

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72960; File No. SR-NYSE-2014-46)

September 3, 2014

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List to Increase Certain Fees for Executions at the Close; Simplify the “Tier Adding Credits” for Non-Floor Brokers and Increase the Credit for One Tier; Decrease the Fee and Increase the Credit for Midpoint Passive Liquidity Orders; Eliminate the Transaction Rate for Floor Broker Volume That “Steps Up” over a Baseline Month and Increase a Related Fee for Floor Broker Transactions; Eliminate a Volume Tier and Decrease a Credit Related to Executions of Orders Sent to the Floor Broker That Add Liquidity on the Exchange; Increase a Volume Requirement and Corresponding Credit for Supplemental Liquidity Providers When Adding Liquidity in Assigned Securities; and Adjust the Pricing Related to the Retail Liquidity Program Under Rule 107C

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 August 20, 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 to (i) increase certain fees for executions at the close; (ii) simplify the “Tier Adding Credits” for non-Floor brokers and increase the credit for one tier; (iii) decrease the fee and increase the credit for Midpoint Passive Liquidity (“MPL”) Orders that remove and provide liquidity, respectively; (iv) increase certain fees for non-Floor broker transactions, including for Designated Market Makers (“DMMs”), that remove liquidity;

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

(v) eliminate the transaction rate for Floor broker volume that “steps up” over a baseline month and increase a related fee for Floor broker transactions that remove liquidity; (vi) eliminate a volume tier and decrease a credit related to executions of orders sent to the Floor broker that add liquidity on the Exchange; (vii) increase a volume requirement and corresponding credit for Supplemental Liquidity Providers (“SLPs”) when adding liquidity in assigned securities; and (viii) adjust the pricing related to the Retail Liquidity Program under Rule 107C. The Exchange proposes to implement the fee changes effective September 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 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 to (i) increase certain fees for executions at the close; (ii) simplify the “Tier Adding Credits” for non-Floor brokers and increase the credit for one tier; (iii) decrease the fee and increase the credit for MPL Orders that remove and provide liquidity, respectively; (iv) increase certain fees for non-Floor broker transactions, including for DMMs, that remove liquidity; (v) eliminate the transaction rate for Floor broker

volume that “steps up” over a baseline month and increase a related fee for Floor broker transactions that remove liquidity; (vi) eliminate a volume tier and decrease a credit related to executions of orders sent to the Floor broker that add liquidity on the Exchange; (vii) increase a volume requirement and corresponding credit for SLPs when adding liquidity in assigned securities; and (viii) adjust the pricing related to the Retail Liquidity Program under Rule 107C. The Exchange proposes to implement the fee changes effective September 1, 2014. The proposed changes would only apply to transactions in securities priced \$1.00 or more.

Executions at the Close

Other than for market at-the-close (“MOC”) and limit at-the-close (“LOC”) orders, the Exchange generally does not charge for executions at the close, including Floor broker executions swept into the close. However, the Exchange does charge \$0.0002 per share to a member organization that executes an average daily volume (“ADV”) on the Exchange during the billing month of at least 1,000,000 shares in (i) executions at the close (except MOC and LOC orders), and/or (ii) Floor broker executions swept into the close. The Exchange proposes to increase this fee to \$0.0003 per share.

The Exchange currently charges \$0.00095 per share for all MOC and LOC orders, except for those of certain member organizations that are particularly active with MOC and LOC orders and other executions at the close. Specifically, the Exchange currently charges \$0.00055 per share for all MOC and LOC orders from any member organization executing (i) an ADV of MOC/LOC activity on the Exchange in the month of at least 0.375% of consolidated ADV (“CADV”) in NYSE-listed securities during the billing month (“NYSE CADV”); or (ii) an ADV of MOC/LOC activity on the Exchange in that month of at least 0.30% of NYSE CADV plus an ADV of total close activity (i.e., MOC/LOC and other executions at the close) on the Exchange

in that month of at least 0.475% of NYSE CADV. The Exchange proposes to increase this fee to \$0.00065 per share.

