

*Electronic Comments*

- Use the Commission's internet comment form (<http://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-Phlx-2020-41 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-Phlx-2020-41. 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 (<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-Phlx-2020-41, and should be submitted on or before September 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-19716 Filed 9-4-20; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-89754; File No. SR-NYSE-2020-71]

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

September 2, 2020.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 20, 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 (1) revise the Step Up Tier 1 Adding Credit; (2) revise the Step Up Tier 4 Adding Credit; (3) revise a requirement for the Incremental Rebate Per Share for Designated Market Makers ("DMM") in most active securities; (4) adopt a new National Best Bid and Offer ("NBBO") Setter pricing tier for DMMs; (5) adopt a new NBBO Setter pricing tier for Supplemental Liquidity Providers ("SLP"); and (6) extend through August 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April, May, June and July 2020, make Floor broker member organizations that had no March 2020 volumes eligible for both waivers, and provide a one-time credit of the equipment and related service charges and trading license fees for member organizations that became member organizations after April 1, 2020. The Exchange proposes to implement the fee changes effective August 20, 2020.<sup>4</sup> The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Exchange originally filed to amend the Price List on August 3, 2020 (SR-NYSE-2020-65). SR-NYSE-2020-65 was subsequently withdrawn and replaced by SR-NYSE-2020-70. SR-NYSE-2020-70 was subsequently withdrawn and replaced by this filing.

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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Price List to:

- Revise the Step Up Tier 1 Adding Credit;
- revise the Step Up Tier 4 Adding Credit;
- revise a requirement for the Incremental Rebate Per Share for DMMs in most active securities;
- adopt a new NBBO Setter pricing tier for DMMs;
- adopt a new NBBO Setter pricing tier for SLPs; and
- extend through August 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April, May, June and July 2020, make Floor broker member organizations that had no March 2020 volumes eligible for both waivers, and provide a one-time credit of the equipment and related service charges and trading license fees for member organizations that became member organizations after April 1, 2020.

The proposed changes respond 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, especially aggressively priced orders that improve the market by setting the NBBO on the Exchange. The proposed changes also respond to the current volatile market environment that has resulted in unprecedented average daily volumes and the temporary closure of the Trading Floor,

<sup>26</sup> 17 CFR 200.30-3(a)(12).

which are both related to the ongoing spread of the novel coronavirus (“COVID-19”).

The Exchange proposes to implement the fee changes effective August 20, 2020.<sup>5</sup>

#### 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 promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>6</sup>

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”<sup>7</sup> Indeed, equity trading is currently dispersed across 13 exchanges,<sup>8</sup> 31 alternative trading systems,<sup>9</sup> and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 20% market share (whether including or excluding auction volume).<sup>10</sup> 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 10%.

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.

In response to the competitive environment described above, 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 attract additional order flow to the Exchange by offering new pricing tiers and lowering a step up requirement in order to incentivize member organizations to submit additional liquidity to, and quote aggressively in support of the price discovery process on, the Exchange.

Moreover, beginning on March 16, 2020, in order 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.<sup>11</sup> On May 14, 2020, the Exchange announced that on May 26, 2020 trading operations on the Trading Floor would resume on a limited basis to a subset of Floor brokers, subject to safety measures designed to prevent the spread of COVID-19.<sup>12</sup> On June 15, 2020, the Exchange announced that on June 17, 2020, the Trading Floor would reintroduce a subset of DMMs, also subject to safety measures designed to prevent the spread of COVID-19.<sup>13</sup>

The proposed rule change responds to these unprecedented events by extending the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations for August 2020 and providing relief for member

organizations that became member organizations after the partial closure of the Trading Floor.

#### Proposed Rule Change

##### Step Up Tier 1 Adding Credit

Currently, the Step Up Tier 1 Adding Credit offers a higher credit to member organizations that qualify for the tier and an additional credit for member organizations providing displayed liquidity in Tapes B and C securities. Specifically, under the current tier, a member organization that sends orders, except MPL and Non-Displayed Limit Orders, that add liquidity in Tape A securities would receive a credit of \$0.0019 if:

- The member organization has Adding ADV, excluding any liquidity added by a DMM, that is at least 0.45% of NYSE CADV,<sup>14</sup> and
- the member organization has Adding ADV, excluding any liquidity added by a DMM, that is at least 0.20% of NYSE CADV for the billing month over the member organization’s March 2019 Adding ADV as a percentage of NYSE CADV in March 2019.

In addition, a member organization that meets these requirements, and thus qualifies for the \$0.0019 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 SLP, equal to at least 0.20% of Tape B and Tape C CADV combined.

The Exchange proposes to retain the current credit and offer an additional tiered credit based on a member organization’s Adding ADV percentage of NYSE CADV. Specifically, the Exchange proposes that a \$0.0020 credit would be available to member organizations that have Adding ADV, excluding any liquidity added by a DMM, that is at least 0.65% of NYSE CADV and at least 0.60% of NYSE CADV over that Member Organization’s March 2019 adding liquidity taken as a percentage of NYSE CADV.

The requirement that a member organization has Adding ADV, excluding any liquidity added by a DMM, that is at least 0.20% of NYSE CADV for the billing month over the member organization’s March 2019 Adding ADV as a percentage of NYSE CADV in March 2019 would remain unchanged.

For example, assume Member Organization B, excluding any liquidity added by a DMM, has an Adding ADV in March 2019 of 0.15% of NYSE CADV.

<sup>14</sup> The terms “ADV” and “CADV” are defined in footnote \* of the Price List.

<sup>5</sup> The Exchange originally filed to amend the Price List on August 3, 2020 (SR-NYSE-2020-65). SR-NYSE-2020-65 was subsequently withdrawn and replaced by SR-NYSE-2020-70. SR-NYSE-2020-70 was subsequently withdrawn and replaced by this filing.

