

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-Phlx-2017-02, and should be submitted on or before February 2, 2017.

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

**Eduardo A. Aleman.**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79748; File No. SR-NYSE-2016-93]

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

January 6, 2017.

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 December 30, 2016, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to: (1) Revise the quoting, quoted size, and adding liquidity requirements for Designated Market Makers ("DMM") to qualify for certain rebates for providing liquidity on the Exchange; (2) introduce new rebates for DMMs for providing liquidity on the Exchange; and (3) change the monthly fees for the use of certain ports by DMMs. The Exchange proposes to implement these changes to its Price List effective January 3, 2017. 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: (1) Revise the quoting, quoted size, and adding liquidity requirements for DMMs to qualify for certain rebates for providing liquidity on the Exchange; (2) introduce new rebates for DMMs for providing liquidity on the Exchange; and (3) change the monthly fees for the use of certain ports by DMMs.

The Exchange proposes to implement these changes effective January 3, 2017.

###### DMMs

###### Quoting, Quoted Size, and Adding Liquidity Requirements

Currently, DMMs earn a rebate of \$0.0027 per share when adding liquidity with orders, other than Mid-Point Liquidity Orders ("MPL Order"), in More Active Securities<sup>4</sup> if the More

Active Security has a stock price of \$1.00 or more and the DMM meets the More Active Securities Quoting Requirement.<sup>5</sup>

In order to qualify for the \$0.0027 rebate per share, the Exchange proposes to require that DMMs also have a DMM Quoted Size for an applicable month that is at least 5% of the NYSE Quoted Size.<sup>6</sup>

Currently, DMMs earn a rebate of \$0.0031 per share when adding liquidity with orders, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of \$1.00 or more and the DMM meets (1) the More Active Securities Quoting Requirement, and (2) has a DMM Quoted Size for an applicable month that is at least 10% of the NYSE Quoted Size.

In order to qualify for the \$0.0031 rebate per share, the Exchange proposes to require that DMMs also quote at the NBBO in the applicable security at least 20% of the time in the applicable month and for providing liquidity that is more than 5% of the NYSE's total intraday adding liquidity in each such security for that month.<sup>7</sup>

Similarly, DMMs currently earn a rebate of \$0.0034 per share when adding liquidity with orders, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of \$1.00 or more and the DMM meets (1) the More Active Securities Quoting Requirement and (2) has a DMM Quoted Size for an applicable month that is at least 15% of the NYSE Quoted Size, for providing liquidity that is more than 15% of the NYSE's total intraday adding liquidity in each such security for that month.

In order to qualify for this \$0.0034 per share rebate, the Exchange proposes to require that DMMs also quote at the NBBO in the applicable security at least

previous month equal to or greater than 1,000,000 shares per month

<sup>5</sup> The "More Active Securities Quoting Requirement" is met if the More Active Security has a stock price of \$1.00 or more and the DMM quotes at the National Best Bid or Offer ("NBBO") in the applicable security at least 10% of the time in the applicable month.

<sup>6</sup> The "NYSE Quoted Size" is calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO. The "DMM Quoted Size" is calculated by multiplying the average number of shares of the applicable security quoted at the NBBO by the percentage of time during which the DMM quoted at the NBBO. See Price List, n. 7.

<sup>7</sup> The NYSE total intraday adding liquidity is totaled monthly and includes all NYSE adding liquidity, excluding NYSE open and NYSE close volume, by all NYSE participants, including Supplemental Liquidity Providers, customers, Floor brokers, and DMMs.

<sup>13</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.

<sup>4</sup> "More Active Securities" are securities with an average daily consolidated volume ("ADV") in the

30% of the time in the applicable month.

#### New Adding Liquidity Rebates

The Exchange also proposes to provide two additional rebates for DMMs adding liquidity to the Exchange.

First, the Exchange proposes a rebate of \$0.0035 per share when adding liquidity with orders, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of \$1.00 or more and the DMM meets the More Active Securities Quoting Requirement and has a DMM Quoted Size for an applicable month that is at least 25% of the NYSE Quoted Size, for providing liquidity that is more than 15% of the NYSE's total intraday adding liquidity in each such security for that month and the DMM quotes at the NBBO in the applicable security at least 50% of the time in the applicable month. The NYSE total intraday adding liquidity would be totaled monthly and would include all NYSE adding liquidity, excluding NYSE open and NYSE close volume, by all NYSE participants, including Supplemental Liquidity Providers, customers, Floor brokers, and DMMs.

