

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100643; File No. SR-NYSE-2024-42)

August 2, 2024

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

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on July 26, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Price List to (1) revise the requirements for market at-the-close (“MOC”) and limit at the close (“LOC”) orders on MOC/LOC Tier 1 and Tier 2; (2) modify the requirements and charges for D Orders at the close based on time of entry or last modification; and (3) introduce incremental per share credits for orders entered and executed by a Floor broker that add liquidity to the Exchange and for D Orders at the close. The Exchange proposes to implement the fee changes effective July 26, 2024. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) revise the requirements for MOC and LOC orders on MOC/LOC Tier 1 and Tier 2; (2) modify the requirements and charges for D Orders at the close based on time of entry or last modification; and (3) introduce incremental per share credits for orders entered and executed by a Floor broker that add liquidity to the Exchange and for D Orders at the close.

The proposed change responds to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders and closing price orders by revising the requirements and offering additional incentives for member organizations to send liquidity to the Exchange, especially during the Closing Auction. The purpose of the proposed rule change is also to encourage efficient usage of Exchange systems by member organizations by continuing to encourage all member organizations to enter or modify D Orders as early possible, which the Exchange believes is in the best interests of all member organizations and investors who access the Exchange.

The Exchange proposes to implement the fee changes effective July 26, 2024.⁴

Background

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁵

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”⁶ Indeed, cash equity trading is currently dispersed across 16 exchanges,⁷ numerous alternative trading systems,⁸ and broker-dealer internalizers and wholesalers, all competing for order flow.

⁴ The Exchange originally filed to amend the Price List on June 3, 2024 (SR-NYSE-2024-34). SR-NYSE-2024-34 was withdrawn on July 26, 2024 and replaced by this filing.

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

⁶ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

⁷ See Cboe U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

⁸ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

Based on publicly-available information, no single exchange currently has more than 20% market share.⁹ Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.¹⁰ It should also be noted that, in the currently highly competitive national market system, numerous exchanges and other order execution venues compete for order flow at the close, and competition for closing orders is robust.¹¹

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. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

In response to this competitive environment, the Exchange has established incentives for

⁹ See Cboe Global Markets U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share/.

¹⁰ See *id.*

¹¹ There are at least seven broker-dealer sponsored products competing for volume at the close, including Credit Suisse's CLOSEX; Instinet's Market-on-Close Cross; Morgan Stanley's Market-on-Close Aggregator (MOCHA); Bank of America's Instinct X® and Global Conditional Cross; JP Morgan's JPB-X; Piper Sandler's On-Close Match Book; and Goldman Sachs' One Delta Close Facility (ODCF). Moreover, the percentage of volume at the NYSE closing price in NYSE-listed securities executed off-exchange has been steadily increasing since before the pandemic. In 2018, the percentage of volume at the NYSE closing price in NYSE-listed securities executed off-exchange was 21.3%. In 2019, the percentage increased to 23.5%. After dipping briefly to 22.1% in 2020, the percentage resumed its upward trend and increased to 25.2% in 2021. The percentage was 24.1% and 23.8% in 2022 and 2023, respectively, and has increased again in 2024 to 26.1% through May 31.

member organizations who submit orders on the Exchange. The proposed fee change is designed to provide incentives to member organizations to submit additional such liquidity to the Exchange, including during closing auctions.

Proposed Rule Change

MOC/LOC Tiers 1 and 2

Currently, for MOC /LOC Tier 1, the Exchange charges \$0.0007 per share for MOC orders and \$0.0007 per share for LOC orders from any member organization in the prior three billing months executing (1) an average daily trading volume (“ADV”) of MOC activity on the NYSE of at least 0.45% of NYSE consolidated ADV (“CADV”),¹² (2) an ADV of total close activity (MOC/LOC and executions at the close) on the NYSE of at least 0.7% of NYSE CADV, and (3) whose MOC activity comprised at least 35% of the member organization’s total close activity (MOC/LOC and other executions at the close). Similarly, for MOC /LOC Tier 2, the Exchange charges \$0.0008 per share for MOC orders and \$0.0008 per share for LOC orders from any member organization in the prior three billing months executing (1) an ADV of MOC activity on the NYSE of at least 0.35% of NYSE CADV,¹³ (2) an ADV of total close activity (MOC/LOC and executions at the close) on the NYSE of at least 0.525% of NYSE CADV, and (3) whose MOC activity comprised at least 35% of the member organization’s total close activity (MOC/LOC and other executions at the close).

