

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may take effect upon filing. The Exchange states that the proposed rule change raises no novel regulatory issues because the Funds will continue to comply with the requirements of BZX Rule 14.11(m). The Exchange also notes that a similar proposal to amend the listing rules of other shares that BZX also lists and trades pursuant to Rule 14.11(m) is currently in effect.<sup>16</sup> For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.<sup>17</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 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 Number SR-CboeBZX-2021-075 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-CboeBZX-2021-075. 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-CboeBZX-2021-075 and should be submitted on or before December 7, 2021.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-24896 Filed 11-15-21; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

##### Sunshine Act Meetings

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an

Open Meeting on Wednesday, November 17, 2021 at 11:00 a.m.

**PLACE:** The meeting will be webcast on the Commission's website at [www.sec.gov](http://www.sec.gov).

**STATUS:** This meeting will begin at 11:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at [www.sec.gov](http://www.sec.gov).

##### MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to adopt amendments to the proxy rules relating to the use of universal proxy cards and related disclosures in director elections.

2. The Commission will consider whether to propose amendments to the proxy rules governing proxy voting advice.

##### CONTACT PERSON FOR MORE INFORMATION:

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

*Authority:* 5 U.S.C. 552b.

Dated: November 10, 2021.

**Vanessa A. Countryman,**  
*Secretary.*

[FR Doc. 2021-25030 Filed 11-12-21; 11:15 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93545; File No. SR-NYSE-2021-65]

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

November 9, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> See Securities and Exchange Act No. 92946 (September 13, 2021) 86 FR 51941 (September 17, 2021) (SR-CboeBZX-2021-060).

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

The Exchange proposes to to[sic] amend its Price List to (1) eliminate the underutilized additional credits for member organizations that add liquidity in Tape B and C Securities when qualifying for certain non-tier and tiered credits by adding liquidity in Tape A Securities; (2) eliminate the underutilized Adding Tier for Non-Displayed Providers in Tape A Securities; and (3) revise the requirements to qualify for the Tier 5 Adding Credit in Tape A Securities. The Exchange proposes to implement the rule change on November 1, 2021. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

#### 1. Purpose

The Exchange proposes to amend its Price List to (1) eliminate the underutilized additional credits for member organizations that add liquidity in Tape B and C Securities when qualifying for certain non-tier and tiered credits by adding liquidity in Tape A Securities; (2) eliminate the underutilized Adding Tier for Non-Displayed Providers in Tape A Securities; and (3) revise the requirements to qualify for the Tier 5 Adding Credit in Tape A Securities.

The proposed revision to the Tier 5 Adding Credit responds to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the rule change on November 1, 2021.

#### 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. Specifically, 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."<sup>4</sup>

As the Commission itself has recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."<sup>5</sup> Indeed, equity trading is currently dispersed across 16 exchanges,<sup>6</sup> 31 alternative trading systems,<sup>7</sup> and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market.<sup>8</sup> Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.<sup>9</sup>

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. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one

<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (Final Rule) ("Regulation NMS").

<sup>5</sup> See Securities Exchange Act Release No. 51808[sic], 84FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) ("Transaction Fee Pilot").

<sup>6</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

<sup>7</sup> 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>.

<sup>8</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

<sup>9</sup> See *id.*

of the numerous currently operating registered exchanges to route such order flow. 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 eliminate certain underutilized additional credits for adding liquidity in Tape B and C Securities and the underutilized Adding Tier for Non-Displayed Providers in Tape A Securities, as follows.

#### Underutilized Additional Credits

Member organizations adding liquidity in Tape A Securities and meeting all of the requirements of the Non-Tier Adding Credit, the Tier 1 Adding Credit, the Tier 2 Adding Credit, the Tier 3 Adding Credit, the Tier 4 Adding Credit, the Tier 5 Adding Credit, the Tier 6 Adding Credit, the Step Up Tier 1 Adding Credit, the Step Up Tier 2 Adding Credit and the Step Up Tier 4 Adding Credit are currently eligible for an additional credit of \$0.0001 per share (under the Non-Tier Adding Credit, Tier 3 Adding Credit, Tier 4 Adding Credit, Tier 5 Adding Credit, Tier 6 Adding Credit, and Step Up Tier 4 Adding Credit) or \$0.0005 per share (under the Tier 1 Adding Credit, Tier 2 Adding Credit, Step Up Tier 1 Adding Credit, and Step Up Tier 2 Adding Credit) if the member organization also adds a specified amount of liquidity, excluding liquidity added as an Supplemental Liquidity Provider ("SLP"), in Tapes B and C Securities.

