SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94543; File No. SR-NYSE-2022-16)

March 29, 2022

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 March 25, 2022, 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) align the charges for market at-the-close ("MOC") and limit at-the close ("LOC") orders on MOC/LOC Tiers 1, 2 and 3, revise the requirements for MOC/LOC Tier 3, introduce incremental per share discounts on MOC orders under MOC/LOC Tier 1, 2 and 3, and revise the rate for all other orders swept into the close; (2) introduce new credits for removing liquidity from the Exchange in Tape C securities; and (3) introduce new Tier 1 Adding Credits in Tape C securities, revise the requirements for Adding Tier 2 in Tape B and C securities, and introduce a new Adding Tier in Tape C securities. The Exchange proposes to implement the rule change on March 25, 2022.[4] The proposed rule change

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 January 27, 2022 (SR-NYSE-2022-06). On February 9, 2002, SR-NYSE-2022-06 was withdrawn and replaced by SR-

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 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) align the charges for MOC and LOC orders on MOC/LOC Tier 1, 2 and 3, revise the requirements for MOC/LOC Tier 3, introduce incremental per share discounts on MOC orders under MOC/LOC Tier 1, 2 and 3,, and revise the rate for all other orders swept into the close; (2) introduce new credits for removing liquidity from the Exchange in Tape C securities; and (3) introduce new Tier 1 Adding Credits in Tape C securities, revise the requirements for Adding Tier 2 in Tape B and C securities, and introduce a new Adding Tier in Tape C securities.

The proposed changes responds to the current competitive environment where order flow

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NYSE-2022-07. SR-NYSE-2022-07 was subsequently withdrawn and replaced by this filing. On February 17, 2022, MEMX LLC ("MEMX") submitted a comment letter in connection with SR-NYSE-2022-07. The Exchange responded to MEMX on March 2, 2022. See Letter from David De Gregorio, Associate General Counsel, NYSE, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated March 2, 2022.

providers have a choice of where to direct not only liquidity-providing and liquidity-removing orders but also MOC orders in NYSE-listed securities by aligning incentives for member organizations to send additional adding and removing liquidity to the Exchange.

The Exchange proposes to implement the rule change on March 25, 2022.

Current Market and Competitive Environment

The Exchange operates in a highly 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."[5]

As the Commission itself has recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."[6] Indeed, equity trading is currently dispersed across 16 exchanges,[7] 31 alternative trading systems,[8] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than

5 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (Final Rule) ("Regulation NMS").

6 See Securities Exchange Act Release No. 51808, 84FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) ("Transaction Fee Pilot").

7 See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.

8 *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/atslist.htm.

20% of the market.[9] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.[10]

In addition, in light of this crowded competitive landscape for order flow, including at the close, the Exchange does not have a monopoly over where MOC orders in NYSE-listed securities are executed. Indeed, competition with respect to MOC Orders in NYSE-listed securities is fierce, not only because of the availability of the Cboe Exchange, Inc. ("Cboe") Market Close, but also, and more relevant, because of the internalization of MOC order flow by some of the largest broker-dealers.[11] In the currently highly competitive national market system, numerous exchanges and other order execution venues compete for order flow intraday as well as at the close, and competition for closing orders is robust. For example, in 2021, 25.2% of volume at the NYSE closing price in NYSE-listed securities was executed off-exchange. During January and February 2022, the percentage increased to 26.5% and was as high as 38% on a single day.[12]

The Exchange believes that the ever-shifting market share among trading venues 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. While it is not possible

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9 See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

10 See id.

11 In addition, there are at least seven broker-dealer sponsored products competing for volume at the close, including Credit Suisse's CLOSEX; Instinet's Market-on-Close Cross; Morgan Stanley's Market-on-Close Aggregator (MOCHA); Bank of America's Instinct X® and Global Conditional Cross; JP Morgan's JPB-X; Piper Sandler's On-Close Match Book; and Goldman Sachs' One Delta Close Facility (ODCF).

