

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84444; File No. SR-NYSE-2018-49)

October 17, 2018

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 October 4, 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) adopt an alternate way to qualify for the Tier 3 Adding Credit; (2) add a new charge for transactions that remove liquidity from the Exchange; and (3) make certain non-substantive, clarifying changes. The Exchange proposes to implement these changes to its Price List effective October 4, 2018.⁴ 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 on September 28, 2018 (SR-NYSE-2018-45). SR-NYSE-2018-45 was subsequently withdrawn and replaced by this filing.

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) adopt an alternate way to qualify for the Tier 3 Adding Credit; (2) add a new charge for transactions that remove liquidity from the Exchange; and (3) make certain non-substantive, clarifying changes.

The Exchange proposes to implement these changes to its Price List effective October 4, 2018.

Tier 3 Adding Credit

The Exchange currently provides an equity per share credit of \$0.0018 per transaction for all orders, other than MPL and Non-Display Reserve orders, for transactions in stocks with a share price of \$1.00 or more when adding liquidity to the Exchange if the member organization (1) has an average daily trading volume (“ADV”) that adds liquidity to the Exchange during the billing month (“Adding ADV”)⁵ that is at least 0.40% of NYSE consolidated average daily volume (“CADV”), and (2) executes market at-the-close

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.

(“MOC”) and limit at-the-close (“LOC”) of at least 0.05% of NYSE CADV.

The Exchange proposes to provide an alternate way for member organizations to qualify for the Tier 3 Adding Credit. As proposed, the Exchange would provide an equity per share credit of \$0.0018 per transaction for all orders, other than MPL and Non-Display Reserve orders, for transactions in stocks with a share price of \$1.00 or more when adding liquidity to the Exchange if the member organization (1) has an Adding ADV that is at least 0.35% of NYSE CADV, (2) executes MOC and LOC orders of at least 0.05% of NYSE CADV, and (3) has an Adding ADV in MPL orders of at least 400,000 shares.

Charges for Removing Liquidity

The Exchange currently charges a fee of \$0.00275 for non-Floor broker transactions that remove liquidity from the Exchange, including those of DMMs. The Exchange also currently charges \$0.0030 for non-Floor broker transactions removing liquidity from the Exchange by member organizations with an Adding ADV, excluding any liquidity added by a DMM, of less than 250,000 ADV on the Exchange during the billing month.

The Exchange proposes to add a slightly higher intermediate fee of \$0.00280 for non-Floor broker transactions that remove liquidity from the Exchange by member organizations with an Adding ADV, excluding any liquidity added by a DMM, that is at least 250,000 ADV on the NYSE in Tape A Securities and less than 500,000 ADV on the NYSE in Tape B and Tape C securities combined during the billing month.

For example, in a given month, a member organization with an Adding ADV, excluding any liquidity added by a DMM, of 250,000 or more on the Exchange in Tape A securities would qualify for a fee of \$0.00275 per share in Tape A securities.

- If that same member organization had an Adding ADV of 300,000 in Tape B

securities and an Adding ADV of 250,000 in Tape C securities, or 550,000 ADV combined, that member would continue to receive a fee of \$0.00275 per share in Tape A securities under the proposed change.

- If that same member organization had an Adding ADV in Tape B and Tape C securities combined of less than 500,000, but still had an Adding ADV of 250,000 or more in Tape A securities, that member organization would receive a fee of \$0.0028 per share in Tape A securities under the proposed change.
- If that member organization had an Adding ADV in Tape B and Tape C securities combined of less than 500,000, and also had an Adding ADV of less than 250,000 in Tape A securities, that member organization would receive a fee of \$0.0030 per share in Tape A securities under the proposed change.

Clarifying, Non-Substantive Changes

First, the Exchange proposes to add a sentence to footnote * to clarify that, unless otherwise specified, references to volumes, quoting, ADV and CADV in the Price List refer to Tape A securities.