The Exchange proposes to eliminate and remove these additional credits from the Non-Tier Adding Credit, Tier 1 Adding Credit, Tier 2 Adding Credit, Tier 3 Adding Credit, Tier 4 Adding Credit, Tier 5 Adding Credit, Tier 6 Adding Credit, Step Up Tier 1 Adding Credit, Step Up Tier 2 Adding Credit and Step Up Tier 4 Adding Credit sections of the Price List. The additional credit has been underutilized by member organizations insofar as no member organization qualified for an additional credit year to date in any of the non-tier or tiers in which it is offered. As such, Exchange does not anticipate that any member organization in the near future would qualify for the additional credits that are the subject of this proposed rule change.

#### Underutilized Adding Tier for Non-Displayed Providers in Tape A Securities

Under the current Adding Tier for Non-Displayed Providers, the Exchange provides credits in Tape A securities for all orders, other than MPL Orders, from

qualifying member organizations that have at least

- an average daily trading volume (“ADV”) that adds liquidity to the Exchange during the billing month (“Adding ADV”) of 0.35% of Tape A consolidated ADV (“Tape A CADV”), excluding any liquidity added by a Designated Market Maker (“DMM”);<sup>10</sup> and
- Adding ADV of Non-Displayed Limit Orders of at least 4 million shares; and
- 35% of the Member Organization’s Total Adding ADV is comprised of Non-Displayed Limit Orders.

A member organization that meets the above requirements receives a credit of \$0.0023 per share (\$0.0006 per share for Non-Displayed Limit Orders) if the member organization has an Adding ADV of at least 0.35% of Tape A CADV or a credit of \$0.0026 per share (\$0.0007 per share for Non-Displayed Limit Orders) if the member organization has Adding ADV of at least 0.45% of Tape A CADV.

In addition, Member Organizations meeting the above requirements and adding liquidity, excluding liquidity added as an SLP, in Tapes B and C Securities of at least 0.20% of Tape B and Tape C CADV combined will receive an additional \$0.00005 per share.

The Exchange proposes to eliminate the Adding Tier for Non-Displayed Providers in its entirety and remove it from the Price List. The tier, including the additional \$0.00005 per share credit, has been underutilized by member organizations insofar as no member organization has qualified for the tier since its introduction in April 2021. As such, Exchange does not anticipate any member organization in the near future would qualify for the credit that is the subject of this proposed rule change.

#### Alternative Qualification for Tier 5 Adding Credit

In response to the competitive environment described above, the Exchange has established incentives for its member organizations who submit orders that provide liquidity on the Exchange. The proposed fee change is also designed to attract additional order flow to the Exchange by incentivizing member organizations to submit additional displayed liquidity to the Exchange.

Under the current Tier 5 Adding Credit, the Exchange provides a \$0.0017

credit in Tape A securities for orders, other than MPL and Non-Display Reserve orders, that add liquidity to the Exchange where a member organization’s Adding ADV, excluding liquidity added as an SLP and as a DMM, is at least 0.29% of NYSE CADV. Further, member organizations that meet the above requirements and add liquidity, excluding liquidity added as an SLP, in Tape B and C Securities of at least 0.20% of Tape B and Tape C CADV combined, would receive an additional \$0.0001 per share. As discussed above, the Exchange proposes to delete this additional credit as underutilized.

The Exchange further proposes to provide an alternative way for member organizations to qualify for the Tier 5 Adding Credit. As proposed, as an alternative to where a member organization’s Adding ADV, excluding liquidity added as an SLP and as a DMM, is at least 0.29% of NYSE CADV, member organizations that have an Adding ADV, excluding liquidity added as an SLP and as a DMM, of at least 0.125% of NYSE CADV and two times more than the Member Organization’s Adding ADV in Tape A Securities in Q1 2021<sup>11</sup> as a percentage of NYSE CADV would also qualify for the \$0.0017 credit.

The Exchange believes that the alternative way to qualify for the Tier 5 Adding Credit will incentivize greater participation from member organizations to increase liquidity-providing orders in the Tape A securities they send to the Exchange to qualify for the Tier 5 Adding Credit, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional member organizations could qualify for the tier under the revised qualification criteria if they choose to direct order flow to, and increase quoting on, the Exchange. However, without having a view of member organization’s activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule

change would result in any member organization directing orders to the Exchange in order to qualify for the new tier.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>13</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

#### The Proposed Change Is Reasonable Elimination of Underutilized Credits and Adding Tier in Tape A Securities

The Exchange believes that the proposed elimination of the underutilized additional credits for member organizations that add liquidity in Tape B and C Securities when qualifying for certain non-tier and tiered credits by adding liquidity in Tape A Securities is reasonable because member organizations have underutilized this incentive. No member organization has qualified for an additional credit year to date in any of the non-tier or tiers in which it is offered. The Exchange does not anticipate any member organization in the near future qualifying for the rebate that is the subject of this proposed rule change. Similarly, the Exchange believes that the proposed elimination of the Adding Tier for Non-Displayed Providers in Tape A Securities is reasonable. No member organization has qualified for the rebate since it was adopted in April 2021, and the Exchange does not anticipate any member organization in the near future qualifying for the tier. The Exchange believes it is reasonable to eliminate credits when such incentives become underutilized. The Exchange also believes eliminating underutilized incentives would add clarity and transparency to the Price List.