12 See note 15, infra.

to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow. These fees vary month to month, and not all are publicly available. With respect to non-marketable order flow that would provide liquidity on an exchange, member organizations can choose from any one of the 16 currently operating registered exchanges to route such order flow. With respect to MOC Order flow, member organizations can choose among multiple options of where to execute such orders. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

In response to this competitive environment, the Exchange has established incentives for member organizations who submit orders that provide liquidity on the Exchange. The Exchange has also established incentives for member organizations to remove liquidity from the Exchange. As detailed below, the proposed higher fees and credits are intended to align incentives for trading both on the close and intraday, which the Exchange believes will increase the quality of order execution on the Exchange's market, which benefits all market participants.

Proposed Rule Change

The Exchange proposes changes to credits and fees for certain executions at the close as well as for adding and removing liquidity in Tape C securities in order to attract liquidity to the Exchange. The Exchange believes that the proposed changes, taken together, will incentivize submission of additional liquidity in Tape A, B and Tape C securities to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations.

Align MOC and LOC Orders in MOC/LOC Tiers 1, 2 and 3

The Exchange currently charges different fees for MOC and LOC orders in MOC/LOC Tiers 1, 2 and 3. The Exchange proposes to align the fees for MOC and LOC orders by raising the rates for MOC orders to parity with the rates for LOC orders, as follows.

Currently, for MOC/LOC Tier 1, the Exchange charges $0.0004 per share for MOC orders and $0.0007 per share for LOC orders from any member organization in the prior three billing months executing (1) an average daily trading volume ("ADV") of MOC activity on the NYSE of at least 0.45% of NYSE consolidated ADV ("CADV"),[13] (2) an ADV of total close activity (MOC/LOC and executions at the close) on the NYSE of at least 0.7% of NYSE CADV, and (3) whose MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close). The Exchange proposed to charge $0.0007 per share for MOC orders meeting the requirements of MOC/LOC Tier 1. The requirements of MOC/LOC Tier 1 would remain the same.

For MOC/LOC Tier 2, the Exchange currently charges $0.0005 per share for MOC orders and $0.0008 per share for LOC orders from any member organization in the prior three billing months executing (1) an ADV of MOC activity on the NYSE of at least 0.35% of NYSE CADV, (2) an ADV of total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.525% of NYSE CADV, and (3) whose MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close). The Exchange proposes to charge $0.0008 per share for MOC orders meeting the requirements of MOC/LOC Tier 2. The tier requirements would remain unchanged.

For MOC/LOC Tier 3, the Exchange currently charges $0.0008 per share for MOC orders and $0.0009 per share for LOC orders from any member organization executing in the

[13] ADV and CADV are defined in footnote * of the Price List.

current billing month (1) an ADV of MOC activity on the NYSE of at least 0.25% of NYSE (Tape A) CADV, (2) an ADV of the member organization's total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.35% of NYSE (Tape A) CADV, and (3) whose MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close). The Exchange proposes to charge $0.0009 per share for MOC orders meeting the revised requirements for MOC/LOC Tier 3. Specifically, member organization executing in the current billing month would need (1) an ADV of MOC activity on the NYSE of at least 0.20% of NYSE (Tape A) CADV and (2) an ADV of the member organization's total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.30% of NYSE (Tape A) CADV. The third requirement for MOC/LOC Tier 3, that member organizations MOC activity comprise at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close), would remain unchanged.

MOC/LOC Tier 1 and 2 pricing on the Exchange has remained unchanged since 2018.[14] The MOC/LOC Tier 3 rate has also remained unchanged since its adoption in 2018.[15] The revised tiered rates in 2018 were designed in part to address a competitive landscape that included the availability of the Cboe Market Close and greater broker-dealer internalization of order flow. However, the 2018 fee changes did not have a material impact on the competitive landscape with respect to internalized MOC order flow, which has continued to grow steadily.[16]

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

15 See Securities Exchange Act Release No. 82706 (February 13, 2018), 83 FR 7282 (February 20, 2018) (SR-NYSE-2018-08).

16 In 2018, the percentage of volume at the NYSE closing price in NYSE-listed securities executed off-exchange was 21.3%. In 2019, the percentage increased to 23.5%. After dipping briefly to 22.1% in 2020, the percentage resumed its upward trend and increased to 25.2% in 2021. During January and February 2022, the percentage increased to 26.5%

