

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78233; File No. SR-NYSE-2016-47)

July 6, 2016

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 27, 2016, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “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 equity transactions in stocks with a per share stock price more than \$1.00 to revise: (1) certain fees for executions at the close; and (2) the requirements for credits related to executions of orders sent to Floor brokers that add liquidity on the Exchange. The Exchange also proposes to amend its Price List to revise its trading license fees. The Exchange proposes to implement these changes to its Price List effective July 1, 2016. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 revise: (1) certain fees for executions at the close; (2) the requirements for credits related to executions of orders sent to Floor brokers that add liquidity on the Exchange; and (3) trading license fees.

The proposed changes would only apply to credits in transactions in securities priced \$1.00 or more.

The Exchange proposes to implement these changes effective July 1, 2016.

Executions at the Close

Currently, member organizations that execute during the billing month average daily volume ("ADV") of at least 750,000 shares through orders executed at the close (except for market at-the-close ("MOC") and limit at-the-close ("LOC") orders), and/or Floor broker executions swept into the close (excluding verbal interest), are charged \$0.00035 per share for such orders.

The Exchange proposes to increase this fee to \$0.0005 per share. The fee would apply only to shares executed in excess of 750,000 ADV during the billing month. For

example, a member organization that has an ADV of 3 million shares during a billing month consisting of 20 trading days would pay \$0.0005 per share fee on the 2.25 million shares that exceed 750,000 on average each day. For the 20 trading days, this would be a total of 45 million shares for that month, and a total fee of \$22,500.

Member organizations with execution volumes below an ADV of 750,000 shares during the billing month would continue not to be charged for these trades.

Further, for Non-Tier MOC/LOC, the Exchange currently charges member organizations \$0.0010 per share for MOC and LOC orders, unless a member organization meets specified thresholds set forth in the Price List for MOC and LOC activity. The Exchange proposes to increase this fee to \$0.0011 per share.

For MOC/LOC Tier 2, the Exchange currently charges \$0.00070 per share for all MOC and LOC orders from any member organization executing (i) an ADV of MOC and 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 and LOC activity on the Exchange in that month of at least 0.300% of NYSE CADV plus an ADV of total close activity (i.e., MOC and 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 \$0.0008 per share.

For MOC/LOC Tier 1, the Exchange currently charges \$0.00060 per share for all MOC and LOC orders from any member organization executing ADV of MOC and LOC activity on the NYSE in that month of at least 0.575% of NYSE CADV. The Exchange proposes to increase this fee to \$0.0007 per share.

### Floor Broker Credits for Orders that Add Liquidity to the Exchange

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 first threshold is 2,500,000 shares ADV in order to qualify for the existing credit of \$0.0020 per share. The second threshold is 12,000,000 shares ADV in order to qualify for the existing credit of \$0.0022 per share.

The Exchange proposes to replace the current share volume ADV thresholds for these credits with thresholds representing a percentage of CADV. More specifically, in order to qualify for the first credit of \$0.0020 per share, the Exchange proposes that a member organization have an ADV that adds liquidity to the Exchange by a Floor broker during the billing month that is at least equal to .07% of CADV. Second, in order to qualify for the credit of \$0.0022 per share, the Exchange proposes that a member organization have an ADV that adds liquidity to the Exchange by a Floor broker during the billing month that is at least equal to .33% of CADV. The Exchange believes thresholds representing a percentage of CADV rather than a fixed share volume requirement, is more appropriate because it would reasonably require that the monthly volume requirement is consistent relative to fluctuations in market volume over time.

### Trading Licenses

NYSE Rule 300(b) provides, among other things, that the price per trading license will be published each year in the Exchange's price list. The current trading license fee

in place for 2016<sup>4</sup> is \$50,000 for the first license held by a member organization and \$15,000 for each additional license held by a member organization. The Exchange proposes to eliminate the \$15,000 additional license fee. To effectuate this change, the Exchange proposes to amend the Price List to delete the phrase “\$15,000.00 per license,” add the words “No charge” before “for additional licenses held by a member organization,” and delete footnote 15 at the end of the sentence. The text of footnote 15 would not be deleted, and would continue to apply to the first license held by a member organization described in the previous paragraph.

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The proposed changes are 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,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> 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.

