

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70997; File No. SR-NYSE-2013-78)

December 5, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Price List to Specify the Exclusion of Odd Lot Transactions from Consolidated Average Daily Volume Calculations for a Limited Period of Time for Purposes of Certain Transaction Pricing on the Exchange Through January 31, 2014

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on November 22, 2013, 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 specify the exclusion of odd lot transactions from consolidated average daily volume (“CADV”) calculations for a limited period of time for purposes of certain transaction pricing on the Exchange. The text of 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 places

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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 specify the exclusion of odd lot transactions from CADV calculations for a limited period of time for purposes of certain transaction pricing on the Exchange. The Exchange proposes to implement the Price List change on December 9, 2013.

The Exchange provides a member or member organization with the opportunity to qualify for one or more pricing tiers based on its level of activity during a particular month. Each tier has a corresponding fee or credit that applies to the member's or member organization's transactions during the month. Generally, a qualifying member or member organization would be subject to a lower transaction fee or a higher transaction credit, depending on the particular tier. Many of these tiers use a specific percentage of CADV in NYSE-listed securities (*i.e.*, Tape A securities) during the billing month ("NYSE CADV") as a threshold that a member's or member organization's activity must meet or exceed in order to qualify for the particular tier. For example, in order to qualify for a reduced fee of \$0.00055 per share for executions of market at-the-close ("MOC") and limit at-the-close ("LOC") orders, a member or member organization must execute an average daily volume ("ADV") of MOC/LOC activity on the Exchange during the month that is at least 0.375% of NYSE CADV. As an additional example, transaction pricing for a member or member organization that is a Designated Market Maker ("DMM") can depend on whether the security is considered "More Active" or "Less

Active.” Such a determination is based on the CADV for the security in the previous month.³

CADV is a measure of transactions in Tape A, Tape B and Tape C securities reported to the consolidated tape. NYSE CADV is a measure of transactions only in Tape A securities reported to the consolidated tape. Transactions in Tape A securities that are not reported to the consolidated tape are not included in NYSE CADV for purposes of the Price List. An odd lot transaction, which is generally an execution of less than 100 shares, is not currently reported to the consolidated tape and is therefore not currently included in NYSE CADV.⁴ Beginning December 9, 2013, odd lot transactions will be reported to the consolidated tape.⁵ The Exchange proposes to amend the Price List to specify that odd lot transactions reported to the consolidated tape will be excluded from NYSE CADV through January 31, 2014 for purposes of billing on the Exchange. This proposed change is intended to maintain consistency in the Exchange’s current method of determining tier qualifications for a limited period of time in order to provide

³ A “More Active” security is one with CADV in the previous month equal to or greater than one million shares. A “Less Active security is one with CADV in the previous month of less than one million shares.

⁴ See NYSE Rule 55. A round lot is generally an execution of 100 shares or a multiple thereof.

⁵ See Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR-CTA-2013-05) (Order Approving the Eighteenth Substantive Amendment to the Second Restatement of the CTA Plan). See also Securities Exchange Act Release No. 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (File No. S7-24-89) (Order Approving Amendment No. 30 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis). See also Securities Exchange Act Release No. 70898 (November 19, 2013), 78 FR 70386 (November 25, 2013) (SR-NYSE-2013-75). See also announcements regarding December 9, 2013 implementation date, available at <https://cta.nyxdata.com/cta/popup/news/2385> and <http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-11>. If the inclusion of odd lot transactions in the consolidated tape is delayed to a date after December 9, 2013, the manner of inclusion or exclusion of odd lot transactions described in this proposal for purposes of billing on the Exchange would similarly take effect on such later date.

members and member organizations with an opportunity to adjust to the potential impact of the inclusion of odd lot transactions in NYSE CADV.

