

in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. With this proposed fee change, the Exchange believes it remains an attractive venue for market participants to trade complex orders.

The Exchange also believes that its proposal to assess a \$0.20 per contract "taker" fee for all regular, or non-complex, Priority Customer orders in the Select Symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. The proposed fee is substantially lower than the \$0.39 per contract fee currently charged by PHLX for Customer orders that remove liquidity in a number of symbols that are subject to that exchange's maker/taker fees.<sup>20</sup> Therefore, while ISE is proposing a fee increase, the resulting fee remains lower than the fee currently charged by PHLX. Further, the proposed increase will bring this fee closer to the fee the Exchange currently charges to other market participants that employ a similar trading strategy. The Exchange also notes, however, that with this proposed rule change, the fee charged to regular, or non-complex, Priority Customer orders will remain lower (as it historically has always been) than the fee currently charged by the Exchange to other market participants.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.<sup>21</sup> 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 Exchange 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 Exchange 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-ISE-2012-17 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-ISE-2012-17. 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 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. 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-ISE-2012-17 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66600; File No. SR-NYSE-2012-07]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Certain Changes to the Transaction Fees and Credits Within the New York Stock Exchange Price List**

March 14, 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 March 1, 2012, New York Stock Exchange LLC ("NYSE" or "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 proposing certain changes to the transaction fees and credits within its Price List, which the Exchange proposes to become operative on March 1, 2012. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### **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 Exchange 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

<sup>20</sup> See PHLX Fee Schedule at <http://www.nasdaqtrader.com/content/marketreulation/membership/phlx/feesched.pdf>.

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>22</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.

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 aspects 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 is proposing certain changes to the transaction fees and credits within its Price List, which the Exchange proposes to become operative on March 1, 2012.<sup>3</sup>

Member Organizations

The Exchange proposes the following changes to the transaction fees and credits in the Price List that are applicable to member organizations:

- Member organizations currently receive a credit of \$0.0015 per-share per-transaction that adds liquidity, both displayed and non-displayed, to the NYSE. The Exchange proposes that the existing \$0.0015 per-share credit remain applicable to a member organization's transactions that add liquidity to the NYSE, except for a member organization's Non-Displayed Reserve Order transactions that add liquidity to the NYSE, for which a lower credit of \$0.0010 per-share will apply.<sup>4</sup>

- A member organization's charges for executions at the opening are currently capped at \$10,000 per-month per-member organization.<sup>5</sup> The Exchange proposes to increase the cap to \$15,000 per-month per-member organization.

- A member organization is currently charged \$0.00085 per-share per-transaction for a Market At-The-Close ("MOC") Order or a Limit At-The-Close ("LOC") Order,<sup>6</sup> unless the member organization executes an average daily trading volume ("ADV") of MOC and LOC Orders on the NYSE in the relevant calendar month of at least 14 million shares, in which case the member organization is charged \$0.00055 per-share per-transaction for MOC and LOC Orders. The Exchange proposes to increase the fee for MOC and LOC

Orders for member organizations that do not reach the 14 million threshold to \$0.00095.<sup>7</sup>

- Member organizations are currently charged \$0.0023 per-share for all other transactions that are not otherwise specified in the Price List (i.e., when taking liquidity from the NYSE). The Exchange proposes that this \$0.0023 rate only apply to non-Floor broker transactions.<sup>8</sup> The Exchange also proposes to charge non-Floor broker member organizations that add specified amounts of liquidity to the NYSE above their normal amount ("step-up") a lower rate of \$0.0022 per-share per-transaction.<sup>9</sup> This lower rate would apply to a non-Floor broker member organization whose ADV that adds liquidity to the NYSE during the billing month ("Adding ADV")<sup>10</sup> is at least the greater of (i) the member organization's January 2012 Adding ADV ("Baseline ADV") plus 0.075% of consolidated average daily volume in NYSE-listed securities during the billing month ("NYSE CADV") or (ii) the member organization's Baseline ADV plus 20%.<sup>11</sup>

