

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-87957; File No. SR-NYSE-2020-02)

January 14, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Price List to Eliminate the Alternative \$10,000 Monthly Fee Cap for Executions at the Open

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 2, 2020, 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) eliminate the alternative \$10,000 monthly fee cap for executions at the open; (2) eliminate the separate fee for verbal executions by Floor brokers at the close and clarify that Floor broker executions swept into the close include verbal interest; (3) adopt an alternate way to qualify for the Tier 4 Adding Credit in Tape A securities; (4) eliminate the NYSE Crossing Session II fee cap; and (5) revise the requirements for the credits available to Supplemental Liquidity Providers (“SLPs”) under SLP Provide Tier 1 for adding liquidity to the

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

Exchange in Tapes B and C securities. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://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 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) eliminate the alternative \$10,000 monthly fee cap for executions at the open; (2) eliminate the separate fee for verbal executions by Floor brokers at the close and clarify that Floor broker executions swept into the close include verbal interest; (3) adopt an alternate way to qualify for the Tier 4 Adding Credit in Tape A securities; (4) eliminate the NYSE Crossing Session II ("NYSE CSII") fee cap; and (5) revise the requirements for the credits available to SLPs under SLP Provide Tier 1 for adding liquidity to the Exchange in Tapes B and C securities.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional displayed

liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective January 2, 2020.

#### Competitive Environment

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>4</sup>

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”<sup>5</sup> Indeed, equity trading is currently dispersed across 13 exchanges,<sup>6</sup> 31 alternative trading systems,<sup>7</sup> and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share

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<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

<sup>5</sup> See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) (“Transaction Fee Pilot”).

<sup>6</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

<sup>7</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

(whether including or excluding auction volume).<sup>8</sup> Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, for the month of November 2019, the Exchange's market share of intraday trading (i.e., excluding auctions) in Tapes A, B and C securities combined was only 9.4%.<sup>9</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

To respond to this competitive environment, the Exchange has established incentives for its member organizations to send orders for execution at the open and close and to utilize the Exchange's after-hours crossing session.<sup>10</sup> In addition, the Exchange has established incentives for its member organizations who submit orders that provide and remove liquidity on the Exchange, including cross-tape incentives for member organizations and SLPs based on submission of orders that provide displayed and non-displayed liquidity in Tapes B and C securities. The proposed fee change is designed to

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<sup>8</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

<sup>9</sup> See id.

<sup>10</sup> CSII runs on the Exchange from 4:00 p.m. to 6:30 p.m. Eastern Time and handles member organization crosses of baskets of securities of aggregate-priced buy and sell orders. See NYSE Rules 900-907.

eliminate certain incentives that have not encouraged member organizations to increase their activity on the Exchange and to revise certain other incentives in order to attract additional order flow to the Exchange, as described below.

Proposed Rule Change

Executions at the Open

For securities priced \$1.00 or more, the Exchange currently charges fees of \$0.0010 per share for executions at open, and \$0.0003 per share for Floor broker executions at the open, subject to \$30,000 cap per month per member organization, provided the member organization executes an average daily trading volume (“ADV”) that adds liquidity to the Exchange during the billing month (“Adding ADV”),<sup>11</sup> excluding liquidity added by a Designated Market Maker (“DMM”), of at least five million shares, unless the lower \$10,000 cap per month per member organization applies. The lower fee cap applies to member organizations that execute an ADV that takes liquidity from the NYSE during the billing month (“Taking ADV”), excluding liquidity taken by a DMM, of at least 1.20% of NYSE consolidated average daily volume (“CADV”) and an ADV of orders for execution at the open (“Open ADV”) of at least 8 million shares.

The Exchange proposes to eliminate the alternative \$10,000 cap. As proposed, the fees of \$0.0010 per share for executions at open, and \$0.0003 per share for Floor broker executions at the open, would remain subject to the \$30,000 cap per month per member organization. The requirements for qualifying for the \$30,000 cap would remain

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<sup>11</sup> 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.

unchanged.

The Exchange is eliminating the lower alternative cap because it has not encouraged member organizations to increase their activity in order to qualify for the lower fee cap as significantly as the Exchange had anticipated. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. There is currently only 1 member organization that qualifies for the alternative fee cap.