The Exchange also currently charges \$0.00050 per share for all MOC and LOC orders from any member organization executing an ADV of MOC/LOC activity on the Exchange in the month of at least 0.575% of NYSE CADV. The Exchange proposes to increase this fee to \$0.00060 per share.

MPL Orders

An MPL Order is an undisplayed limit order that automatically executes at the mid-point of the best protected bid (“PBB”) or best protected offer (“PBO”), as such terms are defined in Regulation NMS Rule 600(b)(57) (together, “PBBO”).⁴ The Exchange currently charges a fee of \$0.0026 per share for executions of MPL Orders that remove liquidity and provides a credit of \$0.0015 per share for executions of MPL Orders that provide liquidity. The Exchange proposes to decrease the MPL Order fee to \$0.0025 per share for executions of MPL Orders that remove liquidity and to increase the MPL Order credit to \$0.0020 per share for executions of MPL Orders that provide liquidity.

Non-Floor broker Transactions (including DMMs)

The Exchange currently charges \$0.0026 per share for non-Floor broker transactions that remove liquidity from the Exchange, including those of DMMs. The Exchange proposes to increase this fee to \$0.0027 per share (except for MPL Orders, as described above).

The Exchange currently provides member organizations with credits of \$0.0022, \$0.0020, or \$0.0017 per share under the Tier 1, Tier 2, and Tier 3 Adding Credits, respectively, when adding liquidity on the Exchange, except that the credit is \$0.0010 for a Non-Displayed Reserve

⁴ See Rule 13. See also 17 CFR 242.600(b)(57).

Order or \$0.0015 for an MPL Order under these tiers. Member organizations must satisfy various requirements related to, for example, “Adding ADV” and MOC and LOC activity in order to qualify for the Tier 1, Tier 2, and Tier 3 Adding Credits (collectively, “Tier Adding Credits”).⁵ The Exchange proposes to simplify and streamline the qualification requirements related to the Tier Adding Credits, as follows:

- The Tier 1 Adding Credit would apply to a member organization that (i) has ADV that adds liquidity to the Exchange during the billing month (“Adding ADV,”

⁵ To qualify for the Tier 1 Adding Credit, (i) a member organization must have an ADV of executions that add liquidity in customer electronic orders to the Exchange (“Customer Electronic Adding ADV,” which excludes any liquidity added by a Floor broker, DMM, or SLP) during the billing month that is at least 1.25% of NYSE CADV, and must execute MOC and LOC orders of at least 0.12% of NYSE CADV; or (ii) the member organization must have Customer Electronic Adding ADV during the billing month that is at least 0.85% of NYSE CADV, must execute MOC and LOC orders of at least 0.12% of NYSE CADV, and must either (a) add liquidity to the Exchange as an SLP for all assigned SLP securities in the aggregate (including shares of both an SLP proprietary trading unit (“SLP-Prop”) and an SLP market maker (“SLMM”) of the same member organization) of more than 0.30% of NYSE CADV or (b) add liquidity to the Exchange as a Floor broker of more than 0.30% of NYSE CADV.

To qualify for the Tier 2 Adding Credit, (i) a member organization must have Customer Electronic Adding ADV that is at least 1.1% of NYSE CADV, and must execute MOC and LOC orders of at least 0.375% of NYSE CADV; (ii) the member organization (a) must have ADV that adds liquidity to the Exchange during the billing month (“Adding ADV,” which excludes any liquidity added by a DMM) that is at least 0.8% of NYSE CADV, (b) must execute MOC and LOC orders of at least 0.12% of NYSE CADV or execute an ADV during the billing month of at least one million shares in RPIs (as defined below related to the Retail Liquidity Program), and (c) must add liquidity to the Exchange as an SLP for all assigned SLP securities in the aggregate (including shares of both an SLP Prop and SLMM of the same member organization) of more than 0.15% of NYSE CADV; or (iii) the member organization must have Customer Electronic Adding ADV during the billing month that is at least 0.5% of NYSE CADV, must execute MOC and LOC orders of at least 0.12% of NYSE CADV, and must have 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 NYSE CADV during September 2012 plus 15%.

