

has considered the proposed rule's impact on efficiency, competition, and capital formation.⁶ The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes that competition for customers and order flow amongst exchanges and other non-exchange market participants is considerable and that the Exchange is offering this new connectivity option to keep pace with changes in the industry and evolving customer needs. The Exchange further states that the offering is entirely optional and is geared towards attracting new customers, as well as retaining existing customers. Additionally, the Exchange has represented that it will make PoPs equally available to any Exchange member or non-member that has been approved to connect to the Exchange.⁸ Finally, the Exchange does not believe that demand will exceed the capacity planned for PoP access. However, in the event that demand does exceed the capacity planned for PoP access, the Exchange represented that it would expand its infrastructure as necessary in order to meet demand.⁹ For the reasons noted above, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-BATS-2013-036) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70193; File No. SR-NYSE-2013-56]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Changes to the Price List

August 14, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on July 31, 2013, New York Stock Exchange LLC (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 (i) add a new credit for agency cross trades, (ii) revise the fees for executions at the close, (iii) revise the fees for market at-the-close ("MOC") and limit at-the-close ("LOC") orders, (iv) revise the fees for Floor broker Discretionary e-Quotes ("d-Quotes"), and (v) revise the fees for certain other Floor broker transactions. The Exchange proposes to implement the fee changes effective August 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (i) add a new credit for agency cross trades, (ii) revise the fees for executions at the close, (iii) revise the fees for MOC and LOC orders, (iv) revise the fees for d-Quotes, and (v) revise the fees for certain other Floor broker transactions. The proposed transaction fee changes described below apply to transactions in stocks with a per share stock price of \$1.00 or more. The Exchange proposes to implement the fee changes effective August 1, 2013.

Agency Cross Trades

Currently, the Exchange does not charge member organizations a fee for agency cross trades (*i.e.*, a trade where a member organization has customer orders to buy and sell an equivalent amount of the same security). The Exchange proposes to offer a per share credit per transaction of \$0.0003, which will be credited to both sides of the transaction.

Executions at the Close

Currently, the Exchange does not charge member organizations a fee for (i) executions at the close (except MOC and LOC orders) or (ii) Floor broker executions swept into the close. The Exchange proposes that if a member organization executes an average daily trading volume ("ADV") on the Exchange during the billing month of at least 1,000,000 shares in (i) executions at the close (except MOC and LOC orders), and/or (ii) Floor broker executions swept into the close, then the Exchange will charge such member organization \$0.0001 per share per transaction (charged to both sides).³ Such executions will continue to be free of charge if the member organization

³ For example, a fee would be charged if a member organization executed an ADV on the Exchange during the billing month of (1) 1,000,000 shares in executions at the close (excluding MOC and LOC orders), but had no Floor broker executions swept into the close; (2) 1,000,000 shares in Floor broker executions swept into the close, but had no other closing executions; or (3) 500,000 shares in executions at the close (excluding MOC and LOC orders) and 500,000 shares in Floor broker executions swept into the close.

⁶ See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See Notice, *supra* note 3, at 40242. The Exchange notes that this would include any Member, non-member service bureau that acts as a conduit for orders entered by Exchange Members, Sponsored Participant, or market data recipient. *Id.*

⁹ *Id.*

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

executes an ADV on the Exchange during the billing month of fewer than 1,000,000 shares.

MOC and LOC Orders

Currently, the Exchange charges \$0.00095 per share per transaction (charged to both sides) for all MOC and LOC orders unless a member organization meets a specified consolidated ADV in NYSE-listed securities during the billing month ("NYSE CADV"). Specifically, if a member organization executes an ADV of MOC and LOC activity on the Exchange in that month of at least 0.375% of NYSE CADV, then the Exchange charges \$0.00055 per share per transaction (charged to both sides) for all MOC and LOC orders. The Exchange proposes to add an additional fee tier for MOC and LOC orders. The Exchange proposes to charge \$0.00050 per share per transaction (charged to both sides) for all MOC and LOC orders from any member organization executing an ADV of MOC and LOC activity on the Exchange in the billing month of at least 0.575% of NYSE CADV.

