

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88165; File No. SR-NYSE-2020-08)

February 11, 2020

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 January 31, 2020, 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 eliminate the Step Up Tier 2 Adding Credit. The Exchange proposes to implement the fee changes effective February 3, 2020. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 to amend its Price List to eliminate the Step Up Tier 2 Adding Credit.

The proposed change responds 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 February 3, 2020.

Competitive Environment

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.”⁴

⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”⁵ Indeed, equity trading is currently dispersed across 13 exchanges,⁶ 31 alternative trading systems,⁷ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).⁸ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange’s market share of trading in Tapes A, B and C securities combined is less than 15%.

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 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain

⁵ See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) (“Transaction Fee Pilot”).

⁶ 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/divisionsmarketregmrexchangeshtml.html>.

⁷ 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>.

⁸ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to this competitive environment, 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 eliminate a pricing tier intended to incentivize member organizations to step up their liquidity-providing orders on the Exchange on all tapes that has not encouraged member organizations to increase their activity on the Exchange.

Proposed Rule Change

Under the current Step Up Tier 2 Adding Credit, a member organization that sends orders, except Mid-Point Liquidity Orders (“MPL”) and Non-Displayed Limit Orders, that add liquidity (“Adding ADV”) in Tape A securities would receive a credit of \$0.0029 if:

- the member organization quotes at least 15% of the National Best Bid or Offer (“NBBO”) in 300 or more Tape A securities on a monthly basis, and
- the member organization’s Adding ADV as a percentage of NYSE consolidated average daily volume (“CADV”), excluding any orders by a Designated Market Maker (“DMM”), that is at least two times more than the member organization’s July 2019 Adding ADV as a percentage of NYSE CADV, and
- the member organization’s Adding ADV as a percentage of NYSE CADV, excluding any liquidity added by a DMM, exceeds that member organization’s Adding ADV in July 2019 taken as a percentage of NYSE

CADV by at least 1.05% of NYSE CADV over that Member

Organization's July 2019 Adding ADV as a percentage of NYSE CADV.

In addition, a member organization that meets these requirements, and thus qualifies for the \$0.0029 credit in Tape A securities, would be eligible to receive an additional \$0.00005 per share if trades in Tapes B and C securities against the member organization's orders that add liquidity, excluding orders as a Supplemental Liquidity Provider ("SLP"), equal to at least 0.20% of Tape B and Tape C CADV combined.

The Exchange proposes to eliminate this tier in its entirety. Current Step Up Tier 3 Adding Credit would become the new Step Up Tier 2 Adding Credit. The requirements for qualifying for the current Step Up Tier 3 Adding Credit would remain unchanged.

The Exchange proposes eliminating the tier because it has not encouraged member organizations to increase their activity in order to qualify for the tier as significantly as the Exchange had anticipated. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. The Exchange has nonetheless observed that, historically, few members have received this credit, with little associated volume, and it has not served to meaningfully increase activity on the Exchange or improve market quality. Indeed, no member organization currently qualifies for the credit. The Exchange therefore proposes to eliminate it.

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,⁹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁰ 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 fragmented and 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.”¹¹

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 orders which provide liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) & (5).

¹¹ See Regulation NMS, 70 FR at 37499.

exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given the competitive environment, the proposal to eliminate the Step Up Tier 2 Adding Credit is reasonable. Currently, no member organization qualifies for the credit. Member organizations have not increased their activity significantly as the Exchange anticipated they would in order to qualify for the credit, related volume is low, and it has not served to meaningfully increase volume or market quality.

The Proposal is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace.

The Exchange believes that eliminating the step up tier constitutes an equitable allocation of fees because it would apply equally to all similarly situated member organizations that submit orders to the NYSE, and that all such member organizations would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms. As noted, the credit has not prompted a meaningful increase in volume or market quality. No member organization currently qualifies for the credit, and no member organization would accordingly be affected by its elimination.

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 proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because elimination of the tier would apply to all similarly situated member organizations and other market participants, who would all be eligible for the remaining step up credits on an equal basis. As noted, no member organization currently qualifies for the credit and thus no member organizations operating on the Exchange would be disadvantaged by its elimination. In addition, elimination of the credit would allow the Exchange to consider new, more effective incentives to attract order flow to the Exchange.

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,¹² 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 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

¹² 15 U.S.C. 78f(b)(8).

among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”¹³

Intramarket Competition. The Exchange believes that the proposed elimination of the step up credit will not place any undue burden on competition. The credit has not served its intended purpose of incentivizing a broader population of member organizations to increase their participation on the Exchange. Elimination of the credit would impact no member organizations because no member organization currently qualifies for it. Moreover, member organizations may seek to mitigate the effects of the loss of the credit by qualifying for the remaining step up credits the Exchange offers that would remain available to all market participants. 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. As previously noted, the Exchange’s market share of trading in Tapes A, B and C securities combined is under 15%. In such an 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. The Exchange’s proposal to eliminate the step up tier credit

¹³ Regulation NMS, 70 FR at 37498-99.

will not meaningfully impact intermarket competition. As discussed above, no member organization currently qualifies for the credit. The Exchange also believes that the proposed change is designed to provide the public and investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

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)¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁵ 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)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ 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-2020-08 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-2020-08. 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-2020-08 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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).