The Exchange proposes to eliminate the third requirement from both tiers.

As proposed for MOC/LOC Tier 1, the Exchange would charge \$0.0007 per share for

¹² ADV and CADV are defined in footnote * of the Price List. The Exchange would delete “[Tape A]” between NYSE and CADV in one place in the tier as redundant. The Exchange would also add “and an” between the remaining requirements to qualify for the tier.

¹³ The Exchange would similarly delete “[Tape A]” between NYSE and CADV in two places in the tier as redundant and add “and an” between the remaining requirements to qualify for this tier as proposed for Tier 1.

MOC orders and \$0.0007 per share for LOC orders from any member organization in the prior three billing months executing an (1) ADV of MOC activity on the NYSE of at least 0.45% of NYSE CADV), and (2) ADV of total close activity (MOC/LOC and executions at the close) on the NYSE of at least 0.7% of NYSE CADV. The current rates would remain the same.

As proposed for MOC/LOC Tier 2, the Exchange would charge \$0.0008 per share for MOC orders and \$0.0008 per share for LOC orders from any member organization in the prior three billing months executing an (1) an ADV of MOC activity on the NYSE of at least 0.35% of NYSE CADV, and (2) an ADV of total close activity (MOC/LOC and executions at the close) on the NYSE of at least 0.525% of NYSE CADV. The current rates would also remain the same.

The proposed change responds to the current competitive environment where order flow providers have a choice of where to direct orders in NYSE-listed securities, including at the close, by modifying requirements in order to facilitate member organizations qualifying for a MOC/LOC tier and encourage additional liquidity to the Exchange. Higher volumes of MOC and LOC orders contribute to the quality of the Exchange's closing auction and provide market participants whose orders are executed at the close with a greater opportunity for execution, which benefits all market participants.

D Orders

Currently, the Exchange does not charge member organizations for the first 750,000 ADV of the aggregate of executions at the close for D Orders, Floor broker executions swept into the close, and executions at the close, excluding MOC Orders, LOC Orders and Closing Offset ("CO") Orders. Further, the Exchange currently charges certain fees differentiated by

time of entry (or last modification) for D Orders at the close after the first 750,000 ADV of aggregate of executions at the close by a member organization.

The Exchange proposes to no longer exclude the first 750,000 ADV of the aggregate of executions at the close by member organizations for D Orders, Floor broker executions swept into the close, and executions at the close, excluding MOC Orders, LOC Orders and CO Orders. As discussed below, the Exchange would waive fees for member organizations with an ADV of at least 10,000 shares entered and executed by its Floor broker up to specific monthly ADV levels based on time of entry (or last modification) in an effort to encourage additional liquidity on the trading floor of a national securities exchange.

The Exchange also proposes to modify the time of entry (or last modification) for D Order fee determination in order to encourage member organizations to enter D Orders earlier in the trading day, thereby increasing transparency in the Closing Auction and reducing member organization's operational risk. Consistent with this purpose, the current rates for D Orders would not change with the exception of D Orders entered in the final minute of trading, which the Exchange proposes to label as "Late D Orders."

The Exchange would modify the current requirements and charges for D Orders as follows:

- The Exchange currently charges \$0.0003 per share for executed D Orders last modified¹⁴ by the member organization earlier than 25 minutes before the scheduled close of trading. The Exchange proposes to charge the current rate to

¹⁴ As set forth in footnote 10 to the Price List, as used in the Price List, the phrase "last modified" means the later of the order's entry time or the final modification or cancellation time for any D Order designated for the close with the same broker badge, entering firm mnemonic, symbol, and side.