Floor Broker d-Quotes

Currently, the Exchange charges \$0.0005 per share per transaction for Floor broker d-Quotes that remove liquidity. The Exchange proposes to add an additional pricing tier for Floor broker d-Quotes. Specifically, the Exchange proposes to charge \$0.0010 per share per transaction for all Floor broker d-Quotes that remove liquidity from any member organization executing an ADV of at least 500,000 shares in d-Quotes that remove liquidity from the Exchange in that month.

Other Floor Broker Transactions

Currently, Floor broker transactions (*i.e.* when taking liquidity from the Exchange) that are not otherwise specified in the Price List are charged \$0.0024 per share per transaction. The Exchange proposes to lower this fee to \$0.0022 per share per transaction. For Floor brokers that execute an ADV in such Floor broker transactions that is at least 10% more than their May 2013 ADV for such Floor broker transactions, the Floor broker transaction charge will be \$0.0020 per share per transaction.

2. Statutory Basis

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

6(b)(4) and 6(b)(5) of the Act,⁵ 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 Exchange believes that the proposed credit for agency cross trades is reasonable because such trades are typically large block orders, and providing a credit will encourage their submission to a public exchange, thereby promoting price discovery and transparency. The Exchange believes that the proposed credit is equitable and not unfairly discriminatory because all member organizations that engage in agency trading will be eligible to receive the credit, and all market participants will benefit from the price discovery and transparency provided for large block orders.

The Exchange believes that offering a new, lower fee tier for member organizations that execute a higher NYSE CADV of MOC and LOC orders is reasonable because it will incent member organizations to provide higher volumes of MOC and LOC orders, and higher volumes of MOC and LOC orders will contribute to the quality of the Exchange's closing auction and provide market participants whose orders are swept into the close with a greater opportunity for execution. The Exchange believes that the proposed tier is equitable and not unfairly discriminatory because all member organizations will be subject to the same fee structure, which will automatically adjust based on prevailing market conditions. The Exchange believes that it is equitable and not unfairly discriminatory to charge a lower fee to member organizations that make significant contributions to market quality by providing higher volumes of liquidity, which benefit all market participants.

The Exchange believes that it is reasonable to charge a fee of \$0.0001 for executions at the close (other than MOC and LOC orders) and Floor broker executions swept into the close if a member organization executes an ADV of at least 1,000,000 such executions on a combined basis. The Exchange's closing auction is a recognized industry benchmark,⁶ and member organizations receive a substantial benefit from the Exchange in obtaining an ADV of 1,000,000 or more such executions at

the Exchange's closing price on a daily basis. In that respect, this fee increase is designed in part to offset the reduction in the Exchange's revenues from the fee reduction described in the preceding paragraph. The Exchange also believes that the proposed fee is equitable and not unfairly discriminatory. While member organizations that reach the threshold of an ADV of at least 1,000,000 combined executions are generally larger member organizations that are deriving a substantial benefit from this high volume of executions, the Exchange must nonetheless encourage liquidity from multiple sources. Allowing member organizations with lower execution volumes to continue to obtain executions at the close at no charge will encourage them to continue to send orders to the Exchange for the closing auction. The Exchange believes that the threshold it has selected will continue to incent order flow from multiple sources and help maintain the quality of the Exchange's closing auctions, which benefits all market participants.

