

For the Commission, pursuant to delegated authority.<sup>9</sup>

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Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71689; File No. SR-NYSE-2014-11]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List To Modify the Current Adding Credit Tiers and Add a New Adding Credit Tier

March 11, 2014.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 28, 2014, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### 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 modify the current adding credit tiers and add a new adding credit tier. The proposed fees would be operative on March 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

##### 1. Purpose

The Exchange proposes to amend its Price List to modify the current adding credit tiers and add a new adding credit tier. The proposed fees would be operative on March 1, 2014.

Under the current Tier 1 Adding Credit, the Exchange offers a credit of \$0.0020 per share (\$0.0010 if a Non-Displayed Reserve Order or \$0.0015 if a Midpoint Passive Liquidity ("MPL" order) for transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if:

(i) The member organization has average daily trading volume ("ADV") that adds liquidity to the NYSE during the billing month ("Adding ADV," which shall exclude any liquidity added by a Designated Market Maker ("DMM")) that is at least 1.5% of consolidated average daily volume in NYSE-listed securities during the billing month ("NYSE CADV"), and executes market at-the-close ("MOC") and limit at-the-close ("LOC") orders of at least 0.375% of NYSE CADV;

(ii) the member organization has Adding ADV that is at least 0.8% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and adds liquidity to the NYSE as a Supplemental Liquidity Provider ("SLP") for all assigned SLP securities in the aggregate (including shares of both an SLP proprietary trading unit ("SLP-Prop") and an SLP market maker ("SLMM") of the same member organization) of more than 0.15% of NYSE CADV; or

(iii) the member organization has ADV that adds liquidity in customer electronic orders to the NYSE ("Customer Electronic Adding ADV," which shall exclude any liquidity added by a Floor broker, DMM, or SLP) during the billing month that is at least 0.5% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and has Customer Electronic Adding ADV during the billing month that, taken as a percentage of NYSE CADV, is at least equal to the member organization's Customer Electronic Adding ADV during September 2012 as a percentage of consolidated average daily volume in NYSE-listed securities during September 2012 plus 15%.

The Exchange proposes to modify the first method by which a member organization may qualify for the current Tier 1 Adding Credit. Specifically, a member organization would qualify for the credit of \$0.0020 per share (\$0.0010 if a Non-Displayed Reserve Order or \$0.0015 if an MPL order) for transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if the member organization has Customer Electronic Adding ADV that is at least 1.1% of NYSE CADV, and executes MOC and LOC orders of at least 0.375% of NYSE CADV. The Exchange does not propose to modify the second or third methods by which a member organization may qualify for the current Tier 1 Adding Credit.

The Exchange also proposes to establish a new adding credit tier, which would provide a credit of \$0.0022 per share (\$0.0010 if a Non-Displayed Reserve Order or \$0.0015 if an MPL order) for transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if:

(i) The member organization has Customer Electronic Adding ADV during the billing month that is at least 1.25% of NYSE CADV, and executes MOC and LOC orders of at least 0.12% of NYSE CADV; or

(ii) the member organization has Customer Electronic Adding ADV during the billing month that is at least 0.85% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and either (a) adds liquidity to the NYSE as an SLP for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) of more than 0.3% of NYSE CADV or (b) adds liquidity to the NYSE as a Floor broker of more than 0.3% of NYSE CADV.

The Exchange proposes to name the new adding credit tier the "Tier 1 Adding Credit" and would rename the current Tier 1 Adding Credit and Tier 2 Adding Credit, the "Tier 2 Adding Credit" and "Tier 3 Adding Credit," respectively. The Exchange also proposes to make certain non-substantive, conforming changes to the Price List.<sup>4</sup>

<sup>4</sup> The Exchange notes that it has previously filed with the Securities and Exchange Commission a proposed rule change to amend the Price List (File No. SR-NYSE-2014-09). Exhibit 5 to SR-NYSE-2014-09 specified an effective date for the revised Price List of March 1, 2014 (changed from February 1, 2014). Exhibit 5 to the instant proposed rule change also specifies an effective date of March 1, 2014. SR-NYSE-2014-09 also modified the credit for executions of orders sent to the Floor broker for representation on the Exchange when adding

<sup>9</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.

## 2. Statutory Basis

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

The Exchange believes that modifying the first method by which member organizations may qualify for the credit of \$0.0020 per share under the current Tier 1 Adding Credit by basing the threshold on Customer Electronic Adding ADV that is at least 1.1% of NYSE CADV is reasonable because it would encourage the submission of customer electronic orders that add liquidity to the Exchange. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would encourage multiple sources of liquidity by providing member organizations that do not have a DMM, SLP, or Floor broker unit with an additional method to qualify for the credit. As is currently the case, member organizations would continue to have three distinct methods of qualifying for the \$0.0020 per share credit.

