

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 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 publicly available. All submissions should refer to File Number SR-Phlx-2012-91 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67408; File No. SR-NYSE-2012-22]

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

July 11, 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 June 29, 2012, New York Stock Exchange LLC (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

proposed rule change from interested persons.

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

The Exchange proposes certain changes to the transaction fees and credits within its Price List, which the Exchange proposes to become operative on July 1, 2012. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange is proposing certain changes to the transaction fees and credits within its Price List, which the Exchange proposes to become operative on July 1, 2012.

The Exchange recently amended Rule 107B, which currently operates on a pilot basis,<sup>3</sup> to add a class of Supplemental Liquidity Providers ("SLPs") that are registered as market makers at the Exchange ("SLMMs").<sup>4</sup> SLPs in the original class ("SLP-Props") are eligible for credits when adding liquidity on the Exchange. The amount of the credit is determined by the "tier" for which the SLP-Prop qualifies, which is based on (i) whether the SLP-Prop meets the 10% average or more quoting requirement in all assigned securities

pursuant to Rule 107B; and (ii) whether the SLP-Prop (a) adds liquidity of an average daily volume ("ADV") of more than 10 million shares for all assigned SLP securities in the aggregate; and (b) for each assigned SLP security, adds liquidity within a specified range of percentages of consolidated ADV ("CADV") for that security.

The Exchange hereby proposes that transaction credits for SLMMs would be identical to those that are applicable to SLP-Props, both with respect to the rate of the credit and the qualification requirements for the tiers. The Exchange also proposes to specify that, for purposes of determining whether an SLP has added liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate, shares of an SLP-Prop and an SLMM of the same member organization would be aggregated.<sup>5</sup> The Exchange has proposed this aggregation because, as described in SR-NYSE-2012-10, if a member organization has more than one business unit, and the SLP-Prop business unit is walled off from the SLMM business unit, the member organization may engage in both an SLP-Prop and SLMM business from those different business units.<sup>6</sup> Accordingly, because the 10 million share threshold applies to all of an SLP's shares in the aggregate, the Exchange believes that the activity of an SLP-Prop and an SLMM of the same member organization should be aggregated.<sup>7</sup> However, for purposes of determining whether an SLP has satisfied the 10% average or more quoting requirement pursuant to Rule 107B as well as the per-security percentage of added liquidity, shares of an SLP-Prop and an SLMM of the same member organization would not be aggregated. As described in SR-NYSE-2012-10, provided there is no coordinated trading between the SLP-Prop and SLMM business units, they may be assigned the same securities.<sup>8</sup> In

<sup>5</sup> The Exchange proposes to add "in the aggregate" to the \$0.0005 tier for securities with a per-share price of less than \$1.00 to make this language consistent with the other tiers. This aspect of the proposed rule change would not be a substantive change.

<sup>6</sup> See *supra* note 4 at 35456.

<sup>7</sup> Additionally, this would be consistent with the manner in which the Exchange aggregates the activity of an SLP-Prop and an SLMM of the same member organization for purposes of determining whether the 10 million share requirement of Rule 107B(a) has been satisfied.

<sup>8</sup> See *supra* note 4 at 35456. See also Rule 107B(i)(2)(B), which provides that an SLP-Prop shall not also act as an SLMM in the same securities in which it is registered as an SLP-Prop and vice versa, provided, however, that if a member organization maintains information barriers between an SLP-Prop unit and an SLMM unit, the SLP-Prop and SLMM units may be assigned the same securities.

<sup>17</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>3</sup> See Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR-NYSE-2008-108). The pilot is currently scheduled to end on July 31, 2012.