<sup>6</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>7</sup> 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”).

<sup>8</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

<sup>9</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/atstlist.htm>.

<sup>10</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

<sup>11</sup> See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/allcategories/2020/03-18-2020-204202110>.

<sup>12</sup> See Trader Update, dated May 14, 2020, available here: <https://www.nyse.com/traderupdate/history#110000251588>.

<sup>13</sup> See Trader Update, dated June 15, 2020, available here: <https://www.nyse.com/traderupdate/history#110000272018>.

In the applicable billing month, Member Organization B has an Adding ADV of 0.85% of NYSE CADV. Member Organization B would qualify for the Step Up Tier 1's higher Adding Credit of \$0.0020 per share in the billing month because it both (1) meets the Adding ADV requirement of 0.65% of NYSE CADV with 0.85%, and (2) meets the Adding ADV increase over that firm's March 2019 Adding ADV by at least 0.60% (Adding ADV of 0.85% of NYSE CADV in the billing month minus the Adding ADV of 0.15% of NYSE CADV in the baseline month for a step up of 0.70% Adding ADV of NYSE CADV).

The purpose of this proposed change is to continue to incentivize member organizations to increase the liquidity-providing orders in Tape A securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the credit to the level of orders sent by a member organization that add liquidity, the Exchange's fee structure would incentivize member organizations to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange. The Exchange proposes higher credits to provide an incentive for member organizations to send more orders because they would then qualify for the credit.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Currently, two (2) member organizations qualify for the Step Up Tier 1 Adding Credit. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. There are currently approximately five (5) firms that could qualify for the proposed higher Step Up Tier 1 Adding Credits based on their current trading profile on the Exchange if they so choose. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new tier credits.

#### Step Up Tier 4 Adding Credit

The Exchange currently provides an incremental \$0.0006 credit in Tapes A, B and C securities for all orders from a

qualifying member organization market participant identifier ("MPID") or mnemonic that sets the NBBO<sup>15</sup> or a new BBO<sup>16</sup> if the MPID or mnemonic:

- Has adding average daily volume ("ADV") in Tapes A, B and C Securities as a percentage of Tapes A, B and C CADV, excluding any liquidity added by a DMM, that is at least 50% more than the MPID's or mnemonic's Adding ADV in Tapes A, B and C securities in June 2020 as a percentage of Tapes A, B and C CADV, and
- is affiliated with an SLP that has an Adding ADV in Tape A securities at least 0.10% of NYSE CADV, and
- has Adding ADV in Tape A securities as a percentage of NYSE CADV, excluding any liquidity added by a DMM, that is at least 0.20%.

The credits are in addition to the MPID's or mnemonic's current credit for adding liquidity and also do not count toward the combined limit on SLP credits of \$0.0032 per share provided for in the Incremental Credit per Share for affiliated SLPs whereby SLPs can qualify for incremental credits of \$0.0001, \$0.0002 or \$0.0003.

The Exchange proposes that member organizations meeting the above current Step Up Tier 4 Adding Credit requirements and that also have

- an Adding ADV that is at least 0.45% of Tapes A, B and C CADV, and
- Adding ADV setting the NBBO that is at least 0.18% of Tapes A, B and C CADV ("US CADV")

would qualify for the following credits instead of the existing credit combined with the incremental \$0.0006 credit:

- \$0.0036 for adding orders that set the NBBO; or
- \$0.0031 for all other displayed adding orders in Tape A, B and C Securities.

For example, assume Member Organization A has two MPIDs, MPID1 and MPID2, and that MPID1 is a SLP with at least 0.10% SLP Adding ADV of NYSE CADV in the billing month. Further assume that MPID2 has an Adding ADV in Tape A, B and C Securities of 0.10% of US CADV in June 2020.

If in the billing month MPID2 has an Adding ADV in Tape A, B and C Securities of 0.50% of US CADV, of which 0.20% of US CADV is in Adding ADV that sets the NBBO, and MPID2 also has Adding ADV in Tape A Securities of 0.25% of NYSE CADV, then Member Organization A's MPID2 would qualify for the current higher incremental credit of \$0.0006 per share

<sup>15</sup> See Rule 1.1(q) (defining "NBBO" to mean the national best bid or offer).

<sup>16</sup> See Rule 1.1(c) (defining "BBO" to mean the best bid or offer on the Exchange).

for setting the NBBO and NYSE BBO in the billing month because MPID2:

- Is affiliated with MPID1 that has an SLP Adding ADV of at least 0.10%;
- has an Adding ADV of 0.50% of US CADV, which is at least 50% higher than June's Adding ADV of 0.10% of US CADV; and
- also meets the Adding ADV in Tape A securities as a percentage of NYSE CADV of least 0.20% with an Adding ADV of 0.25% of NYSE ADV in the billing month.

However, since MPID2 has an Adding ADV of 0.50% of US CADV with 0.20% of US CADV of Adding ADV that sets the NBBO, MPID2 would instead qualify for the proposed credits of \$0.0036 for adding orders that set the NBBO, and \$0.0031 for all other displayed adding orders, both in Tape A, B and C Securities. MPID1 would also receive the new credits as it is affiliated with MPID2, unless it's current SLP credits combined with the SLP Step Up credits are higher.

The purpose of this proposed change is to continue incentivizing member organizations to increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO or a new BBO on the Exchange and encourage higher levels of liquidity, which would support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders that add liquidity to the Exchange. Currently, one (1) member organizations qualifies for the Step Up Tier 4 Adding Credit. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues but there are currently approximately three (3) firms that could qualify for the proposed alternative credits based on their current trading profile on the Exchange if they so choose. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new credits.

