

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80222; File No. SR-NYSE-2017-09)

March 13, 2017

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 March 1, 2017, 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 (1) revise the fee for Midpoint Passive Liquidity (“MPL”) orders that remove liquidity from the Exchange and are designated with a “retail” modifier as defined in Rule 13, and (2) revise the requirements and credits for MPL orders that provide liquidity to the Exchange, including the related credits for Supplemental Liquidity Providers (“SLP”). The Exchange proposes to implement these changes to its Price List effective March 1, 2017. 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 (1) revise the fee for MPL orders that remove liquidity from the Exchange and are designated with a “retail” modifier as defined in Rule 13, and (2) revise the requirements and credits for MPL orders that provide liquidity to the Exchange, including the related credits for SLPs.

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

The Exchange proposes to implement these changes to its Price List effective March 1, 2017.

MPL Orders

An MPL Order is defined in Rule 13 as 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”).<sup>4</sup>

MPL Orders that Remove Liquidity

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<sup>4</sup> See Rule 13. See also 17 CFR 242.600(b)(57).

The Exchange currently does not charge a fee for MPL Orders that remove liquidity from the Exchange and that are designated with a “retail” modifier as defined in Rule 13. The Exchange proposes to charge a \$0.00100 fee for MPL Orders that remove liquidity from the Exchange and that are designated with a “retail” modifier as defined in Rule 13.

#### MPL Orders that Add Liquidity

The Exchange currently provides a credit of \$0.00275 per share credit for MPL Orders that provide liquidity from a member organization that has Adding ADV<sup>5</sup> in MPL Orders of at least 0.04% of NYSE consolidated ADV (“CADV”),<sup>6</sup> excluding liquidity added by a Designated Market Maker (“DMM”). The Exchange provides a \$0.0015 per share transaction credit for MPL Orders that provide liquidity from a member organization that does not meet the Adding ADV threshold.

The Exchange proposes that member organizations qualifying for the \$0.00275 credit have an Adding ADV in MPL orders that is at least 0.140% of NYSE CADV, excluding any liquidity added by a DMM.

The Exchange also proposes a new credit of \$0.0025 for member organizations that have Adding ADV in MPL orders that is at least 0.030% of NYSE CADV, excluding any liquidity added by a DMM.

Finally, the Exchange proposes that MPL Orders that provide liquidity from a member organization that does not meet the above Adding ADV thresholds receive a per share

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<sup>5</sup> “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.

<sup>6</sup> NYSE CADV is defined in the Price List as the consolidated average daily volume of NYSE-listed securities.

transaction credit of \$0.0010.

The Exchange proposes the same changes to the credits applicable to SLPs for MPL Orders described above. In addition, the Exchange proposes to conform the Adding ADV requirement in MPL Orders for SLPs to qualify for the proposed \$0.00275 credit of at least 0.140% of NYSE CADV, excluding liquidity added by a DMM, in place of the fixed share amount.

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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>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</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.

The Exchange believes that the proposed increase to the fee for executions of MPL Orders that remove liquidity and that are designated with a “retail” modifier as defined in Rule 13, the proposed changes to the credits for MPL Orders that provide liquidity, the proposed additional credit tier, and conforming the Adding ADV requirement and credit for SLPs in MPL Orders are reasonable. MPL Orders provide opportunities for market participants to interact with

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) & (5).

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.

Specifically, the Exchange believes that charging a fee for MPL Orders that remove liquidity from the Exchange and that are designated with a "retail" modifier as defined in Rule 13 is reasonable because the charge is substantially lower than the \$0.0030 fee for MPL orders that remove liquidity and are not designated with a Retail Modifier as defined in Rule 13.

The Exchange believes that the proposed additional tier credit for MPL Orders is reasonable because the proposed MPL Order Tier credit of \$0.00250 per share that would apply if the member organization has Adding ADV in MPL Orders that is at least 0.030% of NYSE CADV excluding any liquidity added by a DMM would relate to volume that provides liquidity, which would be identical to the type of volume to which the credit would apply.

The new credit is also reasonable because it would be similar or higher than the rates on the NASDAQ Stock Market, LLC ("NASDAQ"). For example, on NASDAQ, firms that average 1 million or more shares of midpoint liquidity receive a credit of \$0.0010 per share in Tape C securities and \$0.0018 in Tape A and B securities to execute against resting midpoint liquidity, which is lower than the proposed \$0.0025 per share rate for MPL orders that is at least 0.030% of NYSE CADV, excluding any liquidity added by a DMM.<sup>9</sup>

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

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<sup>9</sup> See NASDAQ Price List, available at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

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 may receive credits for MPL Orders, as is currently the case.

The Exchange also believes that the credit of \$0.0010 for MPL Orders that provide liquidity from a member organization that does not meet the above Adding ADV thresholds is also reasonable as it would be similar to the \$0.0010 credit on NASDAQ for midpoint liquidity in Tape C, or NASDAQ Listed Securities, for firms that adds less than 1 million shares of midpoint liquidity.<sup>10</sup>

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>11</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 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

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<sup>10</sup> See id.

<sup>11</sup> 15 U.S.C. 78f(b)(8).

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 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>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</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

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

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)<sup>14</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-2017-09 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-2017-09. 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

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<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).



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-2017-09, 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>15</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).