#### Verbal Interest at the Close

Currently, the Exchange charges a fee of \$0.0010 per share for verbal executions by Floor brokers at the close.

The Exchange does not currently charge member organizations for the first 750,000 ADV of the aggregate of executions at the close for d-Quote, Floor broker executions swept into the close, excluding verbal interest, and executions at the close, excluding market at-the-close (“MOC”) Orders, limit at-the-close (“LOC”) Orders and Closing Offset (“CO”) Orders. After the first 750,000 ADV of the aggregate of executions at the close by a member organization, d-Quotes are charged fees differentiated by time of entry (or last modification).<sup>12</sup> All other orders from continuous

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<sup>12</sup> d-Quotes last modified by the member organization earlier than 25 minutes before the scheduled close of trading are eligible for a \$ 0.0003 per share fee. d-Quotes last modified from 25 minutes up to but not including 3 minutes before the scheduled close of trading are eligible for a \$0.0007 per share fee. d-Quotes last modified in the last 3 minutes before the scheduled close of trading for firms in MOC/LOC Tiers 1 and 2 are eligible for a \$0.0008 per share fee; all other firms are eligible for \$0.0010 per share. As set forth in footnote 10 to the Price List, the phrase “last modified” means the later of the order’s entry time or the final modification or cancellation time for any d-Quote order with the same broker badge, entering firm mnemonic, symbol, and side.

trading swept into the close are charged \$0.0007.

The Exchange proposes to eliminate the separate \$0.0010 charge per share for verbal executions and clarify that verbal interest at the close would be counted for purposes of Floor Broker executions swept into the close that are subject to a charge of \$0.0007 per share for shares executed in excess of an ADV of 750,000 shares. To effectuate this change, the Exchange would replace “excluding” with “including” before “verbal interest.”

The purpose of this proposed change is to incentivize member organizations to send additional orders to the Exchange for execution at the close by lowering the fee for verbal interest at the close. As proposed, verbal interest swept into close would not be charged for the first 750,000 ADV of the aggregate of executions at the close by a member organization, and would be charged at the lower rate of \$0.0007 per share for shares executed in excess of an ADV of 750,000 shares.

#### Tier 4 Adding Credit

Under current Tier 4, a member organization that adds liquidity to the Exchange in securities with a share price of \$1.00 or more would be entitled to a per share credit of \$0.0015 if the member organization (i) has Adding ADV in MPL orders that is at least 4 million shares ADV, excluding any liquidity added by a DMM, and (ii) executes MOC and LOC orders of at least 0.10% of NYSE CADV.

The Exchange proposes to add an alternative way for member organizations to qualify for the Tier 4 Adding Credit. As proposed, member organizations that do not meet the current requirements and have

- (i) an Adding ADV that is at least 0.175% of NYSE CADV,

- (ii) ADV of the member organization's total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.05% of NYSE CADV, and
- (iii) an Adding ADV 25,000 shares in Orders designated as "retail" (i.e., orders that satisfy the Retail Modifier requirements of Rule 13) that add liquidity to the NYSE would qualify for the current per share credit of \$0.0015.

For example, in a month where NYSE CADV is 3.5 billion shares, Member Organization A has an Adding ADV of 7 million shares, a total close ADV of 3.5 million shares, and an Adding ADV of 30,000 shares in retail orders that add liquidity to the Exchange. Member Organization A would have previously received a credit of \$0.0012 per share for adding liquidity as it falls short of the requirements for Adding Tiers 1, 2, 3, and 4. The proposed change would qualify Member Organization A for a \$0.0015 credit because Member Organization A has an Adding ADV of 0.20% of NYSE CADV, a total close ADV that is 0.10% of NYSE CADV, and an Adding ADV in retail orders of 30,000 shares, all of which meet the proposed requirements.

The purpose of the proposed change is to increase the incentive for order flow providers to send liquidity-providing orders to the Exchange. As described above, member organizations with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that offering an alternate way for member organizations to qualify for a tiered credit, more member organizations will be able to choose to route their liquidity-providing orders to the Exchange to qualify for the credit. There are no member firms that currently qualify for both the current and proposed requirements for Tier 4. The Exchange cannot predict with certainty how many member

organizations would avail themselves of this opportunity, but believes that at least 7 member organizations could qualify for the tier. Additional liquidity-providing orders benefits all market participants because it provides greater execution opportunities on the Exchange.

