

proposed rule's impact on efficiency, competition, and capital formation.¹¹

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-ChoeBZX-2018-002 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 ChoeBZX-2018-002. 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 ChoeBZX-2018-002 and should be submitted on or before February 16, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82563; File No. SR-NYSE-2018-03]

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

January 22, 2018.

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 January 8, 2018, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 amend its Price List for equity transactions in stocks with a per share stock price of \$1.00 or more to (1) revise the Non-Tier Adding Credit; (2) modify the market at-the-close ("MOC") and limit at-the-close ("LOC") tier and non-tier rates and add a new Floor broker MOC fee; (3) modify the fee for executions at the close (except MOC, LOC and Closing Offset ("CO") Orders), and Floor broker executions swept into the close,

excluding verbal interest above the first 750,000 average daily volume ("ADV") of aggregate executions at the close; (4) introduce a Tier 4 Adding Credit; (5) introduce tiered trading license fees; and (6) make certain non-substantive organizational and clarifying changes, including grouping fees for all executions at the close together. The Exchange proposes to implement these changes to its Price List effective January 8, 2018.⁴ 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.

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 Non-Tier Adding Credit; (2) modify the MOC and LOC tier and non-tier rates and add a Floor broker MOC fee; (3) modify the fee for executions at the close (except MOC, LOC and CO Orders), and Floor broker executions swept into the close, excluding verbal interest above the first 750,000 average daily volume ("ADV") of aggregate executions at the close; (4) introduce a Tier 4 Adding Credit; (5) introduce tiered trading license fees; and (6) make certain non-substantive organizational and clarifying changes, including grouping fees for all executions at the close together.

The proposed changes would only apply to fees and credits in transactions in securities priced \$1.00 or more.

The Exchange proposes to implement these changes to its Price List effective January 8, 2018.

¹² 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Price List on December 28, 2017 (SR-NYSE-2017-73). SR-NYSE-2017-73 was subsequently withdrawn and replaced by this filing.

¹¹ See 15 U.S.C. 78c(f).

Member Organization Non-Tier Adding Credit

Member organizations are currently eligible for the Non-Tier Adding Credit for all orders in securities priced \$1.00 or more, other than Midpoint Passive Liquidity ("MPL")⁵ and Non-Display Reserve orders, that add liquidity to the NYSE unless a higher credit applies. The applicable rate for the Non-Tier Adding Credit is \$0.0014 per share. The Exchange proposes to lower this credit to \$0.0012 per share. The credits applicable to MPL orders and Non-Display Reserve orders would be unchanged.

Executions at the Close

Overview

The Exchange proposes to group all fees relating to executions at the close together in a table under a new proposed heading titled "Executions at the Close Equity Per Share Charge—per transaction (both sides)." The current entries relating to charges for executions at the close, including verbal interest and MOC/LOC Tiers 1 and 2, would be moved and/or replaced with modified entries, as described more fully below. The Exchange also proposes modifications to the rates for non-tier MOC orders and a new fee for MOC order executed by Floor brokers. Finally, the Exchange proposes modifications for charges for executions at the close (except MOC, LOC and CO Orders), and Floor broker executions swept into the close, excluding verbal interest above the first 750,000 ADV of the aggregate of executions at the close by a member organization.⁶

MOC/LOC Tiers and Non-Tier MOC/LOC

MOC/LOC Tier 1

For MOC/LOC Tier 1, the Exchange currently charges \$0.0007 per share for all MOC and LOC orders from any member organization executing ADV of MOC and LOC activity on the NYSE in that month of at least 0.575% of consolidated average daily volume ("CADV") in NYSE-listed securities (*i.e.*, Tape A securities) during the billing month ("NYSE CADV").

⁵ An MPL Order is an undisplayed limit order that automatically executes at the mid-point of the best protected bid ("PBB") or best protected offer ("PBO"), as such terms are defined in Regulation NMS Rule 600(b)(57) (together, "PBBO"). See Rule 13. See also 17 CFR 242.600(b)(57).

⁶ The Exchange is not proposing to change the fees for verbal interest at the close and for CO Orders. The Exchange proposes non-substantive differences to describe these fees as the first and second entries on the table with the fees associated with executions at the close.

