

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86930; File No. SR-NYSE-2019-48)

September 11, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Quoting Thresholds Applicable in Relation to an Issue Experienced by the Consolidated Tape Association on August 12, 2019

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 30, 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 modify the manner in which it calculates certain quoting thresholds applicable to billing on the Exchange in relation to an issue experienced by the Consolidated Tape Association (“CTA”) securities information processor on August 12, 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 concerning the purpose of, and basis for, the proposed rule change and discussed any comments

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the manner in which it calculates certain quoting thresholds applicable to billing on the Exchange in relation to an issue experienced by the CTA securities information processor (the “SIP”) on August 12, 2019 (“SIP Processing Issue”). Specifically, the Exchange proposes to exclude August 12, 2019 from any monthly calculations of quoting thresholds for the month of August, as described further below.

The SIP processes, consolidates, and disseminates real-time last-sale and quote information from every trading venue. According to CTA, on Monday, August 12, 2019, beginning at approximately 2:48 p.m. E.T., the SIP experienced issues with its Consolidated Quote System (“CQS”) output lines, and beginning at 3:12 p.m. E.T., began experiencing disruptions to connectivity to its Consolidated Tape System (“CTS”) lines, and that these issues continued into the after-hours trading sessions. Because of the SIP Processing Issue, the SIP advised that there may be gaps in the intra-day trades, quotes and other messages that were attempted to be sent to it during the impacted time period.⁴ As a result of the SIP Processing Issue, the Exchange’s determination of the NBBO for a period of that day was likely impacted.

As provided for in the Exchange’s Price List, many of the Exchange’s transaction fees and credits are based on trading, quoting and liquidity thresholds that member organizations must

⁴ See CTA Notice of “CTA Processing Issue on August 12, 2019: Post-Mortem,” which is available here: <https://www.ctaplan.com/alerts#110000144324>.

satisfy in order to qualify for particular rates. In particular, for Tape A securities, certain Designated Market Maker (“DMM”) rates are determined based on whether a DMM quotes at the National Best Bid or Offer (“NBBO”) in an applicable security for a specified percentage of time in the applicable month. In addition, credits paid to Supplemental Liquidity Providers (“SLP”) are also based on whether an SLP has met a specified percentage of quoting requirements calculated for an applicable month.

The Exchange believes that because the SIP Processing Issue potentially impacted the ability for the Exchange and other market participants to determine the NBBO in securities during the trading day, this day -- August 12, 2019 -- should be excluded from any monthly calculations relating to NBBO as specified on the Price List. The Exchange believes that excluding August 12, 2019 from the calculation of meeting quoting thresholds for DMMs and SLPs for the month of August would reasonably ensure that a member organization that would otherwise qualify for a particular threshold during August 2019, and the corresponding transaction rate, would not be negatively impacted by the SIP Processing Issue on August 12, 2019.⁵

The Exchange notes that the proposed exclusions would be similar to the current provision in the Price List whereby, for purposes of transaction fees and SLP credits, ADV calculations exclude early closing days⁶ or if the Exchange experiences a system disruption that lasts for more than 60 minutes.⁷ Here, the system disruption was at the SIP, not the Exchange,

⁵ The exclusion would not apply to Retail Liquidity Providers as there were no registered RLPs on the Exchange on August 12, 2019.

⁶ For example, the Exchange closes early on the Friday immediately following Thanksgiving Day (e.g., Friday, November 29, 2019).

⁷ See footnote 4 in the Price List.

but nonetheless impacted the Exchange's ability to determine the NBBO during the August 12th trading day.

The proposed change is not otherwise intended to address any other issues surrounding billing for activity on the Exchange and the Exchange is not aware of any negative impact on member organizations that would result from the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁹ 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 Proposed Change is Reasonable

The Exchange believes that excluding August 12, 2019 for purposes of determining transaction fees and credits that are based on whether a member organization quoted at the NBBO for a specified percentage of time over the applicable month is reasonable because the SIP Processing Issue impacted the ability of the Exchange to determine the NBBO in securities during the August 12th trading day. The proposed change to exclude this trading day is reasonable because, without the proposed exclusion, both the numerator and the denominator for August 12, 2019 would be impacted and not calculable for the full trading day. As a result, without the proposed exclusion, a member organization that would otherwise qualify for a particular threshold for August 2019, and the corresponding transaction rate, may be negatively impacted by the SIP Processing Issue. Finally, the Exchange believes that the proposed rule

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) & (5).

change is reasonable because the SIP Processing Issue was not within the Exchange's control nor can the Exchange correct or otherwise remediate the issue.

The Proposal is an Equitable Allocation of Fees

The Exchange believes that excluding activity on August 12, 2019 for purposes of determining transaction fees and credits based on whether a member organization quoted at the NBBO for a percentage of time during the billing month is equitable because it would apply equally to all market participants on the Exchange and to all credits based on such quoting requirements. In this regard, excluding August 12, 2019 from such calculations would reasonably ensure that a member organization that would otherwise qualify for a particular threshold for August 2019, and the corresponding transaction rate, would not be negatively impacted by the SIP Processing Issue. This is equitable because DMMs and SLPs have specific performance metrics that must be satisfied for assigned securities in order to qualify for the particular rates in the Price List.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the exclusion would apply equally to all member organizations that are subject to transaction rates based on quoting at the NBBO for a specified percentage of the billing month. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. Rather, as discussed above, the Exchange believes that the proposed exclusion would reasonably ensure that a member organization that would otherwise qualify for a particular threshold for August 2019, and the corresponding transaction rate, would not be negatively impacted by the SIP Processing Issue. This is not unfairly discriminatory because DMMs and

SLPs have specific performance metrics that must be satisfied for assigned securities in order to qualify for the particular rates in the Price List.

The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed exclusion of August 12, 2019 would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would reasonably ensure that a member organization that would otherwise qualify for a particular threshold during the month, and the corresponding transaction rate, would not be negatively impacted by the SIP Processing Issue. The Exchange further believes that the proposed exclusions remove impediments to and perfect the mechanism of a free and open market and a national market system because they provide transparency for member organizations and the public regarding the manner in which the Exchange will calculate certain quoting thresholds related to billing for activity on the Exchange on August 12, 2019 and for the month of August 2019. In this regard, the Exchange believes that the proposed exclusions are consistent with the Act because they address inquiries from member organizations regarding how the Exchange will treat August 12, 2019 for purposes of billing.

¹⁰ 15 U.S.C. 78f(b)(5).

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.

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. The proposed rule change would treat all market participants on the Exchange equally by excluding August 12, 2019 from quoting level calculations described in the Price List. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to exclude August 12, 2019 for the purposes of determining transaction fees and credits based on quoting levels as set forth in the Price List. The proposed exclusion would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. In addition, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to fairly assess its member organizations fees and to apply credits in light of the SIP Processing Issue, which was beyond the control of the Exchange.

Intramarket Competition. The proposed change is designed to eliminate a trading day that would almost certainly affect the ability of member organizations to meet certain of these thresholds for August 2019. The proposed exclusion would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

¹¹ 15 U.S.C. 78f(b)(8).

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those 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 off-exchange venues. By providing member organizations with a greater level of certainty for August 2019 by reasonably ensuring that member organizations that would otherwise qualify for a particular threshold for August 2019, and the corresponding transaction rate, would not be negatively impacted by the SIP Processing Issue, the Exchange believes that the proposed change could promote competition between the Exchange and other execution venues by encouraging member organizations to continue their participation on the Exchange.

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 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

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-2019-48 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-2019-48. 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

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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-2019-48 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

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Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).