#### Alternative Qualification for Tier 5 Adding Credit in Tape A Securities

As discussed above, 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

<sup>10</sup> Footnote 2 to the Price List defines ADV as “average daily volume” and “Adding ADV” as ADV that adds liquidity to the Exchange during the billing month. CADV is defined in footnote \* of the Price List.

<sup>11</sup> The current Tier 6 Adding Credit uses “1Q”, which the Exchange proposes to change to “Q1” for consistency and clarity.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4) & (5).

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.”<sup>14</sup> 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.”<sup>15</sup>

Given the current competitive environment, the Exchange believes that the proposed revision to the requirements for member organizations to qualify for Tier 5 Adding Credit represents a reasonable attempt to attract additional order flow to the Exchange. Specifically, the Exchange believes that the proposed revision is reasonable because it would provide further incentives for member organizations to route additional liquidity-providing orders to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

As noted above, the Exchange operates in a competitive environment, particularly as relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange believes that an alternative method to qualify for the tier will provide greater incentives for member organizations to add more liquidity to the Exchange. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional member organizations could qualify for the tier under the revised qualification criteria if they choose to direct order flow to, and increase quoting on, the Exchange. However, without having a view of member organizations’ activity on other exchanges and off-exchange venues, the Exchange has no way of

knowing whether this proposed rule change would result in any additional member organizations directing orders to the Exchange in order to qualify for the Tier 5 Adding Credit.

#### The Proposal Is an Equitable Allocation of Fees

##### Elimination of Underutilized Credits and Adding Tier in Tape A Securities

The Exchange believes the proposal equitably allocates fees among its market participants because the underutilized additional credits and Adding Tier the Exchange proposes to eliminate would be eliminated in their entirety, and would no longer be available to any member organization in any form. Similarly, the Exchange believes the proposal equitably allocates fees among its market participants because elimination of the underutilized credits would apply to all similarly-situated member organizations on an equal basis. All such member organizations 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.

##### Alternative Qualification for Tier 5 Adding Credit in Tape A Securities

The Exchange believes the proposed rule change equitably allocates its fees among its market participants. The proposed change would continue to encourage member organizations to submit additional liquidity to the Exchange and execute orders on the Exchange, thereby contributing to robust levels of liquidity, to the benefit of all market participants.

The Exchange believes that providing an additional way to qualify for the Tier 5 Adding Credit would encourage the submission of additional liquidity to the Exchange, thereby providing customers with a higher quality venue for price discovery, liquidity, competitive quotes and price improvement. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity present on the Exchange. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. Specifically, the Exchange

believes that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations would be eligible for the same credits if they meet the revised requirements for the tier. As to those member organizations that do not presently qualify for the adding liquidity credit, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

#### The Proposal Is Not Unfairly Discriminatory

##### Elimination of Underutilized Credits and Adding Tier in Tape A Securities

The Exchange believes that the proposal is not unfairly discriminatory. The proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal is not unfairly discriminatory because the proposed elimination of the underutilized additional credits and Adding Tier would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating credits that are underutilized and ineffective would no longer be available to any member organization on an equal basis. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of underutilized fees would make the Price List more accessible and transparent and facilitate market participants’ understanding of the fees charged for services currently offered by the Exchange.

##### Alternative Qualification for Tier 5 Adding Credit in Tape A Securities

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

The proposed changes to the Tier 5 Adding Credit are not unfairly discriminatory because the alternate requirements to achieve the credit would be applied to all similarly situated member organizations and other market participants, who would all be subject to the same modified requirements to qualify for the tier and the same credits on an equal basis. For the same reason, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. Accordingly, no

<sup>14</sup> See Regulation NMS, *supra* note 4, at 37499.

<sup>15</sup> 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).

member organization already operating on the Exchange would be disadvantaged by this allocation of fees. Further, the Exchange believes the proposal would incentivize member organizations to send more orders to the Exchange to qualify for higher credits.

The Exchange believes that the proposed changes would not permit unfair discrimination among member organizations because the tiered rates are available equally to all member organizations. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and the Exchange believes there are additional member organizations that could qualify if they chose to direct their order flow to the Exchange. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

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,<sup>16</sup> 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 proposal relates to the elimination of an underutilized credits and an adding tier and, as such, would not have any impact on intra- or inter-market competition because the proposed change is solely designed to accurately reflect the services that the Exchange currently offers, thereby adding clarity to the Price List.

