

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84330; File No. SR-NYSE-2018-43)

October 1, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 67 to Specify that D-Quote Functionality under Rule 67(f)(5) will Continue To Be in Effect Until Six Months After the End of the Pilot Period

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 24, 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 Rule 67 (Tick Size Pilot Plan) to specify that d-Quote functionality under Rule 67(f)(5) will continue to be in effect until six months after the end of the pilot period (which will be April 2, 2019). 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.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Rule 67 (Tick Size Pilot Plan) to specify that d-Quote functionality described under Rule 67(f)(5) will continue to be in effect for all pilot securities (“Pilot Securities”) under the plan for the Tick Size Pilot Program (the “Plan”) until six months after the end of the pilot period (which will be April 2, 2019).

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc. (f/k/a EDGA Exchange, Inc.), Bats EDGX Exchange, Inc. (f/k/a EDGX Exchange, Inc.), the Financial Industry Regulatory Authority, Inc. (“FINRA”), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, NYSE MKT LLC, NYSE Arca, Inc., and the Exchange (collectively, the “Participants”), filed the Plan to Implement a Tick Size Pilot Program (“Plan”)⁴ with the Securities and

⁴ See Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (File No. 4-657) (“Tick Plan Approval Order”). See, also, Securities and Exchange Act Release No. 76382 (November 6, 2015) (File No. 4-657), 80 FR 70284 (File No. 4-657) (November 13, 2015), which extended the pilot period commencement date from May 6, 2015 to October 3, 2016. The Plan was submitted to the Commission pursuant to Rule 608 of Regulation NMS. 17 CFR 242.608.

Exchange Commission (the “Commission”), pursuant to Section 11A of the Act⁵ and Rule 608 of Regulation NMS thereunder.⁶ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the “June 2014 Order”).⁷ The Plan was published for comment in the Federal Register on November 7, 2014,⁸ and approved by the Commission, as modified, on May 6, 2015.⁹

The Plan includes stocks of companies with \$3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least \$2.00 for every trading day. The Plan consists of a control group (“Control Group”) of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.¹⁰

During the pilot, Pilot Securities in the Control Group are quoted at the current tick size increment of \$0.01 per share and trade at the currently permitted increments. Pilot Securities in the first test group (“Test Group One”) are quoted in \$0.05 minimum increments but continue to

⁵ 15 U.S.C. 78k-1.

⁶ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁷ See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

⁸ See Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4-657) (Tick Plan Filing).

⁹ See Tick Plan Approval Order, supra note 4. See also Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4-657), amending the Plan to add National Stock Exchange, Inc. as a Participant.

¹⁰ See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

trade at any price increment that is currently permitted.¹¹ Pilot Securities in the second test group (“Test Group Two”) are quoted in \$0.05 minimum increments and trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.¹² Pilot Securities in Test Group Three are subject to the same terms as Test Group Two and are also subject to the “Trade-at” requirement to prevent price matching by a person not displaying at a price of a Trading Center’s “Best Protected Bid or “Best Protected Offer,” unless an enumerated exception applies.¹³ In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS (“Rule 611”)¹⁴ apply to the Trade-at requirement.

The pilot period commenced on October 3, 2016 and is in effect for a period of two years following commencement, until April 2, 2019 (the “Pilot Period”)[sic]. Pursuant to an exemption granted under Rule 608(e) of Regulation NMS, the quoting and trading requirements of the Plan will terminate at the end of trading on Friday, September 28, 2018, instead of at the end of trading on Tuesday, October 2, 2018.¹⁵ At the close of trading on September 28, 2018, all Pilot Securities will be moved into the Control Group and certain data collection provisions under Appendix B and C of the Plan will continue to apply through six (6) months after the end

¹¹ See Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

¹² See Section VI(C) of the Plan.

¹³ See Section VI(D) of the Plan.

¹⁴ 17 CFR 242.611.

¹⁵ See Letter from David S. Shillman, Associate Director, for the Commission, by the Division of Trading of Markets, pursuant to delegated authority, to John Ramsay, Chief Market Policy Officer, IEX Group, Inc., dated September 10, 2018.

of the Pilot Period, which will be April 2, 2019.¹⁶

Amendment to Rule 67 - d-Quotes

The Exchange adopted Rule 67 to implement the requirements specified in the Plan. Rule 67(f)(5) states that, in all Pilot Securities, d-Quotes to buy (sell) will not exercise discretion if (i) exercising discretion would result in an execution equal to or higher (lower) than the price of a protected offer (bid), or (ii) the price of a protected bid (offer) is equal to or higher (lower) than the filed price of the d-Quote. As noted above, at the end of the Pilot Period, Test Group One, Test Group Two and Test Group Three Pilot Securities will be moved into the Control Group. Because Rule 67(f)(5) applies to all Pilot Securities, including Pilot Securities in the Control Group, all Pilot Securities will continue to be subject to Rule 67(f)(5) for the six-month period after the end of the Pilot Period. To make this clear, the Exchange proposes to amend the first paragraph of Rule 67, which currently provides that “The provisions of this Rule will be in effect during a pilot to coincide with the Pilot Period for the Regulation NMS Tick Size Pilot Plan,” to add that “[p]aragraph (f)(5) of this Rule will continue to be in effect for all Pilot Securities for six months after the end of the Pilot Period.” The Exchange believes that this proposed rule change will promote transparency that the existing Rule 67(f)(5) requirement, which is applicable to Control Group Pilot Securities, would continue to be applicable to all Pilot Securities for the six-month period following the end of the Pilot Period.

2. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in

¹⁶ See, supra, note 16.

¹⁷ 15 U.S.C. 78f(b).

general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 rule change is consistent with the Act because it facilitates data analysis during the data collection period specified under a Plan approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act.¹⁹ More specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency and clarity in Exchange rules that an existing provision in Rule 67 relating to how Control Group Pilot Securities are processed would continue during the six-month period following the end of the Pilot Period and during which certain data collection provisions under Appendix B and C of the Plan will continue to apply. By specifying that Rule 67(f)(5) would continue to apply through the six-month period after the end of the Pilot Period, during which all Pilot Securities will be in the Control Group, this proposed rule change ensures that the Exchange's system functionality during the six-month period after the end of the Pilot Period will be in compliance with the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See, supra, note 5.

procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. The proposed changes facilitate data analysis during the data collection period specified under the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)²⁰ of the Act and Rule 19b-4(f)(6) thereunder.²¹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²² normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the Plan's quoting and trading rule obligations will cease on September 28, 2018, and this proposed rule change should be operative on or before that date in order to provide notice to members that the provisions of Rule 67(f)(5) would continue to apply during the six-month period following the end of the Pilot Period. The Commission believes that the proposed rule change provides clarity as to the requirements under Rule 67(f)(5) during the post-Pilot Period. In addition, the Commission believes that the proposed rule change should ensure that the data collected under the Tick Size Pilot during the post-Pilot Period remains consistent with the data collected during the Pilot Period. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.²⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2018-43 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-2018-43. 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-2018-43 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.²⁵

Eduardo A. Aleman
Assistant Secretary

²⁵ 17 CFR 200.30-3(a)(12).