#### NYSE CADV Requirement for DMM Incremental 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 4.5 billion shares, when adding liquidity with orders, other than 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 that the incremental credit would be available in months where NYSE CADV is equal to or greater than 4.0 billion shares. The purpose of this proposed change is to continue to incentivize DMM to increase their added liquidity on the Exchange during periods of high market volumes, thereby improving quoting and increase adding liquidity across securities where there may be more liquidity providers. The Exchange notes that the lower NYSE CADV requirement is still higher than the average NYSE CADV in 2019 (3.56 billion shares) and 2018 (3.64 billion shares). The Exchange therefore believes that the proposed NYSE CADV level will continue to increase DMM liquidity during periods of higher market volumes.

#### DMM NBBO Setter Tier

The Exchange proposes to adopt a new pricing tier—the DMM NBBO Setter Tier—for securities with a per share price of \$1.00 or above.<sup>17</sup>

<sup>17</sup> For both the DMM NBBO Setter Tier and the SLP NBBO Setter Tier discussed below, the Exchange also proposes the non-substantive change of inserting a column to the right of the proposed fee that would identify the relevant Exchange liquidity indicator as set forth in the NYSE Pillar Gateway Binary Protocol Specification (August 3, 2020). The value represents the conditions under which an order was executed and whether it added or removed liquidity from the Exchange. For the DMM NBBO Setter Tier, the relevant liquidity indicators would be a combination of the following: "ASP" (Add Limit Order Setting New NBBO with Priority), "ASB" (Add Limit Order Setting New BBO) and "AJP" (Add Limit Order Joining NBBO with Priority). The SLP NBBO Setter Tier would utilize the ASP liquidity indicator.

The Exchange proposes an incremental rebate per share for orders, other than MPL Orders, in DMM assigned securities that provide displayed liquidity in Tape A, B and C Securities, as follows:

1. A DMM with providing liquidity in all assigned securities as a percentage of NYSE CADV of the DMM's assigned securities of

- at least 0.65% and less than 0.90%, and
- at least 0.12% of a DMM's Adding ADV setting the NBBO or BBO combined would receive an incremental DMM BBO Setter Credit in Tape A, B and C Securities of \$0.00005 per share for adding orders that set the BBO.

2. A DMM with providing liquidity in all assigned securities as a percentage of NYSE CADV of the DMM's assigned securities of

- at least 0.90% and less than 1.25%, and
- at least 0.225% of a DMM's Adding ADV setting the NBBO or BBO combined would receive an incremental DMM NBBO Setter Credit in Tape A, B and C Securities of
- \$0.0002 per share for adding orders that set the NBBO; or
- \$0.000075 per share for adding orders that set the BBO; or
- \$0.00005 per share for all other adding orders, other than MPL Orders.

3. Finally, a DMM with providing liquidity in all assigned securities as a percentage of NYSE CADV of the DMM's assigned securities of

- at least 1.25%, and
- at least 0.375% Adding ADV setting the NBBO or BBO combined would receive an incremental DMM NBBO Setter Credit in Tape A, B and C Securities of
- \$0.0003 per share for adding orders that set the NBBO; or
- \$0.0001 per share for adding orders that set the BBO; or
- \$0.0001 per share for all other adding orders, other than MPL Orders.

For example, assume DMM A has an Adding ADV of NYSE CADV of 1.30% in their assigned securities, with 0.30% Adding ADV of NYSE CADV that sets the NBBO or BBO. DMM A would then qualify for incremental credits per share of:

- Adding orders that set the NBBO: \$0.0002.
- Adding orders that set the BBO: \$0.000075.
- All other adding orders, other than MPL Orders: \$0.00005.

If the DMM A's current credit in a symbol was \$0.0031, then the credits in

that symbol for DMM A would now be \$ 0.0033 when setting the NBBO (\$0.0031 + \$0.0002), \$0.003175 when setting the BBO (\$0.0031 + \$0.000075), and \$0.00315 for all other adding orders, other than MPL Orders (\$0.0031 + \$0.00005).

However, if DMM A has the same Adding ADV of NYSE CADV of 1.30% but instead had an Adding ADV of NYSE CADV that sets the NBBO or BBO of 0.39%, then DMM A would qualify for higher DMM incremental credits of:

- \$0.0003 per share for adding orders that set the NBBO; or
- \$0.0001 per share for adding orders that set the BBO; or
- \$0.0001 per share for all other displayed adding orders, other than MPL Orders.

The purpose of this proposed change is to incentivize DMMs to increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO on the Exchange. The proposed DMM NBBO Setter Tier is thus intended to encourage higher levels of liquidity by DMMs on the Exchange, which would support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality. As noted above, the Exchange operates in a competitive environment, and member organizations have a choice of where to send order flow. Because the proposed tier requires DMMs to receive an incremental per share credit if the DMM meets certain trading qualifications and establishes the NBBO on the Exchange, the Exchange believes that the proposed credit would provide an incentive for all four (4) DMMs to quote more aggressively on the Exchange in order to qualify for it. The Exchange believes that incentivizing DMMs on the Exchange to add liquidity that improve the market by setting the NBBO on the Exchange could contribute to price discovery and improve quoting on the Exchange. In addition, additional liquidity providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation, which benefits all member organizations.

#### SLP NBBO Setter Tier

The Exchange proposes to adopt a new pricing tier—the SLP NBBO Setter Tier—for securities with a per share price of \$1.00 or above.

