

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88602; File No. SR-NYSE-2020-27)

April 8, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Price List to Respond to the Current Volatile Market Environment that has Resulted in Unprecedented Average Daily Volumes and the Temporary Closure of the Trading Floor

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 April 1, 2020, 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 (1) clarify for purposes of certain rebates applicable to Designated Market Makers (“DMM”) that in a month where the average monthly NYSE consolidated average daily volume (“CADV”) equals or exceeds a certain threshold, the Exchange will use the most recent month where the average monthly NYSE CADV is less than that threshold to calculate “Security CADV”; (2) revise the providing liquidity requirement for certain DMM rebates in a month where the average monthly NYSE CADV equals or exceeds a certain threshold; (3) cap the maximum average number of shares per day for the billing month for purposes of calculating NYSE CADV for the Supplemental

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Liquidity Provider (“SLP”) Tape A adding tiers; (4) introduce maximum average share caps applicable to SLPs for adding displayed and non-displayed liquidity in Tape B and C securities; and (5) waive equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations for April 2020 in connection with the recent temporary closing of the Trading Floor. 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 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 (1) clarify for purposes of certain rebates applicable to DMMs that in a month where the average monthly NYSE CADV equals or exceeds a certain threshold, the Exchange will use the most recent month where the average monthly NYSE CADV is less than that threshold to calculate “Security CADV”; (2) revise the providing liquidity requirement for certain DMM rebates in a month where the average monthly NYSE CADV equals or exceeds a certain threshold; (3) cap the maximum average number of shares per day for the billing month for purposes of calculating NYSE CADV for the SLP Tape A adding tiers; (4) introduce maximum average share caps applicable to SLPs for adding

displayed and non-displayed liquidity to the Exchange in Tape B and C securities; and (5) waive equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations for April 2020 in connection with the recent temporary closing of the Trading Floor.

The proposed changes respond to the current volatile market environment that has resulted in unprecedented average daily volumes and the temporary closure of the Trading Floor, which are both related to the ongoing spread of the novel coronavirus (“COVID-19”), by providing a degree of certainty to DMMs and SLPs adding liquidity to the Exchange by adjusting the threshold requirements for specified fees and credits to account for the unprecedented volume and to Trading Floor-based member organizations impacted by the temporary closing of the Trading Floor by waiving specified Floor-based fees for the month of April 2020.

Specifically, the Exchange proposes the following:

- For purposes of DMM rebates that are based on whether the DMM meets either the More Active Securities Quoting Requirement or the Less Active Securities Quoting Requirement, as those terms are defined in the Price List, which thresholds are based the average daily consolidated volume of securities (“Security ADV”), specify that in a month where NYSE CADV equals or is greater than 5.5 billion shares, the NYSE will use the most recent month where the average monthly NYSE CADV is less than 5.5 billion shares to calculate the Security CADV.
- In order for DMMs to qualify for rebates when adding liquidity in More Active Securities, in a month where the average monthly NYSE CADV is equal to or

greater than 5.5 billion shares, lower the DMM providing requirements as a percent of the NYSE's total intraday adding liquidity.

- For purposes of calculating NYSE CADV for SLP Tiers 1, 1A, 2, 3, 4, SLP Step Up Tier and Incremental SLP Step Up Tier adding credits, establish a monthly maximum average cap of 5.5 billion shares per day for NYSE CADV.
- For purposes of calculating Tier 1 and Tier 2 SLP credits for adding displayed and non-displayed liquidity to the Exchange in Tape B and C securities, establish a monthly maximum average cap of 2.75 billion shares per day for Tape B, 3.25 billion shares for Tape C, and 6.0 billion shares for Tape B and C combined.
- Waive booth telephone and related service charges and trading license fees for the billing month of April 2020 for (1) member organizations with at least one trading license, a physical Trading Floor presence, and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking and auction volumes during March 1 to March 20, 2020, and (2) member organizations with at least one trading license that are DMMs with 30 or fewer assigned securities for the billing month of March 2020.

The Exchange proposes to implement the fee changes effective April 1, 2020.

