultimately competition. The proposed change would also lead to increased competition among execution venues, including by permitting the Exchange to compete with other markets that apply comparable pricing for executions at the opening.¹¹ The proposed change also would not impose any burden on competition among market participants. Instead, the pricing for executions at the opening would remain at relatively low levels and would continue to reflect the benefit that market participants receive through the ability to have their orders interact with other liquidity at the opening.

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 or rebate opportunities available at other venues to be more favorable. In

⁹ As noted in note 1 [sic] above, DMM executions at the opening would continue to not be charged. The Exchange believes that this is reasonable because of the liquidity-providing function that DMMs serve. This is also equitable and not unfairly discriminatory because DMMs are subject to certain obligations to which other members and member organizations are not.

¹⁰ 15 U.S.C. 78f(b)(8).

¹¹ See supra note 8.

such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ thereunder, because it establishes a due, fee, or other charge imposed 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁴ of the Act to determine

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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-2014-18 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2014-18. 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 available publicly. All submissions should refer to File Number SR-NYSE-2014-18 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30–3(a)(12).