To qualify for the Tier 3 Adding Credit, a member organization must have Adding ADV that is at least 0.20% of NYSE CADV and must execute MOC and LOC orders of at least 0.10% of NYSE CADV.

which would exclude any liquidity added by a DMM) that is at least 1.10% of NYSE CADV, and (ii) executes MOC and LOC orders of at least 0.12% of NYSE CADV. Instead of two methods of qualifying for the Tier 1 Adding Credit, only the first existing method would remain – the second method, which applied three sets of criteria, would be eliminated. The concept of “Customer Electronic Adding ADV” would be replaced with only the simpler existing concept of “Adding ADV,” which would continue to exclude DMM volume, but which would include SLP and Floor broker volume. The applicable threshold of required Adding ADV would be lowered, from 1.25% to 1.10% of NYSE CADV. The applicable MOC/LOC threshold would not change.

- The Tier 2 Adding Credit would apply to a member organization that (i) has Adding ADV of at least 0.75% of NYSE CADV, and (ii) executes MOC and LOC orders of at least 0.10% of NYSE CADV or executes an ADV during the billing month of at least one million shares in Retail Price Improvements Orders (“RPIs,” which are discussed in greater detail below under “Retail Liquidity Program”). Instead of three methods of qualifying for the Tier 2 Adding Credit, only the second existing method would remain – the first and third methods would be eliminated. The applicable threshold of required Adding ADV would be lowered, from 0.80% to 0.75% of NYSE CADV. The applicable threshold of required MOC/LOC activity would also be lowered, from 0.12% to 0.10% of NYSE CADV. The existing optional threshold related to adding liquidity as an SLP in assigned securities also would be eliminated.

- The Tier 3 Adding Credit is already fairly straightforward in terms of qualification requirements, and would apply to a member organization that (i) has Adding ADV of at least 0.35% of NYSE CADV, and (ii) executes MOC and LOC orders of at least 0.05% of NYSE CADV. The applicable threshold of required Adding ADV would be raised, from 0.20% to 0.35% of NYSE CADV. The applicable threshold of required MOC/LOC activity would be lowered, from 0.10% to 0.05% of NYSE CADV.

The Exchange proposes increase the credit for the Tier 3 Adding Credit from \$0.0017 to \$0.0018 per share; the Tier 1 and Tier 2 Adding Credits (\$0.0022 and \$0.0020 per share, respectively) would not change.

Floor broker Transactions

The Exchange currently charges \$0.0005 or \$0.0015 per share for certain Floor broker Discretionary e-Quotes (“d-Quotes”) that remove liquidity. The Exchange charges \$0.0023 per share (or \$0.0026 if an MPL Order) for all other Floor broker transactions that remove liquidity from the Exchange, unless the member organization executes an ADV in Floor broker transactions in the month that is at least 10% more than its May 2013 ADV for Floor broker transactions, in which case the charge is \$0.0021 per share (or \$0.0026 if an MPL Order). The Exchange proposes to eliminate the rate related to Floor broker ADV that “steps up” over its May 2013 ADV. The Exchange also proposes to increase the \$0.0023 per share fee (or \$0.0026 if an MPL Order) for Floor broker transactions that take liquidity from the Exchange, to \$0.0024 per share (or \$0.0025 if an MPL Order, as proposed above).