Additionally, if a member organization's ratio of Baseline ADV-to-total ADV during January 2012 is less than 10%, the \$0.0022 rate would only apply to the member organization's shares that are executed in an amount up to and including 0.75% of NYSE CADV. The current rate of \$0.0023 per-share would apply to the member

organization's remaining shares that are executed, unless the member organization's Adding ADV is greater than its Baseline ADV by at least 0.25% of NYSE CADV.<sup>12</sup>

- The Price List contains several rates applicable to member organization transactions with a per-share price of less than \$1.00. Except for those transactions that are free or that result in a credit, the Price List generally specifies that the applicable rate is the lesser of (i) 0.3% of the total dollar value of the transaction or (ii) the same rate that would apply if the price per-share was not below \$1.00.<sup>13</sup> The Exchange proposes that, except for those that are currently free or that result in a credit, the rate for these transactions with a per-share price of less than \$1.00 be 0.3% of the total dollar value of the transaction.

Floor Brokers

The Exchange proposes the following changes to the transaction fees and credits in the Price List that are applicable to Floor brokers:

- Floor brokers are currently charged \$0.0029 per-share for orders that are routed from the NYSE and executed in another market. Other member organizations are charged \$0.0030 per-share for orders that are routed from the

<sup>12</sup> Continuing with the example above, if the member organization maintains a ratio of Baseline ADV-to-total ADV during January 2012 of less than 10%, the \$0.0022 rate would apply to the member organization's first 30 million shares that are executed (i.e., 0.75% X four billion NYSE CADV) and the current \$0.0023 rate would apply to the member organization's remaining shares that are executed, unless the member organization's Adding ADV is greater than 15 million shares (i.e., five million Baseline ADV plus 10 million step-up (0.25% X four billion NYSE CADV)), in which case the \$0.0022 rate would apply to all of the member organization's shares that are executed. The Exchange recognizes that a firm that becomes a member organization after January 2012 would have a ratio of Baseline ADV-to-total ADV during January 2012 that is zero. In this regard, the \$0.0022 rate would apply only to the new member organization's first 30 million shares that are executed, unless the new member organization's Adding ADV is greater than 10 million, in which case the \$0.0022 rate would apply to all of the new member organization's shares that are executed.

<sup>13</sup> The Exchange notes that this is explicit where the Price Lists specifies that the routing fee applicable to securities with a per-share price below \$1.00 is the lesser of (i) 0.3% of the total dollar value of the transaction or (ii) the routing fee that would be applicable if the price per-share was not below \$1.00. In contrast, this is inherent where, for example, the Price List specifies that the fee applicable to MOC and LOC executions in securities with a per-share price below \$1.00 is the lesser of (i) 0.3% of the total dollar value of the transaction or (ii) \$0.00085—the same MOC/LOC fee that would be applicable if the price per-share was not below \$1.00.

<sup>3</sup> Unless stated otherwise, the fees and credits discussed herein are not applicable to transactions with a per-share price of less than \$1.00.

<sup>4</sup> See NYSE Rule 13 (Definitions of Orders). A Non-Displayed Reserve Order is a limit order that is not displayed, but remains available for potential execution against all incoming automatically executing orders until executed in full or cancelled.

<sup>5</sup> See footnote 2 within the Price List.

<sup>6</sup> See NYSE Rule 13. The Exchange proposes a technical change to conform the use of the terms MOC and LOC throughout the Price List, where applicable.

<sup>7</sup> The Exchange is not proposing to change the existing \$0.00055 fee for member organizations that do reach the 14 million share threshold.

<sup>8</sup> As described below, Floor brokers would instead be charged \$0.0022 per-share for their other transactions that are not otherwise specified in the Price List.

<sup>9</sup> The Exchange proposes to amend the Price List to reflect that the current \$0.0023 rate would apply (i) only to non-Floor broker transactions and (ii) only if the lower rate of \$0.0022 proposed herein does not apply.

<sup>10</sup> The Exchange proposes to specify, with respect to this proposed lower rate, that calculations of Adding ADV would exclude early closing days as well as any liquidity added by a Designated Market Maker ("DMM").