The proposed change to the rate for Tier 1 and 2 MOC orders would revert to the rates to those in effect prior to the 2018 MOC/LOC Tier fee changes.[17] However, as described below, the Exchange will provide member organizations an opportunity to qualify for incremental per share discounts that would allow a member organization to qualify for MOC/LOC Tier pricing that would be in line with the current tier pricing for MOC Orders. But even without the discounts described below, the proposed rates for MOC orders under Tier 1 and Tier 2, would be lower than or equal to the best applicable rate on other primary listing exchanges.[18]

Incremental Per Share Discounts on MOC Orders

As a way of offsetting the proposed higher fees for tiered MOC orders, the Exchange proposes incremental discounts per share on MOC orders for member organizations that meet the requirements of the MOC/LOC Tiers 1-3 in the billing month. These proposed discounts are designed to align incentives among both trading on the close and intraday trading on the Exchange.

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and was as high as 38% on a single day.

17 See Securities Exchange Act Release No. 78233 (July 6, 2016), 81 FR 45190 (July 12, 2016) (SR-NYSE-2016-47) (setting the MOC/LOC Tier 1 fee to $0.0007 per share and the MOC/LOC Tier 2 fee to $0.0008).

18 For example, the best applicable fee on the NASDAQ Stock Market, LLC ("NASDAQ") is $0.0016 per executed share, with the lowest possible rate available on Nasdaq of $0.0008 per executed share, which is available only if a firm adds liquidity in all Tapes above 1.75.% of Consolidated Volume or MOC/LOC volume above 0.50% of Consolidated Volume. See NASDAQ Price List, available at https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2. The highest rate for LOC orders in Tier 3 would also be lower than the NASDAQ fee. The closing auction fee on Cboe BZX for listed securities is $0.00100. See Cboe BZX Fee Schedule, available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/. The Exchange notes that the NASDAQ requirements for MOC/LOC volume is a percentage of all Tapes CADV, whereas the NYSE requirement is all close (MOC/LOC and other orders at the close) as a percentage of just Tape A CADV.

As proposed, member organizations that have an Adding ADV[19] in Tapes A, B and C Securities as a percentage of Tapes A, B and C CADV, excluding any liquidity added by a Designated Market Maker ("DMM"), that is at least 0.50%, would be eligible for an incremental discount per share of $0.0001. Alternatively, a member organization has an Adding ADV in Tapes A, B and C Securities as a percentage of Tapes A, B and C CADV, excluding any liquidity added by a DMM, that is at least 1.00% would instead be eligible for a $0.0002 incremental discount per share. Finally, member organizations with an ADV of at least 250,000 shares entered and executed by its affiliated Floor broker would also be eligible for an incremental per share discount of $0.0001. This last discount would be in addition to either of the first two discounts. For purposes of the proposed discount, an affiliated Floor broker eligible for the discount would be a Floor broker under 75% common ownership or control of the member organization.[20]

For example, assume Member Organization A in the billing month has an ADV of at least:

- 0.45% of Adding as a percentage of Tape A, B and C CADV;
- 0.20% of MOC as a percentage of Tape A CADV;
- 0.30% of total close as a percentage of Tape A CADV; and
- 35% of MOC as a percentage of that member organization's total close ADV.

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19 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.

20 The Price List defines "affiliate" as any member organization under 75% common ownership or control of that member organization. See Price List, General, Section I (Billing Disputes).

Based on the foregoing, under the proposed change, Member Organization A would qualify for per share fees for MOC and LOC orders of $0.0009 under MOC/LOC Tier 3. Without the proposed change, Member Organization A would not qualify under the current higher requirements of 0.25% of MOC and 0.35% of total close as a percentage of Tape A CADV, and would be charged the non-tier rate of $0.0010 per share. Accordingly, the proposed change could result in a fee reduction for member organizations that would currently only be eligible for the higher non-tier rate.