D Orders last modified earlier than 10 minutes before the scheduled close of trading. The Exchange would define these orders as “Early D Orders.”

- The Exchange currently charges \$0.0007 per share for executed D Orders last modified by the member organization from 25 minutes up to but not including 3 minutes before the scheduled close of trading. The Exchange proposes to charge the current rate to D Orders last modified from 10 minutes up to but not including 1 minute before the scheduled close of trading. The Exchange would define these orders as “Mid D Orders.”
- For D Orders last modified in the last 3 minutes before the scheduled close of trading, the Exchange charges three different fees. The Exchange proposes to charge these fees, as modified, for D Orders last modified by the member organization in the last 1 minute before the scheduled close of trading, which the Exchange would define as “Late D Orders.”
 - The Exchange currently charges \$0.0008 per share for executed D Orders last modified in the last 3 minutes before the scheduled close of trading for member organizations in MOC/LOC Tiers 1 and 2, both with Adding ADV of at least 0.50% of Tape A CADV or MOC/LOC Tiers 1, 2 or 3 with Adding ADV of at least 1.05% of Tape A CADV. The Exchange would eliminate the limitation to member organizations in MOC/LOC Tiers 1 and 2 and would charge \$0.0011 per share for executed D Orders last modified in the last 1 minute before the scheduled close of trading for member organizations with Adding ADV of at least 0.50% of Tape A

CADV (unchanged from the current requirement) and total close activity of a least 1.75% of Tape A CADV.

- The Exchange currently charges \$0.0009 per share for executed D Orders last modified in the last 3 minutes before the scheduled close of trading for member organizations in MOC/LOC Tiers 1, 2 and 3 with Adding ADV of at least 0.65% of Tape A CADV. The Exchange would eliminate this fee.
- The Exchange currently charges \$0.0010 per share for executed D Orders last modified in the last 3 minutes before the scheduled close of trading for all other member organizations. The Exchange proposes to charge all other member organizations \$0.0012 per share for executed D Orders last modified one minute before the scheduled close of trading.
- For member organizations with an ADV of at least 10,000 shares entered and executed by its Floor broker, the Exchange proposes that Early, Mid- and Late D Orders up to specific monthly ADV levels would be free.¹⁵ Qualifying member organizations would be charged the previously described rates for all volume for each D Order type above the proposed thresholds.

As proposed, qualifying member organizations would not be charged for the first 500,000 shares of Early D Orders, with the above rates for Early D Orders applicable to all volume above that threshold.

¹⁵ For the avoidance of doubt, the member organization eligible for the proposed fee waiver for D Orders up to the specific monthly ADV levels would be the same legal entity as the member organization operating the Floor broker.

For Mid D Orders, qualifying member organizations would not be charged for the first 750,000 shares, with the above rates for Mid D Orders applicable to all volume above that threshold.

Finally, for Late D Orders, qualifying member organizations would not be charged for the first 250,000 shares, with the above rates for Late D Orders applicable to all volume above that threshold

- Orders from continuous trading swept into the close would continue to be charged the current rate of \$0.0008.

The purpose of these changes is to continue to encourage additional liquidity on the Exchange. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Since the proposal not to charge Early, Mid- and Late D Orders up to specific monthly ADV levels for member organizations with a minimum ADV entered and executed by its Floor broker would be new, the Exchange does not know how many member organizations could qualify based on their current trading profile and if they choose to direct order flow to the Exchange. Based on the profile of member organizations and their liquidity provision, the Exchange believes that additional member organizations could qualify for the discounts if they choose to direct order flow to the Exchange. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the discounts.