The Exchange proposes three tiered credits for orders that provide displayed liquidity in Tape A, B and C Securities, on a monthly basis, from SLPs and member organizations affiliated with SLPs in addition to the tiered or non-

tiered SLP credit for adding displayed liquidity, as follows:

1. A member organization that has an
  - Adding ADV, including any liquidity added by a DMM, that is at least 1.25% of US CADV combined, and
  - Adding ADV setting the NBBO of at least 0.30% of US CADV combined would receive an NBBO Setter Credit in Tape A, B and C Securities of
  - \$0.0038 per share for adding orders that set the NBBO; and
  - \$0.0033 per share for all other displayed adding orders.
2. A member organization that has an
  - Adding ADV, including any liquidity added by a DMM, that is at least 0.95% of US CADV combined, and
  - Adding ADV setting the NBBO of at least 0.18% of US CADV combined would receive an NBBO Setter Credit in Tape A, B and C Securities of
  - \$0.0037 per share for adding orders that set the NBBO; and
  - \$0.0032 per share for all other displayed adding orders.
3. A member organization that has an
  - has an Adding ADV, including any liquidity added by a DMM, that is at least 0.65% of US CADV combined, and
  - has an Adding ADV setting the NBBO of at least 0.09% of US CADV combined would receive an NBBO Setter Credit in Tape A, B and C Securities of
  - \$0.0036 per share for adding orders that set the NBBO; and
  - \$0.0031 per share for all other displayed adding orders.
4. Finally, a member organization that has an
  - has an Adding ADV, including any liquidity added by a DMM, that is at least 0.55% of US CADV combined, and
  - has an Adding ADV setting the NBBO of at least 0.05% of US CADV combined would receive an NBBO Setter Credit in Tape A, B and C Securities of
  - \$0.0035 per share for adding orders that set the NBBO; or
  - \$0.00305 per share for all other displayed adding orders.

For example, assume Member Organization B affiliated with an SLP has an Adding ADV of at least 0.60% of US CADV, of which at least 0.05% of US CADV sets the NBBO. Member Organization B would qualify for a credit of \$0.0035 for orders that set the NBBO and \$0.00305 for all other displayed adding orders. Further assume that Member Organization B qualifies for the current SLP Tier 1 credit of \$0.0029 and Incremental SLP Step Up Tier credit of \$0.0003 for a combined current SLP credit of \$0.0032.

For the billing month, Member Organization B would qualify for credits per share of:

- \$0.0035 per share for adding orders that set the NBBO,
- \$0.0032 per share for SLP adding orders that meet the current 10% average or more quoting requirement in an assigned security pursuant to Rule 107B
- \$0.00305 per share for all other displayed adding orders.

The Incremental SLP Step Up Tier credit would not apply to the proposed \$0.0035 or \$0.00305 credits.

The purpose of this proposed change is to incentivize member organizations that are SLPs to increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO. The proposed SLP NBBO Setter Tier is thus intended to encourage higher levels of liquidity, which would support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Because the proposed tier requires an SLP to receive an per share credit if the SLP meets certain trading qualifications and establish the NBBO on the Exchange, the Exchange believes that the proposed credit would provide an incentive for SLPs and their affiliates to send additional liquidity to the Exchange to set the NBBO in order to qualify for it.

The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Since the proposed tier is new, the Exchange does not know how many SLPs and their affiliates could qualify for the proposed tiered credits based on their current trading profile on the Exchange. However, without having a view of member organization's activity on other exchanges and off-exchange venues, there are currently approximately six (6) SLPs and affiliated firms that could qualify for the new setting tier based on their current trading profile on the Exchange if they so choose. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new setting tier.

Fee Waivers for Trading Floor-Based Member Organizations

As noted above, on March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective March 23, 2020, as a precautionary measure to prevent the potential spread of COVID-19. Following the temporary closure of the Trading Floor, the Exchange waived certain equipment fees for the booth telephone system on the Trading Floor and associated service charges for the months of April and May.<sup>18</sup> On May 26, 2020, the Trading Floor reopened on a limited basis to a reduced number of Floor brokers to accommodate health-focused considerations. Following the partial reopening, the Exchange extended the equipment fee waiver for the months of June and July.<sup>19</sup> As noted above, on June 15, 2020, a limited number of DMMs returned to the Trading Floor. The Trading Floor continues to operate with reduced headcount and additional health and safety precautions.<sup>20</sup>

For the months of April, May, June and July, the Exchange waived the Annual Telephone Line Charge of \$400 per phone number and the \$129 fee for a single line phone, jack, and data jack. The Exchange also waived 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.<sup>21</sup> These fees were waived 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

<sup>18</sup> See Securities Exchange Act Release No. 88602 (April 8, 2020), 85 FR 20730 (April 14, 2020) (SR-NYSE-2020-27); Securities Exchange Act Release No. 88874 (May 14, 2020), 85 FR 30743 (May 20, 2020) (SR-NYSE-2020-29). See footnote 11 of the Price List.

<sup>19</sup> See Securities Exchange Act Release No. 89050 (June 11, 2020), 85 FR 36637 (June 17, 2020) (SR-NYSE-2020-49); Securities Exchange Act Release No. 89324 (July 15, 2020), 85 FR 44129 (July 21, 2020) (SR-NYSE-2020-59).

<sup>20</sup> See Trader Update, dated June 15, 2020, available here: <https://www.nyse.com/trader-update/history#110000272018>. DMMs continue to support a subset of NYSE-listed securities remotely.

<sup>21</sup> The Service Charges also include an internet Equipment Monthly Hosting Fee that the Exchange did not waive for April, May and June 2020 and that the Exchange does not propose to waive for August 2020.

license that are Designated Market Makers with 30 or fewer assigned securities for the billing month of March 2020.

Because the Trading Floor continues to operate with reduced capacity, the Exchange proposes to extend the waiver of these Trading Floor-based fees through August 2020. To effectuate this change, the Exchange proposes to add “and August” between “July” and “2020” in footnote 11 to the Price List.

In addition, the Exchange proposes to enable member organizations that had no Floor broker executions during March 1 to March 20, 2020 to be eligible for the waiver of these Trading Floor-based fees through August 2020. As proposed, a Floor member organization member organizations with at least one trading license and a physical Trading Floor presence that had no Floor broker executions during March 1 to March 20, 2020 would be eligible for the waiver if it had Floor broker executions accounting for 40% or more of the member organization’s combined adding, taking, and auction volumes during its first month as a member organization on or after May 26, 2020, *i.e.*, the date the Trading Floor reopened on a limited basis.