Second, the Exchange proposes to make a non-substantive, clarifying change to the annual trading license fee. Currently, for all member organizations, including Floor brokers with more than ten trading licenses but excluding Regulated Only Members, the trading license fee is \$50,000 for the first license held by the member organization unless one of the other rates is deemed applicable.⁶ The current Price List provides that the annual fee applies to “All member organizations with 10 or more trading licenses.” The Exchange proposes a

⁶ See Securities Exchange Act Release No. 82563 (January 22, 2018), 83 FR 3799, 3801 (January 26, 2018) (SR-NYSE-2018-03).

non-substantive change to clarify this language by adding the phrase “, including Floor brokers” after “All member organizations” and the parenthetical “excluding Regulated Only Members” at the end of the entry.

* * * * *

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,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ 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.

Tier 3 Adding Credit

The Exchange believes that providing an additional way to qualify for the Tier 3 Adding Credit is reasonable, equitable and not an unfairly discriminatory allocation of fees 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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) & (5).

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. The proposed changes will also encourage the submission of additional MPL orders that add liquidity, thus providing price improving liquidity to market participants and increasing the quality of order execution on the Exchange's market, which benefits all market participants. 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 and add liquidity to the Exchange and do not currently meet the requirements for higher credits for Adding Tiers 1, 2, and 3.

Charges for Removing Liquidity

The Exchange believes that introducing a slightly higher charge than the current lowest charge of \$0.00275 for non-Floor broker transactions that remove liquidity from the Exchange for member organizations with an Adding ADV, excluding DMM liquidity, of at least 250,000 ADV on NYSE Tape A and less than 500,000 ADV on the NYSE in Tape B and Tape C securities combined during the billing month is reasonable. The Exchange believes that the proposed rate change will incentivize submission of additional liquidity in Tape B and Tape C securities to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange also believes that the proposed fee is equitable because it would apply to all similarly situated member organizations that add liquidity in Tape B or Tape C securities.

The proposed fee also is equitable and not unfairly discriminatory because it would be consistent with the applicable rate on other marketplaces. For example, Nasdaq PSX provides a lower fee per share for removing liquidity, \$0.0028 in Tape A and B securities and \$0.0029 in Tape C securities, if a firm removes 0.065% or more of Consolidated Volume; otherwise, Nasdaq PSX imposes a charge of \$0.0030 per share for removing liquidity.⁹ Given the Exchange's and Nasdaq PSX's relative size and market share, the Exchange believes that Nasdaq PSX remove requirement of 0.065%, which would be 4.55 million shares ADV in a month where CADV is 7 billion shares, is comparable to the Exchange's 250,000 ADV and 500,000 ADV adding requirements. The Exchange notes that since the requirement is for Tape B and Tape C securities combined, member organizations can meet the requirement by adding liquidity in either Tape B or Tape C securities, or both. The Exchange further notes that other marketplaces have tiers with adding requirements in specific tapes to qualify for a rate in securities on another tape. For example, to be eligible for a \$0.0020 adding credit in Tape C securities on Nasdaq, firms are required to average a minimum of 250,000 shares added per day in Tape A or Tape B securities (combined); otherwise, the Tape C credit for adding liquidity is \$0.0015.¹⁰

Non-Substantive, Clarifying Changes

The Exchange believes that the proposed non-substantive, clarifying changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because they are designed to provide greater specificity and clarity to the Price List, thereby removing

⁹ See https://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing.

¹⁰ See <https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

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. The proposed change would not alter the application of any fees or rebates on the Price List. As such, the proposed changes would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national exchange system. In particular, the Exchange believes that the proposed change would provide greater clarity to members and member organizations and the public regarding the Exchange's Rules. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

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 make

¹¹ 15 U.S.C. 78f(b)(8).

non-substantive technical corrections and update the Exchange's Price List in order to provide the public and 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,

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

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-2018-49 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-2018-49. This file number should be included on the subject line if e-mail is used. To help the Commission process and

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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-2018-49 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).