<sup>4</sup> See Securities Exchange Act Release No. 67154 (June 7, 2012), 77 FR 35455 (June 13, 2012) (SR-NYSE-2012-10). The Exchange notes that pursuant to SR-NYSE-2012-10 the addition of the SLMM class would not be effective until the first day of the month following Commission approval, which is July 2, 2012.

this regard, the Exchange believes that this proposed disaggregation is consistent with the prohibition of an

SLP-Prop coordinating its trading with an SLMM of the same member organization, and vice versa.<sup>9</sup>

Accordingly, the credits for SLP-Props and SLMMs would be as follows:

Credit per Share—per transaction—for Supplemental Liquidity Providers (“SLPs”)—when adding liquidity to the NYSE in securities with a per share price of \$1.00 or more, if the SLP does not qualify for the higher credit set forth below.	\$0.0015; or \$0.0010 if a Non-Displayed Reserve Order.
Credit per Share—per transaction—for SLPs—when adding liquidity to the NYSE in securities with a per share price of \$1.00 or more, if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B [sic] and (ii) adds liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) and, for each assigned SLP security, adds liquidity of not more than 1.0% of the consolidated ADV for that assigned SLP security in the applicable month (shares of an SLP-Prop and an SLMM of the same member organization shall not be aggregated).	\$0.0020; or \$0.0015 if a Non-Displayed Reserve Order.
Credit per Share—per transaction—for SLPs—when adding liquidity to the NYSE in securities with a per share price of \$1.00 or more, if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B [sic] and (ii) adds liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) and, for each assigned SLP security, adds liquidity of more than 1.0% but not more than 2.5% of the consolidated ADV for that assigned SLP security in the applicable month (shares of an SLP-Prop and an SLMM of the same member organization shall not be aggregated).	\$0.0021; or \$0.0016 if a Non-Displayed Reserve Order.
Credit per Share—per transaction—for SLPs—when adding liquidity to the NYSE in securities with a per share price of \$1.00 or more, if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B [sic] and (ii) adds liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) and, for each assigned SLP security, adds liquidity of more than 2.5% of the consolidated ADV for that assigned SLP security in the applicable month (shares of an SLP-Prop and an SLMM of the same member organization shall not be aggregated).	\$0.0024; or \$0.0019 if a Non-Displayed Reserve Order.
Credit per Share for SLPs for executions of securities with a per share price of \$1.00 or more at the close .....	None.
Credit per Share—per transaction—for SLPs—when adding liquidity to the NYSE in securities with a per share price of less than \$1.00, if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B [sic] and (ii) adds liquidity of an ADV of more than 10 million shares for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) in the applicable month.	\$0.0005.

The following example illustrates how the proposed aggregation/disaggregation would operate for a member organization that has separate business units that operate as an SLP-Prop and an SLMM, where the SLP-Prop and SLMM are each assigned securities ABC and XYZ and the following assumptions are made:

- The percentage of time at the NBBO for securities ABC and XYZ during the month is 13% and 11%, respectively for SLP-Prop and 11% and 9%, respectively, for SLMM;
- The ADV of adding liquidity for all assigned securities (i.e., securities ABC and XYZ) during the month is 5 million shares per day for SLP-Prop and 6 million shares per day for SLMM; and
- The adding liquidity in securities ABC and XYZ during the month is 1.5% and 2.6% of CADV, respectively, for SLP-Prop and 0.6% and 1.5% of CADV, respectively, for SLMM.

In this example, the member organization's combined ADV for adding liquidity in all assigned securities is greater than 10 million,

which enables both the SLP-Prop and SLMM units of that member organization to qualify for the SLP credit of \$0.0020 or more if it meets the individual per security requirements. The SLP-Prop would qualify for a \$0.0021 credit per share in security ABC and a \$0.0024 credit per share in security XYZ. The SLMM would qualify for a \$0.0020 credit per share in security ABC, but only a \$0.0015 credit per share in security XYZ because it does not meet the quoting requirements in security XYZ.

Unrelated to the proposed SLMM credits, the Exchange proposes to remove obsolete text from the Price List that states that there is no charge during Crossing Session (“CS”) II, CSIII and CSIV.<sup>10</sup> In this regard, CSIII and CSIV are no longer in effect on the Exchange.<sup>11</sup> Additionally, the Exchange currently charges a fee for executions during CSII.<sup>12</sup> For clarity, the Exchange proposes to move the fee schedule references to CSI and CSII under one heading.

