

Dated: April 22, 2021.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-08729 Filed 4-26-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91626; File No. SR-NYSE-2021-22]

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

April 21, 2021.

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 April 1, 2021, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Price List to (1) lower the new firm and the annual trading license fees and (2) introduce the NYSE Membership On-Ramp Program, which offers discounted membership fees, port fees and market data fees for up to 18 months for new member organizations. The Exchange proposes to implement the fee changes effective April 1, 2021. 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 (1) lower the new firm and the annual trading license fees and (2) introduce the NYSE Membership On-Ramp Program (the “Program”), which offers discounted membership fees, port fees and market data fees for up to 18 months for new member organizations.

The purpose of this filing is to encourage smaller, retail-oriented market participants that are not currently NYSE member organizations to become member organizations by discounting certain fixed costs associated with NYSE membership.

The Exchange proposes to implement the fee changes effective April 1, 2021.

Background

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁴

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”⁵ Indeed, equity trading is currently dispersed across 16 exchanges,⁶ 31 alternative trading

systems,⁷ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange has more than 20% market share.⁸ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange’s market share of trading in Tape A, B and C securities combined is less than 12%.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

Proposed Rule Change

The Exchange proposes to modify, and discount certain fixed costs related to Exchange membership in order to incentivize smaller, retail-oriented market participants to consider NYSE membership. Specifically, as discussed more fully below, the Exchange proposes to lower the new firm fee for all member organizations and charge the annual trading license fee in 12 monthly installments, which will slightly reduce the current fees. In addition, the Exchange proposes to introduce a new NYSE Membership On-Ramp Program (the “Program”) that offers significant discounts for up to 18 months on membership fees, port fees and market data fees for new member organizations, subject to specific restrictions.

Reduction of New Firm Fee

The Exchange currently charges a New Firm Fee ranging from \$2,500 to \$20,000, depending on the type of firm, which is charged per application for any broker-dealer that applies to be approved as a member organization. The Exchange proposes to lower the New Firm Fees as follows:

- The fee for carrying firms would be reduced from the current \$20,000 to \$4,000;
- The fee for introducing firms would be reduced from the current \$7,500 to \$4,000; and

markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml>.

⁷ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atstlist.htm>.

⁸ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

⁵ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

⁶ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

• The fee for non-public organizations would be reduced from the current \$2,500 to \$2,000.

The proposed reductions of the New Firm Fee would be available to all applicants seeking approval as a new member organization, including carrying firms, introducing firms, or non-public organizations, which would be seeking to obtain an equities trading license at the Exchange. The most significant fee reduction would be for carrying firms, which is designed to incentivize Exchange membership, and in particular incentivize smaller, retail-oriented firms to become Exchange member organizations.

In conjunction with the discounts the Exchange proposes to introduce through the Program, discussed below, the Exchange believes that the proposed fee changes would provide increased incentives for equity trading firms that are not currently Exchange member organizations to apply for Exchange membership. The Exchange believes that having more member organizations trading on the Exchange would benefit investors through the additional display of liquidity and increased execution opportunities on the Exchange. In addition, the Exchange believes that incentivizing smaller broker-dealers to become member organizations could increase the amount of retail order flow sent to a public exchange, thereby encouraging greater participation and liquidity.

Annual Fee Billed Monthly

Currently, for all member organizations, including Floor brokers with more than ten trading licenses but excluding Regulated Only Members,⁹ the Exchange charges \$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 charges \$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 charges 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. Finally, Regulated Only Members are charged an

Annual Administrative Fee of \$25,000. These fees can be prorated monthly as set forth in footnote 15 of the Price List.

The Exchange proposes to charge trading license fees on a monthly basis. Dividing the current annual fees into 12 equal amounts results in a \$20 reduction per fee for the first two categories of member organizations and a \$40 reduction for the remaining two categories of member organizations, as follows:

- The current \$50,000 annual fee for the first license held by the member organization would become a \$4,165 fee per month for the first trading license held by a member organization unless one of the other rates is deemed applicable, which translates into a \$49,980 annual fee.
- The current \$35,000 annual fee for the first trading 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 would become a \$2,915 fee per month, which translates into a \$34,980 annual fee.
- The current \$25,000 for the first trading 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 would become a \$2,080 fee per month, which translates into a \$24,960 annual fee.
- Finally, the current \$25,000 administrative fee for Regulated Only Members would be charged as a \$2,080 per month fee, which translates into a \$24,960 annual fee.

