SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86386; File No. SR–NYSE–2019–37]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Offer a New Monthly Rebate for Designated Market Makers Assigned 30 or Fewer Securities

July 16, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 1, 2019, 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 offer a new monthly rebate for Designated Market Makers (''DMM'') assigned 30 or fewer securities. The Exchange proposes to implement the fee change effective July 1, 2019. The proposed rule change is available on the Exchange's website 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 offer a new monthly rebate to Designated Market Makers (''DMM'') assigned 30 or fewer securities.

The proposed change responds to the current competitive environment by offering an additional incentive to existing, smaller DMMs to quote on the Exchange. The proposed incentive also seeks to attract new DMMs in order to expand and diversify the pool of Exchange DMMs.

The Exchange proposes to implement the fee change effective July 1, 2019.

Competitive Environment

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.''[4]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.''[5] Indeed, equity trading is currently dispersed across 13 exchanges,[6] 31 alternative trading systems,[7] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in June 2019, the Exchange averaged less than 9.2% market share (excluding auctions) of executed volume of equity trades in all securities.[9]

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 against which market makers can quote, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange fees that relate to providing incentives for market makers to compete for order flow.

In response to this competitive environment, the Exchange has established incentives for its DMMs to quote at specified levels. The proposed fee change is designed to (1) encourage market maker quoting by offering an additional incentive to existing, smaller DMMs to quote on the Exchange, and (2) attract new DMMs in order to expand and diversify the pool of Exchange DMMs.

Proposed Rule Change

The Exchange proposes to pay to a DMM with 30 or fewer assigned securities a new, monthly rebate of $1,500 per security, up to a maximum of $10,000. The proposed rebate would be payable for each security assigned to such a DMM in the previous month (regardless of whether the stock price exceeds $1.00) for which that DMM provides quotes at the National Best Bid (''NBB'') and National Best Offer (''NBO,'' together the ''NBBO'') at least 25% of the time in the applicable month. As proposed, the monthly rebate would be in addition to the current rate on transactions and would be prorated to the number of trading days in a month that an eligible security is assigned to a DMM.

For example, if a DMM is assigned 8 securities during the entire month of March, in April, if the DMM provides quotes at the NBBO in the applicable security at least 25% of the time, the Exchange would calculate the DMM's rebate as 8 × $1,500 = $12,000. Since the proposed benefit is capped at $10,000 per month, the DMM would receive a credit of $10,000.

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *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'').

[6] *See* Cboe Global Markets, U.S. Equities Market Volume Summary (June 28, 2019), available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data (June 3, 2019), available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of May 31, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary (June 28, 2019), available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

The proposed rule change is designed to provide smaller market makers (*i.e.,* DMMs with 30 or fewer assigned securities) with an added incentive to quote in their assigned securities at the NBBO at least 25% of the time in a given month. As described above, member organizations have a choice of where to send order flow. The Exchange believes that incentivizing DMMs on the Exchange to quote at the NBBO more frequently could attract additional orders to the Exchange and contribute to price discovery. In addition, additional liquidity-providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation.

Moreover, the Exchange believes that the proposed change is designed to attract additional DMMs to the Exchange. Currently, the Exchange has five DMMs, only one of which has fewer than 30 assigned securities and therefore could qualify for the rebate. The Exchange's affiliate, NYSE Arca, Inc. (''NYSE Arca''), for instance, has more than three times as many primary market makers.[10] The Exchange cannot predict with certainty whether and how many member organizations would avail themselves of the opportunity to become an Exchange DMM. However, the Exchange believes that the proposed rebate could incentivize additional firms to become DMMs on the Exchange by making it easier for smaller entrants.

The proposed change is not otherwise intended to address any 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,[11] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[12] 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

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. 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.'' [13]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [14] Indeed, equity trading is currently dispersed across 13 exchanges,[15] 31 alternative trading systems,[16] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market share of executed volume of equity trades (whether including or excluding auction volume).[17] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in June 2019, the Exchange had 9.2% market share of executed volume of equity trades (excluding auction volume).[18]

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 against which market makers can quote, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange fees that relate to providing incentives for market makers to compete for order flow.