The Exchange currently provides a per share credit for executions of orders sent to a Floor broker for representation on the Exchange when adding liquidity to the Exchange if the

member organization has an ADV that adds liquidity to the Exchange by a Floor broker during the billing month that is at least equal to certain thresholds. The Exchange proposes to increase the first threshold of 2,000,000 shares ADV to 2,500,000 shares ADV in order to qualify for the existing credit of \$0.0020 per share (or \$0.0020 if an MPL Order, as proposed above). The Exchange proposes to eliminate the second threshold of 4,000,000 shares ADV and the corresponding credit of \$0.0021. The Exchange proposes to decrease the third threshold of 14,000,000 shares ADV to 12,000,000 shares ADV and decrease the corresponding credit of \$0.0023 per share to \$0.0022 (or \$0.0020 if an MPL Order, as proposed above).

SLP Transactions

The Exchange currently provides a per share credit to SLPs of \$0.0025 per share (or \$0.0020 if a Non-Displayed Reserve Order or \$0.0015 if an MPL Order) when adding liquidity to the Exchange if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to NYSE Rule 107B and (ii) adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.30% of NYSE CADV. The Exchange proposes to increase the latter threshold from 0.30% to 0.35% and to increase the corresponding credit from \$0.0025 to \$0.0026. The Exchange also proposes to similarly increase the rate for Non-Displayed Reserve Orders by \$0.0001, from \$0.0020 to \$0.0021. The MPL Order rate would increase to \$0.0020, as proposed above.

Retail Liquidity Program

The Retail Liquidity Program is a pilot program that is designed to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for

price improvement to such order flow.⁶ Retail order flow is submitted through the Retail Liquidity Program as a distinct order type called a “Retail Order,” which is defined in Rule 107C(a)(3) as an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization (“RMO”), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.⁷ In addition to RMOs, Retail Liquidity Providers (“RLPs”) were created as an additional class of market participant under the Retail Liquidity Program. RLPs are required to provide potential price improvement for Retail Orders in the form of “RPIs,” which are non-displayed interest that is better than the PBBO.⁸ Member organizations other than RLPs are also permitted, but not required, to submit RPIs.

RLP executions of RPIs against Retail Orders are not currently charged or provided with a credit (i.e., they are free) if the RLP satisfies the applicable percentage requirement of Rule 107C. The Exchange proposes to instead provide a credit of \$0.0003 per share. RPIs of an RLP

⁶ See Rule 107C. See also Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55). The Exchange also proposes a non-substantive change to correct a typographical error in references to Rule 107C in the Price List.

⁷ RMO is defined in Rule 107C(a)(2) as a member organization (or a division thereof) that has been approved by the Exchange under Rule 107C to submit Retail Orders.

⁸ RLP is defined in Rule 107C(a)(1) as a member organization that is approved by the Exchange to act as such and that is required to submit RPIs in accordance with Rule 107C. RPI is defined in Rule 107C(a)(4) and consists of non-displayed interest in NYSE-listed securities that is priced better than the PBBO by at least \$0.001 and that is identified as such.

that does not satisfy the applicable percentage requirement of Rule 107C would remain subject to the existing fee of \$0.0003 per share.

A fee of \$0.0003 per share also currently applies to non-RLP member organization executions of RPIs against Retail Orders, unless the non-RLP member organization executes an ADV during the month of at least 500,000 shares of RPIs, in which case no charge or credit applies (i.e., the execution is free). The Exchange proposes to instead provide a credit of \$0.0003 per share to such RPI executions if the non-RLP member organization satisfies the 500,000 ADV threshold.

RMOs currently receive a credit of \$0.0005 per share for executions of Retail Orders if executed against RPIs or MPL Orders.⁹ The Exchange proposes to eliminate this credit so that such Retail Order executions would be free (i.e., no credit or charge).¹⁰

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that 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,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

⁹ Retail Orders are otherwise charged according to standard fees applicable to non-Retail Orders if executed against the Book.

¹⁰ The Exchange would continue to charge an RMO according to standard fee applicable to non-Retail Orders for a Retail Order that executes against the Book.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Executions at the Close

The Exchange believes that the proposed fee increases for certain executions at the close are reasonable. The Exchange's closing auction is a recognized industry benchmark,¹³ and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis.