The Exchange believes that it is reasonable to not charge member organizations for Early, Mid- and Late D Orders up to specific monthly ADV levels if the member organization has an ADV of at least 10,000 shares executed by its Floor broker. The Exchange notes that other

marketplaces offer various incentives to only certain members based on ADV and/or heightened quoting requirements. For instance, marketplaces offer incremental credits to members that are lead market makers (“LMM”) registered in a minimum number of securities and that add a specified percentage of displayed liquidity¹⁶ as well as discounted remove fees for market makers meeting certain heightened quoting requirements that also meet specific trading obligations.¹⁷ Moreover, the proposed ADV of at least 10,000 shares executed by its Floor broker requirement is low relative to these other markets’ requirements for market maker-only incentives.¹⁸ The Exchange further believes that eligibility for the proposed fee waiver for member organizations that have a Floor broker plus an adding volume requirement is not unfairly discriminatory because member organizations that do not operate a Floor brokerage business can still qualify for the fee waiver by choosing to add a Floor broker on the Exchange. Indeed, to the extent that member organizations add Floor brokers to qualify for the proposed fee waiver for D Orders, the proposal would have the added benefit of potentially attracting new Floor brokers to the Exchange.

Incremental Floor Broker Credits

¹⁶ Cboe BZX offers a higher tiered rebate based on a lower adding requirement if the member is enrolled in a minimum number of LMM securities. See Cboe BZX Equities Fee Schedule, available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.

¹⁷ Nasdaq offers discounted remove fees in Tape A and Tape B securities for market makers meeting the requirements to qualify as Qualified Market Makers (QMMs) in addition to QMM rebate incentives if they execute shares of liquidity representing 1.00% or more of Consolidated Volume during the month for shares executed (in securities priced at or greater than \$1). See Nasdaq Price List, available at <https://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#:~:text=Qualified%20Market%20Makers,certain%20quoting%20requirements%20each%20month>.

¹⁸ For instance, Nasdaq’s discounted remove fees in Tape A and Tape B securities for QMMs in addition to QMM rebate incentives are available if they execute shares of liquidity representing 1.00% or more of Consolidated Volume during the month for shares executed (in securities priced at or greater than \$1), which is a much higher bar than the proposed ADV requirement for Floor brokers. See generally id.

As part of what the Exchange proposes to call the “Floor Broker Incentive and Rebate Program,” the Exchange proposes an incremental per share credit for orders executed by a Floor broker in addition to the preceding fees and credits specified in the Price List. Specifically, the Exchange proposes that orders executed by a member organization’s Floor broker would receive an additional \$0.0002 per share for orders that add liquidity to the Exchange, other than MPL and Non-Displayed Limit Orders, and/or (2) an additional \$0.000025 per share for the proposed Early, Mid-and Late D Orders where the member organization has (1) an ADV of at least 10,000 shares entered and executed by its Floor broker, and (2) an ADV comprised of at least 50% Floor broker ADV of the member organization’s total ADV, excluding routing.

For example, assume that Member Organization A enters and executes 2 million shares that add liquidity on the trading Floor through its Floor broker. Further assume that a second member organization, Member Organization B, enters 10 million shares that add liquidity and routes its flow to Member Organization A for execution on the trading Floor through Member Organization A’s Floor broker. Both member organizations receive the current rate for adding liquidity on the trading Floor of at least \$0.0019 per share for their shares entered as the entering firm, unless a better current tiered rate applies. Under the proposed pricing, Member Organization A would also receive an additional credit of \$0.0002 for executing the 10 million shares for adding liquidity on the trading Floor on behalf of Member Organization B.

The purpose of the proposed incremental Floor broker credits is to continue to encourage member organizations to send orders to trading Floor for execution, thereby contributing to robust levels of liquidity, especially for adding liquidity and during the Closing Auction, which benefits all market participants. Members and member organizations benefit from the substantial amounts of liquidity present on the Exchange during the close. The Exchange believes the

proposed change would also thereby promote price discovery and transparency, and enhance order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange both intraday and during the close.