Second, the Exchange proposes a rebate of \$0.0045 per share when adding liquidity with orders, other than MPL orders, in Less Active Securities if the Less Active Security has a stock price of \$1.00 or more and the DMM quotes at the NBBO in the applicable security at least 30% of the time in the applicable month.

As with existing DMM rebates, the proposed rebates would be applied when (1) posting displayed and non-displayed orders on Display Book, including s-quote and s-quote reserve orders; (2) providing liquidity on non-displayed interest using the Capital Commitment Schedule; or, prior to the implementation of the Capital Commitment Schedule, using the following message activities: price improvement, size improvement (PRIN FILL), matching away market quotes; and (3) executing trades in the crowd and at Liquidity Replenishment Points. The proposed rebates would not apply to executions at the open.<sup>8</sup>

#### DMM Port Fees

The Exchange proposes to amend its Price List to change the monthly fees for the use of certain ports by DMMs.

The Exchange currently makes ports available that provide connectivity to the Exchange's trading systems (*i.e.*, ports for entry of orders and/or quotes ("order/quote entry ports")) and charges

\$550 per port per month, except that DMMs are not charged for ports that connect to the Exchange via the DMM Gateway.<sup>9</sup> The Exchange also currently makes ports available for drop copies and charges \$550 per port per month, except that DMMs are not charged for ports that connect to the Exchange via the DMM Gateway.<sup>10</sup>

The Exchange proposes to not charge DMMs for the first twelve ports that connect to the Exchange via the DMM Gateway and then charge DMMs \$550 per port per month for additional ports above the first 12 ports. The DMMs would continue not to incur fees for ports that connect to the Exchange via the DMM Gateway for drop copies. DMMs would also, like other market participants, continue to be charged for order/entry ports that connect to the Exchange via the CCG.

\* \* \* \* \*

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>12</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

<sup>9</sup> The Exchange has a Common Customer Gateway ("CCG") that accesses the equity trading systems that it shares with its affiliates, NYSE MKT LLC ("NYSE MKT") and NYSE Arca, Inc. ("NYSE Arca"). All ports connect to the CCG. *See, e.g.*, Securities Exchange Act Release No. 64542 (May 25, 2011), 76 FR 31659 (June 1, 2011) (SR-NYSE-2011-13). DMMs can connect to the Exchange in two ways: Via the DMM Gateway and CCG. Only DMMs may connect to the DMM Gateway and only when acting in their capacity as a DMM. DMMs are required to use the DMM Gateway for certain DMM-specific functions that relate to the DMM's role on the Exchange and the obligations attendant therewith, which are not applicable to other market participants on the Exchange. By contrast, non-DMMs as well as DMMs may use the CCG. Use of the CCG by a DMM is optional, and a DMM that connects to the Exchange via CCG can use the relevant order/quote entry port for orders and quotes both in its capacity as a DMM and for orders and quotes in other securities.

<sup>10</sup> Only one fee per drop copy port applies, even if receiving drop copies from multiple order/quote entry ports.

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

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

#### DMMs

#### Quoting, Quoted Size and Adding Liquidity Requirements

The Exchange believes that the proposed additional quoting, quoted size and adding liquidity requirements in order for DMMs to qualify for the \$0.0027, \$0.0031 and \$0.0034 rebates per share when adding liquidity on the Exchange is reasonable because the higher proposed requirement would improve quoting and increase adding liquidity across securities where there may be fewer liquidity providers. The Exchange believes that higher quoting obligations provide higher volumes of liquidity, which contributes to price discovery and benefits all market participants. Moreover, the Exchange believes that the proposed increase in the credits is equitable and not unfairly discriminatory because, as is currently the case under the existing rates, the credits are available to all DMM firms.