The Exchange believes that it is equitable and not unfairly discriminatory to increase fees for executions at the close (other than MOC and LOC orders) and Floor broker executions swept into the close for a member organization that executes an ADV of at least 1,000,000 of such executions on a combined basis because member organizations that reach this ADV threshold are generally larger member organizations that are deriving a substantial benefit from this high volume of closing executions. Nonetheless, the Exchange must continue to encourage liquidity from multiple sources. Allowing member organizations with execution volumes below 1,000,000 shares to continue to obtain executions at the close at no charge encourages them to continue to send orders to the Exchange for the closing auction. The Exchange believes that its proposal would equitably balance these interests and continue to encourage order flow from multiple sources, which helps to maintain the quality of the Exchange's closing auctions for the benefit of all market participants.

With respect to the increased fees for member organizations that execute higher volumes of MOC and LOC orders and other activity at the close, the Exchange believes that the proposed

¹³ For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

rates are reasonable because they are still below the \$0.00095 rate that would otherwise apply to MOC and LOC orders. As such, the Exchange believes that the fees would continue to encourage member organizations to provide higher volumes of MOC and LOC orders and other close activity, which contributes to the quality of the Exchange's closing auction and provides market participants with a greater opportunity for execution as a result of such increased activity. In this regard, the Exchange continues to believe that it is equitable and not unfairly discriminatory to charge a lower fee to member organizations that make significant contributions to market quality by providing higher volumes of liquidity, especially at the close, which benefits all market participants.

The Exchange also believes that the proposed increases to these particular fees for closing executions are reasonable because certain other changes to transaction rates proposed herein may offset these increases (e.g., an increased Tier 3 Adding Credit, lower qualification thresholds for the Tier 1 and Tier 2 Adding Credits, and lower (higher) fees (credits) for removing (adding) liquidity with MPL Orders). The proposed rates are also reasonable, in that they are consistent with, and in some cases lower than, applicable closing rates on the NASDAQ Stock Market, LLC ("NASDAQ").¹⁴ For example, the default fee for executions in NASDAQ's "Closing Cross" is \$0.0003 per share, which is identical to the rate proposed herein. Regarding MOC and LOC orders, the default fee for executions in NASDAQ's Closing Cross is \$0.0015 per share, which is higher than the default rate of \$0.00095 on the Exchange. The lowest MOC/LOC fee on NASDAQ is \$0.0008 per share, which, again, is higher than the both the \$0.00060 and \$0.00065 rates proposed herein. This aspect of the proposed change also is equitable and not unfairly discriminatory because all similarly situated member organizations

¹⁴ See, e.g., NASDAQ Rule 7018(d).

would pay the same rate, as is currently the case, and because all member organizations would be eligible to qualify for the rate by satisfying the related thresholds, where applicable.

MPL Orders

The Exchange introduced the MPL Order and related fees and credits in January 2014.¹⁵ The Exchange increased the MPL Order fee by \$0.0001 for executions of MPL Orders that remove liquidity, to the current rate of \$0.0026 per share, shortly thereafter, in March 2014, but maintained the original credit rate of \$0.0015 per share for executions of MPL Orders that provide liquidity that currently exists in the Price List.¹⁶ After several months of member organization activity using MPL Orders, the Exchange now believes that a decrease to the applicable fee and increase to the applicable credit are reasonable. These changes should encourage additional utilization of MPL Orders on the Exchange. MPL Orders provide opportunities for market participants to interact with orders priced at the midpoint of the PBBO, thus providing price improving liquidity to market participants and increasing the quality of order execution on the Exchange's market, which benefits all market participants.

MPL Orders are not be [sic] eligible for any tiered or additional credits or reduced fees, even if the MPL Orders contribute to a member organization qualifying for such pricing. The Exchange therefore also believes that the proposed pricing is reasonable because, even though the \$0.0025 fee would be lower than the \$0.0027 fee proposed for other non-Floor broker executions that remove liquidity, the fee for MPL Order executions of a member organization

¹⁵ See Securities Exchange Act Release No. 71452 (January 31, 2014), 79 FR 7267 (February 6, 2014) (SR-NYSE-2014-05).

