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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94933; File No. SR-NYSE-2022-22)

May 17, 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 May 11, 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 introduce a new adding credit for providing displayed liquidity to the Exchange in Tape B and C Securities. The Exchange proposes to implement the fee changes effective May 11, 2022.⁴ The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Price List on May 2, 2022 (SR-NYSE-2022-21). On May 11, 2022, SR-NYSE-2022-21 was withdrawn and replaced by this filing.

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 a new adding credit for providing displayed liquidity to the Exchange in Tape 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 May 11, 2022.

Background

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 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

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 16 currently operating registered exchanges to

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/atlist.htm>.

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

¹⁰ See *id.*

route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to the competitive environment described above, the Exchange has established incentives for its member organizations who submit orders that provide liquidity on the Exchange. The proposed fee change is designed to attract additional order flow to the Exchange by incentivizing member organizations to submit additional displayed liquidity to the Exchange.

Proposed Rule Change

The Exchange proposes a new adding credit in Tape B and C securities for the market participant identifier (“MPID”) or mnemonic of member organizations that meet the current requirements for Step Up Adding Tier 5 as well as certain additional proposed requirements, as follows.

The current Step Up Tier 5 Adding Credit offers incremental credits for providing displayed liquidity to the Exchange in Tape A securities for all orders, other than MPL and Non-Displayed Limit Orders, from a qualifying member organization’s MPID or mnemonic if the member organization has Adding ADV, excluding any liquidity added by a Designated Market Maker (“DMM”), that is at least 1.00% of Tape A CADV,¹¹ and if the MPID or mnemonic has an Adding ADV as a percentage of Tape A CADV, excluding any liquidity added by a DMM, that is:

- at least two times more than that MPID’s or mnemonic’s Adding ADV in January 2021 (“Baseline Month”) as a percentage of Tape A CADV, and

¹¹ The terms “ADV” and “CADV” are defined in footnote * of the Price List.

- at least 0.10% of Tape A CADV over that MPID's or mnemonic's Adding ADV in in the Baseline Month as a percentage of Tape A CADV.

A member organizations meeting the above requirements receives a \$0.0001 incremental credit for an increase of at least 0.10% and less than 0.175% of Tape A CADV over the Baseline Month. Member organizations receive a \$0.0002 incremental credit for an increase of at least 0.175% of Tape A CADV over the Baseline Month.

The Exchange proposes a new \$0.0029 credit for providing displayed liquidity in Tape B and C Securities based on similar requirements to the Step Up Tier 5 Adding Credit.

Specifically, the proposed credit would be available for providing displayed liquidity in Tape B and C Securities for a qualifying member organization's MPID or mnemonic that has providing volume in Tape A Securities of at least 1.0% of Tape A CADV, and the MPID or mnemonic has providing volume in Tape A Securities that is

- at least two times more than that MPID's or mnemonic's baseline in January 2021 as a percentage of Tape A CADV, and
- at least 0.10% of Tape A CADV over that MPID's or mnemonic's Adding ADV in January 2021 baseline as a percentage of Tape A CADV, and
- at least 0.25% of Tape A CADV over that MPID's or mnemonic's Adding ADV in January 2021 as a percentage of Tape A CADV.

To effectuate this change, the Exchange would amend the chart setting forth the Adding Tiers for transaction fees and credits for Tape B and C Securities to add a new column titled "Step Up Tier" and set forth the proposed requirements and proposed credit.

For example, assume Member Organization A has an Adding ADV as a percentage of Tape A CADV of 1.10%, and adding ADV of Tape B and C of CADV 0.075% each, in the

billing month. Member Organization A would currently qualify for Tape B and C Tier 2 credits of \$0.0023 per share each based on the current Tape B and C Tier 2 requirement of 0.05% for each tape.

Further assume that one of Member Organization A's MPIDs, MPID1, has an Adding ADV of 0.30% of Tape A CADV and that MPID1 has an Adding ADV of 0.10% in the Baseline Month and, as such, MPID1's Adding ADV is 2.5 times its Baseline Month with a step up of 0.20% and qualifies for Step Up Tier 5. If instead MPID1 had a Tape A Adding ADV of 0.40% of CADV, for step up of Tape A Adding ADV of 0.30% CADV, MPID 1 would qualify for the proposed Tape B and C credit of \$0.0029 for adding displayed liquidity.

The purpose of this proposed change is to incentivize member organizations to increase the liquidity-providing orders in the Tape B and C securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. 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. Because the proposed tier requires a member organization's MPID or mnemonic to increase the volume of its trades in orders that add liquidity over that MPID or mnemonic's January 2021 Adding ADV baseline, the Exchange believes that the proposed credit would provide an incentive for all member organizations to send additional liquidity to the Exchange in order to qualify for it. 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 credit if they choose to direct order flow to, and increase quoting on, 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 new tier.

The proposed change is 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,¹² in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹³ 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 competitive market. 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.”¹⁴ While Regulation NMS has enhanced competition, it has also

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) & (5).

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”¹⁵

The new proposed adding credit in Tape B and C credit is reasonable. Specifically, the Exchange believes that the proposed credit would provide an incentive for member organizations to send 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.

The Exchange believes that it’s reasonable to provide a \$0.0029 credit in Tape B and C Securities to the qualifying MPID or mnemonic based on the proposed increased adding requirements because this would encourage individual MPIDs or mnemonics of a member organization 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. As previously noted, without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any member organization’s MPID or mnemonic qualifying for the tier. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional member organizations could qualify for the proposed credit if they choose to direct order flow to, and increase quoting on, the Exchange. The Exchange believes the proposed credit is reasonable as it would provide an additional incentive for member organization’s MPID

¹⁵ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

or mnemonic to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the credit, thereby contributing to depth and market quality on the Exchange.

The Proposal is an Equitable Allocation of Fees

The Exchange believes that the proposed credit is equitable because the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market wide quality and price discovery. 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's MPID or mnemonic qualifying for the tier. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional member organizations could qualify for the proposed credit if they choose to direct order flow to, and increase quoting on, the Exchange. The Exchange believes the proposed credit is equitable as it would provide an additional incentive for member organization's MPID or mnemonic to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the credit, thereby contributing to depth and market quality on the Exchange. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All member organization's MPIDs or mnemonics that provide liquidity could be eligible to qualify for the proposed credit if they increase their Adding ADV over their own baseline of order flow and the member organization meets the 0.25% increase in Adding ADV of Tape CADV requirement. The Exchange believes that offering a step up credit for providing liquidity if the step up requirements for Tape B and C securities are met 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 in Tape A Securities, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Proposal is Not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to provide an additional per share step up credit in Tape B and C Securities, as the proposed credit would be provided on an equal basis to all member organizations and their MPIDs or mnemonics that add liquidity by meeting the new proposed requirements and would equally encourage all member organizations and their MPIDs or mnemonics to provide additional displayed liquidity on the Exchange. As noted, the Exchange believes that the proposed credit would provide an incentive for member organizations and their MPIDs or mnemonics to send additional liquidity to the Exchange in order to qualify for the additional credit. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. Finally, the submission of orders to the Exchange is optional for member organizations and their MPIDs or mnemonics in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

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,¹⁶ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in

¹⁶ 15 U.S.C. 78f(b)(8).

furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes 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 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.”¹⁷

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. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the change on the same basis. Accordingly, 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. In such an

¹⁷ Regulation NMS, 70 FR at 37498-99.

environment, the Exchange must continually adjust its fees and 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.

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)¹⁸ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁹ 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)²⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2022-22 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-2022-22. 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-2022-22 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.²¹

J. Matthew DeLesDernier
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12).