<sup>11</sup> For example, assume that a particular member organization's Baseline ADV was five million shares and that NYSE CADV during the billing month was four billion shares. To qualify for the lower rate, the member organization would need to have an Adding ADV during the billing month that is at least the greater of (i) eight million shares (i.e., five million Baseline ADV plus three million step-up (0.075% X four billion NYSE CADV)) or (ii) six million shares (i.e., five million Baseline ADV plus one million step-up (120% of Baseline ADV)). The Exchange recognizes that a firm that becomes a member organization after January 2012 would have a Baseline ADV of zero. In this regard, a new member organization would need to have an Adding ADV during the billing month of at least three million shares (i.e., zero Baseline ADV plus three million step-up (0.075% X four billion NYSE CADV)) for the \$0.0022 rate to apply.

NYSE and executed in another market.<sup>14</sup> The Exchange proposes to charge Floor brokers the same \$0.0030 rate as other member organizations. Accordingly, the Exchange proposes to remove from the Price List the text that differentiates between the routing fees for Floor brokers and other member organizations.

- Floor brokers are currently charged \$0.0023 for all other transactions that are not otherwise specified in the Price List (i.e., when taking liquidity from the NYSE). As referenced above, the Exchange proposes to decrease this fee to \$0.0022 for all other Floor broker transactions.

#### DMMs

The Exchange proposes the following changes to the transaction fees and credits in the Price List that are applicable to DMMs:

- Except for executions at the opening, which are free, DMMs are currently charged \$0.0015 per-share per-transaction that removes liquidity from the Exchange. The Exchange proposes to increase this fee to \$0.0023 per-share per-transaction.

- DMMs currently receive a rebate of \$0.0005 per-share for executions at the close. The Exchange proposes to modify this rate so that DMM executions at the close are free.

- DMMs are currently eligible for rebates of \$0.0025 per-share when adding liquidity in More Active Securities<sup>15</sup> if the DMM meets the More Active Securities Quoting Requirement.<sup>16</sup> DMMs are also eligible for rebates of \$0.0030 per-share when adding liquidity in More Active Securities when the DMM meets both (i) the More Active Securities Quoting Requirement and (ii) the More Active Securities Quoted Size Ratio Requirement<sup>17</sup> when providing

liquidity that is 20% or less of the NYSE's total intraday adding liquidity in each such security for that month.<sup>18</sup> DMMs are eligible for a rebate of \$0.0026 per-share for added incremental liquidity over 20% of the NYSE's total intraday adding liquidity in each such security for that month.

The Exchange proposes a new rebate of \$0.0026 per-share when adding liquidity in More Active Securities if (i) the DMM meets both the More Active Securities Quoting Requirement and the More Active Securities Quoted Size Ratio Requirement and (ii) the DMM's providing liquidity is 10% or less of the NYSE's total intraday adding liquidity in each such security for that month.<sup>19</sup> The current \$0.0030 per-share rebate would be applicable for securities in which the DMM's providing liquidity is more than 10% but less than or equal to 20% of the NYSE's total intraday adding liquidity in each such security for that month. Additionally, the Exchange proposes to increase the existing \$0.0026 per-share rebate to \$0.0029 and that this rebate be applicable for securities in which the DMM's providing liquidity is more than 20% of the NYSE's total intraday adding liquidity in each such security for that month.<sup>20</sup>

#### SLPs

The Exchange proposes the following changes to the transaction fees and credits in the Price List that are applicable to SLPs:

- SLPs are eligible for credits when adding liquidity to the NYSE.<sup>21</sup> The amount of the credit is determined by the "tier" that the SLP qualifies for, which is based on the SLP's level of quoting and the ADV of liquidity added by the SLP in assigned securities. The credits currently range from \$0.0015 per-share per-transaction for the lowest

tier (tier 4) to \$0.0022 per-share per-transaction for the highest tier (tier 1).<sup>22</sup> The Exchange proposes to apply a credit within each tier for executions of Non-Displayed Reserve Orders that would be \$0.0005 less than the current credit, which, going forward, would be applicable to the SLP's other executions that add liquidity to the NYSE.<sup>23</sup>

- The Exchange proposes that the existing tier 1 credit, which is currently \$0.0022 per-share per-transaction, be increased to \$0.0024 per-share per-transaction.<sup>24</sup>

#### Crossing Session II

Crossing Session II ("CSII") runs on the Exchange from 4 p.m. to 6:30 p.m. Eastern Time and handles member organization crosses of a basket of securities of aggregate-priced buy and sell orders.<sup>25</sup> A fee of \$0.0001 per-share currently applies to both sides of a CSII execution, and a cap of \$50,000 per-month in CSII execution fees is applicable per-member organization. The Exchange proposes to increase the CSII fee to \$0.0002 per-share for each side of the transaction and increase the monthly cap on CSII fees to \$100,000.

