

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82965; File No. SR-NYSE-2018-10)

March 29, 2018

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)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 16, 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 (1) a new fee for Floor broker executions at the open, and (2) different charges for Discretionary e-Quotes (“d-Quotes”) above the first 750,000 average daily volume (“ADV”) of aggregate executions at the close based on the time of d-Quote entry. The Exchange proposes to implement these changes to its Price List effective April 1, 2018. 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.

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 introduce (1) a new fee for Floor broker executions at the open, and (2) different charges for d-Quotes above the first 750,000 ADV of aggregate executions at the close based on time of d-Quote entry or modification.

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

The Exchange proposes to implement these changes to its Price List effective April 1, 2018.

Executions at the Open

For securities priced \$1.00 or more, the Exchange currently charges a fee of \$0.0010 per share for executions at the open, subject to a monthly fee cap of \$30,000 per member organization provided the member organization executes an ADV that adds liquidity to the Exchange during the billing month ("Adding ADV"), excluding liquidity added by a Designated Market Maker, of at least five million shares.

For securities priced \$1.00 or more, the Exchange proposes to introduce a fee of \$0.0003 per share for executions at the open by Floor brokers which, as proposed, would also be subject

to the \$30,000 per member organization monthly fee cap for executions at the open.⁴ The \$0.0010 per share fee for executions at the opening would not be changed. DMMs currently are not charged for executions at the opening and would continue to not be charged.

Executions at the Close

For d-Quotes above the first 750,000 ADV of the aggregate of executions at the close by a member organization, the Exchange proposes new charges differentiated by the last time such d-Quotes are last modified.

Currently, the Exchange does not charge member organizations for the first 750,000 ADV of the aggregate of executions at the close for d-Quote, Floor broker executions swept into the close, excluding verbal interest, and executions at the close, excluding MOC Orders, LOC Orders and CO Orders. For d-Quote, Floor broker executions swept into the close, excluding verbal interest, and executions at the close, excluding MOC Orders, LOC Orders and CO Orders after the first 750,000 ADV of the aggregate of executions at the close by a member organization, the Exchange charges \$0.0007 per share.

The Exchange proposes to continue not to charge member organizations for the first 750,000 ADV of the aggregate of executions at the close for d-Quote, Floor broker executions swept into the close, excluding verbal interest, and executions at the close, excluding MOC Orders, LOC Orders and CO Orders.

The Exchange proposes the following fees differentiated by time of entry (or last modification) for d-Quotes at the close after the first 750,000 ADV of the aggregate of executions at the close by a member organization:

⁴ The existing pricing for executions at the opening in securities priced below \$1.00 would remain unchanged (i.e., 0.3% of the total dollar value of the transaction).

- \$0.0003 per share for executed d-Quotes last modified⁵ by the member organization earlier than 25 minutes before the scheduled close of trading.
- \$0.0007 per share for executed d-Quotes last modified from 25 minutes up to but not including 3 minutes before the scheduled close of trading.
- \$0.0008 per share for executed d-Quotes last modified in the last 3 minutes before the scheduled close of trading for firms in MOC/LOC Tiers 1 and 2; all other firms, \$0.0010 per share.

All other orders from continuous trading swept into the close would continue to be charged the existing rate of \$0.0007.

The Exchange proposes to add a new footnote 9 to the Price List that would provide that, for member organizations that execute an ADV on the NYSE during a billing month in excess of 750,000 shares, the Exchange would determine the average fee applicable to that member organization based on all executions at the close for that month and would not charge that average fee for executions below the 750,000 ADV.

The following example demonstrates the operation of the new fee structure for executions at the close.

- Assume that Member Organization A has a combined ADV of d-Quote, Floor broker and other orders executed at the close of 5 million shares in a 20 day month, or 100 million shares for the month. Further assume that Member

⁵ As set forth in proposed footnote 10 to the Price List, as used in the Price List, the phrase “last modified” would mean the later of the order’s entry time or the final modification or cancellation time for any d-Quote order with the same broker badge, entering firm mnemonic, symbol, and side.

Organization A is not at MOC/LOC Tier 1 or 2. Assume a regular 4:00 p.m. close of trading and that the firm therefore does not qualify for a MOC/LOC Tier.