Current Market and Competitive Environment

Since March 9, 2020, markets worldwide have been experiencing unprecedented market-wide declines and volatility because of the ongoing spread of COVID-19. Trading volumes on the Exchange have surged. For instance, between March 1 and March 30, 2020, NYSE CADV was 7.4 billion shares, 95% higher than the average NYSE CADV between 2018 and 2020.

Beginning on March 16, 2020, to slow the spread of COVID-19 through social distancing

measures, significant limitations were placed on large gatherings throughout the country. As a result, on March 18, 2020, the Exchange determined that beginning March 23, 2020, the physical Trading Floor facilities located at 11 Wall Street in New York City would close and that the Exchange would move, on a temporary basis, to fully electronic trading.⁴

Moreover, 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 successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁵

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”⁶ Indeed, equity trading is currently dispersed across 13 exchanges,⁷ 31 alternative trading systems,⁸ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no

⁴ See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/allcategories/2020/03-18-2020-204202110>.

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

⁶ 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”).

⁷ 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/divisionsmarketregmrexchangesshtml.html>.

⁸ 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>.

single exchange has more than 20% market share (whether including or excluding auction volume).⁹ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange’s market share of trading in Tape A, B and C securities combined is less than 13%.

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

The proposed rule change accordingly responds to these unprecedented events and the current competitive landscape where market participants can and do move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes.

Proposed Rule Change

DMM Rebates Based on Calculation of Security CADV

The section of the Exchange’s Price List entitled “Fees and Credits Applicable to DMMs” sets out different monthly rebate amounts to DMMs depending on the CADV of the security and the DMM quoting percentage and size in any month in which the DMM meets the More Active Securities Quoting Requirement¹⁰ and the Less Active Securities Quoting

⁹ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹⁰ The “More Active Securities Quoting Requirement” is met if the More Active Security has a stock price of \$1.00 or more and the DMM quotes at the NBBO in the applicable security at least 10% of the time in the applicable month.

Requirement,¹¹ as well as DMM providing as a percent of the NYSE’s total intraday adding liquidity, as those terms are defined in the Price List. Specifically, the monthly rebates offered by the Exchange for DMMs meeting the More Active Securities Quoting Requirement and the Less Active Securities Quoting Requirement are determined based on securities with a Security CADV (i.e., the average daily consolidated volume for the applicable security) equal to or greater than 1,000,000 shares per month, respectively, in the previous month. The Exchange also provides monthly rebates to DMMs depending on the Security CADV and the DMM quoting percentage. Finally, the Exchange allocates market data quote revenue (“Quoting Share”) received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation to DMMs for securities with a Security CADV of less than 1,500,000 shares in the previous month (regardless of whether the stock price exceeds \$1.00) based on the DMM meeting specified quoting percentage requirements at the NBBO.¹²

For each of these calculations based on Security CADV, the Exchange proposes to add a footnote following each use of “previous month” in the DMM section of the Price List providing that in a month where NYSE CADV equals or is greater than 5.5 billion shares, the Exchange will use the most recent month where NYSE CADV is less than 5.5 billion shares to calculate the Security CADV.

For example, assume the relevant billing month is April 2020. Assume NYSE CADV in the preceding month of March 2020 was equal to or greater than 5.5 billion shares and that the

¹¹ The “Less Active Securities Quoting Requirement” is met when a security has a consolidated ADV of less than 1,000,000 shares per month in the previous month and a stock price of \$1.00 or more, and the DMM quotes at the NBBO in the applicable security at least 15% of the time in the applicable month.

¹² See NYSE Price List, at 8-13, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

most recent month where NYSE CADV was less than 5.5 billion shares was February 2020. In this example, the Exchange would use trading volumes from February 2020 to calculate Security CADV and, as long as NYSE CADV was under 5.5 billion shares, the Security CADV for each security would be based on that symbol's CADV in the month of February. In the event that NYSE CADV in February 2020 was also equal to or greater than 5.5 billion shares, the Exchange would use the next most recent month prior to February where NYSE CADV was under 5.5 billion shares.