Finally, the Exchange also proposes that member organizations with a physical trading Floor presence that became member organizations on or after April 1, 2020 would be eligible for a one-time credit for the member organization’s Booth Telephone System charges and all Service Charges except the internet Equipment Monthly Hosting Fee for the months of April through July 2020 if the member organization meets the other requirements for the waiver described in footnote 11 of the Price List.

In order to further reduce costs for member organizations with a Trading Floor presence, the Exchange also waived the April, May, June and July 2020 monthly portion of all applicable annual fees 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.<sup>22</sup>

The Exchange proposes to also waive the August 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 would also be waived for August 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 “and August” between “July” and “2020” in footnote 15.

In addition, the Exchange proposes to enable member organizations that had no Floor broker executions during March 1 to March 20, 2020, as they were not NYSE members, to be eligible for waiver of the monthly portion of the applicable annual fees through August 2020. As proposed, a Floor member organization member organizations with at least one trading license and a physical Trading Floor presence that had no Floor broker executions during March 1 to March 20, 2020 would be eligible for the waiver if it had Floor broker executions accounting for 40% or more of the member organization’s combined adding, taking, and auction volumes during its first full month as a member organization on or after May 26, 2020.

Similarly, the Exchange proposes that member organizations with a physical trading Floor presence that became member organizations on or after April 1, 2020 would be eligible for a one-time credit for the member organization’s indicated annual trading license fee for the months of April through July 2020 if the member organization meets the other requirements for the waiver described in footnote 15 of the Price List.

The proposed extension of the fee waivers would reduce monthly costs for member organizations with a Trading Floor presence whose operations were disrupted by the Floor closure, which lasted approximately two months, and remains partially closed. The Exchange believes that extension of the fee waiver would ease the financial burden associated with the ongoing partial Trading Floor closure. The Exchange believes that all member organization that conduct a significant portion of trading on the Trading Floor would benefit from this proposed fee change. In addition, enabling member organizations with a Trading Floor presence and at least one trading license who became member organizations on or after May 26, 2020 to be eligible for the proposed waivers for August 2020

and to provide a one-time credit for the waivers for the months April through July 2020 would reduce monthly costs and ease the financial burden associated with the ongoing partial Trading Floor closure for member organizations that became member organizations after the temporary closure of the Trading Floor in March and who, like other Floor-based member organizations, are not operating at full capacity while the Trading Floor remains partially closed.

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>23</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>24</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.

### 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.”<sup>25</sup>

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 exchange

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(4) & (5).

<sup>25</sup> See Regulation NMS, 70 FR at 37499.

<sup>22</sup> See notes 17–19, *supra*. See footnote 15 of the Price List.

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.

#### Step Up Tier 1 Adding Credit

The Exchange believes that the proposed revisions to the Step Up Tier 1 Adding Credit represent a reasonable attempt to attract additional order flow to the Exchange.

Specifically, the Exchange believes that providing additional higher credits for incremental increases in Adding ADV as a percentage of NYSE CADV would continue to provide an incentive for member organizations to route additional liquidity-providing orders to the Exchange in Tape A securities, which would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for member organizations from the substantial amounts of liquidity present on the Exchange. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities. The Exchange further believes that by correlating the amount of the credit to the level of orders sent by a member organization that add liquidity, the Exchange's fee structure would incentivize member organizations to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange. The Exchange proposes higher credits to provide an incentive for member organizations to send more orders because they would then qualify for the credit.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. As previously noted, there are a number of member organizations that could qualify for the proposed higher credit but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed higher credit is reasonable as it would provide an additional incentive for member organizations to direct their order flow

to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

#### Step Up Tier 4 Adding Credit

The Exchange believes that the proposed alternative incentives to member organizations that meet the current Step Up Tier 4 Adding Credit requirements and add additional liquidity to the Exchange is reasonable.

Specifically, the Exchange believes that providing alternative credits to member organizations that increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO on the Exchange and encourage higher levels of liquidity would continue to support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality. 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 Exchange believes it is reasonable to provide higher credits for orders that provide additional liquidity. Moreover, the Exchange believes that providing a higher credit for adding orders that set the NBBO or a new BBO is reasonable because it would encourage additional aggressively priced displayed liquidity on the Exchange and because market participants benefit from the greater amounts of liquidity and price improvement present on the Exchange. Further, the Exchange believes that requiring member organizations to meet additional specific Adding ADV requirements is reasonable. Specifically, requiring additional Adding ADV that is at least 0.45% of US CADV, and at least 0.18% of US CADV is reasonable because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the greater amounts of liquidity and price improvement present on the Exchange.

As previously noted, there are a number of member organizations that could qualify for the proposed higher credit but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any member organization qualifying for the alternate credits. The Exchange believes the proposed credits are reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to

qualify for the higher incremental credit, thereby contributing to depth and market quality on the Exchange.

#### NYSE CADV Requirement for DMM Incremental Rebate

The Exchange believes that requiring that the DMM incremental credit be available in months where NYSE CADV is equal to or greater than 4.0 billion shares is reasonable. As noted, the purpose of this proposed change is to continue to incentivize DMM to increase their added liquidity on the Exchange during periods of high market volumes, thereby improving quoting and increase adding liquidity across securities where there may be more liquidity providers and contributing to price discovery, thus benefiting all market participants. As noted above, the lower NYSE CADV requirement is still higher than the average NYSE CADV in 2019 (3.56 billion shares) and 2018 (3.64 billion shares). The Exchange therefore believes that the proposed NYSE CADV level will continue to increase DMM liquidity during periods of high market volumes. Revising the NYSE CADV requirement would not impair the fostering of liquidity provision and stability in the marketplace during periods of high volumes.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange believes that the proposed revision would continue to provide an incentive for DMMs to send additional liquidity to the Exchange to set the NBBO in order to qualify for the credit. In addition, the proposal would continue to foster liquidity provision and stability in the marketplace during periods of high volumes and continue to reward DMMs, who have greater risks and heightened quoting and other obligations than other market participants.

