

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91123; File No. SR-NYSE-2021-11]

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

February 12, 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 February 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 and II 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) introduce a new Step Up Adding Tier 5, and (2) modify the incremental step up tier for Supplemental Liquidity Providers (“SLPs”) (“Incremental SLP Step Up Tier”). The Exchange proposes to implement the fee changes effective February 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 amend its Price List to (1) introduce a new Step Up Adding Tier 5, and (2) modify the Incremental SLP Step Up Tier.

The proposed changes respond 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 fee changes effective February 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 16% 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 10%.

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 of the 16 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.

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 designed to attract additional order flow to the Exchange by incentivizing member organizations to submit additional displayed liquidity to, and quote aggressively in support of the price discovery process on, the Exchange.

Proposed Rule Change

New Step Up Tier 5 Adding Credit

The Exchange proposes to adopt a new “Step Up Tier 5 Adding Credit” that would offer incremental credits for providing displayed liquidity to the Exchange in Tape A securities.

As proposed, the Exchange would provide incremental credits in Tape A securities for all orders, other than MPL and Non-Displayed Limit Orders, from a qualifying member organization’s market participant identifier (“MPID”) or mnemonic if the member organization has Adding ADV, excluding any liquidity added by a Designated Market Maker (“DMM”), that is at least 1.00% of Tape A CADV,⁹ and if the MPID or mnemonic has an Adding ADV as a percentage of Tape A

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/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

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/atslist.htm>.

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

⁹ The terms “ADV” and “CADV” are defined in footnote * of the Price List.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

CADV, excluding any liquidity added by a DMM, that is:

- At least two times more than that MPID's or mnemonic's Adding ADV in January 2021 ("Baseline Month") as a percentage of Tape A CADV, and
- at least 0.10% of Tape A CADV over that MPID's or mnemonic's Adding ADV in the Baseline Month as a percentage of Tape A CADV.

A member organizations that meets the above requirements would receive a \$0.0001 incremental credit for an increase of at least 0.10% and less than 0.175% of Tape A CADV over the Baseline Month. Member organizations would receive a \$0.0002 incremental credit for an increase of at least 0.175% of Tape A CADV over the Baseline Month.

For example, assume a member organization has an Adding ADV as a percentage of Tape A CADV of 1.10% in the billing month, and qualified for an Adding Tier 2 credit of \$0.0020 per share. Further assume that one of the member organization's MPIDs, MPID1, had an Adding ADV of 0.25% of Tape A CADV. Further assume that MPID1 has an Adding ADV of 0.10% in the Baseline Month. Because that MPID1's Adding ADV was 2.5 times its Baseline Month with a step up of 0.15%, MPID1 would qualify for an incremental credit of \$0.0001, for a combined credit of \$0.0021, based on the member organization's Adding Tier 2 credit.

If in the following billing month the member organization again had an Adding ADV as a percentage of Tape A CADV of 1.10%, and MPID1 had an Adding ADV of 0.30% of Tape A CADV, for step up in Adding ADV of 0.20% of Tape A CADV, MPID 1 would qualify for an incremental credit of \$0.0002, for a combined credit of \$0.0022 based on the member organization's Adding Tier 2 credit. If in the third billing month, the member organization had an Adding ADV as a percentage of Tape A CADV of 0.95%, MPID1 would not qualify for the Adding Step Up 5 as the member organization's Adding ADV was below the 1.0% requirement.

The purpose of this proposed change is to incentivize member organizations to increase the liquidity-providing orders in the Tape A securities they send to the Exchange, 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. Because the proposed tier requires a member organization's MPID or mnemonic to increase the volume of

its trades in orders that add liquidity over that MPID or mnemonic's January 2021 Adding ADV baseline, the Exchange believes that the proposed credits would provide an incentive for all member organizations to send additional liquidity to the Exchange in order to qualify for them. 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 tiered rate under the new 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.

Incremental SLP Step Up Tier

Pursuant to the Incremental SLP Step Up Tier, the Exchange currently provides an incremental credit to a SLP in addition to the SLP's tiered or non-tiered credit for adding displayed liquidity if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B (quotes of an SLP-Prop and an SLMM of the same member organization shall not be aggregated) (the "Quoting Requirement"), and (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in the second quarter of 2018 or the third quarter of 2018, whichever is lower, as follows:

- SLPs that (1) meet the Quoting Requirement, and (2) add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.10% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in the second

quarter of 2018 or the third quarter of 2018, whichever is lower, receive an incremental credit of \$0.0001 per share.