The Exchange believes that the proposed d-Quote rate of \$0.0010 per share for Floor brokers executing an ADV of at least 500,000 d-Quotes that remove liquidity from the Exchange is reasonable because a substantial benefit is derived from obtaining executions for such a high volume of d-Quotes. The Exchange believes that the proposed tier is equitable and not unfairly discriminatory. While Floor brokers that reach the threshold of an ADV of at least 500,000 combined executions are generally larger member organizations that are deriving a substantial benefit from this high volume of executions, the Exchange must nonetheless encourage liquidity from multiple sources. Allowing Floor brokers with lower execution volumes to continue to use d-Quotes to remove liquidity at the lower fee of \$0.0005 will continue to incent order flow from multiple sources and help maintain the quality of order execution on the Exchange, which benefits all market participants. The Exchange further believes it is reasonable to continue to maintain d-Quote take rates that are lower than the take rate that applies to Floor broker transactions not otherwise specified on the Price List (*i.e.*, the proposed \$0.0022 and \$0.0020 per share rates) because d-Quotes in particular encourage additional liquidity during the trading day and incent Floor brokers to provide additional intra-quote price improved trading, which contribute to the overall quality of the Exchange's market.

The Exchange believes that it is reasonable to lower the fees for Floor

⁵ 15 U.S.C. 78f(b)(4) and (5).

⁶ For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

⁴ 15 U.S.C. 78f(b).

broker transactions that take liquidity but are not otherwise specified in the Price List in light of the two proposed increases in other Floor broker fees. The Exchange also believes it is equitable and not unfairly discriminatory to continue to charge Floor brokers that take liquidity lower fees (\$0.0022 or \$0.0020 per share) than non-Floor brokers that take liquidity (which pay \$0.0025 per share) because Floor brokers have slower access to the Exchange (via handheld technology) than non-Floor brokers and are prohibited from routing directly to other market centers from handheld devices, which prevents them from accessing any associated pricing opportunities that might exist at those away markets.

The Exchange believes that the lower Floor broker take liquidity fee of \$0.0020 for take liquidity over the proposed 10% threshold is reasonable because it is designed to strike a balance in the fees and incentives offered by the Exchange for taking and providing liquidity. The Exchange believes that it is reasonable to use May 2013 as the threshold date because that is the last month without exceptional market activity, such as an index rebalancing. Moreover, customer orders that take liquidity encourage liquidity providers to post in the expectation of having their own orders filled. Accordingly, the Exchange believes that it is equitable and not unfairly discriminatory to use pricing incentives, such as a reduced fee for taking liquidity, to encourage Floor brokers to increase their participation in the market by submitting their customers' liquidity taking orders to the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces in setting its fees and credits, as described below in the Exchange's statement regarding the burden on competition. For these 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,⁷ the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes the proposed credit for agency cross trades will provide an alternative to reporting them to FINRA's trade reporting facility and allow the Exchange to more effectively compete for market share. The proposed new fee

for executions at the close and Floor broker executions swept into the close will only apply to member organizations that obtain high volumes of executions at the close on a daily basis; to date, such executions have been free, and the Exchange does not believe competition will be burdened by instituting a small fee for members that are obtaining a substantial benefit from these executions. Similarly, the Exchange does not believe that Floor brokers that are removing higher volumes of liquidity via d-Quotes from the Exchange would be burdened by paying a higher fee for such executions. The increases in these Floor broker fees in turn will be offset by the fee reductions for all other Floor broker transactions that take liquidity that are not otherwise specified in the Price List. The additional pricing tier for MOC and LOC orders reflect the need for the Exchange to adjust financial incentives to attract order flow.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at 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 alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. 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 believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4⁹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁰ 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. Please include File Number SR-NYSE-2013-56 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSE-2013-56. 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 Web site (<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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 15 U.S.C. 78s(b)(2)(B).

