SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96112; File No. SR-NYSE-2022-47)

October 20, 2022

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Rule 7.44

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on October 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 modify Rule 7.44 relating to the Retail Liquidity Program. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

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1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 modify Rule 7.44, which sets forth the Exchange's Retail Liquidity Program (the "Program").[4] The purpose of the Program is to attract retail order flow to the Exchange and allow such order flow to receive potential price improvement. Rule 7.44 provides for a class of market participant called Retail Liquidity Providers ("RLPs"), and non-RLP member organizations are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer, called a Retail Price Improvement Order ("RPI Order").[5] When there is an RPI Order in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, that such interest exists.[6] Retail Member Organizations ("RMOs") can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPI

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4 The Program was established on a pilot basis in 2012 and was approved by the Commission to operate on a permanent basis in 2019. See Securities Exchange Act Release No. 85160 (February 15, 2019), 84 FR 5754 (February 22, 2019) (SR-NYSE-2018-28). In connection with the Commission's approval of the Program on a pilot basis, the Commission granted the Exchange's request for exemptive relief from Rule 612 of Regulation NMS, 17 CFR 242.612 (the "Sub-Penny Rule"), which, among other things, prohibits a national securities exchange from accepting or ranking orders priced greater than $1.00 per share in an increment smaller than $0.01. See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55). The Exchange notes that the change proposed in this filing has no substantive impact under the Sub-Penny Rule and thus does not require an update or revision to the exemptive relief previously granted by the Commission.

5 See Rules 7.44(a)(1) (defining an RLP) and 7.44(a)(4) (defining RPI Order).

6 See Rule 7.44(j).

Orders and then may interact with other liquidity on the Exchange or elsewhere, depending on the Retail Order's instructions.[7] The segmentation in the Program allows retail order flow to receive potential price improvement as a result of their order flow being deemed more desirable by liquidity providers. The Program is currently limited to trades in NYSE-listed securities.[8]

The Exchange now proposes to modify Rule 7.44 to expand the Program's availability to all securities traded on the Exchange. Rule 7.44(a)(4) currently defines an RPI Order as consisting of "non-displayed interest in NYSE-listed securities that would trade at prices better than the PBB or PBO by at least $0.001 and that is identified as such." To expand the program to permit RPI Orders in all securities on the Exchange (i.e., both NYSE-listed securities and securities traded on the Exchange pursuant to unlisted trading privileges), the Exchange proposes to modify Rule 7.44(a)(4) to delete the reference to "NYSE-listed securities," such that the rule would provide that an RPI Order is "non-displayed interest that would trade at prices better than the PBB or PBO by at least $0.001 and that is identified as such."

The Exchange also proposes a conforming change to Rule 7.44(j), which describes the Retail Liquidity Identifier disseminated when RPI interest priced at least $0.001 better than the PBB or PBO for a particular security is available in Exchange systems. Rule 7.44(j) currently provides that the Retail Liquidity Identifier will be disseminated through proprietary data feeds and through the Consolidated Quotation System.[9] Because the Exchange proposes to permit RPI Orders in all securities, the Exchange proposes to update Rule 7.44(j) to provide that the Retail

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7 See Rule 7.44(a)(2) (defining RMO); Rules 7.44(a)(3) and 7.44(k) (describing Retail Orders).

8 See Rule 7.44(a)(4).

9 The Exchange also proposes a non-substantive change to correct a typographical error in Rule 7.44(j) and replace "Consolidation Quotation System" with "Consolidated Quotation System."

Liquidity Identifier would also be disseminated through the UTP Quote Data Feed, as applicable.[10]

Subject to the effectiveness of this proposed rule change, the Exchange will implement this change in the fourth quarter of 2022 and announce the implementation date by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes expanding the Program's availability to all securities traded on the Exchange would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, protect investors and the public interest by enabling RPI Orders in all securities to participate in the Program and receive potential price improvement. The Exchange believes that this expansion of the Program would benefit retail investors by providing increased opportunities for price improvement in all securities traded on

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10 The Exchange notes that this proposed change would align Rule 7.44(j) with the comparable rule of its affiliated exchange, NYSE Arca, Inc. ("NYSE Arca"). NYSE Arca currently operates a retail price improvement program that includes securities that trade on that exchange pursuant to unlisted trading privileges. See NYSE Arca Rule 7.44-E(j).

11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(5).

the Exchange, rather than limiting the Program to NYSE-listed securities only. The Exchange also believes that the proposed change would allow it to compete with other exchanges that operate retail price improvement programs that are available to all securities traded on such exchanges.[13] The Exchange believes that the proposed conforming change to Rule 7.44(j) would also remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, protect investors and the public interest by updating Rule 7.44(j) to provide for the dissemination of the Retail Liquidity Identifier for RPI Orders on the UTP Quote Data Feed. The proposed change would ensure that the Retail Liquidity Identifier would also be disseminated as appropriate for RPI Orders in securities traded on the Exchange pursuant to unlisted trading privileges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change could promote competition by permitting RPI Orders in all securities traded on the Exchange, thereby supporting price improvement opportunities for retail investors. The Exchange further believes that the proposed expansion of the Program to include all securities traded on the Exchange would promote competition between the Exchange and other exchanges that offer retail price improvement programs for which all securities traded on such exchanges are eligible to participate.[14]

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13 See, e.g., Cboe BYX Exchange, Inc. ("BYX") Rule 11.24 (setting forth BYX's Retail Price Improvement Program, with Retail Price Improvement Order defined in Rule 11.24(a)(3)); Nasdaq BX, Inc. ("BX") Rules 4702(b)(5)(A) (defining "Retail Price Improving Order") and 4780 (setting forth BX's Retail Price Improvement Program); Investors Exchange LLC ("IEX") Rule 11.232 (setting forth IEX's Retail Price Improvement Program).

14 See id.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b-4(f)(6) thereunder.[16] Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[17] and Rule 19b-4(f)(6)(iii) thereunder.[18]

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)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

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

[16] 17 CFR 240.19b-4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[19] 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-2022-47 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-2022-47. 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-2022-47 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.[20]

J. Matthew DeLesDernier,
Deputy Secretary.

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[20] 17 CFR 200.30-3(a)(12).