- SLPs that (1) meet the Quoting Requirement, and (2) add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.15% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in the second quarter of 2018 or the third quarter of 2018, whichever is lower, receive an incremental credit of \$0.0002 per share.
- SLPs that (1) meet the Quoting Requirement, and (2) add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.25% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in the second quarter of 2018 or the third quarter of 2018, whichever is lower, receive an incremental credit of \$0.0003 per share.

SLPs can only qualify for one of the three credits in a billing month. Further, the combined SLP credits are currently capped at \$0.0032 per share in a billing month.

The Exchange proposes to modify the second prong of the Incremental SLP Step Up Tier by adopting an alternative qualification basis for SLPs to qualify for the incremental credit. As proposed, SLPs would continue to qualify for the one of the incremental credits if the SLP adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.10%, 0.15%, or 0.25% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in either the second quarter of 2018, the third quarter of 2018 or the month of January 2021, whichever is lowest.

The proposed change, which would allow the Exchange to use the lowest or more favorable (to the SLP) of the three baseline benchmarks, is intended to

allow a greater number of SLPs to qualify for the incremental credits.

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,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹¹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

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 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.”¹² 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.”¹³

New Step UP Tier 5 Adding Credit

The new proposed Step Up Tier 5 Adding Credit is reasonable. Specifically, the Exchange believes that the proposed Step Up Tier 5 Adding Credit would provide an incentive for member organizations to send additional liquidity providing orders to

the Exchange in Tape A securities. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange.

The Exchange believes that requiring member organization to have Adding ADV, excluding any liquidity added by a DMM, that is at least 1.00% of Tape A CADV, and if the MPID or mnemonic has an Adding ADV as a percentage of Tape A CADV, excluding any liquidity added by a DMM, that is at least two times more than that MPID's or mnemonic's Adding ADV in January 2021 as a percentage of Tapes A CADV, and at least 0.10% of Tape A CADV over that MPID's or mnemonic's Adding ADV in January 2021 as a percentage of Tape A CADV, in order to qualify for the proposed Step Up Tier 5 Adding Credit is reasonable because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the greater amounts of displayed liquidity present on the Exchange. Further, the Exchange believes it's reasonable to provide a \$0.0001 incremental credit to the qualifying MPID or mnemonic for an increase of at least 0.10% and less than 0.175% of Tape A CADV or a \$0.0002 incremental credit if an increase of at least 0.175% of Tape A CADV because this would encourage individual MPIDs or mnemonics of a member organization to send orders that provide liquidity to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants, and promoting price discovery and transparency. Since the proposed Step Up Tier 5 would be new with a step up requirement, no member organization's MPID or mnemonic currently qualifies for the proposed pricing tier. As previously noted, without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any member organization's MPID or mnemonic qualifying for the tier. The Exchange believes the proposed credit is reasonable as it would provide an additional incentive for member organization's MPID or mnemonic to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

Incremental SLP Step Up Tier

The Exchange believes that providing an additional way to qualify for the Incremental SLP Step Up Tier is

reasonable because it would encourage additional liquidity on the Exchange and because members and member organizations benefit from the substantial amounts of liquidity that are present on the Exchange. The Exchange believes the proposed change to adopt an alternate baseline benchmark for the Incremental SLP Step Up Tier is reasonable because it provides existing SLPs (including SLPs that are also DMMs) with added incentive to bring additional order flow to a public market. In particular, the Exchange believes that making a third alternate baseline benchmark available to SLPs would provide SLPs with an increased opportunity to qualify for the incremental credit, and would continue to provide an incentive for SLPs to add liquidity to the Exchange, to the benefit of the investing public and all market participants.

The Proposal Is an Equitable Allocation of Fees

New Step UP Tier 5 Adding Credit

The Exchange believes that the proposed Step Up Tier 5 is equitable because the magnitude of the additional credit is less than the current Step Up Tier 2 credit in Tape A securities.