#### New Adding Liquidity Rebates

The Exchange believes that the proposed new rebates are equitably allocated and not unfairly discriminatory because they will apply equally to all DMMs. The Exchange believes that the proposed rebate of \$0.0035 for intraday adding liquidity that exceeds 25% share of NYSE Quoted Size for providing liquidity that is more than 15% of the NYSE's total intraday adding liquidity in each such security for that month and the DMM quotes at the NBBO in the applicable security at least 50% of the time in the applicable month is reasonable as it would encourage greater quoting and liquidity. Similarly, the proposed rebate of \$0.0045 for DMMs adding liquidity with orders, other than MPL orders, in Less Active Securities if the Less Active Security has a stock price of \$1.00 or more and the DMM quotes at the NBBO in the applicable security at least 30% of the time in the applicable month is reasonable given the higher proposed quoting requirement and corresponding rebate. Moreover, the proposed requirements are equitable and not unfairly discriminatory because they would apply equally to all DMM firms.

#### DMM Port Fees

The Exchange believes that the proposal to amend the port fees constitutes an equitable allocation of fees because all similarly situated DMMs and other market participants would be charged the same port rates. The Exchange believes that the proposed change is reasonable even though DMMs are required to use the DMM Gateway for certain DMM-specific

<sup>8</sup> See Price List, n. 6.

functions that relate to the DMM's role on the Exchange and the obligations attendant therewith because the proposed port fees for DMMs are expected to permit the Exchange to offset, in part, its infrastructure costs associated with making such ports available, including costs based on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. In this regard, the Exchange believes that the proposed fees are competitive with those charged by other exchanges.<sup>13</sup> The proposed change is also reasonable because the proposed per port rates would encourage DMM users to become more efficient with, and reduce the number of ports used, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize with respect to managing its own infrastructure.

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>14</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. Rather, the Exchange believes that the proposed change relating to DMM rebates would contribute to the Exchange's market quality by promoting price discovery and ultimately increased competition. For the same reasons, the proposed change also would not impose any burden on competition among market participants. Further, the proposed change will permit the Exchange to set fees for ports that are competitive with those charged by other exchanges.<sup>15</sup> Moreover, the Exchange believes that the proposal to amend the port fees would encourage users to become more efficient with, and reduce the number of ports used. In this regard, the Exchange believes that the proposal would not impose any burden on competition that

is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange believes that a reduction in the number of ports would result in a decrease in the infrastructure that the Exchange is required to support for connectivity to its trading systems. This would also provide incentive for users to become more efficient with their use of ports and could therefore result in such users becoming more competitive due to decreased costs.

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 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)<sup>16</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>17</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>18</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-2016-93 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-2016-93. 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

<sup>13</sup> For example, the charge on the NASDAQ for a FIX Trading Port is \$575 per port per month. See NASDAQ Rule 7015. A separate charge for Pre-Trade Risk Management ports also is applicable, which ranges from \$400 to \$600 and is capped at \$25,000 per firm per month. See NASDAQ Rule 7016.

<sup>14</sup> 15 U.S.C. 78f(b)(8).

<sup>15</sup> See note 13, *supra*.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>18</sup> 15 U.S.C. 78s(b)(2)(B).

information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–93, and should be submitted on or before February 2, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79750; File No. SR–ICC–2016–013]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change To Amend the ICE Clear Credit Clearing Rules, as Modified by Amendment No. 1, Relating to Default Management, Clearing House Recovery and Wind-Down

January 6, 2017.

#### I. Introduction

On November 4, 2016, ICE Clear Credit LLC (“ICC” or “clearing house”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change (SR–ICC–2016–013) to amend the ICC Clearing Rules (“ICC Rules” or “Rules”) relating to clearing house default management, recovery, and wind-down, and to adopt certain related default auction procedures. The proposed rule change was published for comment in the **Federal Register** on November 22, 2016.<sup>3</sup> The Commission received one comment letter to the proposed rule change.<sup>4</sup> On December 19, 2016, ICC filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comment on Amendment No. 1 from interested persons and, for the reasons stated below, is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of the Proposed Rule Change and Notice of Filing of Amendment No. 1

ICC has proposed changes to the ICC Rules, as modified by Amendment No. 1, relating to clearing house default management, recovery, and wind-down to address uncovered losses from a clearing participant (“Participant”) default or series of Participant defaults. The proposed changes consist of three aspects. First, ICC proposes to revise its auction procedures and tools for returning to a matched-book after a Participant default or series of Participant defaults and to implement a different approach to allocating uncovered losses stemming from such Participant default(s) that provides more certainty to Participants by limiting their exposure to ICC. Second, ICC proposes to collect additional initial margin to ensure that it maintains minimum pre-funded financial resources in compliance with applicable regulatory requirements. Third, ICC proposes to clarify the governance requirements relating to the use of ICC’s proposed default management tools, including matched-book tools and loss allocation tools, as well as clarify the Rules to enhance transparency and specificity.

