SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96944; File No. SR-NYSE-2023-11)

February 16, 2023

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

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 February 14, 2023, 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. Under Rule 7.44, a class of market participants 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 Orders and then

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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).

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 Exchange recently modified the Program to be available for all securities traded on the Exchange.[8]

Rule 7.44(k) currently describes the operation of a Retail Order pursuant to the Program, which is defined in Rule 7.44(a)(3) as an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. Rule 7.44(k) provides that a Retail Order is a non-routable Limit IOC Order to buy (sell) that will trade only with available RPIs to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the Exchange Book. Any quantity of a Retail Order to buy (sell) that does not trade with eligible orders to sell (buy) will be immediately and automatically cancelled. Rule 7.44(k) further provides that a Retail Order will be rejected on arrival if the PBBO is locked or crossed and may not be designated with a minimum trade size modifier ("MTS Modifier").[9]

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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 Securities Exchange Act Release No. 96112 (October 20, 2022), 87 FR 64831 (October 26, 2022) (SR-NYSE-2022-47) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Rule 7.44).

9 See Rule 7.31(i)(3) (providing that the MTS Modifier designates an order with a minimum trade size and an order with an MTS Modifier will be rejected if the MTS is less than a round lot or if the MTS is larger than the size of the order). The Exchange notes that the rule text currently providing that a Retail Order may not be designated with an MTS Modifier was introduced in connection with the Exchange's transition to the Pillar trading platform and was intended to ensure that Exchange rules continued to

The Exchange now proposes to permit Retail Orders to be designated with an MTS Modifier and, accordingly, proposes to modify the last sentence of Rule 7.44(k) to reflect this change. The proposed change is intended to provide RMOs with the option to designate Retail Orders with a minimum trade size if they so choose. The Exchange believes that the proposed change would provide additional flexibility to RMOs entering Retail Orders, which could encourage retail order flow to the Exchange and promote additional opportunities for price improvement for such orders. The Exchange notes that the proposed change would not otherwise impact the operation of Retail Orders as set forth in current Exchange rules and would simply make an existing modifier available for use with Retail Orders. The Exchange also believes that the proposed change would allow it to compete with other exchanges' retail price improvement programs that permit retail orders to be designated with a minimum trade size.[10]

The Exchange also proposes non-substantive clarifying changes to Rules 7.44(a)(3) and 7.44(a)(4)[11] relating to the size of Retail Orders and RPI Orders. Rules 7.44(a)(3) and 7.44(a)(4)(E) currently include text providing that Retail Orders and RPI Orders, respectively, may be an odd lot, round lot, or mixed lot. The Exchange now proposes to delete such rule text

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accurately reflect the operation of Retail Orders (as established prior to such transition). See Securities Exchange Act Release No. 85930 (May 23, 2019), 84 FR 25100 (May 30, 2019) (SR-NYSE-2019-26) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change of New Rule 7.44 To Operate Its Retail Liquidity Program on Pillar, the Exchange's New Technology Trading Platform).

10 See, e.g., Investors Exchange LLC ("IEX") Rules 11.190(b)(9)(G), 11.190(b)(10)(G), and 11.232(a)(2) (providing that a Retail order may be a Discretionary Peg order or Midpoint Peg order, either of which may be designated with a minimum trade size). The Exchange notes that IEX's retail improvement program differs from the NYSE RLP in that the IEX program is designed to provide price improvement at the midpoint but does not believe that difference to be meaningful with respect to the ability to designate a retail order with a minimum trade size.

11 The Exchange also proposes a non-substantive change to Rule 7.44(a)(4)(A) to improve the clarity of the rule text, with no change to the operation of the rule.

as extraneous because Exchange rules already provide that orders may be entered in any size unless otherwise specified.[12]

Subject to the effectiveness of this proposed rule change, the Exchange will implement this change no later than in the second quarter of 2023 and announce the implementation date by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5),[14] 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 the proposed change 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 allowing RMOs the option to designate Retail Orders with a minimum trade size, which could attract additional retail order flow to the Exchange, thereby promoting additional opportunities for price improvement and order execution on the Exchange and promoting competition with other exchanges operating retail price improvement programs that allow retail orders to be designated with a minimum trade size.[15] The Exchange also believes that the proposed change would remove impediments to, and perfect the mechanism of,

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12 See Rule 7.38(a).

13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(5).

15 See note 10, supra.

a free and open market and a national market system and promote just and equitable principles of trade because it would permit the use of the existing MTS Modifier with Retail Orders and would not otherwise impact the operation of Retail Orders as provided under current Exchange rules. The Exchange further believes that the proposed clarifying changes to Rule 7.44 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 because they are intended only to streamline Exchange rules and would not impact the operation of existing Exchange rules.

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, to the extent the proposed change encourages RMOs to direct additional Retail Orders to the Exchange and increases opportunities for price improvement and order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants. The Exchange also believes that the proposed change would promote competition with retail price improvement programs on other equities exchanges that permit retail orders to be designated with a minimum trade size.[16]

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.

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[16] Id.

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[17] and Rule 19b-4(f)(6) thereunder.[18] Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and subparagraph (f)(6) of Rule 19b-4 thereunder.[20]

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

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

18 17 CFR 240.19b-4(f)(6).

19 15 U.S.C. 78s(b)(3)(A)(iii).

20 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 satisfied this requirement.

21 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-2023-11 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-2023-11. 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-2023-11 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.[22]

Sherry R. Haywood,
Assistant Secretary.

[22] 17 CFR 200.30-3(a)(12).