⁷ 15 U.S.C. 78f(b)(8).

available for Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2013-56 and should be submitted on or before September 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-20191 Filed 8-19-13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70198; File No. SR-DTC-2013-09]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Special Procedures for Securities Offered Pursuant to Regulation S, Category 3, Under the Securities Act of 1933

August 14, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 31, 2013, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by DTC. DTC filed the rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(4)⁴ thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to eliminate special procedures of DTC for securities offered pursuant to Regulation S⁵ ("Reg S"), Category 3, under the Securities Act of 1933 ("Securities Act").⁶

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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 these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) DTC's Policy Statement on the Eligibility of Foreign Securities (the "Policy") sets forth the criteria and procedures for making the securities of foreign issuers ("Foreign Securities") eligible for deposit and book-entry transfer through the facilities of DTC.⁷ Foreign Securities eligible for book-entry services include those offered and sold without registration under the Securities Act⁸ pursuant to Regulation S ("Reg S Securities").⁹ This includes Category 1 securities, Category 2 securities, and Category 3 securities as defined therein ("Category 1, 2, and 3 Securities", respectively).¹⁰ Category 3

⁵ 17 CFR 230.901-230.905 and Preliminary Notes.

⁶ 15 U.S.C. 77a *et seq.*

⁷ For additional information please see the Policy as set forth in the DTC Rules. See also SEC Release No. 34-56277 (August 17, 2007), 72 FR 48709 (August 24, 2007) [File No. DR-DTC-2007-04] for the rule filing implementing the Policy.

⁸ 15 U.S.C. 77a *et seq.*

⁹ Regulation S provides an exemption from the Section 5 registration requirements of the Securities Act of 1933, as amended, for offerings made outside the United States by both U.S. and foreign issuers. A securities offering, whether private or public, made by an issuer outside of the United States in reliance on safe harbors provided under Regulation S need not be registered under the Securities Act. See 17 CFR 230.901-230.905 and Preliminary Notes.

¹⁰ Category 1 of the primary offering safe harbor of Reg S includes the securities of foreign issuers for which there is no substantial U.S. market, securities being offered by foreign (or domestic) issuers in overseas directed offerings, securities of foreign governments and securities being offered by foreign issuers pursuant to employee benefit plans. Category 2 of the primary offering safe harbor of Reg

of the primary offering safe harbor of Regulation S includes the equity securities of non-reporting foreign issuers with substantial U.S. market interest in the subject securities. In addition to an offshore transaction requirement and prohibition on directed selling efforts, further requirements might have to be met to qualify for the first safe harbor. The applicable requirements depend on the extent to which there is a nexus with the United States, with more stringent requirements applying the greater the need is for protection of U.S. investors. The spectrum ranges from Category 1, where the likelihood of the securities flowing back into the United States is least, to Category 3, where that likelihood is greatest.¹¹ This rule filing relates to a change in procedures for Category 3 Securities.

Historically, at the request of issuers in consideration of their own requirements for compliance with applicable law, Category 3 Securities held at DTC have been more tightly controlled than the other Categories. DTC accordingly required additional documentation from issuers for chills on deliveries of Category 3 Securities among Participants for a limited period in connection with the underwriting distribution of those securities. For the reasons described below, DTC hereby proposes to eliminate these additional requirements and the related chills.

Pursuant to the Policy noted above, Issuers and Participants are responsible to comply with the Securities Act and the rules and regulations of the Commission thereunder in any transaction in Foreign Securities through the facilities of DTC. Additionally, prior to securities being made eligible at DTC, issuers are required to deliver a Letter of Representations ("LOR") to DTC which reflects the issuer's agreement to comply with the requirements set forth in DTC's Operational Arrangements (the "OA") with respect to securities it has issued that are held at DTC.¹² With respect to Reg S Securities, the LOR also includes a "Reg S Rider" with representations of the Issuer that, at the time of initial issuance, the securities were subject to applicable transfer restrictions but were eligible for transfer under Regulation

S includes the equity securities of reporting foreign issuers, the debt securities of foreign (or domestic) reporting issuers, and the debt securities of nonreporting foreign issuers even if there is substantial U.S. market interest in the securities.

¹¹ See 17 CFR 230.903.

¹² The Operational Arrangements set forth the criteria for eligibility of securities for DTC services. See www.dtcc.com for a copy of the OA.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4).