

which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Funds must be in compliance with Rule 10A-3 under the Act,<sup>38</sup> as provided by NYSE Arca Equities Rule 5.3.

(6) The Funds may invest up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser consistent with Commission guidance.

(7) The Funds will utilize cleared swaps if available and to the extent practicable and not enter into any swap agreement unless the Adviser believes that the other party to the transaction is creditworthy. The Sub-Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. Any swaps used will be cash collateralized as required.

(8) The Funds, and certain Underlying ETPs in which the Funds invest, will invest no more than 10% of a Fund's net assets in non-investment grade debt securities. In addition, the Funds, and certain Underlying ETPs in which the Funds invest, will invest no more than 10% of their net assets in asset-backed and mortgaged-backed securities.

(9) The Funds will effect repurchase transactions only with large, well-capitalized and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. The Funds do not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33 $\frac{1}{3}$ % of their respective assets.

(10) The Funds will not invest in leveraged (e.g., 2X, -2X, 3X, or -3X) ETFs.

(11) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>39</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>40</sup> that the proposed rule change (SR-NYSEArca-2013-116), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-02502 Filed 2-5-14; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71452; File No. SR-NYSE-2014-05]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List To Introduce Fees and Credits for A New Order Type Called a Midpoint Passive Liquidity Order

January 31, 2014.

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 January 22, 2014, 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.

<sup>39</sup> 15 U.S.C. 78f(b)(5).

<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 17 CFR 200.30-3(a)(12).

<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.

### 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 introduce fees for a new order type called a Midpoint Passive Liquidity ("MPL") Order. The proposed fees would be operative on January 27, 2014. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments 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 introduce fees for a new order type called a MPL Order. The proposed fees would be operative on January 27, 2014.

The Exchange recently introduced the MPL Order type,<sup>4</sup> which is an undisplayed limit order that automatically executes at the mid-point of the protected best bid or offer ("PBBO"). An MPL Order is not eligible for manual executions, including openings, re-openings, or closing transactions. An MPL Order also is not eligible to trade if it would trade at a price below \$1.00 or if the execution price would be out to five decimal places above \$1.00. All market participants—customers, Floor brokers, Designated Market Makers ("DMMs"), and Supplemental Liquidity Providers ("SLPs")—may use the MPL order type.

The Exchange proposes to charge \$0.0025 per share for all MPL Orders that remove liquidity from the Exchange if the security is priced \$1.00 or more. The Exchange also proposes to offer a

<sup>4</sup> See Rule 13 and Securities Exchange Act Release No. 71330 (January 16, 2014) (SR-NYSE-2013-71).

<sup>38</sup> See 17 CFR 240.10A-3.

credit of \$0.0015 per share for all MPL Orders that provide liquidity to the Exchange if the security is priced \$1.00 or more.<sup>5</sup> The fee and credit will apply to all market participants. MPL Orders that add liquidity will contribute to adding liquidity requirements, including Tier 1 Adding Credit, Tier 2 Adding Credit, SLP credits for \$0.0023 and \$0.0025 credits, and DMM providing liquidity. However, the Exchange notes that MPL Orders will not be eligible for any tiered or additional credits or reduced fees even if the MPL Orders contribute to a member organization qualifying for an additional credit. For example, if a member organization qualified for the Tier 1 Adding Credit, the member organization will receive the proposed \$0.0015 per share credit for MPL Orders, not \$0.0018 per share for such order under the tier. Where the MPL Order fee or credit does not differ from the current fee or credit, the Exchange has not proposed a change to the Price List.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>7</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 Exchange believes that the proposed fee of \$0.0025 per share for all MPL Orders that remove liquidity from the Exchange and the proposed credit of \$0.0015 per share for all MPL Orders that provide liquidity to the Exchange if the security is priced \$1.00 or more are reasonable because the fee and credit would be the same as the fee and credit that would otherwise apply for all other non-Floor broker transactions (*i.e.*, \$0.0025 per share fee for taking liquidity from the Exchange and \$0.0015 per share credit under the non-Tier Adding Credit). The Exchange notes that the proposed credit and fee are within the same range as at least one other exchange for MPL Orders.<sup>8</sup> The

Exchange also believes that the proposed fee and credit are equitable and not unfairly discriminatory because they may provide opportunities for market participants to interact with orders priced at the midpoint of the PBBO, thus providing price improving liquidity to market participants and thereby increase the quality of order execution on the Exchange's market, which benefits all market participants. The Exchange also believes that providing the same fees and credits for MPL Orders that would otherwise apply is equitable and not unfairly discriminatory. Moreover, all market participants will be eligible for the proposed fee and credit. The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to limit additional or higher credits for MPL Orders for which market participants may otherwise qualify because it will ensure that all market participants pay the same fees and receive the same credits regardless of Floor broker, DMM, or SLP designation. The Exchange believes that it is reasonable to allow MPL Orders to count toward adding liquidity because it is consistent with the purpose of those credits. The Exchange also believes it is equitable and not unfairly discriminatory because all market participants that use the MPL Order type will pay the same fee and receive the same credit.

