

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81612; File No. SR-NYSE-2017-47)

September 14, 2017

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

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 7, 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 credit for Designated Market Makers (“DMMs”) for Mid-Point Passive Liquidity (“MPL”) Orders that provide liquidity to the Exchange, and (2) make certain non-substantive, clarifying changes. The Exchange proposes to implement the proposed changes on September 7, 2017.⁴ 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Price List Schedule on August 29, 2017 (SR-NYSE-2017-45) and withdrew such filing on September 7, 2017.

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 credit for DMMs for MPL Orders that provide liquidity to the Exchange, and (2) make certain non-substantive, clarifying changes.

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

The Exchange proposes to implement these changes to its Price List effective September 7, 2017.

Proposed Rule Change

The Exchange proposes the following changes to its Price List.

Verbal Interest at the Close

The current Price List provides that the Exchange charges \$0.0010 for verbal interest on the close. The Price List also provides that non-electronic agency transactions of Floor brokers that execute at the close are not charged.

The Exchange would delete the current entry providing that there is no charge for non-electronic agency transactions of Floor brokers that execute at the close. This entry was inadvertently not deleted when the Exchange adopted the current charge for verbal interest on the close.⁵ Deleting obsolete and duplicative material would add clarity to the Exchange's Price List.

At the Opening Orders

The Exchange currently charges \$0.0010 for at the opening or at the opening only orders that are "credited to both sides." The Exchange proposes to replace "At the opening or at the opening only orders" with "Executions at the Open." The Exchange would also delete "credited to." The Exchange believes that the reference is redundant and unnecessary.

Credits for MPL Orders

An MPL Order is an undisplayed limit order that trades at the mid-point of the best protected bid ("PBB") and best protected offer ("PBO"), as such terms are defined in Regulation NMS Rule 600(b)(57) (together, "PBBO").

The Exchange proposes changes to the Price List to consolidate and streamline presentation of the credits for MPL orders that provide liquidity to the Exchange. Currently, credits for MPL orders that provide liquidity to the Exchange, excluding MPL Orders from DMMs and Supplemental Liquidity Providers ("SLP"), are set forth separately from the related credits for MPL orders that add liquidity to the Exchange applicable to SLPs. The credit amounts and qualifications for SLP and non-SLP MPL orders that add liquidity to the Exchange are the same.

⁵ See Securities Exchange Act Release No. 77929 (May 26, 2016), 81 FR 35406 (June 2, 2016).

In order to consolidate these provisions, the Exchange proposes to delete (1) the phrase “and Supplemental Liquidity Providers (‘SLPs’)” from the provision governing credits for MPL orders that provide liquidity to the Exchange so as not to exclude SLP MPL orders, and (2) the SLP fees for MPL orders that add liquidity to the Exchange found under the heading “Credit Applicable to Supplemental Liquidity Providers (‘SLPs’)” of the Price List in their entirety. No substantive change would be effected since, as noted, the amount of the credits and qualifications for SLP and non-SLP MPL orders that add liquidity to the Exchange are currently the same and would remain unchanged.

DMM MPL Orders

The Exchange currently provides a credit of \$0.0030 to DMMs for executions of MPL Orders in securities priced \$1.00 or more that provide liquidity to the NYSE. The Exchange proposes to revise the credit to DMMs to \$0.00275.

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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,⁶ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁷ 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) & (5).

and does not unfairly discriminate between customers, issuers, brokers or dealers and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed non-substantive changes to its Price List deleting obsolete entry relating to non-electronic agency transactions of Floor brokers at the close; clarifying that the charge for at the opening or at the opening only orders are “credited” to both sides; replacing “At the opening or at the opening only orders” with “Executions at the Open”; and consolidating and streamlining the presentation of the credits for MPL orders that provide liquidity to the Exchange are designed to provide greater specificity and clarity to the Price List, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Eliminating obsolete and redundant material also reduces potential confusion and adds transparency and clarity to the Exchange’s rules, thereby ensuring that members, regulators, and the public can more easily navigate and understand the Exchange’s rulebook.

Finally, the Exchange believes that the proposed change to the credit for DMMs for MPL Orders that provide liquidity to the Exchange to \$0.00275 per share is reasonable because the credit is in line with the best credit for member organizations of

\$0.00275 when the member organization has Adding ADV⁸ in MPL orders that is at least 0.140% of NYSE CADV.⁹ The proposed \$0.00275 credit is also comparable to credits provided by other markets. For example, NASDAQ's best credit to add non-displayed midpoint liquidity is \$0.0025.¹⁰ Moreover, the requirement is equitable and not unfairly discriminatory because DMMs on the Exchange have heightened quoting and other obligations that other market participants do not have. As such, it is equitable and not unfairly discriminatory to offer DMMs a credit that is in line with the best credit for other member organizations that do not have such obligations. The requirement is also equitable and not unfairly discriminatory because it would apply equally to all DMM firms.

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,¹¹ 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 proposed rule

⁸ "Adding ADV" is when a member organization has ADV that adds liquidity to the Exchange during the billing month. Adding ADV excludes any liquidity added by a DMM.

⁹ NYSE CADV is defined in the Price List as the consolidated average daily volume of NYSE-listed securities.

¹⁰ See NASDAQ Price List, available at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>

¹¹ 15 U.S.C. 78f(b)(8).

change is designed to eliminate obsolete and redundant material from the Exchange's Price List and provide the public and investors with a Price List that is clear and transparent. Further, the Exchange believes that the proposed change to the credit for DMMs for MPL Orders would not place a burden on competition because the lower credit is comparable to credits provided by other exchanges.

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)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 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-2017-47 on the subject line.

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).

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-2017-47. 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 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-2017-47 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.¹⁵

Eduardo A. Aleman
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).