

received 9 comments on the proposal as amended by Amendment No. 1.<sup>8</sup>

On July 30, 2012, FINRA withdrew the proposed change (SR-FINRA-2009-028).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67585; File No. SR-NYSE-2012-33]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Certain Changes to the Credits Within the New York Stock Exchange Price List That Are Applicable to Supplemental Liquidity Providers

August 2, 2012.

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> notice is hereby given that, on July 25, 2012, New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to certain changes to the credits within its Price List that are applicable to Supplemental Liquidity Providers (“SLPs”), which the Exchange proposes to become operative on August 1, 2012. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

<sup>8</sup> See *supra* note 5.

<sup>9</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.

#### 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 is proposing certain changes to the credits within its Price List that are applicable to SLPs, which the Exchange proposes to become operative on August 1, 2012.

SLPs are eligible for credits when adding liquidity to the NYSE.<sup>3</sup> The amount of the credit is currently determined by the “tier” that the SLP qualifies for, which is based on the SLP’s level of quoting and the average daily volume (“ADV”)<sup>4</sup> of liquidity added by the SLP in assigned securities.

The Exchange proposes to amend the Price List, such that only the following three credit rates would apply to SLPs:<sup>5</sup>

1. [sic] The current standard credit of \$0.0015 per share (or \$0.0010 per share if a Non-Displayed Reserve Order) would apply when adding liquidity to the Exchange in securities with a per share price of \$1.00 or more, if the SLP does not qualify for the higher credit set forth in paragraph 2, below.

2. [sic] The current credit of \$0.0020 per share (or \$0.0015 per share if a Non-Displayed Reserve Order) would be increased to \$0.0021 per share (or \$0.0016 per share if a Non-Displayed Reserve Order) and would apply when adding liquidity to the Exchange in securities with a per share price of \$1.00 or more if the SLP (i) meets the 10% average or more quoting requirement in the assigned security pursuant to Rule 107B<sup>6</sup> and (ii) adds liquidity of an ADV

<sup>3</sup> SLP credits are not applicable to executions of securities with a per share price of \$1.00 or more at the close.

<sup>4</sup> For purposes of SLP liquidity credits, ADV calculations exclude early closing days.

<sup>5</sup> SLP execution of securities with a per share price of \$1.00 or more at the close would continue to be free.

<sup>6</sup> Quotes of an SLP that is a proprietary trading unit of a member organization (“SLP-Prop”) and an

of more than 10 million shares for all assigned SLP securities in the aggregate.<sup>7</sup> The current requirement related to adding liquidity of a certain percentage of consolidated ADV (“CADV”) for an assigned security in the applicable month would no longer be applicable.

3. [sic] The current credit of \$0.005 per share when adding liquidity to the Exchange in securities with a per share price of less than \$1.00 if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B<sup>8</sup> and (ii) adds liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate.<sup>9</sup>

The result of this proposed change is that the current credit tiers of \$0.0021 per share (or \$0.0016 per share if a Non-Displayed Reserve Order) and \$0.0024 per share (or \$0.0019 per share if a Non-Displayed Reserve Order) will be removed from the Price List, as will the corresponding threshold requirements that are currently applicable to these credits.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>11</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would encourage SLPs to send additional orders to the Exchange for execution in order to qualify for an incrementally higher credit for such executions that add liquidity on the Exchange. In this regard, the Exchange believes that this may incentivize SLPs to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency.

SLP registered as a market maker at the Exchange (“SLMM”) of the same member organization are not aggregated for purposes of this calculation.

<sup>7</sup> This calculation includes shares of both an SLP-Prop and an SLMM of the same member organization.

<sup>8</sup> See *supra* note 3.

<sup>9</sup> See *supra* note 4.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

The Exchange also believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would streamline the Price List with respect to determining the particular credit applicable to an SLP. Specifically, the Exchange believes that eliminating the requirement that an SLP add liquidity of a certain percentage of CADV for an assigned security in the applicable month, as well as the additional tiers that currently correspond to such percentages, would simplify the method by which SLPs are provided with credits for adding liquidity.

The Exchange believes that the rate of \$0.0021 per share (or \$0.0016 per share if a Non-Displayed Reserve Order) is reasonable because it is consistent with a rate that is currently available to SLPs. The Exchange also believes that the proposed rate is reasonable because it is directly related to an SLP's activity during the month in assigned securities (i.e., the applicable 10% and 10 million share thresholds). In this regard, the proposed change is intended to incentivize SLPs to provide liquidity on the Exchange in order to satisfy the applicable percentage and volume thresholds and would result in a credit that is reasonably related to an exchange's market quality that is associated with higher volumes.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because it will apply to all SLPs on an equal and non-discriminatory basis. All similarly situated members on the Exchange are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly discriminatory. In this regard, the Exchange notes that the standard credit is available to all SLPs. Likewise, all SLPs are eligible to qualify for the increased credit, which, as discussed above, is based on whether an SLP satisfies the applicable percentage and volume thresholds.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

The Exchange does not believe that the proposed rule change will impose

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *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>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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.

#### **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-2012-33 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NYSE-2012-33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2012-33 and should be submitted on or before August 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67584; File No. SR-NASDAQ-2012-066]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a New Market Maker Peg Order Available to Exchange Market Makers**

August 2, 2012.

#### **I. Introduction**

On June 6, 2012, The NASDAQ Stock Market LLC ("Exchange" or "NASDAQ") 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 to adopt a new Market Maker Peg Order to provide similar functionality as the automated functionality provided to market makers under Rules

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).