### B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>9</sup> 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. The Exchange believes the proposed MPL Order fees and credits will enhance order execution opportunities for member organizations. Further, the Exchange believes that providing the same fees and credits for MPL Orders that would otherwise apply will enhance competition between the Exchange and other exchanges that currently offer similar order types by offering investors another option to access liquidity at the midpoint of the PBBO.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee or credit levels at a particular

venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with the Act.

### 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>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</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 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>12</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 proposal 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-2014-05 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

<sup>5</sup> The Exchange's current rates for transactions in securities with a per share price less of than \$1.00 would continue to apply.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>8</sup> For Tape A Securities under its Tier 1, Tier 2, and Basic Rate Tier, the Exchange's affiliate, NYSE Arca Equities, Inc., currently charges \$0.0030 per share for all MPL Orders that remove liquidity and provides a credit of \$0.0015 per share for all MPL

Orders that provide liquidity. See NYSE Arca Equities, Inc. Schedule of Fees and Charges, available at [https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse\\_arca\\_marketplace\\_fees\\_for\\_1-2-14.pdf](https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees_for_1-2-14.pdf).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2014-05. 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 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-2014-05 and should be submitted on or before February 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2014-02498 Filed 2-5-14; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71455; File No. SR-NSCC-2013-13]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Discontinue Its Stock Borrow Program

January 31, 2014.

#### I. Introduction

On December 10, 2013, the National Securities Clearing Corporation

(“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-NSCC-2013-13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change was published for comment in the **Federal Register** on December 27, 2013.<sup>3</sup> The Commission did not receive comments on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposal

NSCC is amending its Rules and Procedures (“Rules”) to discontinue its Stock Borrow Program. The effective date of the rule change will be announced by NSCC via an Important Notice.

Currently, NSCC Members may elect to participate in the Stock Borrow Program by designating specific securities from their inventory at the Depository Trust Company (“DTC”) as available to be lent in the event that NSCC's Continuous Net Settlement (“CNS”) system cannot complete a delivery of a security to a long Member because a short Member has not completed its delivery to CNS. In such a case, if a lender has identified such a security as available through the Stock Borrow Program and the lender has a free excess position of the security at DTC, NSCC initiates deliveries through CNS to the long Member and sets up a pending receive for the lending Member. If the position is not returned to the lender by the end of the settlement day, i.e., the Member with the original obligation to deliver to CNS does not complete that delivery, the lender receives full market value for the securities through NSCC settlement.

Usage of NSCC's Stock Borrow Program has declined over the past few years. In 2007, NSCC borrowed a daily average of approximately \$1.85 billion in market value at the close of each day from the approximately 21 Members that participated in the Stock Borrow Program. In October 2013, only three Members participated in the Stock Borrow Program and the average daily value borrowed at the close of day during that month was approximately \$81 million. Usage of the program has continued to drop since the end of October 2013. Given the reduction in the use of the program, NSCC has determined that it is not economically efficient to maintain the service.

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

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

<sup>3</sup> Securities Exchange Act Release No. 34-71156 (Dec. 20, 2013), 78 FR 79028 (Dec. 27, 2013) (SR-NSCC-2013-13).

#### III. Discussion and Commission Finding

Section 19(b)(2)(C) of the Act <sup>4</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act <sup>5</sup> requires that the rules of a clearing agency be designed to, among other things, “promote the prompt and accurate clearance and settlement of securities transactions and . . . to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.” <sup>6</sup> The Commission finds that NSCC's proposed rule change is consistent with these requirements because discontinuing an underutilized service will enable NSCC to allocate its resources to core clearing agency functions in a more efficient and effective manner.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act <sup>7</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NSCC-2013-13 be, and it hereby is, *approved*.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2014-02501 Filed 2-5-14; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>4</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>5</sup> 12 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>13</sup> 17 CFR 200.30-3(a)(12).