- Assume further that a total of 75 million shares were d-Quotes last modified before 3:35 p.m., and therefore subject to a fee of \$0.0003; 5 million shares were d-Quotes last modified from 3:35 p.m. and prior to 3:57 p.m., and therefore subject to a fee of \$0.0007; 15 million shares were d-Quotes last modified from 3:57 p.m. up to the close., and therefore subject to a fee of \$0.0010; and 5 million shares were other executions at the close, and therefore subject to a fee of \$0.0007.
- Member Organization A's combined initial fee for that month would be \$44,500.00 an average fee of \$0.000445 per share (\$44,500.00 divided by 100 million shares).
- Since under the proposed Price List, the first 750,000 shares ADV would not be charged, the Exchange would reduce the initial \$44,500.00 fee by \$6,675.00, which is the product of 750,000 shares multiplied by 20 days multiplied by the average fee of \$0.000445.
- Member Organization A's net fee for the month would thus be \$37,825.00 (\$44,500.00 minus \$6,675.00 for the 750,000 ADV that is not charged).
- If Member Organization A was at MOC/LOC Tier 1 or MOC/LOC Tier 2, Member Organization A's monthly fee would be \$35,275.00, representing an initial \$41,500.00 fee reduced by \$6,225.00 based on 750,000 ADV without charge for 20 days on the average initial fee of \$0.0004150 per share.

* * * * *

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 6(b)(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 and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee changes for certain executions at the close are reasonable. The Exchange's closing auction is a recognized industry benchmark,⁸ 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.

Executions at the Open

The Exchange believes that the proposed fee for executions at the open sent to a Floor broker for representation on the Exchange is reasonable because it would encourage additional liquidity on the Exchange's opening auction and because members and member organizations benefit from the substantial amounts of liquidity that are present on the Exchange during such time.

The Exchange believes the proposed change is equitable and not unfairly discriminatory

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) & (5).

⁸ For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

because it would continue to encourage member organizations to send orders to the trading Floor for execution, thereby contributing to robust levels of liquidity on the trading Floor, which benefits all market participants. The proposed fee will encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange during the opening. Moreover, the requirement is equitable and not unfairly discriminatory because it would apply equally to all similarly situated member organizations. Finally, the Exchange notes that the proposed fee and the current cap together are comparable to those for executions at the opening on other markets.⁹

Executions at the Close

The Exchange believes that charging different rates for d-Quotes that execute in the close based on time of entry or last modification is reasonable and not unfairly discriminatory because it encourages all member organizations to enter or modify d-Quotes as early possible, beginning with as early as 25 minutes before the close of trading, in order to build up liquidity going into the closing auction. Further, it is reasonable to charge member organizations a higher rate for entering or modifying their interest in the final minute of regular trading hours because such interest most benefits from the flexibility afforded the order type.

Similarly, the Exchange believes that calculating how a member organization that executes an ADV on the Exchange during a billing month in excess of 750,000 shares is not charged for those first 750,000 shares is reasonable because the Exchange would reduce a member organization's total charges for d-Quote and other executions at the close by the average

⁹ For example, NASDAQ charges \$0.0015 per share for certain orders executed in the NASDAQ Opening Cross and applies at \$35,000 fee cap per month per firm for such executions. See Nasdaq Rule 7018(e).

fee applicable to the member organization for that month for executions at the close times 750,000 shares per day. The Exchange believes it is reasonable to reduce the fee by the average fee applicable to that member organization because the Exchange would now charge four rates for d-Quotes and other executions at the close (\$0.0003, \$0.0007, \$0.0008 or \$0.0010). The average rate would therefore be the member organization's weighted average of those three rates and the Exchange would not charge that average price for the first 750,000 shares per day.

The Exchange believes that offering a lower fee for members at MOC/LOC Tier 1 and 2 of \$0.0008 for d-Quotes executed from 3:57 p.m. up to 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 fee for MOC/LOC Tier 1 and 2 is equitable and not unfairly discriminatory because all similarly situated member organizations will be subject to the same fee structure, which will automatically adjust based on prevailing market conditions.

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,¹⁰ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in

¹⁰ 15 U.S.C. 78f(b)(8).

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 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)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² 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)¹³ 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-2018-10 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.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSE-2018-10. 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-2018-10 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.¹⁴

Brent J. Fields
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).