As described above, CADV is also used in the Price List to differentiate between “More Active” and “Less Active” securities for purposes of DMM pricing. Odd lot transactions are currently excluded when determining whether a security is More Active or Less Active because odd lot transactions are not currently reported to the consolidated tape. In contrast to the proposed change described above, the Exchange will not make any adjustment beginning on December 9, 2013 to consolidated tape figures for purposes of determining whether a security is More Active or Less Active.⁶ Therefore, beginning December 9, 2013, odd lot transactions reported to the consolidated tape would be included in More Active/Less Active determinations. These determinations are based on CADV from the previous month and DMMs would therefore be able to adjust their activity immediately on December 9, 2013 based on November 2013 CADV.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

⁶ The Exchange considers a change to the text of the Price List unnecessary to reflect this result because it will occur automatically by operation of odd lot transactions being reported to the consolidated tape.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because it will maintain consistency in the current manner of measuring member or member organization activity with respect to transaction pricing on the Exchange for a limited period of time. Absent this change, the denominator of a tier threshold calculation (i.e., NYSE CADV) would increase immediately when odd lot transactions begin to be reported to the consolidated tape and a member or member organization would therefore need to immediately increase its own activity (i.e., the numerator) to qualify for the tier compared to when odd lot transactions were not included in the consolidated tape. However, such an increase in member or member organization activity would not result in any corresponding benefit to the member or member organization, because the Exchange is not proposing a change to the tier rates. The Exchange anticipates that the eventual impact on determining tier qualifications will be minimal when odd lot transactions begin to be included in NYSE CADV. Notwithstanding the anticipated minimal impact, however, the Exchange believes that it is reasonable to provide members and member organizations with a limited transition period to adapt to such impact.

The Exchange believes that it is reasonable to include odd lot transactions in More Active/Less Active security determinations immediately on December 9, 2013 because such determinations are based on CADV from the previous month. DMMs would therefore be able to adjust their activity immediately on December 9, 2013 based on November 2013 CADV. This is different than with excluding odd lot transactions from the NYSE CADV calculation for a limited period of time because NYSE CADV is determined based on the actual billing month, not a prior month. Furthermore, the Exchange does not anticipate that including odd lot

transactions in these determinations beginning on December 9, 2013 would have a significant impact on the number of securities that would otherwise be considered Less Active absent the inclusion of odd lot transactions.⁹

The proposed change is equitable and not unfairly discriminatory because it would apply to all members and member organizations equally. More specifically, odd lot transactions would be excluded from NYSE CADV for billing purposes for all members and member organizations for a limited period of time. The proposed change is also equitable and not unfairly discriminatory because the inclusion of odd lots in the NYSE CADV calculation beginning on February 1, 2014 would occur at the same time for all members and member organizations, after the same nearly two month transition period. The proposed change is also equitable and not unfairly discriminatory because odd lot transactions would be immediately included in More Active/Less Active determinations for all members and member organizations that operate as DMMs. Immediately including odd lot transactions reported to the consolidated tape in More Active/Less Active determinations is equitable and not unfairly discriminatory because DMMs would be able to adjust their activity immediately on December 9, 2013 based on November 2013 CADV. 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 these 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,¹⁰ the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate

⁹ Based on October 2013 data, fewer than 1% of securities to which a DMM is assigned would become More Active securities by including odd lot transactions.

¹⁰ 15 U.S.C. 78f(b)(8).

in furtherance of the purposes of the Act. Instead, the proposed change would maintain consistency in the Exchange's current method of determining tier qualifications for a limited period of time in order to give members and member organizations an opportunity to adjust to the inclusion of odd lot transactions in NYSE CADV. This proposed change is also designed to maintain competition on the Exchange by eliminating the potential for members and member organizations to immediately fail to qualify for a tier due to the inclusion of odd lot transactions in the consolidated tape beginning on December 9, 2013. The Exchange believes that competition would not be burdened by including odd lot transactions in More Active/Less Active determinations because the Exchange anticipates that this would not have a significant impact on the number of securities that would otherwise be considered Less Active absent the inclusion of odd lot transactions – i.e., fewer than 1% of securities to which a DMM is assigned based on October 2013 data.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee or credit levels at a particular venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. The billing method described herein is based on objective standards that are applicable to all members and member organizations and reflects the need for the Exchange to offer significant financial incentives to attract order flow. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with the Act.

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)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² 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)¹³ 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. Please include File Number SR-NYSE-2013-78 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSE-2013-78. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSE-2013-78 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).