The Exchange proposes to move the MOC/LOC Tier 1 as the third [sic] entry on the table with the charges associated with executions at the close and modify it to provide that the MOC/LOC Tier 1 rates would be available for all MOC and 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 0.45% of NYSE CADV, (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).

For member organizations qualifying for the MOC/LOC Tier 1 requirements, the Exchange proposes to retain the \$0.0007 per share charge for LOC executions and to lower the per share charge for MOC executions to \$0.0004 per share.

MOC/LOC Tier 2

For MOC/LOC Tier 2, the Exchange currently charges \$0.0008 per share for all MOC and LOC orders from any member organization executing (i) an ADV of MOC and LOC activity on the Exchange in that month of at least 0.375% of NYSE CADV; or (ii) an ADV of MOC and LOC activity on the Exchange in that month of at least 0.300% of NYSE CADV plus an ADV of total close (MOC/LOC and executions at the close) activity on the Exchange in that month of at least 0.475% of NYSE CADV.

The Exchange proposes to move the MOC/LOC Tier 2 as the fourth [sic] entry on the table with the charges associated with executions at the close and modify it to provide that the MOC/LOC Tier 2 rates would be available for all MOC and 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, (2) an ADV of total close activity (MOC/LOC and other 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).

For member organizations qualifying for the MOC/LOC Tier 2 requirements, the Exchange proposes to retain the \$0.0008 per share charge for LOC executions and to lower the per share charge for MOC executions to \$0.0005 per share.

Non-Tier MOC/LOC

The Exchange proposes to move fees for Non-Tier MOC/LOC rates, which as proposed would include MOC Orders, LOC Orders, and MOC Orders entered by a Floor broker, as the fifth [sic] entry on the table with the charges associated with executions at the close.

For Non-Tier MOC/LOC, the Exchange currently charges member organizations \$0.0011 per share for MOC and LOC executions, unless a member organization meets specified thresholds set forth in the Price List for MOC and LOC activity. The Exchange proposes that the Non-Tier MOC/LOC rates would be available for any member organization not meeting the above requirements for MOC/LOC Tier 1 or MOC/LOC Tier 2.

For member organizations that qualify for Non-Tier MOC/LOC, the Exchange proposes to lower the fee for MOC executions to \$0.0010 per share. The charge for Non-Tier LOC executions would remain the same at \$0.0011.

Floor Broker MOC Orders

The Exchange propose [sic] a new fee for the execution of MOC orders sent to a Floor broker for representation on the Exchange of \$0.0005 per share unless a lower tiered fee applies. The proposed fee would appear in the table as part of the Non-Tier MOC/LOC entries.

Fees for d-Quotes and Other Executions at the Close

The Exchange proposes to move charges for d-Quotes and other executions at the close, which as proposed would include d-Quotes, Floor broker executions swept into the close, excluding verbal interest, and executions at the close but excluding MOC Orders, LOC Orders, and CO Orders, as the sixth [sic] entry on the table with the charges associated with executions at the close.

Currently, the Exchange charges \$0.0005 per share if a member organization executes an ADV on the NYSE during the billing month in excess of 750,000 shares in (1) executions at the close (except MOC and LOC executions), and/or (2) Floor broker executions swept into the close, excluding verbal interest. The fee is applicable to shares executed in excess of 750,000 ADV, while no charge is applicable to shares executed below 750,000 ADV.

The Exchange proposes to continue not to charge member organizations for the first 750,000 ADV of the aggregate of executions at the close for d-Quote, Floor broker executions swept into the close, excluding verbal interest, and

executions at the close, excluding MOC Orders, LOC Orders and CO Orders. For d-Quote, Floor broker executions swept into the close, excluding verbal interest, and executions at the close, excluding MOC Orders, LOC Orders and CO Orders after the first 750,000 ADV of the aggregate of executions at the close by a member organization, the Exchange proposes to change the rate to \$0.0007 per share.

Tier 4 Adding Credit

The Exchange proposes to establish a new adding credit tier titled the “Tier 4 Adding Credit” that would provide a credit of \$0.0015 per share for all orders, other than MPL and Non-Display Reserve orders, that add liquidity to the NYSE if:

- (i) The member organization has Adding ADV in MPL orders that is at least 4 million shares ADV, excluding any liquidity added by a DMM, and
- (ii) the member organization executes MOC and LOC orders of at least 0.10% of NYSE CADV.

