

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-100731; File No. SR-NYSE-2024-45)

August 15, 2024

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) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 8, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 revise the requirements for Supplemental Liquidity Providers (“SLPs”) that are also Designated Market Makers (“DMM”) to qualify for SLP Adding Tiers 1-5. The Exchange proposes to implement the fee changes effective August 8, 2024. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to revise the requirements for SLPs that are also DMMs to qualify for SLP Adding Tiers 1-5. Specifically, the Exchange proposes to lower the required adding as a percentage of NYSE consolidated average daily volume ("CADV") in order for SLPs that are also DMMs with a specific number of DMM registrations to qualify for each tier.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by modifying the requirements for member organizations to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective August 8, 2024.<sup>3</sup>

Background

Current Market and Competitive Environment

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

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<sup>3</sup> The Exchange originally filed to amend the Price List on August 1, 2024 (SR-NYSE-2024-43). SR-NYSE-2024-43 was withdrawn on August 8, 2024 and replaced by this filing.

promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>4</sup>

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”<sup>5</sup> Indeed, cash equity trading is currently dispersed across 16 exchanges,<sup>6</sup> numerous alternative trading systems,<sup>7</sup> and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.<sup>8</sup> Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange’s share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.<sup>9</sup>

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<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

<sup>5</sup> See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

<sup>6</sup> See Cboe U.S Equities Market Volume Summary, available at [https://markets.cboe.com/us/equities/market\\_share](https://markets.cboe.com/us/equities/market_share). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

<sup>7</sup> 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>.

<sup>8</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [https://markets.cboe.com/us/equities/market\\_share/](https://markets.cboe.com/us/equities/market_share/).

<sup>9</sup> See *id.*

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. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow.

Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

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 changes are designed to continue to attract additional order flow to the Exchange by revising the requirements for SLPs that are also DMMs in SLP Adding Tiers 1-5 in order to further incentivize member organizations to submit additional displayed liquidity to, and quote aggressively in support of the price discovery process on, the Exchange.

#### Proposed Rule Change

For SLPs that are also DMMs registered in a minimum number of Tape A securities and subject to Rule 107B(i)(2)(A), current SLP Adding Tier 1, Tier 2, Tier 3, Tier 4, and Tier 5 set forth an additional requirement that the adding average daily volume ("ADV") represent a fixed percentage of NYSE CADV. The requirement is set forth in the column titled "SLP Adding ADV % Tape A CADV If DMM" and currently ranges from 0.08% to 0.55%. The Exchange proposes to amend those percentages, as follows.

Under current SLP Tier 1, an SLP adding liquidity in Tape A securities receives a credit of \$0.0032, 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, and (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)<sup>10</sup> of an ADV of more than 1.00% (or 0.080% for SLPs that meet the SLP Cross Tape Tier 1 Incentive) of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and registered in at least 500 Tape A issues, more than 0.55% of NYSE CADV. The Exchange proposes to lower the more than 0.55% of NYSE CADV requirement to more than 0.36% of NYSE CADV.

Under current SLP Tier 2, an SLP adding liquidity in Tape A securities receives a 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, and (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 ADV of more than 0.90% (or 0.75% for SLPs that meet the SLP Cross Tape Tier 1 Incentive) of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and registered in at least 500 Tape A issues, more than 0.45% of NYSE CADV. The Exchange proposes to change the more than 0.45% of NYSE CADV requirement to more than 0.24% of NYSE CADV.

Under current SLP Tier 3, an SLP adding liquidity in Tape A securities receives a credit of \$0.00305, or \$0.00105 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, and (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop

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<sup>10</sup> Under Rule 107B, an SLP can be either a proprietary trading unit of a member organization (“SLP-Prop”) or a registered market maker at the Exchange (“SLMM”). For purposes of the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated. However, for purposes of adding liquidity for assigned SLP securities in the aggregate, shares of both an SLP-Prop and an SLMM of the same member organization are included.

and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.60% of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and registered in at least 500 Tape A issues, more than 0.36% of NYSE CADV. The Exchange proposes to change the more than 0.36% of NYSE CADV requirement to more than 0.18% of NYSE CADV.

Under current SLP Tier 4, an SLP adding liquidity in Tape A securities receives a credit of \$0.0029, or \$0.0009 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, and (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 ADV of more than 0.45% of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and registered in at least 500 Tape A issues, more than 0.24% of NYSE CADV. The Exchange proposes to change the more than 0.24% of NYSE CADV requirement to more than 0.08% of NYSE CADV.

Once an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and registered in at least 500 Tape A issues adds liquidity for all assigned SLP securities in the aggregate of more than 0.08% of NYSE CADV, that SLP will automatically receive the highest SLP Tier 4 credit of \$0.0029, even if the SLP otherwise qualifies for SLP Tiers 5 or 6. To reflect this in the Price List, the Exchange would replace the existing NYSE CADV requirement in SLP Tiers 5 and 6 of 0.18% of NYSE CADV and 0.08% of NYSE CADV, respectively, with “N/A.”

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,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>12</sup> 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.

As discussed above, 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.”<sup>13</sup> While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”<sup>14</sup>

### The Proposed Change is Reasonable

In light of the competitive environment in which the Exchange currently operates, the

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4) & (5).

<sup>13</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

<sup>14</sup> See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

proposed rule change is a reasonable attempt to incentivize member organizations to direct order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the credits, thereby contributing to depth and market quality on the Exchange. The Exchange believes that the proposed lower adding as a percentage of NYSE CADV requirements would incentivize market participants to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange.

#### The Proposal is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates fees and credits among market participants because all member organizations that participate on the Exchange may qualify for the proposed credits and fees on an equal basis. The Exchange believes its proposal equitably allocates its fees and credits among its market participants by fostering liquidity provision and stability in the marketplace.

The Exchange believes that the proposed changes would encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange. The proposed changes would also encourage the submission of additional orders that add liquidity, thus providing liquidity to market participants, providing greater price discovery and increasing the quality of order execution on the Exchange's market, which would benefit all market participants. The proposed changes are equitable because they would apply equally to all qualifying similarly-situated SLPs that submit orders to the NYSE and add liquidity to the Exchange.



### 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 Exchange believes that 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 lower adding as a percentage of NYSE CADV requirement that SLPs that are also DMMs must meet to qualify for the SLP adding tiers also does not permit unfair discrimination because the proposed changes would apply to all similarly situated market participants on an equal and non-discriminatory basis and would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed requirements, who would all be eligible for the same credits on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. The proposal does not permit unfair discrimination because the qualification criteria would be applied to all similarly situated member organizations, who would all be eligible for the same credits on an equal basis. Further, as noted, the Exchange believes the proposal would provide an incentive for member organizations to continue to send orders that provide liquidity to the Exchange, to the benefit of all market participants. 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,<sup>15</sup> 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 among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>16</sup>

*Intramarket Competition.* The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. 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

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<sup>15</sup> 15 U.S.C. 78f(b)(8).

<sup>16</sup> See Regulation NMS, 70 FR at 37498-99.

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. 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.

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 has become effective upon filing pursuant to Section 19(b)(3)(A)<sup>17</sup> of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the 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.

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:

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

Electronic comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSE-2024-45 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-2024-45. This file number should be included on the subject line if email 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or

subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-45, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Sherry R. Haywood,**

Assistant Secretary.

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<sup>18</sup> 17 CFR 200.30-3(a)(12).