In accordance with Section 6(b)(8) of the Act,<sup>17</sup> the Exchange further believes that the proposed rule change offering an alternative method to qualify for the Tier 5 Adding Credit 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 change would encourage the submission of additional liquidity and order flow to a public exchange, thereby 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 competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>18</sup>

*Intramarket Competition.* The proposed change is designed to attract additional order flow to the Exchange. As described above, the Exchange believes that the proposed change would provide additional incentives for market participants to route liquidity-providing orders to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The current and proposed credits 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.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges 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 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.

The Exchange believes that the proposed change 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.

#### *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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>21</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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

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

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2021-65 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-2021-65. 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

<sup>16</sup> 15 U.S.C. 78f(b)(8).

<sup>17</sup> 15 U.S.C. 78f(b)(8).

<sup>18</sup> Regulation NMS, 70 FR at 37498-99.

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

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

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

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-2021-65, and should be submitted on or before December 7, 2021.

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

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-24897 Filed 11-15-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SMALL BUSINESS ADMINISTRATION

[Docket No. SBA-2020-0048]

### Termination of Nonmanufacturer Rule Class Waiver

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notification of intent to terminate the class waiver to the Nonmanufacturer Rule for radiology equipment.

**SUMMARY:** The U.S. Small Business Administration (SBA) is considering terminating a class waiver of the Nonmanufacturer Rule (NMR) for irradiation apparatus manufacturing, computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; fluoroscopes manufacturing; fluoroscopic X-ray apparatus and tubes manufacturing; generators, X-ray, manufacturing; irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing under manufacturing categorized under North American Industry Classification System (NAICS) code 334517 and Product Service Code (PSC) 6525.

**DATES:** Comments and source information must be submitted on or before xx/xx/xxxx.

**ADDRESSES:** You may submit comments and source information via the Federal Rulemaking Portal at <https://www.regulations.gov> under Docket ID SBA-2020-1148]. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Carol Hulme, Attorney Advisor, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination as to whether the information will be published.

**FOR FURTHER INFORMATION CONTACT:**

Carol Hulme, Attorney Advisor, by telephone at 202-205-6347 or by email at [Carol-Ann.Hulme@sba.gov](mailto:Carol-Ann.Hulme@sba.gov).

**SUPPLEMENTARY INFORMATION:** An awardee of a Federal small business set-aside contract valued over \$250,000.00, service-disabled veteran-owned small business contract, HUBZone contract, women-owned small business contract, or 8(a) contract must provide its own product or that of a small business manufacturer unless a waiver is in place. If the above-identified class waiver is terminated, small businesses will no longer be authorized to provide the product of any manufacturer regardless of size on the identified items, unless a Federal contracting officer obtains an individual waiver to the NMR.

Section 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations, found at 13 CFR 121.406(b), require that recipients of Federal supply contracts issued as a small business set-aside (except as stated below), service-disabled veteran-owned small business (SDVO SB) set-aside or sole source contract, Historically Underutilized Business Zone (HUBZone) set-aside or sole source contract, WOSB (women-owned small business) or economically disadvantaged women-owned small business (EDWOSB) set-aside or sole source contract, 8(a) set-aside or sole source contract, partial set-aside, or set aside of an order against a multiple award contract provide the product of a small business manufacturer or processor if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the

Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). Note that the NMR does not apply to small business set-aside acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold but continues to apply to socioeconomic categories over the micropurchase threshold.

Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market. The SBA defines "class of products" based on a combination of (1) the six-digit NAICS code, (2) the four-digit PSC, and (3) a description of the class of products. As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

In accordance with the SBA's regulations at 13 CFR 121.1204(a)(7), SBA will periodically review existing class waivers to the NMR to determine whether small business manufacturers or processors have become available to participate in the Federal market. Upon receipt of information that such a small business manufacturer or processor exists, the SBA will announce its intent to terminate the NMR waiver for a class of products. 13 CFR 121.1204(a)(7)(ii). Unless public comment reveals no small business exists for the class of products in question, SBA will publish a Final Notice of Termination in the **Federal Register**.

On October 31, 2007, the SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing (X-Ray Equipment and Supplies). The comments submitted in response failed to establish the existence of a small business manufacturer of these products. As such, on December 26, 2007, after the comment and notice period passed, SBA issued a class waiver for those products effective January 10, 2008. That notice can be found at 77 FR 73057.

On April 20, 2020, SBA received a request to terminate the previously issued waiver. The requester provided information that established the existence of a small business manufacturer of the identified products. Thus SBA is proposing to terminate the class waiver for irradiation apparatus manufacturing, computerized axial

<sup>22</sup> 17 CFR 200.30-3(a)(12).