Assume instead that Member Organization A had an Adding ADV of 0.55% of Tape A, B, and C CADV. In that case, Member Organization A would qualify for a MOC per share discount of $0.0001 and a combined MOC order fee of $0.0008. If Member Organization A had a trading Floor ADV of at least 250,000 shares, including adding, removing, open and close ADV, executed by that member organization's affiliated Floor broker, Member Organization A would then qualify for an additional $0.0001 per share discount, for a combined MOC order fee of $0.0007.

Assume Member Organization A had an Adding ADV of at least 1.00% rather than 0.55%. In that case, Member Organization A would qualify for a $0.0002 per share discount, instead of $0.0001 as in the previous example, for combined discount of $0.0003 and a combined MOC order fee of $0.0006 (including the additional $0.0001 per share Floor broker discount), which would be *lower* than the current MOC/LOC Tier 3 rate of $0.0008 per share. Member Organization A's fee for LOC orders would remain at the MOC/LOC Tier 3 fee of $0.0009.

As the example shows, the discounts provide for several ways for member organizations to lower their effective MOC fee to levels that are comparable and even below the current rates for MOC orders on MOC/LOC Tier 3 and equal to the current MOC/LOC Tier 1 and 2 today. In addition, because the discounts are structured such that they are available based on higher adding volumes or sending orders to affiliated Floor brokers, the discounts also enhance liquidity provision on the Exchange and/or support the maintenance and potential expansion of a trading Floor presence by member organizations. The Exchange believes that expanding the trading Floor presence by member organizations would benefit investors by increasing the amount of order flow to and execution opportunities on a public exchange, thereby encouraging greater participation and liquidity. Moreover, it should be noted that member organizations have alternative ways to participate in lower MOC rates at the closing auction. MOC orders executed by a Floor broker are eligible for a $0.0005 standard rate unless a lower tiered fee applies. Member organizations also have the option of utilizing D Orders last modified (as defined in the Price List) earlier than 25 minutes before the scheduled close of trading, which would give the member organization a $0.0003 rate, which is lower than the lowest proposed MOC/LOC Tier 1 rate. D Orders entered and last modified from 25 minutes up to 3 minutes before the scheduled close are also charged a $0.0007 fee, which is in line with MOC/LOC Tier 1 and lower than the other two MOC/LOC Tiers. The Exchange notes that these discounts also provide member organizations with flexibility to qualify for discounts, either through Adding ADV or through their affiliated Floor broker. In addition, the first 750,000 ADV of D Orders are free. Finally, member organizations can also get free execution at the Close using closing offset orders.

Since the proposed incremental discounts are new, the Exchange does not know how many member organizations could qualify for the new discounts based on their current trading profile and if they choose to direct order flow to the Exchange. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional member organizations could qualify for the discounts if they choose to direct order flow to the Exchange. However, without having a view of member organization'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 member organization directing orders to the Exchange in order to qualify for the discounts.

Orders at the Close

Currently, the Exchange does not 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 MOC orders, LOC orders and CO orders. As set forth in the Price List, the Exchange charges certain fees differentiated by time of entry (or last modification) for D Orders at the close after the first 750,000 ADV of the aggregate of executions at the close by a member organization. All other orders from continuous trading swept into the close are charged $0.0007. The Exchange proposes to charge all other orders from continuous trading swept into the close $0.0008, which is in line with the applicable fee on other marketplaces.[21]

Credits for Removing Liquidity in Tape C Securities

For Tape B and C securities, the Exchange currently offers a Remove Tier for securities at or above $1.00 for member organizations that have a minimum amount of Adding ADV. The Exchange also charges a lower remove fee of $0.00285 in Tapes B and C for member organization with an Adding ADV, excluding liquidity added by a DMM, that is at least 250,000 ADV on the NYSE in Tape A.

The Exchange proposes two new credits for member organizations removing liquidity in Tape C securities. First, the Exchange proposes a $0.0026 per share fee for removing in Tape C

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21 For example, the NASDAQ's Continuous Book fee is $0.00085. See NASDAQ Price List, available at https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.

securities if the member organizations achieves a 0.25% Adding Tape C percentage of Tape C CADV. Second, the Exchange proposes a $0.0027 per share fee for removing in Tape C securities if the member organization achieves a 0.10% Adding Tape C percentage of Tape C CADV.