The Exchange believes that the new Tier 1 Adding Credit of \$0.0022 per share for transactions in stocks with a per share stock price of \$1.00 or more when adding liquidity is reasonable because it would further contribute to inciting member organizations to provide additional amounts of liquidity on the Exchange. The Exchange believes that the proposed new Tier 1 Adding Credit of \$0.0022 is equitable and not unfairly discriminatory because all member organizations would benefit from such increased levels of liquidity. In addition, the new Tier 1 Adding Credit would provide a higher credit to member organizations that is reasonably related to the value to the Exchange's market quality associated with higher volumes of liquidity. In addition, the Exchange believes that the proposed new Tier 1 Adding Credit is equitable and not unfairly discriminatory because it would provide several methods of qualifying for the credit, which would

attract multiple sources of liquidity to the Exchange.

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

In accordance with Section 6(b)(8) of the Act,<sup>7</sup> the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed changes to the adding credit tiers would not burden competition, but rather would encourage multiple sources of liquidity, including both member organizations with an SLP or Floor broker unit and those without. In addition, the proposed new Tier 1 Adding Credit would not burden competition; rather, it is designed to encourage member organizations to submit additional amounts of liquidity on the Exchange.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee or credit levels at a particular venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with the Act.

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</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>10</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-2014-11 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-2014-11. 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 will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-

liquidity to the Exchange. When updating the Price List, the Exchange will include the fee changes described in both this filing and the fee changes reflected in SR-NYSE-2014-09, which are reflected in the Exhibit 5 to this proposed rule change.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>7</sup> 15 U.S.C. 78f(b)(8).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

2014–11 and should be submitted on or before April 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71685; File No. SR–ISE–2014–11]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Market Makers To Enter Opening Only Orders in Appointed Options Classes

March 11, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that, on February 25, 2014 the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II 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 ISE proposes to amend Rule 805(a) to permit market makers to enter Opening Only Orders in the options classes to which they are appointed. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.ise.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 these statements may be examined at

the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects 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 Rule 805(a) to permit market makers to enter Opening Only Orders in the options classes to which they are appointed. On October 7, 2010 the Exchange filed an immediately effective rule change that, among other things, established two new order types, including the “Opening Only Order,” which is a limit order that can be entered for the opening rotation only.<sup>3</sup> When the ISE adopted this new order type, however, it did not add it to the list of order types in Rule 805(a) that market makers are permitted to trade in their appointed classes.<sup>4</sup> Because of this, market makers are not currently permitted to submit Opening Only Orders in the options classes to which they are appointed. Prior to the launch of the ISE’s T7 trading system (formerly “Optimise”), which introduced Opening Only Orders, market makers could submit immediate-or-cancel (“IOC”) orders prior to the opening of trading, which provided the same functionality as ISE’s current Opening Only Orders. Specifically, like Opening Only Orders, the ISE permitted members to submit IOC orders at any time prior to the opening of trading, which would then execute during the opening rotation, with any unexecuted portion being cancelled. Under the T7 trading system, however, IOC orders are only permitted intraday. The Exchange now proposes to amend its rules so that market makers are able to use this functionality again by submitting Opening Only Orders to the ISE. Market makers on other options exchanges, such as the MIAX Options Exchange (“MIAX”), similarly have the ability to enter “opening only” order types in their appointed classes.<sup>5</sup>

<sup>3</sup> See Exchange Act Release No. 63117 (October 15, 2010), 75 FR 65042 (October 21, 2010) (SR–ISE–2010–101). An “Opening Only Order” is a limit order that can be entered for the opening rotation only. Any portion of the order that is not executed during the opening rotation is cancelled.

<sup>4</sup> Market makers are currently permitted to submit the following order types in their appointed options classes: IOC orders, market orders, fill-or-kill orders, complex orders, and certain block orders and non-displayed penny orders. See ISE Rule 805(a).

<sup>5</sup> See MIAX Rule 605(a).

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the “Act”),<sup>6</sup> in general, and with Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that allowing market makers to use Opening Only Orders will give those members greater flexibility to update prices during the opening rotation. Specifically, market makers have requested that they be permitted to use Opening Only Orders so that they may use this order type to update their prices in single series during the opening process more efficiently than relying on quoting systems that are designed to update prices across multiple series. As explained above, “opening only” orders types are available to market makers on other exchanges, and this functionality was previously available to ISE market makers prior to the introduction of the T7 trading system as members, including market makers, were able to submit IOC orders for execution in the opening rotation. Moreover, because any portion of an Opening Only Order that is not executed during the opening rotation is cancelled, this proposed rule change is generally consistent with Rule 805(a), which was intended to prevent market makers from having both standing limit orders and quotes in the same options class.

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

In accordance with Section 6(b)(8) of the Act,<sup>8</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change is pro-competitive as it permits market makers to use functionality already available to other ISE members, and to market makers on other exchanges, who are currently able to submit Opening Only Orders or other similar order types.

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

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

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

<sup>11</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.