In addition, the Exchange proposes conforming changes to footnote 15 of the Price List. First, the Exchange proposes to delete the second sentence of the footnote that provides that the indicated annual trading license fee will be prorated on a monthly basis for the portion of the calendar year during which the trading license will be outstanding. Such a provision would be moot when fees are charged monthly, and footnote 15 already provides the applicable charges for trading licenses that are in place for 10 calendar days or less in a calendar month as well as 11 calendar days or more in a calendar month. Second, the Exchange would delete “annual” before trading license in the fifth sentence of footnote 15.

NYSE Membership On-Ramp Program

The Exchange currently charges member organizations certain fixed costs related to Exchange membership, including the trading license fees described above, port fees, and fees for

market data products, which are filed with the Commission and set forth on a separate Fee Schedule.¹⁰ Effective April 1, 2021, the Exchange proposes to discount these fees for new member organizations during the first 18 months following approval as a new member organization to make Exchange membership easier for a greater number of market participants.

Eligibility and Restrictions

To be eligible, a new member organization may not have been, within the prior 18 months, approved as an NYSE member organization with an activated trading license. Eligibility for discounts begins in the month that a new membership application is approved. A new member organization is only eligible to enroll in the Program once. A new member organization that is an “affiliate” of an existing member organization, defined in the General section at the end of the Price List as any member organization under 75% common ownership or control of that member organization, is ineligible to participate in the Program. In addition, as proposed, Regulated Only Members would be ineligible to participate in the Program but could become eligible as of the month the Regulated Only Membership is converted into a full membership. Regulated Only Members are eligible to convert to a full membership at any time.

The proposed monthly trading license fees described above based on a member organization's number of trading licenses would be eligible for the Program's proposed discounts during the 18-month period.

Further, the NYSE offers the following Market Data products to new member organizations on a voluntary, subscription basis: the NYSE Integrated Feed, NYSE Best Quote and Trades (BQT) BQT Feed, NYSE Order Imbalances Feed, NYSE BBO, NYSE Trades, NYSE Openbook Ultra and NYSE Openbook Aggregated (“Market Data Product”). Each market data product allows a vendor to redistribute certain data elements included in the data feed on a real-time basis. For each product, the Exchange charges associated fees set forth on the Market Data Fee Schedule.¹¹ The Exchange is not proposing any changes to the NYSE Proprietary Market Data Fee Schedule or the fees described therein.

The Market Data Fees that would be eligible for the Program are the Access

⁹ See Rule 2(b)(ii) (a Regulated Only Member is a registered broker or dealer which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate).

¹⁰ The NYSE Proprietary Market Data Fee Schedule is available at https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf (“Market Data Fee Schedule”).

¹¹ See note 10, *supra*.

Fees (general and Per User, if applicable), Professional User Fees (internal use only), Non-Professional User fee (for external use, including Enterprise Fees), Non-Display Fees, Redistribution Fee, and Multiple Data Feed Fee ("Eligible Market Data Fees") for the market data products specified on the Market Data Fee Schedule. The Program's discounts are not available to a member organization subject to the Digital Media Enterprise Fee or the Professional User Fees for data externally distributed to professional subscribers. A firm that was a subscriber to any of the Eligible Market Data Fees within the prior 18 months before becoming approved as a new member organization is ineligible for Program's Market Data fee discounts. Program discounts cannot be combined with any other discounts applicable to Eligible Market Data Fees. For example, the Exchange offers a one-month free trial to any firm that subscribes to a particular NYSE proprietary real time market data product for the first time. As proposed, this discount could not be combined with Program discounts to extend Phase 1 by one month.

Finally, the Program would be available for fees charged for the first 10 ports that provide connectivity to the Exchange's trading systems (*i.e.*, ports for entry of orders and/or quotes ("order/quote entry ports")). The Exchange charges \$550 per order/quote entry port per month. Designated Market Makers ("DMMs") are not charged for the first 12 order/quote entry ports per month that connect to the Exchange. The Exchange also currently makes ports available for drop copies and charges \$550 per port per month, except that DMMs are not charged for drop copy ports that connect to the Exchange. The Program would also be available for fees charged for a member organization's first 10 drop copy ports.¹²

Because DMMs are not charged for first dozen order/quote entry ports and are not charged at all for drop copy ports, new member organizations that are DMMs would not be eligible for the discount for either order/quote entry ports or drop copy ports.

