

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85095; File No. SR-NYSE-2019-02)

February 11, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Price List to Add a New Incentive for Supplemental Liquidity Providers in Tape A Securities When Adding Liquidity in Securities Traded pursuant to Unlisted Trading Privileges

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 February 1, 2019, 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 add a new incentive for Supplemental Liquidity Providers (“SLP”) in Tape A securities when adding liquidity in securities traded pursuant to Unlisted Trading Privileges (“UTP”) (Tapes B and C). The Exchange proposes to implement these changes to its Price List effective February 1, 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.

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 add a new incentive for SLPs in Tape A securities when adding liquidity in UTP Securities (Tapes B and C).

The Exchange proposes to implement these changes to its Price List effective February 1, 2019.

Proposed Rule Change

Currently, SLP Tier 1 provides that an SLP adding liquidity in Tape A securities with a per share price of \$1.00 or more is eligible for a per share credit of \$0.0029 if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B, 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)⁴ of an ADV⁵ of more than 0.90% of NYSE CADV, or

⁴ 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

with respect to an SLP that is also a Designated Market Maker (“DMM”) and subject to Rule 107B(i)(2)(a), more than 0.90% 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 SLP Tier 1 credit in the case of Non-Displayed Reserve Orders is \$0.0012.

The Exchange proposes an additional incentive to SLPs in Tape A securities under SLP Tier 1 for SLPs that meet the current requirements for SLP Provide Tier 1 in UTP Securities.

SLP Provide Tier 1 provides a \$0.0032 per share credit per tape in an assigned UTP Security for SLPs adding displayed liquidity to the Exchange if the SLP (1) adds liquidity for all assigned UTP Securities in the aggregate of an CADV of at least 0.10% for Tape B and 0.075% for Tape C, (2) meets the 10% average or more quoting requirement in 400 or more assigned UTP Securities in Tapes B and C combined pursuant to Rule 107B, and (3) meets the 10% average or more quoting requirement in an assigned UTP Security pursuant to Rule 107B.

The Exchange proposes that SLPs meeting the requirements of SLP Provide Tier 1 in UTP Securities would be eligible to qualify for the SLP Tier 1 adding rates where the SLP, in addition to meeting the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B, adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.75% of NYSE CADV or, with respect to SLPs that

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.

⁵ The defined term, “ADV,” is used here as defined in footnote 2 to the Price List.

are also DMMs and subject to Rule 107B(i)(2)(a), more than 0.75% 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 Price List would refer to this as the “SLP Cross Tape Tier 1 Incentive.”

For example, assume an SLP averages an Adding ADV⁶ of 28 million shares a day in Tape A securities in the billing month where the NYSE CADV is 3.5 billion shares, for a percent adding of CADV of 0.80% in Tape A securities, which before the proposed change qualifies the SLP for SLP Tier 1A in Tape A securities by meeting the current 0.60% CADV requirement. Further assume that the SLP meets the requirements of SLP Provide Tier 1 in UTP Securities in both Tape B securities and Tape C securities. Under the proposed change, that SLP would be eligible for the lower SLP Tier 1 requirement for Tape A securities of 0.75% of CADV, which it would meet by having a percent adding CADV of 0.80%.

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

⁶ “Adding ADV” is when a member organization has ADV that adds liquidity to the Exchange during the billing month. Adding ADV excludes any liquidity added by a DMM.

⁷ 15 U.S.C. 78f(b).

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.

The Exchange believes that lowering the ADV requirement to qualify for SLP Tier 1 in Tape A securities for SLPs that add liquidity in UTP Securities by meeting the SLP Provide Tier 1 requirements in both Tape B and Tape C 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 SLP Tier 1 credits equally.

The Exchange further believes that the proposal is reasonable and not unfairly discriminatory because, although the proposed alternative requirement is offered for members organizations qualifying for SLP Tier 1 and not for the SLP Non-Tier, Adding Tier 2, Adding Tier 3 and Adding Tier 4, the proposal will encourage SLPs that do not currently qualify for either the SLP Tier 1 in Tape A securities or the SLP Provide Tier 1 in UTP Securities to add additional liquidity in order to reach the SLP Tier 1 and SLP Provide Tier 1. The Exchange notes that SLPs qualifying for SLP Tier 2 in Tape A securities that receive a credit of \$0.0026 and that do not trade UTP Securities can qualify for the SLP Tier 1 credit of \$0.0029 by meeting the requirements for the SLP Step Up Tier 1 and thereby receive an additional \$0.0003 credit, for a combined adding credit of

⁸ 15 U.S.C. 78f(b)(4) & (5).

\$0.0029.

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,⁹ 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 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

⁹ 15 U.S.C. 78f(b)(8).

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)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

19(b)(2)(B)¹² 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-2019-02 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-2019-02. 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

¹² 15 U.S.C. 78s(b)(2)(B).

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-2019-02 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.¹³

Eduardo A. Aleman
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).