DMM Adding Liquidity Credits in More Active Securities

Currently, DMMs earn a rebate of \$0.0031 per share when adding liquidity, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of \$1.00 or more and the DMM meets the More Active Securities Quoting Requirement¹³ and the DMM (1) has a DMM Quoted Size¹⁴ for an applicable month that is at least 10% of the NYSE Quoted Size, and (2) quotes at the National Best Bid or Offer (“NBBO”) in the applicable security at least 20% of the time in the applicable month, and (3) has providing liquidity that is more than 5% of the NYSE’s total intraday adding liquidity in each such security for that month.

DMMs electing the optional monthly rebate per security (“Rebate per Security”) instead receive a lower monthly rebate per share (“Optional Credit”) of \$0.0030 per share if the quoting and providing requirements are met. A DMM that meets (1) these requirements, and (2) the

¹³ See note 10, *supra*.

¹⁴ The “NYSE Quoted Size” is calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO. The “DMM Quoted Size” is calculated by multiplying the average number of shares of the applicable security quoted at the NBBO by the DMM by the percentage of time during which the DMM quoted at the NBBO. See NYSE Price List, n. 7.

DMM Additional Quoting Requirement¹⁵ would receive an incremental credit of \$0.0003 per share in each eligible assigned More Active Security.

The Exchange proposes that in a month where NYSE CADV is equal to or greater than 5.5 billion shares, the DMM providing liquidity requirement would instead be 2.5% of the NYSE's total intraday adding liquidity in each such security for that month. The other current requirements and credits would otherwise remain unchanged.

Similarly, DMMs currently earn a rebate of \$0.0034 per share when adding liquidity with orders, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of \$1.00 or more and the DMM meets the More Active Securities Quoting Requirement and (1) has a DMM Quoted Size for an applicable month that is at least 15% of the NYSE Quoted Size, (2) for providing liquidity that is more than 15% of the NYSE's total intraday adding liquidity in each such security for that month, and (3) quotes at the NBBO in the applicable security at least 30% of the time in the applicable month. DMMs electing the optional Rebate per Security instead receive an Optional Credit of \$0.0033 per share if the quoting and providing requirements are met. A DMM that meets (1) these current requirements, and (2) the DMM Additional Quoting Requirement receives an incremental credit of \$0.0001 per share in each eligible assigned More Active Security.

The Exchange proposes that in a month where NYSE CADV is equal to or greater than 5.5 billion shares, the DMM providing liquidity requirement would instead be more than 7.5% of the NYSE's total intraday adding liquidity in each such security for that month. The other current requirements and credits would otherwise remain unchanged.

¹⁵ The "DMM Additional Quoting Requirement" is defined as the DMM increasing their quoting at the NBBO by at least 5% over their quoting at the NBBO in September 2019, in at least 300 assigned securities.

Finally, DMMs currently earn a rebate of \$0.0035 per share when adding liquidity with orders, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of \$1.00 or more and the DMM meets the More Active Securities Quoting Requirement and (1) has a DMM Quoted Size for an applicable month that is at least 25% of the NYSE Quoted Size, (2) for providing liquidity that is more than 15% of the NYSE's total intraday adding liquidity in each such security for that month, and (3) quotes at the NBBO in the applicable security at least 50% of the time in the applicable month. DMMs electing the optional Rebate per Security instead receive an Optional Credit of \$0.0034 per share if the quoting and providing requirements are met.

The Exchange proposes that in a month where NYSE CADV is equal to or greater than 5.5 billion shares, the DMM providing liquidity requirement would instead be more than 7.5% of the NYSE's total intraday adding liquidity in each such security for that month. The other current requirements and credits would otherwise remain unchanged.