Since the proposed credits are new, the Exchange does not know how many member organizations could qualify for the new credits based on their current trading profile and if they choose to direct order flow to the Exchange. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional member organizations could qualify for the tier if they choose to direct order flow to the Exchange. However, without having a view of member organization'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 member organization directing orders to the Exchange in order to qualify for either of the new credits.

Tiered Adding Credits in Tape B and C Securities

The current Tier 1 Adding Credit in Tape B and C Securities offers a credit of $0.0026 per share on a per tape basis for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the member organization has at least 0.10% of Adding CADV in Tape B or C on a per tape basis. For purposes of qualifying for this tier, the 0.10% of Adding CADV could include shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization.[22] The Exchange proposes that member organizations meeting

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[22] Under Rule 107B, a 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 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.

the adding liquidity requirements for Tier 1, which would remain unchanged, would be eligible for a $0.0029 per share credit instead for Tape C securities. Member organizations meeting the adding liquidity requirements for Tier 1 would continue to be eligible for the existing $0.0026 per share credit for Tape B securities.

Similarly, the current Tier 2 Adding Credit offers a per tape credit of $0.0023 per share for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the member organization has at least 0.03% of Adding CADV in Tape B or C on a per tape basis. For purposes of qualifying for this tier, the 0.03% of Adding CADV could include shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization. The Exchange proposes to require at least 0.05% of Adding CADV in Tape B or C in order to qualify for this credit. The current credit would remain unchanged.

Finally, the Exchange proposes a new Tape C Adding Tier credit that would offer a per tape credit of $0.0031 per share for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the member organization has at least 0.25% of Adding CADV in Tape C securities. The Exchange believes that the proposed Tape C Adding Tier would further contribute to incenting member organizations to provide additional amounts of liquidity on the Exchange. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow in Tape C securities that member organizations choose to route to other exchanges or to off-exchange venues. Because the proposed Tape C Adding Tier would be new, the Exchange does not know how many member organizations could qualify for the new credit based on their current trading profile and if they choose to direct order flow to the Exchange. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional member organizations could qualify for the tier if they choose to direct order flow to the Exchange. However, without having a view of member organization'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 member organization directing orders to the Exchange.[23]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[25] 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

In light of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors. The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of orders transacted on the Exchange by member organizations by aligning incentives for trading both on the close and

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23 The Exchange proposes the non-substantive change of relocating the phrase "(including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization)" without change from Tier 1 and Tier 2 to the first column of the chart following "Per-Tape Requirement (Non-SLP and Floor broker Adding % Tape CADV)" in order to avoid duplication. Further, the Exchange proposes the non-substantive change of deleting "per share on a per Tape basis" in Tier 1 and "per share" in Tier 2 and adding "per share" following "Display Adding Rate" in the first column to similarly to similarly avoid duplication.

24 15 U.S.C. 78f(b).

25 15 U.S.C. 78f(b)(4) & (5).

intraday, which would benefit all market participants by offering greater price discovery and an increased opportunity to trade on the Exchange, both intraday and during the closing auction.

Orders at the Close

The Exchange believes that the proposed fee change for certain executions at the close are reasonable. The Exchange's closing auction is a recognized industry benchmark,[26] 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 Exchange believes that the proposed increased fees and incentives for fee discounts for MOC orders are a reasonable way to encourage greater liquidity and achieving the proposed discounts. MOC orders are always marketable and therefore have a higher likelihood of execution at the close which have value. MOC orders also contribute meaningfully to the price and size discovery, which is the hallmark of the closing auction process. Higher volumes of MOC orders contribute to the quality of the Exchange's closing auction and provide market participants whose orders are swept into the close with a greater opportunity for execution. Further, as noted above, in the currently highly competitive national market system, competition for closing orders among exchanges, ATSs and other market execution venues is robust.