##### A. Revised Auction Procedures, Tools for Returning ICC to a Matched-Book and Tools for Default Loss Allocation

ICC proposes substantial changes in the way it returns to a matched-book following a Participant default or series of defaults. Specifically, ICC proposes to maintain its existing default management practices,<sup>5</sup> such as the practice of auctioning a defaulting Participant’s positions to its non-defaulting Participants, but proposes to eliminate its ability to forcibly allocate a defaulting Participant’s positions to other non-defaulting Participants, in the event an auction is unsuccessful. In lieu of these forced allocations, ICC has proposed a revised set of auction procedures and an additional matched-book tool. The revised auction procedures include initial and secondary auctions, each of which include a number of features designed to incentivize Participants and their customers to bid competitively. In the event that the default management auctions are unsuccessful in returning ICC to a matched-book, ICC proposes to

terminate any positions of non-defaulting Participants (or their customers) that exactly offset the unsuccessfully auctioned positions in the defaulting Participant’s portfolio. ICC refers to this termination of a discrete set, as opposed to all, of its outstanding positions as “partial tear-up.” Separately, ICC proposes to revise its authority to seek unlimited guaranty fund assessments from its Participants and implement a “cooling-off period,” during which its ability to call for additional Participant contributions to the guaranty fund is capped. In addition, ICC proposes, in a highly limited set of circumstances, to allocate losses by reducing the amount of variation margin that would otherwise be owed to Participants or their customers as a tool to assist in ICC’s recovery, which ICC refers to as “reduced gains distributions.” These provisions are described more fully below.<sup>6</sup>

##### 1. Revised Auction Procedures

Under the proposed changes, ICC will use an auction to dispose of a defaulting Participant’s portfolio.<sup>7</sup> Ordinarily, ICC will begin with an initial default auction and if necessary or appropriate proceed to a secondary auction. But, in consultation with the Risk Committee, if practicable, and upon a majority vote of ICC’s Board, ICC may bypass the initial auction and proceed directly to a secondary auction.

In the initial auction, ICC management will divide the defaulting Participant’s portfolio into one or more lots, and each non-defaulting Participant will be subject to a minimum bid requirement for each lot. In addition, ICC proposes to permit customers of Participants to participate in the initial auction either by bidding indirectly through a Participant or by bidding directly in the auction, provided that such customers (1) agree to the terms of the auction, (2) accept the same confidentiality agreements concerning the auction as a Participant; and (3) make a minimum deposit to be applied by ICC in the same manner as Participants’ guaranty fund contributions. ICC will use all available default resources to cover the costs associated with the initial default

<sup>6</sup> See Notice, 81 FR at 83906–10, unless otherwise noted.

<sup>7</sup> Although the auction procedures will not be published, ICC will make such procedures available to all Participants, subject to existing confidentiality arrangements between ICC and Participants and the confidentiality provisions set forth in the auction procedures. ICC will also make such procedures available to customers of Participants at the request of such customers (and/or permit Participants to do so), subject to confidentiality arrangements.

<sup>19</sup> 17 CFR 200.30–3(a)(12).

<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. 34–79324 (Nov. 16, 2016), 81 FR 83906 (Nov. 22, 2016) (SR–ICC–2016–013) (“Notice”).

<sup>4</sup> See letter from Jacqueline H. Mesa, Senior Vice President of Global Policy, FIA (Dec. 2, 2016) (“FIA Comment”).

<sup>5</sup> ICC’s existing default remedies, as amended by this proposed rule change, are referred to as “Standard Default Management Actions.” By contrast, additional, new default management tools adopted as part of this proposed rule change are referred to as “Secondary Default Management Actions.” See Notice, 81 FR at 83906.