

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83929; File No. SR-NYSE-2018-37)

August 23, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a 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 August 10, 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 to (1) amend the cap applicable to certain transactions at the open; (2) add new incentives for member organizations and Supplemental Liquidity Providers (“SLP”) in Tape A securities when adding liquidity in securities traded pursuant to Unlisted Trading Privileges (“UTP”) (Tapes B and C); (3) add a new Step Up tier for SLPs in Tape A securities; and (4) amend the alternative NYSE Crossing Session II (“NYSE CSII”) fee cap. The Exchange proposes to implement these changes to its Price List effective August 10, 2018.⁴ The proposed rule change is available on the Exchange’s website at

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 on August 1, 2018 (SR-NYSE-2018-36) and withdrew such filing on August 10, 2018. This filing replaces SR-NYSE-2018-36 in its entirety.

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 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) amend the cap applicable to certain transactions at the open; (2) add new incentives for member organizations and SLPs in Tape A securities when adding liquidity in UTP Securities (Tapes B and C); (3) add a new Step Up tier for SLPs in Tape A securities; and (4) amend the alternative NYSE CSII fee cap. In general, the proposed amendments are intended to encourage greater participation by Exchange member organizations and encourage submission of additional liquidity to a national securities exchange, to the benefit of all market participants.

The Exchange proposes to implement these changes to its Price List effective August 10, 2018

Executions at the Open

For securities priced \$1.00 or more, the Exchange currently charges fees of \$0.0010 per share for executions at open, and \$0.0003 per share for Floor broker executions at the open, subject to \$30,000 cap per month per member organization, provided the member organization

executes an average daily trading volume (“ADV”) that adds liquidity to the Exchange during the billing month (“Adding ADV”),⁵ excluding liquidity added by a DMM, of at least five million shares, unless the lower \$20,000 monthly fee cap applies. The lower fee cap applies to member organizations that execute an ADV that takes liquidity from the NYSE during the billing month (“Taking ADV”), excluding liquidity taken by a DMM, of at least 1.30% of NYSE consolidated average daily volume (“CADV”) and an ADV of orders for execution at the open (“Open ADV”) of at least 8 million shares.

The Exchange proposes to lower the alternative fee cap from \$20,000 to \$10,000. The Exchange would also require member organizations to execute a Taking ADV, excluding liquidity taken by a DMM, of at least 1.20% of NYSE CADV in order to qualify for the lower cap. The additional requirement of an Open ADV of at least 8 million shares would remain unchanged.

New Cross Tape Incentive

The Exchange proposes an additional incentive to member organizations and SLPs in Tape A securities that add liquidity to the Exchange in UTP Securities, as follows.

As proposed, member organizations that meet the current requirements for the Tier 1 Adding Credit or Tier 2 Adding Credit on Tape A would be eligible to receive an additional \$0.00005 per share in Tape A securities if the member organization adds liquidity, excluding liquidity added as an SLP, in UTP Securities of at least 0.20% of Tape B and Tape C CADV combined.

⁵ Footnote 2 to the Price List defines ADV as “average daily volume” and “Adding ADV” as ADV that adds liquidity to the Exchange during the billing month. The Exchange is not proposing to change these definitions.

Similarly, SLPs that (1) meet the current requirements for the SLP Tier 1 or Tier 4 credits or the proposed requirements for the SLP Step Up Tier credits described below, and (2) add liquidity in UTP Securities of at least 0.30% of Tape B and Tape C CADV combined, would be eligible for an additional \$0.00005 per share in Tape A securities for SLPs that meet the requirements for SLP Tier 1 and Tier 4 credits or an additional \$0.0001 in Tape A securities for SLPs that meet the requirements for SLP Step Up Tier in securities with a per share price of \$1.00 or more that meet the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B (quotes of an SLP-Prop and an SLMM of the same member organization would not be aggregated).⁶