### 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

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<sup>4</sup> See Securities Exchange Act Release No. 76865 (January 11, 2016), 81 FR 2264 (January 15, 2016) (SR-NYSE-2016-06).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4) & (5).

benchmark,<sup>7</sup> 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 modify fees for executions at the close (other than MOC and LOC orders) and Floor broker executions swept into the close (excluding Verbal Interest) for member organizations that execute an ADV of at least 750,000 of such executions on a combined basis, by increasing the applicable fee but to apply that fee only to shares executed over 750,000 ADV during the billing month, because member organizations that reach 750,000 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 of an ADV below 750,000 shares during the billing month to continue to obtain executions at the close at no charge, and to charge the fee only with respect to shares executed over 750,000 ADV during the billing month, continues to encourage member organizations 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. The proposed fee is also reasonable, in that it is lower than applicable closing rates on the NASDAQ Stock Market, LLC ("NASDAQ").<sup>8</sup> For example, the default fee for executions in NASDAQ's "Closing Cross" is \$0.0008 per share.

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<sup>7</sup> For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

<sup>8</sup> See NASDAQ Rule 7018(d).

The Exchange believes that increasing the MOC/LOC Non-Tier fee to \$0.0011 is reasonable because this rate would be lower than the non-tier rate, Tier F, for market-on-close and limit-on-close orders on NASDAQ, of \$0.0015 per executed share.<sup>9</sup> Similarly, the Exchange believes that increasing the MOC/LOC Tier 2 fee to \$0.00080 per share and the MOC/LOC Tier 1 fee to \$0.0007 is reasonable because the proposed MOC/LOC Tier 2 fee would be the same as the lowest fee for market-on-close and limit-on close orders on NASDAQ, of \$0.0008 per executed share, and the proposed MOC/LOC Tier 1 fee would be lower than the lowest fee for market-on-close and limit-on close orders on NASDAQ.

The Exchange believes that maintaining the lowest comparable fee for the highest liquidity requirements would incentivize member organizations to send in more closing auction volume to the primary market, thereby deepening the Exchange's liquidity pool and supporting the quality of price discovery. The Exchange believes that it is equitable and not unfairly discriminatory to charge lower or equal fees to member organizations that make significant contributions to market quality by providing higher volumes of liquidity, which benefits all market participants. The Exchange believes the proposed fees are equitable and not unfairly discriminatory because all similarly situated member organizations would be subject to the same fee structure.

#### Floor Broker Credits for Orders that Add Liquidity to the Exchange

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.

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<sup>9</sup> See id.

The proposed change would also encourage the execution of such transactions on a public exchange, thereby promoting price discovery and transparency.

The Exchange believes the proposed change is equitable and not unfairly discriminatory because it 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. The proposed change is also 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. 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.

Finally, the Exchange believes that the proposed change promotes just and equitable principles of trade because, by basing the monthly volume requirement on a percentage of NYSE CADV, the Floor broker requirement to add liquidity to the market would track actual consolidated trading volumes. Accordingly, in months with lower trading volumes, a monthly volume requirement that tracks the actual consolidated volume would reasonably require that Floor brokers add sufficient liquidity relative to the market, without the monthly volume requirement being too burdensome for them. Conversely, during months when trading volumes are generally higher across all markets,

the proposed change would result in Floor brokers being required to increase the liquidity they add to the market, thereby reasonably requiring that Floor brokers are engaging in meaningful trading activity consistent with the purpose of the Floor broker credits for adding liquidity to the Exchange.

#### Trading Licenses

The Exchange believes that the proposal to eliminate the \$15,000 fee for each additional license held by a member organization above the first license is reasonable because it will encourage member organizations to hold additional trading licenses, which will increase the number of market participants trading on the floor of the Exchange, which will promote liquidity, price discovery, and the opportunity for price improvement for the benefit of all market participants. The Exchange also believes it is reasonable to offer a fee reduction because it will provide member organizations with greater flexibility in managing their personnel, especially during times of increased volatility and in summer months when member organizations tend to experience greater staff rotation. The Exchange believes the proposed change is equitable and not unfairly discriminatory because all similarly situated member organizations would continue to be subject to the same trading license fee structure and because access to the Exchange's market would continue to be offered on fair and non-discriminatory terms.

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 the foregoing 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,<sup>10</sup> 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 changes would contribute to the Exchange's market quality by promoting price discovery and ultimately increased competition. For the same reasons, the proposed change also would not impose any burden on competition among market participants. Pricing for executions at the opening [sic] 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 [sic]. The Exchange also believes that the proposed changes 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 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.

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

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<sup>10</sup> 15 U.S.C. 78f(b)(8).

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)<sup>11</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>12</sup> 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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

19(b)(2)(B)<sup>13</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2016-47 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSE-2016-47. 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

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<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

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-2016-47 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Brent J. Fields  
Secretary

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