

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84767; File No. SR-NYSE-2018-59)

December 10, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pilot Period for the Exchange's Retail Liquidity Program Until the Earlier of Approval of the Filing to Make the Program Permanent or June 30, 2019

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on November 30, 2018, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("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 extend the pilot period for the Exchange's Retail Liquidity Program (the "Retail Liquidity Program" or the "Program"), which is currently scheduled to expire on December 31, 2018, until the earlier of approval of the filing to make the Program permanent or June 30, 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 extend the pilot period for the Retail Liquidity Program, currently scheduled to expire on December 31, 2018,⁴ until the earlier of approval of the filing to make the Program permanent or June 30, 2019.

Background

In July 2012, the Commission approved the Retail Liquidity Program on a pilot basis.⁵ The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, Retail Liquidity Providers (“RLPs”) are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange’s best protected bid or offer (“PBBO”), called a Retail Price Improvement Order (“RPI”). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations (“RMOs”) can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

⁴ See Securities Exchange Act Release No. 83540 (June 28, 2018), 83 FR 31234 (July 3, 2018) (SR-NYSE-2018-29).

⁵ See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55) (“RLP Approval Order”).

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Rule 107C(m), the pilot period for the Program is scheduled to end on December 31, 2018.

Proposal to Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide and consider the Exchange's filing to make the filing permanent.⁶ As such, the Exchange believes that it is appropriate to extend the current operation of the Program.⁷ Through this filing, the Exchange seeks to amend NYSE Rule 107C(m)⁸ and extend the current pilot period of the Program until the earlier of approval of the filing to make the Program permanent or June 30, 2019.

⁶ See id. at 40681; see also SR-NYSE-2018-28 (filing to make Rule 107C, which sets forth the Exchange's Retail Liquidity Program, permanent).

⁷ Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. See Letter from Martha Redding, Associate General Counsel and Asst. Corporate Secretary, NYSE Group, Inc., to Brent J. Fields, Secretary, Securities and Exchange Commission, dated November 30, 2018.

⁸ The Exchange notes that the proposed amendment to Rule 107C(m) would amend the current version of Rule 107C(m), which the Exchange also proposes to amend as part of the Exchange's filing to make Rule 107C permanent. See SR-NYSE-2018-28.

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 Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed 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 extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously noted, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

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 rule change simply extends an established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may 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 waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁵ 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-2018-59 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2018-59. 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

¹⁵ 15 U.S.C. 78s(b)(2)(B).

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-2018-59 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.¹⁶

Eduardo A. Aleman
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).