#### General

The Exchange proposes to include a reference within the Price List to the last date on which the Price List was amended.

#### 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>26</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>27</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members,

<sup>14</sup> DMMs and Supplemental Liquidity Providers ("SLPs") are also charged a \$0.0030 per-share routing fee.

<sup>15</sup> "More Active Securities" are those with an ADV in the previous month equal to or greater than one million shares.

<sup>16</sup> A DMM meets the "More Active Securities Quoting Requirement" when a More Active Security has a stock price of \$1.00 or more and the DMM quotes at the National Best Bid or Offer ("NBBO") in the applicable security at least 10% of the time in the applicable month.

<sup>17</sup> See footnote 7 within the Price List. A DMM meets the "More Active Securities Quoted Size Ratio Requirement" when the DMM Quoted Size for an applicable month is 15% of the NYSE Quoted Size. The Exchange proposes a technical change to specify that the DMM Quoted Size for the applicable month must be "at least" 15% of the NYSE Quoted Size. The "NYSE Quoted Size" is calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO. The "DMM Quoted Size" is calculated

by multiplying the average number of shares of the applicable security quoted at the NBBO by the DMM by the percentage of time during which the DMM quoted at the NBBO.

<sup>18</sup> The NYSE total intraday adding liquidity is totaled monthly and includes all NYSE adding liquidity, excluding NYSE open and NYSE close volume, by all NYSE participants, including SLPs, customers, Floor brokers and DMMs.

<sup>19</sup> The Exchange proposes to remove duplicative language describing "NYSE total intraday adding liquidity." The Exchange also proposes to make certain non-substantive changes to renumber the existing \$0.0030 and \$0.0026 rebates as "(b)" and "(c)," respectively.

<sup>20</sup> The Exchange notes that the proposed \$0.0029 per-share rebate would be applicable to all of the member organization's adding liquidity in each such security for that month, not just the incremental liquidity that is more than 20% of the NYSE's total intraday adding liquidity.

<sup>21</sup> SLP credits are not applicable to executions of securities with a per-share price of \$1.00 or more at the close.

<sup>22</sup> The rate applicable to executions of securities with a per-share price of less than \$1.00 is \$0.0005.

<sup>23</sup> For example, if an SLP's executions fall within tier 3, then the existing \$0.0020 tier 3 rate would remain applicable to the SLP's executions that add liquidity other than executions of Non-Displayed Reserve Orders, for which a rate of \$0.0015 would apply.

<sup>24</sup> Consistent with the proposed differentiation between executions of Non-Displayed Reserve Orders and other executions, the Exchange proposes that the tier 1 SLP credit for executions of Non-Displayed Reserve Orders that add liquidity be \$0.0019 per-share per-transaction. To qualify for tier 1, an SLP must (i) meet or exceed the 10% quoting requirement in an assigned security pursuant to NYSE Rule 107B, and (ii) add liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate and, for each assigned SLP security, add liquidity of more than 2.5% of NYSE CADV for that assigned SLP security in the applicable month.

<sup>25</sup> See NYSE Rules 900–907.

<sup>26</sup> 15 U.S.C. 78f(b).

<sup>27</sup> 15 U.S.C. 78f(b)(4).

issuers and other persons using its facilities. The proposed rule change is equitably allocated and not unfairly discriminatory because it applies uniformly to all similarly situated member organizations.

Specifically, the Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it is intended to incentivize member organizations to submit additional amounts of displayed liquidity to the Exchange during the trading day. For example, the proposed higher credits applicable to member organization executions other than Non-Displayed Reserve Orders would incentivize member organizations to instead provide displayed liquidity on the Exchange. This would similarly be true with respect to providing a larger credit to SLP executions other than executions of Non-Displayed Reserve Orders.