In addition, the Exchange believes that lowering the required ADV of MOC activity on the NYSE as a percentage of Tape A CADV and total close activity (MOC/LOC and other executions at the close) on the NYSE as a percentage of Tape A CADV in order to qualify for MOC/LOC Tier 3 is reasonable because, coupled with the increased fee, the Exchange believes the change would encourage greater participation which leads to greater marketable and other

26 For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

liquidity at the closing auction. As noted, higher volumes of MOC orders contribute to the quality of the Exchange's closing auction and provide market participants whose orders are executed at the close with a greater opportunity for execution, which benefits all participants As noted above, the rate for MOC orders has remained unchanged since 2018, and the proposed change to the rate for Tier 1 and 2 MOC orders would revert to the rates to those in effect prior to the changes made in 2018 to lower the MOC/LOC Tier 1 and 2 rates. Moreover, even without the proposed incremental discounts, the proposed rates for MOC orders, including the highest proposed rate, would be lower than or in line with the applicable rate on other marketplaces.[27] The Exchanges offers other ways for member organizations to achieve lower fees in the close, including MOC orders through their Floor broker or D Orders last modified earlier than 25 minutes before the scheduled close of trading.

Further, the Exchange believes that offering proposed incremental per share discounts on MOC orders is a reasonable way to lower a member organization's effective fee for MOC orders. The proposed discounts based on increased Adding ADV in Tapes A, B and C Securities as a percentage of Tapes A, B and C CADV and/or through entry by an affiliated Floor broker is also a reasonable way to encourage submission of additional liquidity to a public exchange and the submission of additional marketable liquidity to the Exchange's closing auction. Member organizations can also achieve discounts by using their affiliated Floor broker to achieve the ADV requirement, which combined with the above discount gives member organizations flexibility in achieve lower fees for MOC orders. As noted, members and member organizations benefit from the substantial amounts of liquidity that are present on the Exchange during such time.

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27 See note 17, supra.

The Exchange notes that other marketplaces provide discounts based on intraday adding volume, and that aligning incentives for lower pricing at the close with additional intraday volume is thus neither novel nor an unreasonable stance in a competitive marketplace. For example, NASDAQ offers six MOC/LOC tiers with fees ranging from $0.0008 to $0.00145 and a non-tier rate of $0.0016 based on adding volume or MOC/LOC volume per MPID as a percentage of Tapes A, B and C. The proposed requirements to achieve the proposed discounts are lower than NASDAQ's current requirements and, as noted, even without the discounts, the proposed rates are lower than or in line with NASDAQ's discounted rates.[28] Similarly, on NYSE Arca, Inc. ("NYSE Arca"), ETP Holders that qualify for Tier 1, Tier 2, or Tier 3 Adding Tiers, which are based on intraday adding volume, are also eligible for discounted rates for Closing orders.[29] In the prevailing competitive marketplace, there is nothing unreasonable in raising base rates and offering incentives to members who support the venue. Similarly, in this competitive marketplace, there is nothing unreasonable in establishing incentives for one type of activity on the Exchange that considers other facets of Exchange participation. For example, under the "Liquidity Removal Tier" offered by MEMX, qualifying members that post orders on its venue are charged a discounted fee for taking liquidity (including when accessing MEMX's protected quote).[30] Finally, the Exchange believes that increasing the fee for all other orders from continuous trading swept into the close is also reasonable because it remains in line or better when compared with other exchanges.[31]

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28 See note 17, supra.

29 See NYSE Arca Equities Fees and Charges, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

30 See MEMX Fee Schedule, available at https://info.memxtrading.com/fee-schedule/.

31 For example, the NASDAQ's Continuous Book fee is $0.00085. See NASDAQ Price

Tape C Incentives

The Exchange believes that the proposed incentives relating to adding and removing liquidity in Tape C securities are a reasonable way to incentivize member organizations to add and remove liquidity on a public exchange.

