

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82706; File No. SR-NYSE-2018-08)

February 13, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Price List for Equity Transactions in Stocks with a Per Share Stock Price of \$1.00 or More to Introduce a New Market at-the-Close and Limit at-the-Close Tier 3

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 February 1, 2018, 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 of \$1.00 or more to introduce a new market at-the-close (“MOC”) and limit at-the-close (“LOC”) Tier 3. 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.

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

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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.

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 introduce a new MOC/LOC Tier 3.

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

The Exchange proposes to implement this change to its Price List effective February 1, 2018.

Currently, for MOC/LOC Tier 1, the Exchange currently charges \$0.0004 per share for MOC orders and \$0.0007 per share for LOC orders from any member organization in the prior three billing months executing (1) an ADV of MOC activity on the NYSE of at least 0.45% of NYSE CADV, (2) an ADV of total close activity (MOC/LOC and executions at the close) on the NYSE of at least 0.7% of NYSE CADV, and (3) whose MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close). For MOC/LOC Tier 2, the Exchange currently charges \$0.0005 per share for MOC orders and \$0.0008 per share for LOC orders from any member organization in the prior three billing months executing (1) an ADV of MOC activity on the NYSE of at least 0.35% of NYSE CADV, (2) an ADV

of total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.525% of NYSE CADV, and (3) whose MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close)

The Exchange proposes a third tier for MOC and LOC orders that would charge \$0.0008 per share for MOC orders and \$0.0009 per share for LOC orders from any member organization executing in the current billing month (1) an ADV of MOC activity on the NYSE of at least 0.25% of NYSE (Tape A) CADV, (2) an ADV of the member organization's total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.35% of NYSE (Tape A) CADV, and (3) whose MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close). The rates and requirements for MOC/LOC Tiers 1 and 2 would remain the same.

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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,<sup>4</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>5</sup> in particular, because it provides for the equitable allocation of reasonable dues,

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

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

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 fee change for certain executions at the close are reasonable. The Exchange's closing auction is a recognized industry benchmark,<sup>6</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 offering a new fee tier for member organizations that execute in a current month an ADV of MOC activity on the NYSE of at least 0.25% of NYSE (Tape A) CADV, an ADV of the member organization's total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.35% of NYSE (Tape A) CADV, and whose MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close) is reasonable and not unfairly discriminatory because the proposed change would encourage greater marketable and other liquidity at the closing auction, and higher volumes of MOC and LOC orders contribute to the quality of the Exchange's closing auction and provide market participants whose orders are swept into the close with a greater opportunity for execution. The Exchange believes that the proposed tier is equitable and not unfairly discriminatory because all member organizations will be subject to the same fee structure, which will automatically adjust based on prevailing market conditions.

The Exchange believes that charging a lower rate for MOC executions than LOC executions is reasonable and not unfairly discriminatory because MOC orders are always marketable and therefore have a higher likelihood of execution at the close. Charging a

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<sup>6</sup> For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

lower fee will encourage higher volumes of MOC orders at the close, which should result in a higher level of orders matched and greater liquidity for all Exchange auction participants. The Exchange notes that the current MOC/LOC Tier 1 and MOC/LOC Tier 2 charge a lower rate for MOC executions than LOC executions.

The Exchange believes that the requirement that at least 35% of the member organization's total close activity be comprised of MOC activity in order to qualify for MOC/LOC Tier 3 rates is reasonable and not unfairly discriminatory because MOC orders contribute meaningfully to the price and size discovery, which is the hallmark of the closing auction process. Charging a lower fee to member organizations utilizing MOC orders as a significant component of their closing auction participation will encourage higher volumes of MOC orders at the close, which should result in robust price discovery, a higher level of orders matched and greater liquidity for all Exchange auction participants.

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>7</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 change would encourage the submission of additional liquidity to a

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<sup>7</sup> 15 U.S.C. 78f(b)(8).

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 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 change 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>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</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 19(b)(2)(B)<sup>10</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-2018-08 on the subject line.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 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-2018-08. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to

File Number SR-NYSE-2018-08 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>11</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).