The Exchange further believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it is intended to incentivize member organizations to submit additional liquidity to the Exchange during the trading day, regardless of whether such liquidity is displayed or non-displayed. For example, the proposal to increase the credit provided for tier 1 SLP transactions would incentivize SLPs to provide greater liquidity on NYSE in their assigned securities. Similarly, the proposed lower fee for removing liquidity for member organizations that "step-up" is intended to incentivize member organizations to submit specified amounts of liquidity to the Exchange during the trading day above their normal amounts submitted to the Exchange. The Exchange further believes that the proposed step-up concept is reasonable, equitable and not unfairly discriminatory because it is substantially similar to the manner in which other exchanges apply more favorable transaction rates for members that increase the amount of liquidity their transactions provide on those exchanges.<sup>28</sup> The Exchange notes that non-Floor brokers would be required to step-up to qualify for the lower rate, whereas the lower rate would apply to Floor broker transactions without the attendant step-up requirement. The Exchange believes that this is reasonable, equitable and not unfairly discriminatory because Floor brokers generally submit orders to the Exchange in an agency capacity, while other member organizations can choose to

submit orders in an agency or principal capacity, or both. Floor brokers therefore have less flexibility with respect to actively determining to add increased amounts of liquidity on the Exchange.

Increasing the current fee for MOC and LOC Orders with a per-share price of \$1.00 or more is also reasonable, equitable and not unfairly discriminatory because these fees would be less than the fees charged by the Exchange's primary competitors. Also, changing the rate for DMM executions at the close, from a \$0.0005 rebate to free, is reasonable, equitable and not unfairly discriminatory because it would further align the DMM closing rate with the rate applicable to other member organizations. The Exchange believes that increasing the cap for transactions at the opening is reasonable, equitable and not unfairly discriminatory because a member organization that reaches the cap would continue to be charged a marginal rate for its transactions at the opening that is lower than the \$0.0005 rate that would be applicable without the cap (i.e., once a member organization reaches the cap, its per-transaction rate thereafter will be zero and its marginal rate will decrease for each additional transaction at the open thereafter). The Exchange also believes that increasing the fee for CSII transactions and the monthly cap that is currently applicable thereto is reasonable, equitable and not unfairly discriminatory because the rate would continue to be less than the rate applicable to executions of MOC and LOC Orders and,<sup>29</sup> generally, because it would more closely align the CSII rate with the other rates within the Price List,<sup>30</sup> while maintaining a cap for member organizations that are particularly active during CSII. The Exchange further believes that the aspects of the proposed rule change that encourage liquidity on the Exchange are reasonable, equitable and not unfairly discriminatory because they would apply uniformly to all similarly situated member organizations and because they would contribute to price discovery on the Exchange and benefit investors generally.

The proposed change to the Floor broker charge for routing orders to away

markets and the Floor broker charge for all other transactions not otherwise specified in the Price List (i.e., when taking liquidity from the NYSE) is reasonable, equitable and not unfairly discriminatory because, taken together, they are not expected to materially increase or decrease the net fees charged to Floor brokers in the aggregate. Additionally, the Exchange believes that the proposed change to the rates for member organization executions with a per-share price of less than \$1.00 is reasonable, equitable and not unfairly discriminatory because it would simplify the Price List. Due to the limited number of securities that trade on the Exchange at a price below \$1.00 and the resulting limited number of executions on the Exchange with a per-share price of less than \$1.00,<sup>31</sup> the Exchange does not anticipate that this change would have a more than negligible impact on transaction fees charged to member organizations.<sup>32</sup> Furthermore, the Exchange notes that the rate of 0.3% of the total dollar value of the transaction would remain consistent with the pricing limitations for securities with a per-share price of less than \$1.00 under Rule 610(c) under Regulation NMS.<sup>33</sup>

The Exchange believes that the proposed increase in the DMM rate for transactions that remove liquidity from the Exchange is reasonable, equitable and not unfairly discriminatory because it would align the DMM rate for removing liquidity with the rate applicable to certain other member organizations.