The proposed discounts would be phased out over a period of 18 months. Specifically, during Phase 1 (months 1–6) following approval of a new membership application, the applicable discount for Eligible Market Data Fees, trading license fees, and port fees would be 100% for each eligible product.

During Phase 2 (months 7–12), the amount of the discount would become 50%. Finally, during Phase 3 (months 13–18), the amount of the discount will be 25%. The Program would terminate at the end of Phase 3 (18 months), and the discounted fees will be charged to that member organization at the regular rate set forth in the Price List or Market Data Fee Schedule, as applicable, from that point forward.

For example, assume new member organization A approved in May 2021 signs up for 20 order/quote entry ports. Currently, member organization A would be charged \$550 per port, for a total of \$11,000 per month. Under the Program, member organization A's first 10 ports would be free for the first 6 months, and the firm would only be charged for 10 ports at \$550, for a total of \$5,500 per month. In months 7 to 12, member organization A's first 10 ports would be billed at a 50% discount, or \$275 per port per month, for a total of \$2,750 per month. In the final 6 months of the Program, member organization A's first 10 ports would be billed at a 25% discount, or \$412.50 per port per month, for a total of \$4,125 per month.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁴ 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 Proposed Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market where market participants can and do move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Moreover, in the current competitive market environment, market participants also have a choice of where to become members.

In light of this, the Exchange believes that it is reasonable to lower the new firm and trading license fee for all

member organizations and offer discounted membership fees, port fees and market data fees for up to 18 months for new member organizations in order to provide an incentive for smaller broker-dealers to apply for Exchange membership and a trading license. The Exchange believes that providing an incentive for broker-dealers that are not currently Exchange member organizations to apply for membership would encourage market participants to become members of the Exchange and bring additional liquidity to a public market. In addition, the Exchange believes that the proposal could result in additional retail liquidity to a public exchange, to the benefit of all market participants. The Exchange believes creating incentives and opportunities for new members on the Exchange protects investors and the public interest by increasing the competition and liquidity on a transparent public market.

The Proposal is an Equitable Allocation of Fees

The Exchange believes the proposal constitutes an equitable allocation of fees because the proposed change would be offered to all market participants that wish to trade at the Exchange and all new member organizations, all of whom would continue to be subject to the same fee structure and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor Exchange membership and the Exchange's pricing if they believe that alternatives offer them better value.

The proposal is not unfairly discriminatory because it neither targets nor uniquely impacts any particular category of market participant. The proposed lower member fees, monthly trading license fees and discounted access to Exchange services for up to 18 months does not permit unfair discrimination because the proposed changes would apply to all similarly situated member organizations, who would all benefit from the lower and discounted fees on an equal basis. The Exchange does not believe that excluding new DMM member organizations from the port fees discounts under the Program is unfairly discriminatory because DMM firms are not currently charged for drop copy

¹² Only one fee per drop copy port applies, even if receiving drop copies from multiple order/quote entry ports.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) & (5).

ports or the first 12 order/quote entry ports.

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,¹⁵ 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, as discussed above, the Exchange believes that the proposed changes would increase competition by reducing the cost of operating as an Exchange member organization, which the Exchange believes will enhance market quality through the submission of additional retail liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁶

Intramarket Competition. The proposed changes are designed to attract additional member organizations and order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to become Exchange member organizations and direct order flow, especially retail order flow, to the Exchange. Greater liquidity benefits all market participants on the Exchange by encouraging market participants to become Exchange member organizations and send orders to the Exchange, thereby providing more trading opportunities and contributing to robust levels of liquidity on the Exchange, which benefits all market participants. The proposed lower fees and discounts would be available to all similarly situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on

competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those 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 off-exchange venues. 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 does not believe its proposed fee change can impose any burden on intermarket competition.

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)¹⁷ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁸ 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)¹⁹ 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-2021-22 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-2021-22. 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 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 SR-NYSE-2021-22 and should be submitted on or before May 18, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-08680 Filed 4-26-21; 8:45 am]

BILLING CODE 8011-01-P

¹⁵ 15 U.S.C. 78f(b)(8).

¹⁶ Regulation NMS, 70 FR at 37498-99.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(2).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

²⁰ 17 CFR 200.30-3(a)(12).