Specifically, the proposal to introduce new credits for member organizations removing liquidity in Tape C securities of $0.0026 and $0.0027 would incentivize member organizations to remove additional liquidity from the Exchange, thereby increasing the number of orders adding liquidity that are executed on the Exchange to achieve the tier requirements which improves overall liquidity on a public exchange and resulting in lower costs for member organizations that qualify for the rate. Without having a view of a member organization's activity on other markets and off-exchange venues, the Exchange believes the proposed credits would provide an incentive for member organizations to remove additional liquidity from the Exchange in Tape C securities. The Exchange notes that the proposed fees are in line with or better than the applicable rate on other marketplaces.[32]

The proposed changes to the Tier 1 and Tier 2 Adding Credits in Tape B and C Securities and the introduction of a Tier 3 Adding Credit in Tape C securities are also reasonable. The proposed $0.0029 per share credit for Tape C securities for member organizations meeting the adding liquidity requirements of Tier 1 and requiring a higher Adding CADV in Tape B or C in order to qualify for the Tape 2 Adding Credit are reasonable because the changes would further contribute to incenting member organizations to provide additional amounts of liquidity on the Exchange in Tape C securities, and all member organizations would benefit from such increased

List, available at https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.

32 See note 17, supra.

levels of liquidity.

Finally, the proposed new Tape C Tier Adding credit of $0.0031 per share when adding liquidity to the Exchange if the member organization has at least 0.25% of Adding CADV in Tape C securities is reasonable because it would also further contribute to incenting member organizations to provide additional amounts of liquidity on the Exchange. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. The Exchange believes that the higher adding requirement to qualify for adding credits in Tape C securities would provide greater incentives for member organizations to add more liquidity to the Exchange. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional member organizations could qualify for the proposed tiered credit if they choose to direct order flow to the Exchange. However, without having a view of member organizations' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional member organizations directing orders to the Exchange in order to qualify for the proposed Tape C Tier.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates fees and credits among market participants because all member organizations that participate on the Exchange may qualify for the proposed credits and fees on an equal basis. The Exchange believes its proposal equitably allocates its fees and credits among its market participants by fostering liquidity provision and stability in the marketplace.

Orders at the Close

The Exchange believes that the proposed fees for MOC orders and associated discounts are an equitable allocation of fees because the proposed changes, taken together, will incentivize member organizations to send additional adding liquidity to achieve lower fees and encourage greater marketable and other liquidity at the closing auction. Higher volumes of MOC orders contribute to the quality of the Exchange's closing auction and provide market participants whose orders are swept into the close with a greater opportunity for execution of orders on the Exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities and improving overall liquidity on a public exchange. The Exchange also believes that the proposed change is equitable because it would apply to all similarly situated member organizations that utilize MOC orders on the Exchange. The proposed change also is equitable because the proposed fees, including the highest proposed fee, would be lower than or in line with the applicable rate on other marketplaces.[33]

The Exchange believes that the proposed incremental per share discounts on MOC orders are equitable because the discounts would be available on an equal basis to all similarly situated member organizations that utilize MOC orders on the Exchange. In this regard, the proposed discounts are equitable because any member organization can choose to increase their adding ADV volume in order to qualify for the proposed discounts and any member organization can choose to have an affiliated Floor broker in order to qualify for the additional proposed discount. Moreover, as noted above, alternative ways to achieve lower MOC fees are also available to all

[33] See note 17, supra.

similarly situated member organizations that utilize MOC orders on the Exchange on an equal basis.

Tape C Incentives

The Tape C incentives for removing and adding liquidity equitably allocate fees and credits among the Exchange's market participants because all member organizations that participate on the Exchange may receive the proposed credits for removing liquidity in Tape C securities and the proposed credits for adding liquidity in if they elect to send their orders to the Exchange and meet the corresponding requirements, including the enhanced requirement for the Tier 2 Adding Credit, in order to qualify for the credits. Without having a view of member organization's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organizations sending more of their orders to the Exchange. The Exchange cannot predict with certainty how many member organizations would avail themselves of this opportunity, but additional orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