The Exchange believes that the proposal to offer an additional rebate to a DMM with 30 or fewer assigned securities if it increases its quoting at the NBBO is a reasonable means to improve market quality, attract additional order flow to a public market, and enhance execution opportunities for member organizations on the Exchange, to the benefit of all market participants. The proposed change is also a reasonable attempt to attract additional DMMs to the Exchange by providing a financial incentive for smaller firms to become DMMs. The Exchange notes that the proposal would also foster liquidity provision and stability in the marketplace and reduce smaller DMM's reliance on transaction fees. The proposal would also reward DMMs, who have greater risks and heightened quoting and other obligations than other market participants.

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 and reducing smaller DMM's reliance on transaction fees. Moreover, the proposal is an equitable allocation of fees because it would reward DMMs for their increased risks and heightened quoting and other obligations. As such, it is equitable to offer smaller DMMs an additional flat, per security credit up to a maximum amount with the current credits for orders that add liquidity.

The proposed rebate is also equitable because it would apply equally to all existing and potential DMM firms of a certain size. The Exchange notes that there is currently only one DMM firm that could qualify for the proposed rebate based on its number of assigned securities. The Exchange believes the proposed rebate could provide an incentive for other market participants to become DMMs on the Exchange. The Exchange believes that the proposal would provide an equal incentive to all member organizations to become DMMs, and that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations would be eligible for the same rebate.

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. For example, member organizations could display quotes on competing exchanges rather than

[10] There are 18 competing Lead Marker Makers (''LMMs'') on NYSE Arca. *See https://www.nyse.com/markets/nyse-arca/membership.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) & (5).

[13] *See* Regulation NMS, 70 FR at 37499.

[14] *See* Transaction Fee Pilot, 84 FR at 5253.

[15] *See* Cboe Global Markets, U.S. Equities Market Volume Summary (June 28, 2019), available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[16] *See* FINRA ATS Transparency Data (June 3, 2019), available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of May 31, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[17] *See* Cboe Global Markets U.S. Equities Market Volume Summary (June 28, 2019), available at *http://markets.cboe.com/us/equities/market_share/.*

[18] *See id.*

quoting sufficiently on the Exchange to meet the 25% NBBO quoting requirement. The Exchange believes that offering this rebate would provide a further incentive for smaller and new DMMs to quote and trade their assigned securities on the Exchange, and will generally allow the Exchange and DMMs to better compete for order flow, thus enhancing competition. The Exchange also believes that the requirement of 30 or more assigned securities to qualify for the credit is not unfairly discriminatory because it would apply equally to all member organizations.

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,[19] 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 incentivize DMMs on the Exchange to quote at the NBBO more frequently, which could attract additional liquidity and contribute to price discovery. Additional liquidity-providing quotes benefit all market participants because it provides greater execution opportunities on the Exchange and improves the public quotation. 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." [20]

Intramarket Competition. The proposed change is designed to attract additional order flow and new DMMs to the Exchange. The Exchange believes that the proposed rebate would continue to incentivize smaller DMMs to quote at the NBBO more frequently, which could attract additional liquidity and contribute to price discovery. Greater liquidity benefits all market participants because it provides greater execution opportunities on the Exchange. The proposed rebate 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.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted, for the month of June 2019, the Exchange's market share of intraday trading (excluding auctions) was 9.2%.[21] In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [22] of the Act and subparagraph (f)(2) of Rule 19b–4 [23] 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) [24] 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–2019–37 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–2019–37. 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–2019–37 and should be submitted on or before August 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Jill M. Peterson,

Assistant Secretary.

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[19] 15 U.S.C. 78f(b)(8).

[20] Regulation NMS, 70 FR at 37498–99.

[21] *See* note 9, *supra.*

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12).