SLPs that meet the current requirements for SLP Tier 1 and add liquidity in UTP Securities of at least 0.30% of Tape B and Tape C CADV combined would receive an additional credit of \$0.00005 per share in Tape A securities for adding liquidity in securities, other than MPL and Non-Display Reserve orders, where they are not assigned as an SLP or in securities where they do not meet the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B. For example, assume an SLP meets the requirements of SLP Tier 1 and adds liquidity in UTP Securities of at least 0.30% of Tape B and Tape C CADV combined. Further assume that the SLP averages an Adding ADV of 28 million shares a day in Tape A securities, with 20 million shares ADV in securities that meet the 10% quoting requirement and 8 million shares ADV in securities below the 10% requirement. Also assume that the SLP adds an

⁶ Under Rule 107B, an SLP can be either a proprietary trading unit of a member organization (“SLP-Prop”) or a registered market maker at the Exchange (“SLMM”). For purposes of the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated. However, for purposes of adding liquidity for assigned SLP securities in the aggregate, shares of both an SLP-Prop and an SLMM of the same member organization are included.

additional 10 million shares ADV in Tape A securities as a non-SLP. Under these facts, the SLP would receive an \$0.00005 credit for all 28 million Adding ADV shares as an SLP as well as the 10 million Adding ADV shares as a non-SLP.

New SLP Step Up Tier

The Exchange proposes a new, sixth SLP Tier designated the “SLP Step Up Tier” that would provide that an SLP, when adding liquidity to the NYSE with orders, other than MPL orders, in securities with a per share price of \$1.00 or more, would receive a credit of \$0.0018, or \$0.0001 if a Non-Displayed Reserve Order, if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B (quotes of an SLP-Prop and an SLMM of the same member organization would not be aggregated), and (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.085% of NYSE CADV over that SLPs’ April 2018 adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) taken as a percentage of NYSE CADV. SLPs that are also DMMs and subject to Rule 107B(i)2)(A) would need to add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.085% of NYSE CADV over that SLPs’ April 2018 adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) taken as a percentage of NYSE CADV after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. The Exchange believes the new tier would provide greater incentives for more SLPs to add more liquidity to the

Exchange.

NYSE CSII Fee Cap

Currently, the Exchange charges a fee of \$0.0004 per share (both sides) for executions in NYSE CSII.⁷ Fees for executions in CSII are capped at \$200,000 per month per member organization unless the alternative, lower cap of \$25,000 per month per member organization applies for member organizations that execute a Taking ADV, excluding liquidity taken by a DMM, of at least 1.30% of NYSE CADV and Open ADV of at least 8 million shares.

The Exchange proposes to lower the alternative cap to \$15,000 per month for member organizations that execute a Taking ADV, excluding liquidity taken by a DMM, of at least 1.20% of NYSE CADV. The requirement for executing an Open ADV of at least 8 million shares would remain unchanged.⁸

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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,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in

⁷ CSII runs on the Exchange from 4:00 p.m. to 6:30 p.m. Eastern Time and handles member organization crosses of baskets of securities of aggregate-priced buy and sell orders. See NYSE Rules 900-907.

⁸ The Exchange also proposes non-substantive changes to delete and add a space on either side of footnote 8 at the end of the description of SLP Tier 1A.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) & (5).

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 Open

The Exchange believes that lowering the alternative fee cap to \$10,000 and lowering the requirement for member organizations to execute a Taking ADV, excluding liquidity taken by a DMM, to at least 1.20% of NYSE CADV in order to qualify for the lower cap for executions at the open is reasonable, equitable and not unfairly discriminatory because it would encourage additional liquidity on the Exchange and because members and member organizations benefit from the substantial amounts of liquidity that are present on the Exchange. The Exchange believes the proposed changes are equitable and not unfairly discriminatory because it would continue to encourage member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed changes 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. Moreover, the proposed changes are equitable and not unfairly discriminatory because they would apply equally to all qualifying member organizations, including Floor brokers, that submit orders to the NYSE opening and that remove liquidity from the Exchange.