Trading License Fees

Rule 300(b) provides, among other things, that the price per trading license will be published in the Exchange’s price list and that a tiered pricing structure based on the number of trading licenses held by a member organization may be utilized. The current trading license fee in place since 2016⁷ is \$50,000 per trading license and no charge for additional licenses held by a member organization. Regulated Only Members, as defined in Rule 2(b)(ii), are charged an annual administration fee of \$25,000.

The Exchange proposes to introduce tiered trading license fees and group all charges relating to trading license fees in a table under the “Trading License” heading.⁸

For all member organizations, including Floor brokers with more than ten trading licenses but excluding Regulated Only Members, the trading license fee would remain unchanged at \$50,000 for the first license held by the member organization unless one of the other rates is deemed applicable.

For member organizations with 3–9 trading licenses, the Exchange proposes a fee of \$35,000 for the first license held by a member organization that has Floor broker executions accounting for 40% or more of the member organization’s

combined adding and taking volumes during the billing month.

For Floor brokers with 1–2 trading licenses, the Exchange proposes a fee of \$25,000 for the first license held by a member organization that has Floor broker executions accounting for 40% or more of the member organization’s combined adding and taking volumes during the billing month.

As set forth in proposed footnote 15, there would continue to be no charge for additional licenses held by a member organization. In addition, the Exchange proposes not to charge for a trading license in place for 10 calendar days or less in a calendar month and eliminate the flat rate of \$100 per day for such license. Further, a trading license in place for 11 calendar days or more in a calendar month will be charged the applicable license fee for that month. Finally, for calculating the number of licenses described above, for the lower rates, the number of licenses will be based on those held by the member organization for 10 or more days in the billing month (including days the Exchange is not open for the entire trading day).⁹

For example, assume a member organization has 10 trading licenses in a given billing month with 9 licenses being held for 10 or more days that month and the tenth license being held for less than ten days. Further assume that the member organization also had Floor broker executions accounting for 40% or more of the member organization’s combined adding and taking volumes during that billing month. In such a case, the member organization would qualify for the lower license fee of \$35,000 in that billing month, prorated monthly.

If that same member organization in the following billing month held the same number of licenses, but with all 10 being held for 10 or more days, then the member organization would be billed the full rate of \$50,000 for that next billing month, prorated monthly, regardless of whether that member organization had Floor broker executions accounting for 40% or more of the member organization’s combined adding and taking volumes during that next billing month.

⁹ The Exchange also proposes non-substantive, clarifying changes to the current first sentence of footnote 15 to delete “indicated above” and add “indicated” before “annual,” “trading license” before “fee,” and “on a monthly basis” after “will be prorated.” Footnote 15 as amended would continue to apply to the first license held by a member organization in each category.

The annual administration fee for Regulated Only Members, as defined in Rule 2(b)(ii), would remain \$25,000.

* * * * *

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ 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 the proposed fee changes for certain executions at the close are reasonable. The Exchange’s closing auction is a recognized industry benchmark,¹² 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.

Member Organization Non-Tier Adding Credit

The Exchange believes that the change to the Member Organization Non-Tier Adding Credit for executions of orders in securities with a per share price of \$1.00 or more is reasonable, equitable and not unfairly discriminatory because it is intended to incentivize member organizations to submit additional amounts of liquidity to the Exchange to be eligible to receive the higher credits available from the Tier 1 Adding Credit, the Tier 2 Adding Credit, the Tier 3 Adding Credit and the proposed Tier 4 Adding Credit. The Exchange believes that the proposed lower credit for the Member Organization Non-Tier Adding Credit is equitable and not unfairly discriminatory because it would apply equally to all member organizations.

MOC/LOC Tiers and Non-Tier MOC/LOC

The Exchange believes that requiring an ADV of MOC activity on the NYSE of at least 0.45% of NYSE CADV, an

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) & (5).

¹² For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

⁷ See Securities Exchange Act Release No. 78233 (July 6, 2016), 81 FR 45190 (July 12, 2016) (SR–NYSE–2016–47).