¹⁶ See Securities Exchange Act Release No. 71684 (March 11, 2014), 79 FR 14758 (March 17, 2014) (SR-NYSE-2014-09).

that removes liquidity would remain constant, even if a member organization qualifies for tiered or volume-based pricing.

The resulting fee also is reasonable because it would be lower than the rates on NASDAQ.¹⁷ For example, NASDAQ charges \$0.0027 per share to execute against resting midpoint liquidity, which is greater than both the existing \$0.0026 per share rate and the proposed \$0.0025 per share rate that would apply to MPL Orders. The resulting credit is reasonable because it would be within the range of credits that are available on NASDAQ for midpoint liquidity – currently between \$0.0014 and \$0.0020 per share.

The proposed change is equitable and not unfairly discriminatory because MPL Orders increase the quality of order execution on the Exchange's market, which benefits all market participants. The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory because all market participants – customers, Floor brokers, DMMs, and SLPs – may use MPL Orders on the Exchange and because all market participants that use MPL Orders would be subject to the same fee or credit, as is currently the case.

Non-Floor broker Transactions (including DMMs)

The Exchange believes that the proposed fee increase for non-Floor broker transactions that remove liquidity is reasonable because non-Floor brokers would continue to receive credits for their transactions that provide liquidity on the Exchange, including (i) for member organizations that add liquidity that satisfies certain thresholds under the Tier Adding Credits, (ii) for DMMs under the DMM credits, and (iii) for MPL Orders under various pricing categories in the Price List. In this regard, the changes proposed to the Tier Adding Credits would result in lower qualification thresholds for the Tier 1 and Tier 2 Adding Credits and would result in both

¹⁷ See supra note 14.

higher and lower qualification thresholds for the Tier 3 Adding Credit, with a higher corresponding Tier 3 Adding Credit rate. The resulting fee also is reasonable because it would continue to be consistent with, and in some cases lower than, the applicable rate on NASDAQ.¹⁸ For example, the standard fee for removing liquidity from NASDAQ in both NASDAQ-listed and NYSE-listed securities is \$0.0030 per share, which is higher than the \$0.0027 per share proposed herein.

The proposed changes to the qualifications for the Tier Adding Credits are reasonable because they would simplify the applicable requirements. Member organizations could more easily track whether their activity will satisfy the applicable thresholds. With respect to the Tier 1 and 2 Adding Credits, the applicable thresholds would be decreased, which is reasonable because it would encourage member organizations to add liquidity to the Exchange at levels that would qualify the member organization for the corresponding credits (i.e., \$0.0022 or \$0.0020 per share, respectively). The Exchange believes that maintaining the RPI method of qualifying, as an alternative to MOC/LOC activity, is reasonable because it would continue to provide member organizations with an alternative way in which to qualify for the credit, thereby encouraging member organizations to provide higher volumes of RPIs, which will continue to contribute to the quality of the Exchange's market, particularly for retail investors, by way of additional price-improved interest on the Exchange available for execution. Regarding the Tier 3 Adding Credit, the applicable Adding ADV threshold would increase, while the MOC/LOC threshold would decrease. On balance, the Exchange believes that qualification requirements for the Tier 3 Adding Credit are reasonable in light of the proposed increase to the corresponding credit (i.e., from \$0.0017 to \$0.0018 per share). Continuing to exclude DMM volume from

¹⁸ Id.

Adding ADV, but including SLP and Floor broker volume, is reasonable because it would contribute further to member organizations qualifying for the Tier Adding Credits. This aspect of the proposed change also is equitable and not unfairly discriminatory because all similarly situated member organizations would pay the same rate, as is currently the case, and because all member organizations would be eligible to qualify for the rate by satisfying the related thresholds.