The Exchange also believes that the proposed change is equitable because it would apply to all similarly situated member organizations that remove and add liquidity in Tape C securities. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. Specifically, the Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations would be eligible for the same credits if they meet the corresponding requirements for the fee or credit. As to those member organizations that do not presently qualify for the adding liquidity credit, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange. The proposed change also is equitable because it would be consistent with the applicable rate on other marketplaces. For example, the Cboe BZX fee for removing is $0.0030 and the requirement to achieve a credit for removing of $0.0031 is an adding ADV of 1.00% of CADV or 100 million shares ADV.[34]

As previously noted, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Because the proposed Tape C incentive involves the introduction of new credits and/or new requirements, the Exchange does not know how many member organizations could qualify for the new remove and add fees based on their current trading profile and if they choose to direct order flow to the Exchange. However, without having a view of member organization'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 member organization directing orders to the Exchange.

<u>The Proposal Is Not Unfairly Discriminatory</u>

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.

<u>Orders at the Close</u>

The proposed increased fees for MOC orders and associated discounts are not unfairly discriminatory because the proposed fees would be applied to all similarly situated member

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34 <u>See</u> Cboe BZX Fee Schedule, available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.

organizations and other market participants, who would all be subject to the same fees, requirements and discounts on an equal basis. For the same reason, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. Further, the Exchange believes the proposal would incentivize member organizations to send more orders to the Exchange to qualify for higher credits. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

Further, the Exchange believes that the proposed incremental per share discounts on MOC orders is not unfairly discriminatory because the discounts would be available on an equal basis to all similarly situated member organizations. As noted above, additional ways to achieve lower MOC fees are also available to all similarly situated member organizations that utilize MOC orders on the Exchange on an equal basis.

<u>Tape C Incentives</u>

The Exchange believes it is not unfairly discriminatory to provide additional credits and fees for adding liquidity to the Exchange in Tape C securities because the credits and fees would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed adding tier requirements. In the prevailing competitive environment, member organizations are free to disfavor the Exchange’s pricing if they believe that alternatives offer them better value. The Exchange believes it is not unfairly discriminatory to provide additional credits and revised requirements to encourage liquidity in Tape C securities as the proposed credits and requirements would be provided on an equal basis to all member organizations.

Further, the Exchange believes the proposed credits would incentivize member organizations that meet the new requirements to send more orders to the Exchange. Since the proposed credits would be new, no member organization currently qualifies for them. As noted, without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed credits provide a reasonable incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the credits, thereby contributing to depth and market quality on the Exchange.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. All member organizations that provide liquidity could be eligible to qualify for the proposed credits in Tape C securities if they meet the proposed requirements. The Exchange believes that offering credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the adding liquidity credits, the proposal will not adversely impact their ability to qualify for other credits provided by the Exchange. Finally, as noted, the submission of orders is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, they can choose the extent of their activity in this regard. 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,[35] 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 proposal would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organization. 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."[36]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. As described above, the Exchange believes that the proposed change would provide additional incentives for market participants to route liquidity-removing and liquidity-providing orders 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. Greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage member organizations to send orders, thereby contributing towards a

35 15 U.S.C. 78f(b)(8).

36 Regulation NMS, 70 FR at 37498-99.

robust and well-balanced market ecosystem. The current and proposed 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 exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange currently has less than 12% market share of executed volume of equities trading. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and 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.

Finally, as previously noted, the Exchange operates in a highly competitive market for MOC Orders 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 non-exchange trading venues that are not subject to the same transparency or statutory standards applicable to exchanges relating to setting fees. Because competitors are free to modify their own fees and credits in response, some without the requirement of making a filing with the Commission, and because market participants may readily adjust their order routing practices, the Exchange believes that any degree to which fee changes in this market may impose any burden on competition would be extremely limited.

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.

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)[37] of the Act and subparagraph (f)(2) of Rule 19b-4[38] 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 19(b)(2)(B)[39] 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:

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[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b-4(f)(2).

[39] 15 U.S.C. 78s(b)(2)(B).

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-2022-16 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-2022-16. 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 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-2022-16 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.[40]

J. Matthew DeLesDernier
Assistant Secretary

[40] 17 CFR 200.30-3(a)(12).