⁸ The Exchange also proposes to correct a typographical error in the heading and change “Licences” to “Licenses.”

ADV of Total Close activity on the NYSE of at least 0.7% of NYSE CADV, and MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close) for the MOC/LOC Tier 1 fee, as well the requiring an ADV of MOC activity on the NYSE of at least 0.35% of NYSE CADV, an ADV of Total Close activity on the NYSE of at least 0.525% of NYSE CADV, and MOC activity comprised at least 35% of the member's total close activity (MOC/LOC and other executions at the close) for the MOC/LOC Tier 2 fee, is reasonable and not unfairly discriminatory because the proposed changes would encourage greater marketable and other liquidity at the closing auction.

The Exchange believes that charging a lower rate for MOC executions than LOC executions is reasonable and not unfairly discriminatory because MOC orders are always marketable and therefore have a higher likelihood of execution at the close. Charging a lower fee will encourage higher volumes of MOC orders at the close, which should result in a higher level of orders matched and greater liquidity for all Exchange auction participants.

The Exchange believes that introducing a requirement that at least 35% of the member organization's total close activity be comprised of MOC activity in order to qualify for MOC/LOC Tier 1 or 2 rates is reasonable and not unfairly discriminatory because MOC orders contribute meaningfully to the price and size discovery, which is the hallmark of the closing auction process. Charging a lower fee to member organizations utilizing MOC orders as a significant component of their closing auction participation will encourage higher volumes of MOC orders at the close, which should result in robust price discovery, a higher level of orders matched and greater liquidity for all Exchange auction participants.

The Exchange believes that lowering the MOC/LOC Non-Tier fee for MOC orders is reasonable as it is comparable to the above change in MOC rates for MOC/LOC Tier 1 and MOC/LOC Tier 2, and that MOC orders contribute meaningfully to the price and size discovery, which is the hallmark of the closing auction process. Charging a lower fee will encourage higher volumes of MOC orders at the close, which should result in a higher level of orders matched and greater liquidity for all Exchange auction participants.

Floor Broker MOC Orders

The Exchange believes that the proposed fee for executions of MOC orders sent to a Floor broker for

representation on the Exchange is reasonable because it would encourage additional displayed liquidity on the Exchange's closing auction. The Exchange believes the proposed change is equitable and not unfairly discriminatory because it would continue to encourage member organizations to send orders to the trading Floor for execution, thereby contributing to robust levels of liquidity on the trading Floor, which benefits all market participants. The Exchange further notes that the \$0.0005 fee for Floor broker MOC orders executed at the close is in line with the \$0.0007 fee for Floor broker executions swept into the close, excluding verbal interest.

Charges for d-Quotes and Other Executions at the Close

The Exchange believes it is appropriate to continue to not charge member organizations for the first 750,000 ADV of the aggregate of executions at the close for d-Quote, Floor broker executions swept into the close, excluding verbal interest, and executions at the close, excluding MOC Orders, LOC Orders, and CO Orders, as this will continue to provide less active member organizations a no-cost mechanism to participate in the closing auction. The proposed fee change for executions above 750,000 ADV is also reasonable, in that it is lower than applicable closing rates on the NASDAQ Stock Market, LLC ("NASDAQ"). For example, the default fee for Continuous Book executions in NASDAQ's "Closing Cross" is \$0.00085 per share, compared with the proposed \$0.0007 fee for d-Quote, Floor broker executions at the close, excluding verbal interest, and executions at the close, excluding MOC Orders, LOC Orders, and CO Orders.¹³

Tier 4 Adding Credit

The Exchange believes that the new Tier 4 Adding Credit of \$0.0015 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 incenting member organizations to provide additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that introducing a requirement for Adding ADV in MPL Orders that is at least 4 million shares ADV, excluding any liquidity added by a DMM is reasonable and not unfairly discriminatory because MPL orders provide opportunities for market

participants to interact with orders priced at the midpoint of the PBBO, thus providing price improving liquidity to market participants and increasing the quality of order execution on the Exchange's market, which benefits all market participants. These changes should encourage additional utilization of MPL Orders on the Exchange. The Exchange further believes that introducing a requirement for executions of MOC and LOC orders of at least 0.10% of NYSE CADV is reasonable and not unfairly discriminatory because it will encourage higher volumes of MOC and LOC orders at the close, which should result in a higher level of orders matched and greater liquidity for all Exchange auction participants.