#### CSII Fee Cap

Currently, the Exchange charges a fee of \$0.0004 per share (both sides) for executions in NYSE CSII.<sup>13</sup> Fees for executions in CSII are capped at \$200,000 per month per member organization unless an alternative, lower cap of \$15,000 per month per member organization applies for member organizations that execute a Taking ADV, excluding liquidity taken by a DMM, of at least 1.20% of NYSE CADV and Open ADV of at least 8 million shares.

The Exchange proposes to eliminate the alternative lower \$15,000 cap. The \$0.0004 per share fee for executions in NYSE CSII would remain unchanged, and would be subject to a \$200,000 cap per month per member organization.

The Exchange is eliminating the lower alternative cap because it has not encouraged member organizations to increase their activity in order to qualify for the lower fee cap as significantly as the Exchange had anticipated. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues in the after-hours market. There is currently only 1 member organization that qualifies for the alternative fee cap.

#### SLP Provide Tier 1

Under current SLP Provide Tier 1, SLPs that add displayed liquidity to the

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<sup>13</sup> See note 10, supra.

Exchange in securities with a per share price at or above \$1.00 and that:

- add liquidity for all assigned Tape B securities of a CADV of at least 0.10% for Tape B or for all assigned Tape C Securities of a CADV of at least 0.075% for Tape C, and
  - meet the 10% average or more quoting requirement in 400 or more assigned securities in Tapes B and C combined pursuant to Rule 107B
- are eligible for a \$0.0033 per share credit per tape in an assigned Tape B or C security where the SLP meets the additional requirement of adding liquidity for all assigned securities of at least 0.30% of Tape B and Tape C CADV combined.

The Exchange proposes to lower the Tape B and C CADV requirement to 0.25% of Tape B and Tape C CADV combined. The other requirements to qualify for the SLP Provide Tier 1 credit would remain unchanged.

The proposed fee change is designed to attract additional order flow to the Exchange by making it easier to qualify for the higher SLP Provide Tier 1 Credit based on adding liquidity to the Exchange in Tape B and C Securities. There are currently 2 SLPs that qualify for the \$0.0033 SLP Provide Tier 1 per share credit based on their current trading profile on the Exchange, but the Exchange believes that at least 3 more SLPs could qualify for the tier if they so choose. However, without having a view of SLP's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any SLP directing orders to the Exchange in order to qualify for this tier.

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in

complying with the proposed changes.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>15</sup> 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

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>16</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders which provide liquidity on an Exchange, member

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<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(4) & (5).

<sup>16</sup> See Regulation NMS, 70 FR at 37499.

organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. As noted, the Exchange's market share of intraday trading (i.e., excluding auctions) for the month of November 2019, in Tapes A, B and C securities was only 9.4%.<sup>17</sup>

#### Tier 4 Adding Credit

Specifically, the Exchange believes that proposing an alternative way for member organizations to qualify for the Tier 4 Adding Credit is reasonable because it would incentivize member organizations to send additional liquidity-providing orders to the Exchange in Tape A securities, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange. The Exchange believes that requiring member organizations to alternatively have an Adding ADV that is at least 0.175% of NYSE CADV, an ADV of the member organization's total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.05% of NYSE CADV, and an Adding ADV 25,000 shares in Orders designated as "retail" (i.e., orders that satisfy the Retail Modifier requirements of Rule 13) that add liquidity to the NYSE

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<sup>17</sup> See note 9 supra.

in order to qualify for the Tier 4 Adding Credit is reasonable because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the greater amounts of displayed liquidity present on the Exchange.

Without having a view of a member organization's activity on other markets and off-exchange venues, the Exchange believes the proposed revised Tier 4 Adding Credit would provide an incentive for member organizations to send liquidity-providing orders to the Exchange. As described above, member organizations with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that offering an alternate way for member organizations to qualify for a tiered credit, more member organizations will be able to choose to route their liquidity-providing orders to the Exchange to qualify for the credit. As previously noted, no member organizations are qualifying for the Tier 4 Adding Credit. Based on the profile of liquidity-providing member organizations generally, the Exchange believes additional member organizations could qualify for the Tier 4 Adding Credit if they choose to direct order flow to, and increase quoting on, the Exchange. Additional liquidity-providing orders benefits all market participants because it provides greater execution opportunities on the Exchange.

