

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92898; File No. SR-NYSE-2021-49)

September 8, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Price List

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 31, 2021, 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 (1) underutilized monthly rebate payable to Designated Market Makers (“DMM”) with 750 or fewer assigned securities in the previous month, and (2) underutilized Supplemental Liquidity Provider (“SLP”) Tier 5. The Exchange proposes to implement the rule change on September 1, 2021. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 eliminate the (1) underutilized monthly rebate payable to Designated Market Makers (“DMM”) with 750 or fewer assigned securities in the previous month, and (2) underutilized SLP Tier 5.

The Exchange proposes to implement the rule change on September 1, 2021.

Proposed Rule Change

The Exchange proposes to eliminate an underutilized DMM rebate and an underutilized adding tier for SLPs, as follows.

Underutilized DMM Rebate

Currently, the Exchange offers an additional per share credit to DMMs in each eligible assigned More Active Security with a stock price of at least \$1.00 on current rebates of \$0.0034 or less, i.e., adding credits of \$0.0015, \$0.0027, \$0.0031, and \$0.0034 per share. Specifically, DMMs are eligible for an incremental rebate \$0.0002 per share in each eligible assigned More Active Security with a stock price of at least \$1.00 where NYSE CADV is equal to or greater than 4.0 billion shares, when adding liquidity with orders, other than Mid-Point Liquidity (“MPL”) Orders, in such securities and the DMM either:

1. has providing liquidity in all assigned securities as a percentage of NYSE CADV that is an increase of 0.30% more than the DMM’s April 2020

providing liquidity in all assigned securities as a percentage of NYSE CADV,
or

2. has providing liquidity in all assigned securities as a percentage of NYSE CADV that is an increase of at least 40% more than the DMM's April 2020 providing liquidity in all assigned securities as a percentage of NYSE CADV for DMMs with 750 or fewer assigned securities in the previous month.

The Exchange proposes to eliminate the second alternative way to qualify for the incremental rebate in its entirety and to remove it from the Price List. The second qualification method has been underutilized by member organizations insofar as no DMMs with 750 or fewer assigned securities has qualified for the incremental rebate in the past six months. As such, Exchange does not anticipate any member organization in the near future would qualify for the rebate that is the subject of this proposed rule change.

Underutilized SLP Tier 5

Under current SLP Tier 5, an SLP adding liquidity in securities with a per share price of \$1.00 or more with orders, other than MPL Orders, is eligible for a per share credit of \$0.0031 (or \$0.0012 if a Non-Displayed Reserve Order) if the SLP: (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an average daily volume ("ADV") of more than 0.60%% of Tape A consolidated ADV ("CADV")⁴ (for SLPs that are also DMMs and subject to Rule 107B(i)(2)(A), more than 0.60% after a discount of the percentage for the prior quarter of Tape A CADV in DMM assigned securities as of the last business day of the prior

⁴ The terms "ADV" and "CADV" are defined in footnote * of the Price List.

month); (3) has Adding ADV,⁵ including non-SLP Adding ADV but excluding any liquidity added by a DMM, that is at least 0.80% of Tape A CADV; and (4) executes an ADV, including non-SLP Adding ADV but excluding any liquidity added by a DMM, of at least 250,000 shares in Retail Price Improvements Orders.

The Exchange proposes to eliminate SLP Tier 5 in its entirety and to remove it from the Price List. The tier has been underutilized by member organizations insofar as no SLP has qualified for the tiered display or tiered non-display credit in the past two months. As such, Exchange does not anticipate any member organization in the near future would qualify for the rebate that is the subject of this proposed rule change. As a result of the deletion of SLP Tier 5, the Exchange would renumber the remaining SLP tiers as follows. Current SLP Tier 1A would become new SLP Tier 2. Current SLP Tier 2 would become new SLP Tier 3. Current SLP Tier 3 would become new SLP Tier 4. Finally, current SLP Tier 4 would become new SLP Tier 5.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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

The Exchange believes that the proposed elimination of the incremental rebate for DMMs

⁵ Footnote 2 to the Price List defines “Adding ADV” as ADV that adds liquidity to the Exchange during the billing month.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) & (5).

with 750 or fewer assigned securities is reasonable because DMMs have underutilized the alternative qualification for this incentive. No DMM has qualified for the rebate in the past six months. The Exchange does not anticipate any member organization in the near future qualifying for the rebate that is the subject of this proposed rule change. Similarly, the Exchange believes that the proposed elimination of SLP Tier 5 is reasonable. No SLP has qualified for the rebate in the past two months, and the Exchange does not anticipate any member organization in the near future qualifying for SLP Tier 5. The Exchange believes it is reasonable to eliminate rebates and credits when such incentives become underutilized. The Exchange also believes eliminating underutilized incentive programs would also simplify the Price List. The Exchange further believes that removing the alternative qualification for the incremental DMM rebate and SLP Tier 5 from the Price List, as well as renumbering the remaining SLP tiers, would add clarity and transparency to the Price List.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates fees among its market participants because the underutilized alternative qualification for a DMM rebate and SLP tier the Exchange proposes to eliminate would be eliminated in their entirety, and would no longer be available to any member organization in any form. Similarly, the Exchange believes the proposal equitably allocates fees among its market participants because elimination of the underutilized rebate and credits would apply to all similarly-situated member organizations on an equal basis. 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.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. 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 Exchange believes that the proposal is not unfairly discriminatory because the proposed elimination of the alternative qualification for the incremental DMM rebate and SLP Tier 5 credits would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating rebates and credits that are underutilized and ineffective would no longer be available to any DMM or SLP, respectively, on an equal basis. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of underutilized fees would make the Price List more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by 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,⁸ 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 proposal relates solely to elimination of an underutilized DMM rebate and SLP tiered credits and, as such, would not have any impact on intra- or inter-market competition because the proposed change is solely designed

⁸ 15 U.S.C. 78f(b)(8).

to accurately reflect the services that the Exchange currently offers, thereby adding clarity to the Price List.

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)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ 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)¹¹ 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

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2021-49 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2021-49. 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-2021-49 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).