## 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>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>14</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. 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 the same credits would be made available to SLMMs that are currently available for SLP-Props. In this regard, the proposed SLMM credits are reasonable, equitable and not unfairly discriminatory because they are available to all SLMMs on an equal basis and because the credits would

<sup>9</sup> This also would be consistent with the manner in which the Exchange disaggregates the activity of an SLP-Prop and an SLMM of the same member organization for purposes of determining whether the 10% requirement of Rule 107B(a) has been satisfied.

<sup>10</sup> The Exchange also proposes to designate related footnote 14 in the Price List as “reserved.”

<sup>11</sup> CSIII and CSIV operated pursuant to a pilot program that ceased operating after it was last extended to February 2009. See Securities Exchange Act Release No. 57213 (January 28, 2008), 73 FR 6540 (February 4, 2008) (SR-NYSE-2008-07).

<sup>12</sup> See Securities Exchange Act Release No. 62082 (May 11, 2010), 75 FR 27848 (May 18, 2010) (SR-NYSE-2010-34). See also Securities Exchange Act Release No. 66600 (March 14, 2012), 77 FR 16298 (March 20, 2012) (SR-NYSE-2012-07).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

provide incentives to SLMMs that are reasonably related to an SLMM's additional quoting and liquidity obligations in each security.

The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to aggregate shares of an SLP-Prop and an SLMM of the same member organization for purposes of determining whether an SLP has added liquidity of an ADV of more than 10 million shares for all assigned SLP securities. Specifically, and as described in SR-NYSE-2012-10, if a member organization has more than one business unit, and the SLP-Prop business unit is walled off from the SLMM business unit, the member organization may engage in both an SLP-Prop and SLMM business from those different business units.<sup>15</sup> Accordingly, because the 10 million share threshold applies to all of an SLP's shares in the aggregate, the Exchange believes that the activity of an SLP-Prop and an SLMM of the same member organization should be aggregated.<sup>16</sup> Furthermore, provided there is no coordinated trading between the SLP-Prop and SLMM business units, they may be assigned the same securities.<sup>17</sup> In this regard, however, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to disaggregate shares of an SLP-Prop and an SLMM of the same member organization for purposes of determining whether an SLP has satisfied the 10% average or more quoting requirement pursuant to Rule 107B as well as the per-security percentage of added liquidity. The Exchange believes that this proposed disaggregation is consistent with the prohibition of an SLP-Prop coordinating its trading with an SLMM of the same member organization, and vice versa.<sup>18</sup>

The Exchange also believes that the removal of the text describing that there is no charge during CSII, CSIII and CSIV and putting the text describing CSI and

CSII under one heading is reasonable, equitable and not unfairly discriminatory because it would result in the removal of obsolete text from the Price List and add greater clarity regarding off-hours trading.

#### *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>19</sup> of the Act and subparagraph (f)(2) of Rule 19b-4 <sup>20</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.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2012-22 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.

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-NYSE-2012-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2012-22 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-67404; File No. SR-ISE-2012-62]**

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees for Certain Orders Executed on the Exchange**

July 11, 2012.

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 July 2,

<sup>21</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>15</sup> See *supra* note 4 at 35456.

<sup>16</sup> Additionally, this would be consistent with the manner in which the Exchange aggregates the activity of an SLP-Prop and an SLMM of the same member organization for purposes of determining whether the 10 million share requirement of Rule 107B(a) has been satisfied.

<sup>17</sup> See *supra* note 4 at 35456. See also Rule 107B(i)(2)(B), which provides that an SLP-Prop shall not also act as an SLMM in the same securities in which it is registered as an SLP-Prop and vice versa, provided, however, if a member organization maintains information barriers between an SLP-Prop unit and an SLMM unit, the SLP-Prop and SLMM units may be assigned the same securities.

<sup>18</sup> Additionally, this would be consistent with the manner in which the Exchange disaggregates the activity of an SLP-Prop and an SLMM of the same member organization for purposes of determining whether the 10% requirement of Rule 107B(a) has been satisfied.