#### SLP Provide Tier 1

Similarly, the Exchange believes lowering the Tape B and C CADV requirement to 0.25% of Tape B and Tape C CADV combined in order for member organizations that are SLPs to qualify for the current \$0.0033 credit per share per tape is reasonable because it would provide further incentives for such member organizations to provide additional liquidity to a public exchange in Tape B and C securities to reach the proposed Adding ADV requirement of 0.30%, thereby promoting price discovery and transparency and

enhancing order execution opportunities for member organizations. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities. The Exchange believes the proposal would provide an incentive for member organizations that are SLPs to route additional liquidity-providing orders to the Exchange in Tape B and C securities. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange.

Without having a view of a member organization's activity on other markets and off-exchange venues, the Exchange believes the proposed additional requirement to qualify for the SLP credit would provide an incentive for member organizations who are SLPs to submit additional adding liquidity to the Exchange in Tape B and C securities. As previously noted, a number of SLPs are qualifying for the SLP Provide Tier 1 credit. Based on the profile of liquidity-providing SLPs generally, the Exchange believes additional SLPs could qualify for the displayed and non-displayed SLP Provide Tier 1 credits if they choose to direct order flow to, and increase quoting on, the Exchange.

#### Elimination of Obsolete Pricing

The Exchange believes that eliminating the alternative \$10,000 cap for executions at the open for member organizations, and the alternative \$15,000 cap for executions in NYSE CSII are reasonable because member organizations have not increased their activity significantly as the Exchange anticipated they would in order to qualify for the respective cap.

#### Verbal Interest at the Close

The Exchange believes that eliminating the separate \$0.0010 charge per share for verbal executions and clarifying that verbal interest at the close would be counted for purposes of Floor Broker executions swept into the close that are subject to a charge of \$0.0007 per share for shares executed in excess of an ADV of 750,000 shares is reasonable as it conforms the treatment of verbal executions swept into the close with that afforded to all other orders from member organizations (except Designated Market Makers and Supplemental Liquidity Providers) swept into the close. The Exchange believes it is reasonable to reduce the fee for verbal executions. The Exchange's Closing Auction is a recognized industry reference point,<sup>18</sup> and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis.

#### The Proposal is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates its fees among its market participants. The Exchange believes its proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace.

#### Tier 4 Adding Credit

The Exchange believes its proposal to offer an alternative way for member organizations to qualify for the Tier 4 Adding Credit equitably allocates its fees among its market participants.

The Exchange is not proposing to adjust the amount of the Tier 4 Adding Credit, which will remain at the current level for all market participants. Rather, by providing an

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<sup>18</sup> For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

alternative way for member organizations to qualify for the Tier 4 Adding Credit, the proposal would continue to encourage member organizations to send orders that provide liquidity to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants, and promoting price discovery and transparency. The proposal would also enhance order execution opportunities for member organizations from the substantial amounts of liquidity present on the Exchange. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes that offering an alternate way for member organizations to qualify for a tiered credit, more member organizations will be able to choose to route their liquidity-providing orders to the Exchange to qualify for the credit. As previously noted, a number of member organizations are qualifying for the Tier 4 Adding Credit. Based on the profile of liquidity-providing member organizations generally, the Exchange believes additional member organizations could qualify for the Tier 4 Adding Credit if they choose to direct order flow to, and increase quoting on, the Exchange. Additional liquidity-providing orders benefits all market participants because it provides greater execution opportunities on the Exchange.

#### SLP Provide Tier 1

The Exchange believes that lowering the Tape B and C CADV requirement in order to qualify for the SLP Provide Tier 1 credit equitably allocates its fees among its market participants.