The Exchange has also proposed a new rebate of \$0.0026 per-share when adding liquidity in More Active Securities if the DMM meets both the More Active Securities Quoting Requirement and the More Active Securities Quoted Size Ratio Requirement when providing liquidity that is 10% or less of the NYSE's total intraday adding liquidity in each such security for that month. Accordingly, the current \$0.0030 per-share rebate would be applicable for securities in which the DMM's providing liquidity is more than 10% but less than or equal to 20% of the NYSE's total intraday adding liquidity in each such security

<sup>31</sup> The Exchange notes that securities for which the average closing price reported on the consolidated tape is less than \$1.00 over a consecutive 30 trading-day period are subject to being delisted from the Exchange. See Section 802.01C (Price Criteria for Capital or Common Stock) of the NYSE Listed Company Manual.

<sup>32</sup> The Exchange notes that, depending on the value of the transaction, this change could result in either an increase or decrease in the rate per-transaction.

<sup>33</sup> 17 CFR 242.610(c).

<sup>28</sup> See, e.g., the "Step Up Tiers" within the NYSE Arca Equities, Inc. Fee Schedule.

<sup>29</sup> For example, the proposed rate of \$0.0002 would continue to be substantially less than the rate for executions of MOC and LOC Orders, which is currently \$0.00055 or \$0.00085 per transaction, with the latter rate proposed to be \$0.00095.

<sup>30</sup> For example, except for transactions that are free, both the current and proposed CSII rate of \$0.0001 and \$0.0002, respectively, are substantially less than the next lowest fee within the Price List (i.e., the \$0.0005 rate for transactions at the opening).

for that month. The Exchange recognizes that the rebate for a DMM whose providing liquidity is currently 10% or less of the NYSE's total intraday adding liquidity will decrease from \$0.0030 to \$0.0026. The Exchange believes that this change is reasonable, equitable and not unfairly discriminatory because it would result in rebates being applied that are more representative of the amount of liquidity added by the particular DMM. In this regard, the Exchange believes that a DMM that meets both the More Active Securities Quoting Requirement and the More Active Securities Quoted Size Ratio Requirement is likely to also be providing liquidity that is reasonably close to, but not greater than, 10% of the NYSE's total intraday adding liquidity in each such security for that month. In contrast, the Exchange believes that a DMM whose providing liquidity is greater than 10% of the NYSE's total intraday adding liquidity would be adding liquidity above the amount associated with meeting both the More Active Securities Quoting Requirement and the More Active Securities Quoted Size Ratio Requirement. Accordingly, the Exchange considers it reasonable, equitable and not unfairly discriminatory to provide a higher rebate for a DMM whose providing liquidity is greater than 10% of the NYSE's total intraday adding liquidity in each such security for that month.

The Exchange notes that the current \$0.0026 per-share rebate would no longer be applicable only to the incremental liquidity that is more than 20% of the NYSE's total intraday adding liquidity in each such security for that month. In this regard, the Exchange believes that the proposal to increase the rebate to \$0.0029 is reasonable, equitable and not unfairly discriminatory because it would balance the effect of the rate applying on a cumulative basis, as opposed to incrementally.

The Exchange also believes that the technical amendments proposed herein would better assist member organizations and others that view the Price List in determining the fees and credits that are applicable on the Exchange.

#### *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>34</sup> of the Act and subparagraph (f)(2) of Rule 19b-4 <sup>35</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 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. 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](mailto:rule-comments@sec.gov). Please include File No. SR-NYSE-2012-07 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 No. SR-NYSE-2012-07. 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 a.m. and 3 p.m. Copies of such 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 No. SR-NYSE-2012-07 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

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

[FR Doc. 2012-6709 Filed 3-19-12; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66599; File No. SR-NYSEAmex-2012-17]

#### **Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Fee Changes Relating to Trading Nasdaq Securities Pursuant to Unlisted Trading Privileges**

March 14, 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 March 1, 2012, NYSE Amex LLC ("NYSE Amex" or "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

<sup>36</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.

<sup>34</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>35</sup> 17 CFR 240.19b-4(f)(2).