#### DMM NBBO Setter Tier

The Exchange believes that the proposed DMM NBBO Setter Tier is reasonable. Specifically, the Exchange believes that a new DMM NBBO Setter Tier would provide an incentive for DMMs to increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO and BBO on the Exchange. The proposed DMM NBBO Setter Tier is thus intended to encourage higher levels of liquidity by DMMs on the Exchange, which would support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality. To the extent that the proposed change leads to an

increase in overall liquidity activity on the Exchange and more competitive pricing, this will improve the quality of the Exchange's market, improve quote spreads and increase its attractiveness to existing and prospective participants.

As noted above, the Exchange operates in a competitive environment, and member organizations have a choice of where to send order flow. Because the proposed tier requires DMMs to receive an incremental per share credit if the DMM meets certain trading qualifications and establishes the NBBO or BBO, the Exchange believes that the proposed credit would provide an incentive for all DMMs to quote more aggressively on the Exchange in order to qualify for it. The Exchange believes that incentivizing DMMs on the Exchange to add liquidity that improves the market by setting the NBBO or BBO on the Exchange could contribute to price discovery and improve quoting on the Exchange. In addition, additional liquidity providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation.

#### SLP NBBO Setter Tier

The Exchange believes that the proposed SLP NBBO Setter Tier is reasonable. Specifically, the Exchange believes that a new NBBO Setter Tier would provide an incentive for SLPs to provide aggressively priced orders that improve the market by setting the NBBO and to send additional liquidity providing orders to the Exchange in Tape A, B and C Securities. To the extent that the proposed change leads to an increase in overall liquidity activity on the Exchange and more competitive pricing, this will improve the quality of the Exchange's market, improve quote spreads and increase its attractiveness to existing and prospective participants.

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 Exchange believes it is reasonable to provide higher credits for orders that provide additional liquidity and set the NBBO. Moreover, the Exchange believes that providing an incrementally higher credit for adding orders that set the NBBO is reasonable because it would encourage additional aggressively priced displayed liquidity on the Exchange by SLPs and because market participants benefit from the greater amounts of liquidity and price improvement present on the Exchange. Further, the Exchange believes that requiring SLPs to meet specific Adding

ADV requirements in order to qualify for the credits is also reasonable because it would encourage additional liquidity on the Exchange and because market participants benefit from the greater amounts of liquidity and price improvement present on the Exchange.

Since the proposed tier would be new, no SLP currently qualifies for the proposed pricing tier. As previously noted, based on the profile of liquidity-providing SLPs generally, the Exchange believes that a number of SLPs and affiliated firms could qualify for the credits if they choose to direct order flow to, and increase quoting on, the Exchange. The Exchange believes the proposed credit is also reasonable because it would provide an additional incentive for member organizations that are not SLPs to become SLPs and direct their order flow to the Exchange.

#### Fee Waivers for Trading Floor-Based Member Organizations

The proposed extension of the 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 partial continued closure of the NYSE Trading Floor. Beginning March 2020, markets worldwide have experienced unprecedented declines and volatility because of the ongoing spread of COVID-19 also resulted in the temporary closure of the NYSE Trading Floor. As noted, the Trading Floor was recently partially reopened on a limited basis to a subset of Floor brokers and DMMs, subject to safety measures designed to prevent the spread of COVID-19. The proposed change is designed to reduce costs for Floor participants for the month of August 2020 and therefore ease the financial burden faced by member organizations that conduct business on the Trading Floor while it continues to operate with reduced capacity. For the same reasons, the Exchange believes that it is reasonable to provide an alternate benchmark for member organizations with a Floor presence that were not member organizations in March 2020 in order to be eligible for the waiver in August. Similarly, the Exchange believes that it is reasonable to provide member organizations with a Floor presence that became member organizations after April 1, 2020 and could not previously qualify for the waivers between April and July 2020 with a one-time credit for those fees if the member organization meets the requirements for the waiver described in the Price List.

Finally, the Exchange believes the proposed non-substantive changes to

add relevant liquidity indicators to the proposed NBBO setter tiers is reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency on the Price List, thereby reducing potential confusion.

#### 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.

#### Step Up Tier 1 Adding Credit

The Exchange believes that the proposed revisions to the Step Up Tier 1 Adding Credit is equitable because the magnitude of the additional credits are not unreasonably high relative to the other adding tier and step up tier credits, which range from \$0.0015 to \$0.0029, in comparison to the credits paid by other exchanges for orders that provide additional step up liquidity.<sup>26</sup> The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving marketwide quality and price discovery.

As noted, without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization qualifying for new tier rates. The Exchange believes the proposed higher credits are reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. Member organizations that add liquidity to the Exchange and meet the current Step Up Tier 1 Adding requirements would be eligible for the additional credits by increasing their amount of Adding ADV as a percentage of NYSE CADV, and because the tiered thresholds would apply equally to all

<sup>26</sup> The tiered adding credits (Tier 1-4 Adding Credits, Step Up Tier 1-4) range from \$0.0029 to \$0.0015. See Cboe BZX Fee Schedule, which has adding credits ranging from \$0.0020 to \$0.0032, at [https://markets.cboe.com/us/equities/membership/fee\\_schedule/bzx/](https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/).



similarly situated member organizations. Similarly, member organizations that currently qualify for adding liquidity credit of \$0.0019 will continue to receive credits when they provide liquidity to the Exchange. With the proposed new tiered requirements, all member organizations would be eligible to qualify for the higher credits if they increase their Adding ADV as a percentage of NYSE CADV. The Exchange believes that offering higher step up credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the adding liquidity credit, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

#### Step Up Tier 4 Adding Credit

The Exchange believes that the proposed alternative incentives for member organizations that meet the current Step Up Tier 4 Adding Credit requirements will allocate the proposed credits fairly among market participants. The proposal will allow member organizations to qualify for an enhanced credit by adding liquidity and setting the NBBO. The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving marketwide quality and price discovery. It is equitable for the Exchange to add additional incentives for member organizations when their orders add liquidity to the Exchange as a means of incentivizing increased liquidity adding activity. An increase in overall liquidity on the Exchange will improve the quality of the Exchange's market and increase its attractiveness to existing and prospective participants.