New Cross Tape Incentive

The Exchange believes that providing an additional incentive in Tape A securities for member organizations that add liquidity in UTP Securities is reasonable because it would further contribute to incenting member organizations to provide additional liquidity to a public exchange

in UTP Securities, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that that the proposal is reasonable and not unfairly discriminatory because it would apply to all member organizations eligible for the relevant Tape A tier credits equally. The Exchange further believes that extending the additional credit to Tier 1 Adding Credit and Tier 2 Adding Credit is reasonable because it would increase the number of member organizations at the higher tiers that could qualify for the proposed credit. The Exchange further believes that the proposed credit is reasonable and not unfairly discriminatory because, although the proposed additional credit is less than that offered for Non-Tier, Adding Tier 3 and Adding Tier 4, members organizations qualifying for Tier 1 Adding Credit and Tier 2 Adding Credit tiers already receive a higher credit for such executions. Similarly, the Exchange believes that extending the additional credit to SLP Tier 1 and SLP Tier 4 and the proposed SLP Step Up Tier is reasonable and not unfairly discriminatory because SLPs qualifying for SLP Tier 3, SLP Tier 2 and SLP Tier 1A would already receive a higher additional credit for such executions. The Exchange further believes that the proposed credit is reasonable and not unfairly discriminatory because, although the proposed additional credit for SLP Tier 1 and SLP Tier 4 is less than that offered for SLP Tier 3, SLP Tier 2, SLP Tier 1A and the proposed SLP Step Up Tier, SLPs qualifying for SLP Tier 1 and SLP Tier 4 already receive a higher credit for such executions. In addition, the Exchange believes that the additional credit of \$0.00005 per share for SLPs that meet the current requirements for SLP Tier 1 and add liquidity in UTP Securities of at least 0.30% of Tape B and Tape C CADV combined for adding liquidity in securities where they are not assigned as an SLP or in securities where they do not meet the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B is reasonable and not unfairly discriminatory because SLP Tier 1 has the

highest Adding ADV requirement. Finally, the proposed cross tape incentives are equitable and not unfairly discriminatory because they would apply equally to all qualifying member organizations, including SLPs, that add liquidity to the Exchange in Tape A, Tape B and Tape C securities and that qualify for SLP Tier 1, SLP Tier 4, Adding Tier 1, and Adding Tier 2.

New SLP Step Up Tier

The Exchange believes that the proposal to introduce a new SLP Step Up Tier is reasonable because it provides SLPs as well as SLPs that are also DMMs with an additional way to qualify for a rebate, thereby providing SLPs with greater flexibility and creating an added incentive for SLPs to bring additional order flow to a public market. In particular, as noted above, the Exchange believes that the new tier will provide greater incentives for more active SLPs to add liquidity to the Exchange, to the benefit of the investing public and all market participants. Moreover, offering a higher credit for SLPs that add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.085% of NYSE CADV over that SLPs' April 2018 adding liquidity and that meet the SLP quoting requirements would provide an incentive for less active SLPs to add liquidity in order to meet the SLP quoting requirements, thereby contributing to additional levels of liquidity to a public exchange, which benefits all market participants. Finally, the Exchange believes that the proposed tier is equitable and not unfairly discriminatory because it would apply equally to all SLPs that don't qualify for better SLP tiered credits and that would submit additional adding liquidity to the Exchange in order to qualify for the new credit.

NYSE CSII Fee Cap

The Exchange believes that lowering the alternative cap to \$15,000 per month and the

Taking ADV requirement to at least 1.20% of NYSE CADV is reasonable and an equitable allocation of fees because it would encourage the execution of additional liquidity on a public exchange, thereby promoting price discovery and transparency. Further, the Exchange believes that the proposed requirements are reasonable, equitable and not unfairly discriminatory because all member organizations that submit orders to the NYSE open, remove liquidity from the Exchange, and participate in CSII will be subject to the same fee structure and access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange further believes that the proposed lowering of the Taking ADV requirement would encourage additional member organizations to participate in CSII.

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,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 Exchange believes that the proposed change would foster liquidity provision and stability in the marketplace, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. In this regard, the Exchange believes that the transparency and competitiveness of attracting additional executions on an exchange market would encourage competition. The Exchange also believes that the proposed rule change is designed to provide the public and

¹¹ 15 U.S.C. 78f(b)(8).

investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

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-2018-37 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-2018-37. 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

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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-2018-37 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).