The Exchange is not proposing to adjust the amount of the SLP Provide Tier 1 credit, which will remain at the current level for all market participants. For the reasons

discussed above, the Exchange believes that the proposed change to the SLP Provide Tier 1 requirements would encourage the SLPs to add liquidity to the market in Tape B and C securities, thereby providing customers with a higher quality venue for price discovery, liquidity, competitive quotes and price improvement. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity present on the Exchange. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities. As the Exchange previously noted that, a number of the current SLP firms are qualifying for the SLP Provide Tier 1 credit based on adding displayed liquidity and adding non-displayed liquidity. Based on the profile of liquidity-providing SLPs generally, the Exchange believes that additional SLPs could qualify for the displayed and non-displayed SLP Provide Tier 1 credits if they choose to direct order flow to, and increase quoting on, the Exchange.

#### Elimination of Obsolete Pricing

The Exchange believes that eliminating the alternative \$10,000 cap for executions at the open and the alternative \$15,000 cap for executions in NYSE CSII constitutes an equitable allocation of fees because it would encourage the execution of additional liquidity on a public exchange, thereby promoting price discovery and transparency. Further, the Exchange believes that eliminating these caps is equitable because it would apply equally to all member organizations that submit orders to the NYSE open and that participate in CSII, and that all such member organizations would continue to be subject

to the same fee structure and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms.

#### Verbal Interest at the Close

The Exchange believes that eliminating the separate \$0.0010 charge per share for verbal executions and clarifying that verbal interest at the close would be counted for purposes of Floor Broker executions swept into the close in excess of an ADV of 750,000 shares equitably allocates its fees among its market participants.

The Exchange believes the proposed change is equitable because it would continue to encourage member organizations to send orders to the close, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposal would 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 during the close. Moreover, the Exchange believes that the proposal is also equitable because it would apply equally to all similarly situated member organizations.

#### The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

#### Tier 4 Adding Credit

The Exchange believes its proposal to offer an alternative way for member organizations to qualify for the Tier 4 Adding Credit is not unfairly discriminatory

because the proposal would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed alternative requirements, who would all be eligible for the same credit on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. Further, as noted, the Exchange believes the proposal would provide an incentive for member organizations to continue to send orders that provide liquidity to the Exchange, to the benefit of all market participants.

#### SLP Provide Tier 1

The Exchange believes that lowering the Tape B and C CADV requirement in order to qualify for the SLP Provide Tier 1 credit is not unfairly discriminatory because the lower requirement to achieve the fee would be applied to all similarly situated member organizations, who would all be eligible for the same credit based on the revised requirement on an equal basis. The proposal to lower the Tape B and C CADV requirement neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the lower threshold would be applied to all similarly situated member organizations and other market participants, who would all be eligible for the same credit on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees.

#### Elimination of Obsolete Pricing

The proposal to eliminate obsolete caps for executions at the open and in NYSE CSII are not unfairly discriminatory because the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not

permit unfair discrimination because elimination of the caps would apply to all similarly situated member organizations and other market participants, who would all be eligible for the same credits on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

#### Verbal Interest at the Close

The proposal to eliminate the separate \$0.0010 charge per share for verbal executions and clarify that verbal interest at the close would be counted for purposes of Floor Broker executions swept into the close that are subject to a charge of \$0.0007 per share for shares executed in excess of an ADV of 750,000 shares is not unfairly discriminatory because it will apply uniformly to all Floor brokers, who are the only market participants that can enter verbal interest at the close. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

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,<sup>19</sup> 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, as discussed above, the Exchange believes that the proposed changes would encourage the submission of

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<sup>19</sup> 15 U.S.C. 78f(b)(8).

additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission’s goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”<sup>20</sup>

*Intramarket Competition.* The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The current credits 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.

*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. As noted, the Exchange’s market share of intraday trading (i.e., excluding auctions) for the month of November 2019, in Tapes A, B and C securities combined was only 9.4%.<sup>21</sup> In such an environment, the Exchange must continually adjust its fees and

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<sup>20</sup> Regulation NMS, 70 FR at 37498-99.

<sup>21</sup> See note 9 supra.

rebates to remain competitive with other exchanges and with off-exchange venues. 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 does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed 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.

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)<sup>22</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>23</sup> 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

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<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f)(2).

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)<sup>24</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2020-02 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-2020-02. 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

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<sup>24</sup> 15 U.S.C. 78s(b)(2)(B).

<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-2020-02 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.<sup>25</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>25</sup> 17 CFR 200.30-3(a)(12).