The Exchange further believes that the proposed new Tier 4 Adding Credit of \$0.0015 is equitable and not unfairly discriminatory because all member organizations would benefit from such increased levels of liquidity. In addition, the new Tier 4 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. The Exchange also believes that the proposed new Tier 4 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.

Trading License Fees

The Exchange believes that the proposal to maintain the current trading license fee, including the fee for Regulated Only Members, and lower the fee for member organizations with 9 or less trading licenses who have Floor broker executions accounting for 40% or more of the member organization's combined adding and taking volumes during the billing month as well as basing the requirement on licenses held 10 or more days in the billing month, is equitable and not unfairly discriminatory because all similarly situated member organizations would continue to be subject to the same trading license fee structure and because access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange also believes that the proposal is equitable and not unfairly discriminatory because all member organizations would continue to have the opportunity to enjoy the benefits of the fee relief with respect to additional trading licenses. The Exchange believes that allowing member organizations

¹³ See NASDAQ Rule 7018(d).

with 9 or less trading licenses that have the requisite Floor broker volumes to obtain a license at a lower cost will help preserve the diversity of the Exchange's membership and encourage smaller member organizations to send orders to the Exchange. The Exchange believes that the threshold it has selected will continue to incent order flow from multiple sources and help maintain the quality of the Exchange's executions, which benefits all market participants. The Exchange further believes that continuing to not charge for additional licenses above the first license held by a member organization, not charging for a trading license in place for 10 calendar days or less, and charging the applicable trading license fee for a trading license in place for 11 calendar days or more is reasonable because it will continue to encourage member organizations to hold additional trading licenses, which will increase the number of market participants on the Exchange trading Floor, thereby promoting liquidity, price discovery, and the opportunity for price improvement for the benefit of all market participants. The proposal is also equitable and not unfairly discriminatory because it would apply equally to all license holders over the same number of days.

Non-Substantive Changes

The Exchange believes that the proposed non-substantive changes to consolidate and streamline the presentation of charges for executions at the close and trading license fees into a table, correct a typographical error and clarify the first sentence of footnote 15 are reasonable because they are designed to provide greater specificity and clarity to the Price List, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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,¹⁴ 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, the

Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁵ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁶ 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)¹⁷ 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-2018-03 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-2018-03. 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.

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ 15 U.S.C. 78s(b)(2)(B).

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–2018–03 and should be submitted on or before February 16, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82544; File No. SR–NSCC–2017–019]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Enhance the Process for Submitting and Accepting ETF Creations and Redemptions

January 19, 2018.

On November 28, 2017, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR–NSCC–2017–019, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder. ² The proposed rule change was published for comment in the **Federal Register** on December 7, 2017. ³ The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission approves the proposed rule change.

I. Description of the Proposed Rule Change

This proposed rule change would modify NSCC’s Rules & Procedures (“Rules”) ⁴ to add two new time frames during which exchange traded fund (“ETF”) agents may submit creation and redemption instructions, including as-of instructions, reversals, and corrections

(“ETF Instructions”) ⁵ to NSCC on behalf of ETF sponsors and ETF authorized participants. ⁶ The existing time frame during which ETF agents can submit ETF Instructions to NSCC extends from 2:00 p.m. to 8:00 p.m. (the “Primary Cycle”). ⁷ The two proposed time frames would extend from 12:30 a.m. to 2:00 p.m. (the “Intraday Cycle”) and from 9:00 p.m. to 11:30 p.m. (the “Supplemental Cycle”). ⁸

The two proposed cycles would enable ETF agents to submit ETF Instructions to NSCC later in the day, or earlier on the following day than currently possible, in order to make corrections to prior submissions. ⁹ The ability to make such new submission would help to avoid a situation where the NSCC member (“Member”) would need to post margin ¹⁰ to cover exposures from the prior erroneous submission. ¹¹ Specifically, the proposed Intraday Cycle would enable NSCC to receive, on an intraday basis, (1) ETF Instructions that are marked as-of a prior trade date, ¹² and (2) ETF Instructions for same-day settlement until the designated cut-off time of 11:30 a.m. ¹³ Meanwhile, the proposed