Floor broker Transactions

The Exchange believes that it is reasonable to eliminate the rate related to Floor broker ADV that “steps up” over its May 2013 ADV because member organizations have not increased their activity to qualify for this rate as significantly as the Exchange anticipated they would. The Exchange believes that this is equitable and not unfairly discriminatory because the rate would be eliminated entirely and because member organizations would remain able to qualify for other existing pricing in the Price List. This aspect of the proposed change would therefore result in a more streamlined Price List.

The Exchange believes that the changes proposed to the tiered credits for executions of orders sent to a Floor broker for representation on the Exchange are reasonable because they would encourage additional displayed liquidity on the Exchange. This would also encourage the execution of such transactions on a public exchange, thereby promoting price discovery and transparency. The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they would continue to encourage member organizations to send orders to the Floor for execution, thereby contributing to robust levels of liquidity on the Floor, which benefits all market participants. This is equitable and not unfairly discriminatory because those member organizations that make significant contributions to market quality and that contribute to

price discovery by providing higher volumes of liquidity would continue to be allocated a higher credit.

The Exchange believes that any member organizations that may currently be qualifying under the existing thresholds could qualify for the remaining two thresholds based on the levels of activity sent to Floor brokers. Moreover, the qualification requirement for the highest credit would be lowered, and the resulting lower credit would reflect the lower qualification requirement. The Exchange introduced these Floor broker tiered credits in early 2014.¹⁹ The Exchange now believes that elimination of the current 4,000,000 share ADV tier would encourage higher levels of activity in order to qualify for the credit of \$0.0022 per share (i.e., by satisfying the 12,000,000 share ADV threshold). This aspect of the proposed change also is equitable and not unfairly discriminatory because all similarly situated member organizations would pay the same rate, as is currently the case, and because all member organizations would be eligible to qualify for the rate by satisfying the related thresholds.

The Exchange believes that it is reasonable to increase the fee, from \$0.0023 to \$0.0024 per share, for Floor broker transactions that remove liquidity from the Exchange because the proposed new rate is designed to strike a balance between the fees and credits offered by the Exchange for removing and providing liquidity, respectively. In this regard, despite the increase in this fee, member organizations would be eligible to qualify for the proposed Floor broker adding credit of \$0.0022 by satisfying the 12,000,000 share ADV threshold described above, which is 2,000,000 million shares less than the current threshold. This proposed rate of \$0.0024 per share would also continue to be set at a level that is below the rate for transactions of non-Floor brokers that remove liquidity (i.e., \$0.0027 per share, as described above), which is

¹⁹ See supra note 16.

reasonable because it would encourage member organizations to continue to send orders to the Floor for execution.

SLP Transactions

The Exchange believes that the proposed change related to SLP transactions is reasonable because it would require that an SLP add a greater amount of liquidity in its assigned securities, but qualifying SLPs would also receive a higher credit for these transactions. This would create an added incentive for SLPs to provide liquidity in assigned securities. This is reasonable because the added incentive created by the availability of the higher credit is reasonably related to an SLP's liquidity obligations on the Exchange and the value to the Exchange's market quality associated with higher volumes. The corresponding \$0.0001 increase in the credit applicable to Non-Displayed Reserve Orders, from \$0.0020 to \$0.0021, also is reasonable because it would maintain the existing \$0.0005 difference between these order types and the otherwise applicable SLP credit (excluding MPL orders). The proposed changes also are equitable and not unfairly discriminatory because all similarly situated SLPs would pay the same rate, as is currently the case, and because all such member organizations would be eligible to qualify for the rate by satisfying the related thresholds, where applicable.

Retail Liquidity Program

The Exchange believes that the proposed changes to the rates under the Retail Liquidity Program are reasonable. The Exchange originally introduced the existing rates approximately two years ago.²⁰ At that time, the Exchange stated that, because the Retail Liquidity Program was a pilot program, the Exchange anticipated that it would periodically review applicable

²⁰ See Securities Exchange Act Release No. 67529 (July 27, 2012), 77 FR 46137 (August 2, 2012) (SR-NYSE-2012-30).

pricing to seek to ensure that it contributes to the goal of the Retail Liquidity Program, which is designed to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for price improvement to such order flow. The proposed new rates are a result of this review.