As previously noted, there are a number of member organizations that could qualify for the proposed higher credit but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any member organization qualifying for the alternate credits. The Exchange believes the proposed incremental credits are reasonable as it would incentivize activity that encourages the setting of the NBBO, thereby contributing to depth and market quality and increased price improvement on the Exchange.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All member organizations would be eligible to qualify for the proposed credits if the Adding ADV requirements are met. Any market participant that is dissatisfied with the proposed new credit is free to shift order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria. The Exchange believes that offering an alternative step up credit for setting the NBBO will encourage higher levels of liquidity provision into the price discovery process and is consistent with the overall goals of enhancing market quality, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the Step Up Tier 4 Adding Credit, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

#### NYSE CADV Requirement for DMM Incremental Rebate

The Exchange believes that the proposal for the DMM incremental credit to be available in months where NYSE CADV is equal to or greater than 4.0 billion shares is an equitable allocation of fees because it would apply equally to all existing and potential DMM firms on an equal basis. As noted, the purpose of this proposed change is to continue to incentivize DMM to increase their added liquidity on the Exchange during periods of higher market volumes, thereby improving quoting and increase adding liquidity across securities where there may be more liquidity providers and contributing to price discovery, thus benefiting all market participants. The Exchange believes that the proposal would provide an equal incentive to all DMMs to add liquidity in more active securities, and that the proposal constitutes an equitable allocation of fees because all similarly situated DMMs would be eligible for the same incremental rebate.

#### DMM NBBO Setter Tier

The Exchange believes the proposed DMM NBBO Setter Tier is equitable and not unfairly discriminatory because the proposed incremental credits would be available to all DMMs on an equal basis. The Exchange believes that the proposed setter tier will allocate the proposed credits fairly among DMMs and allow DMMs to qualify for a credit by adding liquidity and setting the

NBBO or BBO. The Exchange believes the proposed rule change would improve market quality by providing incentives for all DMMs to increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO or BBO on the Exchange, thereby encouraging higher levels of liquidity by DMMs on the Exchange, which would support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality.

#### SLP NBBO Setter Tier

The Exchange believes that the proposed SLP NBBO Setter Tier will allocate the proposed credits fairly among market participants. The proposed tier will allow SLPs to qualify for a credit by adding liquidity and setting the NBBO on the Exchange. The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery. It is equitable for the Exchange to add additional incentives for SLPs to receive a credit when their orders add liquidity to the Exchange as a means of incentivizing increased liquidity adding activity. An increase in overall liquidity on the Exchange will improve the quality of the Exchange's market and increase its attractiveness to existing and prospective participants.

Since the proposed tier would be new, no SLP currently qualifies for the proposed pricing tier. As previously noted, based on the profile of liquidity-providing SLPs generally, the Exchange believes that a number of SLPs and affiliated firms could qualify for the credits if they choose to direct order flow to, and increase quoting on, the Exchange.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All similarly situated SLPs would be eligible to qualify for the proposed credits if the Adding ADV requirements in Tapes A, B and C securities are met. Moreover, the Exchange believes that the proposed provides an equal incentive for all member organizations that are not SLPs to become SLPs and qualify for the proposed credits on an equal basis by directing their order flow to the Exchange. The Exchange believes that offering SLPs credits for setting the NBBO will encourage higher levels of liquidity provision into the price discovery process and is consistent with the overall goals of enhancing market

quality, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally.

#### Fee Waivers for Trading Floor-Based Member Organizations

Finally, the proposed extension of the waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations to August 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 partially open.

The proposed change is equitable as it merely continues the fee waiver granted in April, May, June and July 2020, and is designed to reduce monthly costs for Trading Floor-based member organizations that are unable to fully conduct Floor operations. For the same reasons, providing a way for member organizations with a Floor presence that were not member organizations during March 2020 to qualify for the waivers in August in the same way as all other Trading Floor-based member organizations is also an equitable allocation of fees. Finally, the Exchange believes that providing member organizations with a Floor presence that became member organizations after April 1, 2020 with a one-time credit for those fees during April–July 2020 is an equitable allocation of fees because it would have the effect of treating all similarly situated Floor-based member organizations the same for the period April and July 2020.

#### 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.

#### Step Up Tier 1 Adding Credit

The Exchange believes it is not unfairly discriminatory to provide a higher per share step up credit, as the proposed credit would be provided on an equal basis to all member organizations that add liquidity by meeting the new Step Up Tier 1's requirements. Further, the Exchange believes the proposed Step Up Tier 1 credit would incentivize member

organizations that meet the current tiered requirements to send more orders to the Exchange to qualify for higher credits. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

#### Step Up Tier 4 Adding Credit

The Exchange believes it is not unfairly discriminatory to provide an alternative per share step up credits for activity that encourages the setting of the NBBO or a new BBO as the proposed credits would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed requirements. As noted, the Exchange intends for the proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, thereby improving market wide quality and price discovery. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

#### NYSE CADV Requirement for DMM Incremental Rebate

The proposal for the DMM incremental credit to be available in months where NYSE CADV is equal to or greater than 4.0 billion shares is also not unfairly discriminatory because the proposal would continue to provide an additional incentive to DMMs to quote and trade their assigned securities on the Exchange in very active months, and will still allow the Exchange and DMMs to better compete for order flow, thus enhancing competition. The proposed lower NYSE CADV requirement would apply equally to all similarly situated DMMs. As described above, member organizations have a choice of where to send order flow. The Exchange believes that incentivizing DMMs on the Exchange to add more liquidity during period of high volumes could contribute to greater price discovery on the Exchange. In addition, additional liquidity-providing quotes benefit all

market participants because they provide greater execution opportunities on the Exchange and improve the public quotation.