Since the proposed incremental credits are new, the Exchange does not know how many member organizations could qualify for the new discounts based on their current trading profile and if they choose to direct order flow to the Exchange. Based on the profile of liquidity-adding firms generally, the Exchange believes that a number of member organizations could qualify for the credits if they choose to direct order flow to the Exchange. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the discounts.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,²⁰ 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.

As discussed above, the Exchange operates in a highly competitive market. The

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4) & (5).

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.”²¹ While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”²²

The Proposed Change is Reasonable

In light of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity to the Exchange, especially during the Closing Auction, and improve the Exchange’s market share relative to its competitors. The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of orders transacted on the Exchange by member organizations, which would benefit all market participants by offering greater price discovery and an increased opportunities to trade on the Exchange, both intraday and during the Closing Auction. The proposed rule change also represents a reasonable attempt to encourage efficient usage of Exchange systems by member organizations by continuing to encourage all member organizations to enter or modify D

²¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

²² See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

Orders as early possible, which the Exchange believes is in the best interests of all member organizations and investors who access the Exchange.

MOC/LOC Tiers 1 and 2

The Exchange believes that eliminating the requirement that a member organization's MOC activity comprise at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close) in order to qualify for to qualify for MOC/LOC Tier 1 and Tier 2 is a reasonable way to encourage greater participation which leads to greater marketable and other liquidity at the Closing Auction. MOC and LOC orders contribute meaningfully to the price and size discovery, which is the hallmark of the closing auction process. Higher volumes of MOC orders contribute to the quality of the Exchange's Closing Auction and provide market participants whose orders are executed at the close with a greater opportunity for execution, which benefits all market participants. Further, as noted above, in the currently highly competitive national market system, competition for closing orders among exchanges, ATSS and other market execution venues is robust.

D Orders

The Exchange believes that its proposal would encourage additional liquidity on the Exchange from multiple sources, which helps to maintain the quality of the Exchange's Closing Auction for the benefit of all market participants.

Specifically, the Exchange believes that no longer exempting the first 750,000 ADV of the aggregate of executions at the close from fees is reasonable as it has not operated as originally intended. Member organizations that currently reach the 750,000 ADV threshold are generally larger member organizations that would continue to derive a substantial benefit from the high volume of closing executions on the Exchange and the Exchange believes would

continue to send orders to the Exchange. While the Exchange is removing the first 750,000 ADV exemption, it notes that it is introducing a new exemption for qualifying member organizations with a Floor broker, which totals 1.5 million shares across Early-, Mid- and Late D Orders. Further, the Exchange believes that not charging Early, Mid- and Late D Orders up to specific monthly ADV levels for member organizations with a minimum ADV entered and executed by its Floor broker would encourage additional liquidity for execution on the trading Floor in the Closing Auction, thereby contributing to robust levels of liquidity on the Floor and at the close, which benefits all market participants. Moreover, the proposed fee waiver for Early, Mid- and Late D Orders would incentivize qualifying member organizations to enter or modify D Orders as early as possible in order to avoid fees for Early, Mid-, and Late D Orders up to the proposed thresholds for each.

Similarly, the Exchange believes that modifying the time of entry for last modification for member organizations to qualify for the existing fees for Early, Mid- and Late D Orders encourages all member organizations to enter or modify D Orders as early possible, beginning with as early as up to 10 minutes before the close of trading, in order to build up liquidity going into the Closing Auction. Member organizations are waiting until later in the trading day to enter and/or modify D Orders than the current 25 minutes. By expanding the time period to enter Early D Orders to up to 10 minutes before the close, the Exchange hopes to encourage member organizations to send D Orders earlier in order to qualify for lower fees. Moreover, the Exchange hopes thereby to incentivize more member organizations to send adding liquidity to the Exchange, which in turn supports the quality of price discovery on the Exchange. In addition, charging member organizations higher rates for entering or modifying their interest in the final minute of regular trading hours reflects a risk premium for delaying entry or