NYSE CADV Cap for SLP Tape A Tiers

The Exchange currently offers tiered and non-tiered credits in Tape A securities to SLPs that meet certain quoting obligations in assigned securities based upon the total percent of NYSE CADV executed. For purposes of calculating NYSE CADV as currently used in SLP Tiers 1, 1A, 2, 3, 4, the SLP Step Up Tier and the Incremental SLP Step Up Tier, the Exchange proposes to establish a monthly maximum average cap of 5.5 billion shares per day for NYSE CADV in the billing month. To effectuate this change, the Exchange would add a footnote ** after "NYSE CADV" where the term appears in each tier specifying that, in a month where NYSE CADV equals or exceeds 5.5 billion shares per day for the billing month, NYSE CADV for that month will be subject to a cap of 5.5 billion shares per day for the billing month. Because SLP Tiers 1,

1A, 2, 4, and the SLP Step Up Tier contain cross-tier incentives based on adding liquidity as a percentage of Tape B and C CADV combined, the proposed footnote would also reference the proposed cap for Tape B and C securities combined discussed below applicable to CADV calculations for SLP Tiers 1 and 2 in Tape B and C securities. The Exchange would also add proposed footnote ** after “Tape B and Tape C CADV” in the SLP Tape A tiers referenced above.

For example, assume in the billing month that an SLP has an average daily adding volume of 5.5 million shares. Further assume that NYSE CADV was 7.5 billion shares during that month. To calculate the SLP adding ADV as a percent of NYSE CADV, the Exchange would use the NYSE CADV cap of 5.5 billion shares, yielding an adding percent of NYSE CADV of 0.10% rather than 0.07% if the Exchange had used 7.5 billion shares.

SLP CADV Caps for SLP Tiers in Tape B and C Securities

For Tape B and C securities, the Exchange currently offers several levels of credits for SLP orders that provide displayed and non-displayed liquidity to the Exchange in Tape B and C securities priced at or above \$1.00 based on the volume of orders as a percentage of CADV that member organizations send to the Exchange. The SLP Provide Tier credits (Non Tier, Tier 2, Tier 1 and Tape A Tier) range from \$0.00005 to \$0.0033. As described below, the Exchange proposes to cap the SLP provide percentage CADV for Tape B, Tape C and for Tape B and C combined.

Under current SLP Tier 1, in order for SLPs to qualify for the current \$0.0031 per share credit per tape and the current \$0.0033 per share credit per tape in an assigned Tape B or C security, an SLP must, among other things, add liquidity for all assigned Tape B securities of a CADV of at least 0.10% for Tape B and a CADV of at least 0.075% for Tape C. The

requirements for the \$0.0033 per share credit also provide that an SLP add liquidity for all assigned securities of at least 0.25% of Tape B and Tape C CADV combined. Under current SLP Provide Tier 2, SLPs are eligible for a \$0.0029 per share credit per tape in an assigned Tape B or C security when adding displayed liquidity to the Exchange if the SLP, among other things, adds liquidity for all assigned Tape B and C securities in the aggregate of a CADV of at least 0.03% per tape.

The Exchange proposes to add footnote # specifying that the calculation of the relevant SLP provide percentage tape CADV would be subject to a maximum average for the billing month of 2.75 billion shares per day for Tape B, 3.25 billion shares for Tape C, and 6.0 billion shares for Tape B and C combined. The proposed caps would apply to all CADV calculations for SLP Tiers 1 and 2.

Fee Waivers for Trading Floor-Based Member Organizations

The Exchange charges certain equipment fees for the booth telephone system on the Trading Floor and associated service charges. Specifically, the Exchange charges an Annual Telephone Line Charge of \$400 per phone number and \$129 for a single line phone, jack, and data jack. The Exchange also assesses related service charges, as follows: \$161.25 to install single jack (voice or data); \$107.50 to relocate a jack; \$53.75 to remove a jack; \$107.50 to install voice or data line; \$53.75 to disconnect data line; \$53.75 to change a phone line subscriber; and miscellaneous telephone charges billed at \$106 per hour in 15 minute increments.¹⁶

Because, as described above, the Trading Floor at 11 Wall Street is temporarily closed, the Exchange proposes to waive these Trading Floor-based fees for April 2020 for member

¹⁶ The Service Charges also include an Internet Equipment Monthly Hosting Fee that the Exchange does not propose to waive for April 2020.

organizations with at least one trading license, a physical Trading Floor presence, and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020. The Exchange also proposes to waive these fees for April 2020 for member organizations with at least one trading license that are Designated Market Makers with 30 or fewer assigned securities for the billing month of March 2020.