The Exchange believes that providing a credit of \$0.0003 per share for RLP executions of RPIs against Retail Orders if the RLP satisfies the applicable percentage requirement of Rule 107C is reasonable because it would further incentivize member organizations to become RLPs and therefore could result in greater price improvement for Retail Orders. Providing a credit of \$0.0003 per share for non-RLP member organization executions of RPIs against Retail Orders if the non-RLP member organization executes an ADV during the month of at least 500,000 shares of RPIs also is reasonable because it would incentivize such non-RLPs to submit RPIs for interaction with Retail Orders.

The Retail Order credit was designed to create a financial incentive for RMOs to bring additional retail order flow to a public market during the initial implementation of the Retail Liquidity Program. Despite the elimination of the credit, RMOs, and indirectly their customers, would continue to receive significant benefits in the form of price improvement by interacting with RPIs. Additionally, Retail Order executions are always considered to remove liquidity, whether against contra-side interest in the Retail Liquidity Program or against the Book.²¹ Orders that remove liquidity are generally charged a fee according to the Price List, but Retail Orders would continue to be subject to alternative pricing (i.e., no charge rather than a fee) that would continue to contribute to maintaining or increasing the proportion of retail flow in

²¹ A Retail Order is an Immediate or Cancel Order. See Rule 107C(a)(3). See also Rule 107C(k) for a description of the manner in which a member or member organization may designate how a Retail Order will interact with available contra-side interest.

exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods).

The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.²² While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The proposed new rates would be set at levels that would continue to reasonably incentivize RMOs to direct Retail Orders to the Exchange and would contribute to robust amounts of RPI liquidity submitted by RMOs and non-RMO member organizations being available for interaction with the Retail Orders. Together, this would increase the pool of robust liquidity available on the Exchange, thereby contributing to the quality of the Exchange's market and to the Exchange's status as a premier destination for liquidity and order execution. The Exchange believes that, because Retail Orders are likely to reflect long-term investment intentions, they promote price discovery and dampen volatility. Accordingly, the presence of Retail Orders on the Exchange has the potential to benefit all market participants. For this reason, the Exchange believes that

²² See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) ("Concept Release") (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary Jo White, Focusing on Fundamentals: The Path to Address Equity Market Structure (Speech at the Security Traders Association 80th Annual Market Structure Conference, Oct. 2, 2013) (available on the Commission's website) ("White Speech"); Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's website) ("Schapiro Speech"). In her speech, Chair White noted a steadily increasing percentage of trading that occurs in "dark" venues, which appear to execute more than half of the orders of long-term investors. Similarly, in her speech, only three years earlier, Chair Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

the proposed pricing is equitable and not unfairly discriminatory and would continue to encourage greater retail participation on the Exchange.

The pricing proposed herein, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would result in better prices for retail investors. The proposed change is also equitable and not unfairly discriminatory because it would contribute to investors' confidence in the fairness of their transactions and because it would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

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,²³ 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 encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the

²³ 15 U.S.C. 78f(b)(8).

Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed rule change is consistent with the Act in this regard, because it strikes an appropriate balance between fees and credits, which will encourage submission of orders to the Exchange, thereby promoting competition.

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 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)²⁴ of the Act and subparagraph (f)(2) of Rule 19b-4²⁵ 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)²⁶ 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2014-46 on the subject line.

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(2).

²⁶ 15 U.S.C. 78s(b)(2)(B).

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-2014-46. 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for website viewing and printing at the NYSE's principal office and on its Internet website at www.nyse.com. 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-2014-46 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.²⁷

Kevin M. O'Neill
Deputy Secretary

²⁷ 17 CFR 200.30-3(a)(12).