modification until nearly the end of trading, while reducing the time entry which results in fewer trades qualifying for these higher fees. Further, it is reasonable to charge member organizations a lower rate based on a higher percentage of Adding ADV of Tape A CADV and total close activity of Tape A CADV for entering or modifying their interest in the final minute of regular trading hours because such interest most benefits from the flexibility afforded the order type. The Exchange notes that while the proposed fee for Late D-Orders is higher than the current fee, the proposed increase in time of order entry or last modified to qualify for Early- and Mid D Orders, which have lower rates than Late D Orders, will result in lower overall fees for member organizations, and incentivize greater liquidity in the Closing Auction, which benefits all market participants.

Incremental Floor Broker Credits

The Exchange believes that the proposed additional credits for orders executed by a Floor broker for representation on the Exchange is a reasonable way to encourage additional liquidity, including D Orders, on the Exchange both during intraday and in Closing Auction because member organizations benefit from the substantial amounts of liquidity that are present on the Exchange during such times. The Exchange believes the proposed change would encourage member organizations to send orders to the trading Floor for execution, thereby contributing to robust levels of liquidity on the trading Floor both intraday and during the Closing Auction, which benefits all market participants. The proposed fee would also encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange during the closing. The proposed change would also encourage the execution of such transactions on a public exchange,

thereby promoting price discovery and transparency. Moreover, the Exchange believes that requiring an ADV comprised of at least 50% Floor broker ADV of the member organization's total ADV is reasonable because it would encourage member organizations that make a substantial contribution to trading Floor liquidity without excluding smaller member organizations.

The Proposal is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates fees and credits among market participants because all member organizations that participate on the Exchange may qualify for the proposed credits and fees on an equal basis. The Exchange believes its proposal equitably allocates its fees and credits among its market participants by fostering liquidity provision and stability in the marketplace.

MOC/LOC Tiers 1 and 2

The Exchange believes that the proposed elimination of the requirement that a member organization's MOC activity comprise at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close) in order to qualify for to qualify for MOC/LOC Tier 1 and Tier 2 will incentivize member organizations to send additional liquidity to achieve lower fees and encourage greater marketable and other liquidity at the closing auction. Higher volumes of MOC and LOC orders contribute to the quality of the Exchange's Closing Auction and provide market participants whose orders are executed in the close with a greater opportunity for execution of orders on the Exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities and improving overall liquidity on a public exchange. The Exchange also believes that the proposed change is equitable because it would apply to all similarly situated member organizations that utilize MOC and LOC orders on

the Exchange on an equal basis.

D Orders

The Exchange believes that the proposed changes to D Orders are an equitable allocation of fees because the proposed changes, taken together, will incentivize member organizations to enter or modify D Orders as early possible, beginning with as early as up to 10 minutes before the close of trading, in order to build up liquidity going into the closing auction. The Exchange's closing auction is a recognized industry benchmark,²³ and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis. The Exchange also believes that it is equitable to charge member organizations a higher rate for entering or modifying their interest in the final minute of regular trading hours because such interest most benefits from the flexibility afforded the order type. Moreover, the proposed fees are equitable because all similarly situated member organizations will be subject to the same fee structure that would be available on an equal basis to all similarly situated member organizations that utilize D Orders on the Exchange. In this regard, the proposed changes are equitable because any member organization can choose to send D Orders earlier than 10 minutes or 1 minute prior to the close in order to qualify for lower fees, and any member organization can choose to have a Floor broker in order to qualify for the lower fee for Late D Orders or to exclude volume from fees up to the proposed specified thresholds for Early, Mid- and Late D Orders. Similarly, the proposal to waive fees for Early, Mid- and Late D Orders for member organizations that have a Floor broker plus an adding volume requirement is equitable because a member organization that would not qualify for the fee waiver because the

²³ For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

member organization does not operate a Floor brokerage business can still qualify for the fee waiver by adding a Floor broker. Indeed, to the extent that member organizations bring on Floor brokers to qualify for the fee waiver, the proposal would have the added benefit of potentially attracting new Floor brokers to the Exchange.