To effectuate this change, the Exchange proposes a new footnote 11 following "Equipment Fee."¹⁷

The proposed change is designed to reduce monthly costs for member organizations with a Trading Floor presence that are unable to use the services associated with the fees while the Trading Floor is temporarily closed. The Exchange believes that this fee waiver would ease the financial burden associated with the temporary Trading Floor closure.

In order to further reduce costs for member organizations with a Trading Floor presence, the Exchange also proposes to waive trading license fees for April 2020. The Exchange currently offers tiered trading license fees, as follows.

For all member organizations, including Floor brokers with more than ten trading licenses but excluding Regulated Only Members as defined in Rule 2(b)(ii), the trading license fee is \$50,000 for the first license held by the member organization unless one of the other rates is deemed applicable. For member organizations with 3-9 trading licenses, the Exchange charges \$35,000 for the first license held by a member organization that has Floor broker

¹⁷ The Exchange proposes to delete current footnote 11, which provides that the Annual Telephone Line Charge will be waived on a prorated basis for Floor brokers for January, February and March 2013, as obsolete. There is no footnote 12 so the Exchange proposes to renumber current footnotes 13 and 14.

executions accounting for 40% or more of the member organization's combined adding and taking volumes during the billing month. For Floor brokers with 1-2 trading licenses, the Exchange charges \$25,000 for the first license held by a member organization that has Floor broker executions accounting for 40% or more of the member organization's combined adding and taking volumes during the billing month. Regulated Only Members are charged an annual administrative fee of \$25,000.

The Exchange proposes to waive the April 2020 monthly portion of all applicable annual fees for member organizations with at least one trading license, a physical Trading Floor presence and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020. The indicated annual trading license fees will also be waived for April 2020 for member organizations with at least one trading license that are DMMs with 30 or fewer assigned securities for the billing month of March 2020.

To effectuate this change, the Exchange proposes to add text describing the waiver to current footnote 15.

The proposed changes are 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,¹⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁹ in

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4) & (5).

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, beginning March 2020, markets worldwide have experienced unprecedented declines and volatility because of the ongoing spread of COVID-19 that has also resulted in the temporary closure of the NYSE Trading Floor. As a result of this volatility, the equity markets have experienced unprecedented trading volumes. Moreover, as also discussed above, the Exchange operates in a highly fragmented and competitive market. In view of these unprecedented events, and the current competitive landscape where market participants can and do move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes, the Exchange believes that the proposed rule change is reasonable.

Specifically, the Exchange believes that using the most recent month where NYSE CADV is less than 5.5 billion shares to calculate the Security CADV for DMM monthly rebates for the More Active Securities Quoting Requirement and the Less Active Securities Quoting Requirement, is reasonable because significantly fewer symbols would qualify as Less Active Securities when NYSE CADV is equal to or exceeds 5.5 billion shares.

Similarly, lowering the DMM providing requirements as a percent of the NYSE's total intraday adding liquidity in a month where NYSE CADV is equal to or greater than 5.5 billion shares in order for DMMs to qualify for rebates when adding liquidity in More Active Securities is reasonable because such extraordinarily high market volumes would make it significantly harder for DMMs to meet the DMM providing requirements.

Further, capping the Tape A monthly CADV at a maximum of 5.5 billion shares when

calculating all Tape A SLP tiers and the Tape B CADV, Tape C CADV and Tape B and C combined CADV when calculating all Tape B and C SLP tiers is reasonable because such extraordinarily high market volumes would make it significantly harder for SLPs, whose adding volume is limited to proprietary adding liquidity, to meet the adding requirements for the aforementioned SLP tiers.

Finally, the proposed waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations is reasonable in light of the temporary closure of the NYSE Trading Floor. The proposed change is designed to reduce costs for Floor participants for the month of April 2020 that are unable to conduct Floor operations while the Trading Floor remains temporarily closed. The Exchange believes that this fee waiver would ease the financial burden faced by member organizations that conduct business on the Trading Floor and benefit all such member organizations.