⁵ An as-of instruction is an instruction that is submitted with a trade date as of an earlier date. As-of reversal instructions and as-of corrections are types of as-of instructions. An as-of reversal instruction is an instruction that is submitted with a trade date as of an earlier date that reverses an instruction that was already processed by NSCC. Reversals and corrections are submitted on the same business day as the incorrect instruction, whereas as-of reversal instructions and as-of correction instructions are submitted on a business day after the date on which the incorrect instruction was submitted (but they would have the same trade date as the incorrect instruction). Notice, 82 FR at 57792.

⁶ ETF sponsors are issuers of ETFs. ETF authorized participants are (1) broker/dealers that have authorized participant agreements with ETF sponsors, and/or (2) broker/dealers that are NSCC members with an established ETF trading relationship with an ETF agent that is representing the ETF. See Rule 2, *supra* note 4.

⁷ All times referenced herein are Eastern Standard Time.

⁸ Notice, 82 FR at 57792–94.

⁹ *Id.* at 57793.

¹⁰ Rules, *supra* note 4. One way that NSCC mitigates its risk exposure to its Members is through a number of risk-based component charges (such as margin) that are calculated and assessed on Members daily. Each of the component charges collectively constitutes a Member’s daily required deposit (“Required Deposit”). The objective of the Required Deposit is to mitigate potential losses to NSCC associated with liquidation of the Member’s portfolio in the event that NSCC ceases to act for a Member (hereinafter referred to as a “Default”). The aggregate of all Members’ Required Deposits constitutes the Clearing Fund, which NSCC would be able to access should a defaulting Member’s own Required Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of that Member’s portfolio.

¹¹ Notice, 82 FR at 57793.

¹² *Id.*

¹³ *Id.*

Supplemental Cycle would enable ETF agents to submit ETF Instructions later than the Primary Cycle cut-off of 8:00 p.m. ¹⁴

In connection with the two proposed cycles, NSCC also proposes to revise the standardized input files, which are submitted by ETF agents to NSCC, and the output files, which are sent by NSCC to ETF agents and ETF authorized participants, to include additional information, such as a reversal/correction indicator and transaction time. ¹⁵

NSCC also proposes an “automated threshold value reasonability check.” This check would hold any ETF Instructions in a “pending” status if such instructions exceed certain thresholds established by NSCC when compared to the most recent closing price. ¹⁶

Finally, NSCC proposes a technical correction to the Rules to clarify that next-day settling ETF Instructions are no longer processed differently than other ETF Instructions when submitted to NSCC. ¹⁷

A. Current ETF Submission Processes

According to NSCC, ETF sponsors have processes outside of NSCC that allow the sponsors to create or redeem ETF shares with ETF authorized participants intraday. The details of the creations or redemptions are then recorded by ETF agents. ¹⁸ The processes conducted outside of NSCC are not uniformly automated and may involve manual data entry that the ETF agent eventually submits to NSCC using the standardized ETF create-and-redeem input file. ¹⁹

Currently, the Primary Cycle is the only time in which ETF agents can submit the input file to NSCC. ²⁰ However, according to NSCC, a risk exists that the manually entered data may contain errors that could result in incorrectly valued transactions. ²¹ NSCC states that any errors in the manually entered data contained in the input file may result in NSCC recording ETF Instructions that may be materially different than the value upon which the ETF sponsor and ETF authorized participant agreed. ²² Nevertheless, NSCC uses that information when calculating both the ETF agent’s and the ETF authorized participant’s daily

¹⁴ *Id.* at 57792.

¹⁵ *Id.* at 57794.

¹⁶ *Id.* at 57795–96.

¹⁷ *Id.* at 57794–95.

¹⁸ *Id.* at 57791.

¹⁹ *Id.*

²⁰ *Id.* at 57792.

²¹ *Id.* at 57791–92.

²² *Id.* at 57792.

¹⁸ 17 CFR 200.30–3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 82193 (December 1, 2017), 82 FR 57791 (December 7, 2017) (SR–NSCC–2017–019) (“Notice”).

⁴ Available at <http://www.dtcc.com/en/legal/rules-and-procedures>.