Incremental Floor Broker Credits

The proposed incremental credits for orders executed by a member organization's Floor broker that add liquidity to the Exchange and D Orders during the close, are equitable because the incremental fees would be available on an equal basis to all similarly situated member organizations that operate a Floor brokerage business. In this regard, the proposed discounts and requirements are equitable because any member organization can choose to increase their adding volume entered and executed by its Floor broker, excluding routing, in order to qualify for the proposed incremental credits and any member organization can choose to operate as a Floor broker in order to qualify for the additional credits on an equal basis. The Exchanges notes that the current Incremental Discounts on MOC Orders utilize similar requirements.²⁴

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.

MOC/LOC Tiers 1 and 2

The proposed streamlined requirements for MOC orders to qualify for MOC/LOC Tiers 1 and 2 are not unfairly discriminatory because the requirements would be applied to all similarly

²⁴ See NYSE Price List at p. 4, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

situated member organizations and other market participants, who would all be subject to the same fees, requirements and discounts on a full and equal basis. For the same reason, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

D Orders

The Exchange believes that the proposed changes to D Orders to modify the time periods by which such orders are considered early, mid-or late is not unfairly discriminatory because the proposed changes will incentivize member organizations to enter or modify D Orders as early possible, beginning with as early as up to 10 minutes before the close of trading, in order to build up liquidity going into the closing auction. The Exchange also believes that it is not unfairly discriminatory to charge member organizations a higher rate for entering or modifying their interest in the final minute of regular trading hours because all member organizations can utilize D Orders and all have an equal choice as to when to submit those orders to benefit most from the flexibility afforded the order type. The Exchange believes that the proposal is not unfairly discriminatory because all similarly situated member organizations that submit D Orders last modified in the last 10 minutes and less before the scheduled close of trading will be subject to the same fee structure based on time of entry (or last modification). In addition, the Exchange believes that waiving fees for Early, Mid- and Late D Orders for member organizations with a Floor broker plus an adding volume requirement is equitable because the proposed fee waiver would apply equally to all similarly situated member organizations. Moreover, the proposed fee

waiver is not unfairly discriminatory because member organizations that do not operate a Floor brokerage business can still qualify for the fee waiver by choosing to add a Floor broker on the Exchange. Indeed, to the extent that member organizations add Floor brokers to qualify for the proposed fee waiver for D Orders, the proposal would have the added benefit of potentially attracting new Floor brokers to the Exchange. In addition, the Exchange believes that it is reasonable to not charge member organizations for Early, Mid- and Late D Orders up to specific monthly ADV levels if the member organization has an ADV of at least 10,000 shares executed by a Floor broker. As noted, other marketplaces offer various incentives to only certain members based on ADV and/or heightened quoting requirements.²⁵

Incremental Floor Broker Credits

The proposed incremental Floor broker credits are not unfairly discriminatory because the proposed fees would be applied to all similarly situated member organizations and other market participants operating a Floor brokerage business, who would all be subject to the same fees, requirements, and discounts on an equal basis. For the same reason, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. Further, the Exchange believes the proposal would incentivize member organizations to send more orders to the Floor in order to qualify for incremental credits. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

²⁵ See notes 16 & 17, supra.

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,²⁶ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As 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."²⁷

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated member organizations on the same and equal

²⁶ 15 U.S.C. 78f(b)(8).

²⁷ See Regulation NMS, 70 FR at 37498-99.

terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. 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 has become effective upon filing pursuant to Section 19(b)(3)(A)²⁸ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the 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.

²⁸ 15 U.S.C. 78s(b)(3)(A).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-42 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-2024-42. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-42 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Sherry R. Haywood,

Assistant Secretary.

²⁹ 17 CFR 200.30-3(a)(12).