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 the proposed use of a lower threshold to calculate Security CADV for DMM rebates and lowering the DMM providing requirements as a percent of the NYSE's total intraday adding liquidity in a month where NYSE CADV is equal to or greater than 5.5 billion shares is an equitable allocation of fees because the proposed changes would apply to all similarly situated member organizations that are DMMs on the Exchange, 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.

For the same reasons, the proposed caps for calculating all Tape A SLP tiers and CADV

for SLP credits for adding displayed and non-displayed liquidity to the Exchange in Tape B and C securities also constitute an equitable allocation of fees. The proposed caps for calculating SLP CADV across all tapes would apply equally to all similarly situated member organizations that are SLPs, all of whom 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.

Finally, the proposed waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during April 2020 are also an equitable allocation of fees. The proposed waivers apply to all Trading Floor-based firms meeting specific requirements during the period that the Trading Floor is temporarily closed. The proposed change is equitable as it is designed to reduce monthly costs for Trading Floor-based member organizations that are unable to conduct Floor operations.

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 proposed use of a lower threshold to calculate Security CADV for DMM rebates and lowering the DMM providing requirements as a percent of the NYSE's total intraday adding liquidity in a month where NYSE CADV is equal to or greater than 5.5 billion shares does not permit unfair discrimination because the proposed changes would apply to all similarly situated member organizations that are DMMs, who would benefit from use of the lower volume threshold to calculate Security CADV on an equal basis.

The proposed caps for calculating all Tape A SLP tiers and CADV for SLP credits for adding displayed and non-displayed liquidity to the Exchange in Tape B and C securities also does not permit unfair discrimination because the proposed changes would apply to all similarly situated member organizations that are SLPs, who would all benefit from use of the lower volume threshold to calculate SLP adding tier CADV across tapes on an equal basis.

The proposed waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during April 2020 is not unfairly discriminatory because the proposed waivers would benefit all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange is not proposing to waive the Floor-related fixed indefinitely, but rather during the period that the Trading Floor is temporarily closed. The proposed fee change is designed to ease the financial burden on Trading Floor-based member organizations that cannot conduct Floor operations while the Trading Floor remains closed.

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,²⁰ 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 continued participation of member organizations on

²⁰ 15 U.S.C. 78f(b)(8).

the Exchange by providing certainty and fee relief during the unprecedented volatility and market declines caused by the continued spread of COVID-19. As a result, the Exchange believes that the proposed change furthers the Commission’s goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”²¹

Intramarket Competition. The Exchange believes that the use of a lower threshold to calculate Security CADV for DMM rebates and lowering the DMM providing requirements as a percent of the NYSE’s total intraday adding liquidity in a month where NYSE CADV is equal to or greater than 5.5 billion shares, the proposed caps for calculating all Tape A SLP tiers and CADV for SLP credits for adding displayed and non-displayed liquidity to the Exchange in Tape B and C securities, and the proposed waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during April 2020 are designed to provide a degree of certainty to DMMs and SLPs adding liquidity to the Exchange during high volatility and to ease the financial burden on Trading Floor-based member organizations impacted by the temporary closing of the Trading Floor. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. 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

²¹ Regulation NMS, 70 FR at 37498-99.

previously noted, the Exchange's market share of trading in Tape A, B and C securities combined is less than 13%. 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 believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to provide a degree of certainty and ease the financial burdens of the current unsettled market environment, and permit affected member organizations to continue to conduct market-making operations on the Exchange and avoid unintended costs of doing business on the Exchange while the Trading Floor is inoperative, which could make the Exchange a less competitive venue on which to trade as compared to other options exchanges.

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)²² of the Act and subparagraph (f)(2) of Rule 19b-4²³ 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

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(2).

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)²⁴ 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-2020-27 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-2020-27. 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

²⁴ 15 U.S.C. 78s(b)(2)(B).

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-2020-27 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.²⁵

J. Matthew DeLesDernier
Assistant Secretary

²⁵ 17 CFR 200.30-3(a)(12).