#### DMM NBBO Setter Tier

The Exchange believes it is not unfairly discriminatory to provide credits for adding liquidity that encourages DMMs on the Exchange to set the NBBO or BBO as the proposed credits would be provided on an equal basis to all similarly situated DMMs that add liquidity by meeting the new proposed DMM Setter Tier's requirements. For the same reason, the Exchange believes it is not unfairly discriminatory to provide incrementally higher credits for increased adding ADV setting the NBBO or BBO combined because the proposed higher credits would equally encourage all DMMs to provide additional liquidity on the Exchange. As noted, the Exchange intends for the proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, thereby encouraging higher levels of liquidity by DMMs on the Exchange, which would support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality.

#### SLP NBBO Setter Tier

The Exchange believes it is not unfairly discriminatory to provide credits for adding liquidity that encourages SLPs to set the NBBO on the Exchange as the proposed credits would be provided on an equal basis to all SLPs and add liquidity by meeting the new proposed requirements. For the same reason, the Exchange believes it is not unfairly discriminatory to provide incrementally higher credits for increased adding ADV setting the NBBO in Tapes A, B and C CADV combined because the proposed higher credits would equally encourage all SLPs to provide additional liquidity on the Exchange in all three tapes. As noted, the Exchange believes that the proposed credit would provide an incentive for SLPs to send additional liquidity to the Exchange to set the NBBO in order to qualify for the additional credits. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. Finally, the Exchange believes that the proposed provides an equal incentive for all member organizations that are not SLPs to become SLPs or becomes affiliated with SLPs and qualify for the proposed credits on an

equal basis by directing their order flow to the Exchange. The Exchange believes that offering SLPs credits for setting the NBBO will encourage higher levels of liquidity provision into the price discovery process and is consistent with the overall goals of enhancing market quality, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally.

#### Fee Waivers for Trading Floor-Based Member Organizations

The proposed continuation of the waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during July 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 not fully open. The proposed fee change is designed to ease the financial burden on Trading Floor-based member organizations that cannot fully conduct Floor operations.

For the same reasons, it is not unfairly discriminatory to provide a way for member organizations with a Floor presence that were not member organizations during March 2020 to qualify for the waivers in August in the same way as all other Trading Floor-based member organizations. Similarly, the Exchange believes that providing member organizations with a Floor presence that became member organizations after April 1, 2020 with a one-time credit for the fees waived during April–July 2020 if the member organization meets the requirements for the waiver is not unfairly discriminatory because it would treat all similarly situated Floor-based member organizations equally for the period April and July 2020.

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>27</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 further discussed above, the Exchange believes that the proposed changes would encourage the continued participation of member organizations on 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."<sup>28</sup>

*Intramarket Competition.* The proposed changes are designed to respond to the current competitive environment and to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed 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 current and 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. Further, the proposed continued waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during August 2020 and the one-time credit for Floor brokers that became member organizations after April 2020 provides a degree of certainty and ease the financial burden on Trading Floor-based member organizations impacted by the temporary closing and partial reopening 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 previously noted, the Exchange's market share of trading in Tape A, B and C securities combined is less than 10%. 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 not fully open, 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)<sup>29</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>30</sup> 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

<sup>27</sup> 15 U.S.C. 78f(b)(8).

<sup>28</sup> Regulation NMS, 70 FR at 37498–99.

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>30</sup> 17 CFR 240.19b-4(f)(2).

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)<sup>31</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2020-71 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-2020-71. 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 (<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-2020-71, and should be submitted on or before September 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-19851 Filed 9-4-20; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-424 OMB Control No. 3235-0473]

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Extension: Rule 17A-3(b)

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 17Ad-3(b) (17 CFR 240.17Ad-3(b)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17Ad-3(b) requires registered transfer agents to send a copy of the written notice required under Rule 17Ad-2(c), (d), and (h) to the chief executive officer of each issuer for which the transfer agent acts when it has failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad-2(a), or to process at least 75% of all items in accordance with the requirements of Rule 17Ad-2(b), for two consecutive months. The issuer may use the information contained in the notices: (1) As an early warning of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents; and (2) to become aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's issues. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's

minimum performance standards then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. Pursuant to Rule 17Ad-3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad-2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items for two consecutive months.

The Commission estimates that only one transfer agent will be subject to the third party disclosure requirements of Rule 17Ad-3(b) each year. If a transfer agent fails to meet the turnaround and processing requirements under 17Ad-3(b), it would simply send its issuer-clients a copy of the notice that had already been produced for the Commission pursuant to Rule 17Ad-2(c) or (d). The Commission estimates the requirement will take the transfer agent approximately four hours to complete. The total estimated burden associated with Rule 17Ad-3(b) is thus approximately 4 hours per year. The Commission estimates that the internal compliance cost for the transfer agent to comply with this third party disclosure requirement will be approximately \$1,128 per year (4 hours × \$283 per hour = \$1,128). The total estimated internal cost of compliance associated with Rule 17Ad-3(b) is thus approximately \$1,128 per year. There are no external costs associated with sending the notice to issuer-clients.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and

<sup>31</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>32</sup> 17 CFR 200.30-3(a)(12), (59).