

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- 92343; File No. SR-NYSE-2021-39)

July 7, 2021

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)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 30, 2021, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“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 modify the requirements to qualify for Supplemental Liquidity Provider (“SLP”) Tier 5. The Exchange proposes to implement the rule change on July 1, 2021. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

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

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

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

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 to modify the requirements to qualify for SLP Tier 5.

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 rule change on July 1, 2021.

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.”<sup>4</sup>

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<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

As the Commission itself has recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”<sup>5</sup> Indeed, equity trading is currently dispersed across 16 exchanges,<sup>6</sup> 31 alternative trading systems,<sup>7</sup> and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market.<sup>8</sup> 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 14%.<sup>9</sup>

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

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<sup>5</sup> 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”).

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

<sup>7</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. Although 54 alternative trading systems were registered with the Commission as of July 29, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

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

<sup>9</sup> See *id.*

### Proposed Rule Change

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 Changes to SLP Tier 5

Under current SLP Tier 5, an SLP adding liquidity in securities with a per share price of \$1.00 or more with orders, other than Mid-Point Liquidity (“MPL”) orders, is eligible for a per share credit of \$0.0031 (or \$0.0012 if a Non-Displayed Reserve Order) if the SLP:

(1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B;

(2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an average daily volume (“ADV”) of more than 0.65% of Tape A consolidated ADV (“CADV”)<sup>10</sup> (for SLPs that are also DMMs and subject to Rule 107B(i)(2)(A), more than 0.65% after a discount of the percentage for the prior quarter of Tape A CADV in DMM assigned securities as of the last business day of the prior month);

(3) has Adding ADV,<sup>11</sup> including non-SLP Adding ADV but excluding any liquidity added by a DMM, that is at least 0.85% of Tape A CADV; and

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<sup>10</sup> The terms “ADV” and “CADV” are defined in footnote \* of the Price List.

<sup>11</sup> Footnote 2 to the Price List defines “Adding ADV” as ADV that adds liquidity to the Exchange during the billing month.

(4) executes an ADV, including non-SLP Adding ADV but excluding any liquidity added by a DMM, of at least 250,000 shares in Retail Price Improvements Orders.

The Exchange proposes to lower the Adding ADV requirements to qualify for the SLP Tier 5. Specifically, the Exchange proposes that a SLP add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.60% of Tape A CADV. For SLPs that are also DMMs and subject to Rule 107B(i)(2)(A), the requirement would be more than 0.60% after a discount of the percentage for the prior quarter of Tape A CADV in DMM assigned securities as of the last business day of the prior month. In addition, the Exchange would require an Adding ADV, including non-SLP Adding ADV but excluding any liquidity added by a DMM, that is at least 0.80% of Tape A CADV.

The remaining requirements for qualifying for SLP Tier 5 and the existing credits would remain unchanged.

The Exchange believes that lowering the ADV requirements to qualify for SLP Tier 5 as proposed above will allow greater numbers of SLPs to potentially qualify for the tier, and will incentivize more SLPs to route their liquidity-providing order flow to the Exchange in order to qualify for the tier. This in turn would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders.

As noted above, the Exchange operates in a competitive environment, particularly as relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange believes that the lower requirements will provide greater incentives for SLPs to add more liquidity to the Exchange. The Exchange does not know how much order flow SLPs 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 SLPs could qualify for the tier under the revised qualification criteria if they choose to direct order flow to, and increase quoting on, the Exchange. However, without having a view of SLP's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional SLPs directing orders to the Exchange in order to qualify for the SLP Tier 5 rates.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed changes.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>13</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

### The Proposed Change Is Reasonable

As discussed above, the Exchange operates in a highly 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

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4) & (5).

successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>14</sup> While Regulation NMS has enhanced competition, it has also 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.”<sup>15</sup>

Given the current competitive environment, the Exchange believes that the proposed revisions to the requirements for SLPs to qualify for SLP Tier 5 represents a reasonable attempt to attract additional order flow to the Exchange. Specifically, the Exchange believes that the proposed revisions are reasonable because they would provide further incentives for member organizations that are SLPs to route additional liquidity-providing orders to a public exchange to reach the proposed Adding ADV requirements, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

As noted above, the Exchange operates in a competitive environment, particularly as relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange believes that the lower requirements will provide greater incentives for SLPs to add more liquidity to the Exchange. The Exchange does not know how much order flow SLPs 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 SLPs could qualify for the tier under the

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<sup>14</sup> See Regulation NMS, *supra* note 4, at 37499.

<sup>15</sup> 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).

revised qualification criteria if they choose to direct order flow to, and increase quoting on, the Exchange. However, without having a view of SLP's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional SLPs directing orders to the Exchange in order to qualify for the SLP Tier 5 credits.

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

The Exchange believes the proposed rule change equitably allocates its fees among its market participants. The proposed change would continue to encourage member organizations that are SLPs to submit additional liquidity to the Exchange and execute orders on the Exchange, thereby contributing to robust levels of liquidity, to the benefit of all market participants.

The Exchange believes that modifying the requirements to qualify for SLP Tier 5 would encourage the submission of additional liquidity to the Exchange, thereby providing customers with a higher quality venue for price discovery, liquidity, competitive quotes and price improvement. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity present on the Exchange. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

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 SLPs would be eligible for the same credits if they meet the revised requirements for the tier. As to those SLPs that do not presently



qualify for the adding liquidity credits, 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 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.

The proposed changes to the SLP Tier 5 are not unfairly discriminatory because the lower ADV requirements to achieve the fee would be applied to all similarly situated member organizations and other market participants, who would all be subject to the same modified requirements to qualify for the tier and the same credits 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 that are SLPs to send more orders to the Exchange to qualify for higher credits.

The Exchange believes that the proposed changes would not permit unfair discrimination among SLPs because the tiered rates are available equally to all SLPs. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and the Exchange believes there are additional SLPs that could qualify if they chose to direct their order flow to the Exchange. 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.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>16</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity and order flow to a public exchange, thereby 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 competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>17</sup>

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-providing and liquidity-removing 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. The current and proposed credits would be available to all

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<sup>16</sup> 15 U.S.C. 78f(b)(8).

<sup>17</sup> Regulation NMS, 70 FR at 37498-99.

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. 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.

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)<sup>18</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>19</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

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)<sup>20</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2021-39 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-2021-39. 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

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<sup>20</sup> 15 U.S.C. 78s(b)(2)(B).

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-2021-39 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).