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market wide quality and price discovery. Since the proposed Step Up Tier 5 would be new and includes a step up Adding ADV requirement, no member organization's MPID or mnemonic currently qualifies for it. As noted, without a view of member organization 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's MPID or mnemonic qualifying for the tier. The Exchange believes the proposed credit is reasonable as it would provide an additional incentive for member organization's MPID or mnemonic to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the credit, thereby contributing to depth and market quality on the Exchange. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All member organization's MPID or mnemonic that provide liquidity could be eligible to qualify for the credit proposed in Step Up Tier 5 if they increase their Adding ADV over

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) & (5).

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

¹³ 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).

their own baseline of order flow and the member organization meets the 1.0% Adding ADV of Tape CADV requirement. The Exchange believes that offering a step up credit for providing liquidity if the step up requirements for Tape A securities are met will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the adding liquidity credits, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

Incremental SLP Step Up Tier

The Exchange believes its proposal to offer an alternative way for member organizations to qualify for the Incremental SLP Step Up Tier equitably allocates its fees among its market participants. The Exchange is not proposing to adjust the amount of the Incremental SLP Step Up Tier, which will remain at the current level for all market participants. Rather, by providing an additional alternative way for member organizations to qualify for the adding credit, the proposal would continue to encourage member organizations to send orders that provide liquidity to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants, and promoting price discovery and transparency. The proposed changes would also encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange. The proposed changes would also encourage the submission of additional orders that add liquidity, thus providing price improving liquidity to market participants and increasing the quality of order execution on the Exchange's market, which would benefit all market participants. Moreover, the proposed changes are equitable because they would apply equally to all qualifying SLPs that submit orders to the NYSE and add liquidity to the Exchange.

The Proposal Is Not Unfairly Discriminatory

New Step Up Tier 5 Adding Credit

The Exchange believes it is not unfairly discriminatory to provide an additional per share step up credit, as

the proposed credit would be provided on an equal basis to all member organizations and their MPIDs or mnemonics that add liquidity by meeting the new proposed Step Up Tier 5's requirements and would equally encourage all member organizations and their MPIDs or mnemonics to provide additional displayed liquidity on the Exchange. As noted, the Exchange believes that the proposed credit would provide an incentive for member organizations and their MPIDs or mnemonics to send additional liquidity to the Exchange in order to qualify for the additional credits. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. Finally, the submission of orders to the Exchange is optional for member organizations and their MPIDs or mnemonics in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

Incremental SLP Step Up Tier

The Exchange believes its proposal to offer an alternative way for member organizations to qualify for the Incremental SLP Step Up Tier is not unfairly discriminatory because the proposal would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed alternative requirements, who would all be eligible for the same credit on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the qualification criteria would be applied to all similarly situated member organizations, who would all be eligible for the same credit on an equal basis. Finally, as noted, the Exchange believes the proposal would provide an incentive for member organizations to continue to send orders that provide liquidity to the Exchange, to the benefit of all market participants.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,¹⁴ the Exchange believes that the proposed rule change would not impose

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional 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."¹⁵

Intramarket Competition. The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed order flow 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 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. 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.

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ Regulation NMS, 70 FR at 37498–99.

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)¹⁶ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁷ 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)¹⁸ 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-2021-11 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-2021-11. 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](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-2021-11 and should be submitted on or before March 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021-03340 Filed 2-18-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91128]

Order Extending the Annual Reports Filing Deadline for Certain Smaller Broker-Dealers

February 12, 2021.

I. Introduction

Broker-dealers registered with the U.S. Securities and Exchange Commission ("SEC" or "Commission") are generally required to file with the Commission, within 60 calendar days after the end of the fiscal year of the broker-dealer, a financial report and either a compliance report or exemption report, along with reports prepared by an independent public accountant¹

¹⁹ 17 CFR 200.30-3(a)(12).

¹ The independent public accountant must be qualified and independent in accordance with Rule 2-01 of Regulation S-X and must be registered with the Public Company Accounting Oversight Board ("PCAOB") if required by the Sarbanes-Oxley Act

covering the financial report and, as applicable, the compliance or exemption report (collectively the "annual reports").² Pursuant to paragraph (m)(3) of Exchange Act Rule 17a-5 ("Rule 17a-5"), the Financial Industry Regulatory Authority, Inc. ("FINRA") has requested that the Commission extend by 30 calendar days the deadline for certain smaller broker-dealers to file the annual reports.³ This order grants such an extension to certain smaller broker-dealers, subject to the conditions described in section III below.

II. Discussion

A. FINRA's Request

In a letter dated February 11, 2021, FINRA requested that the Commission issue an order pursuant to paragraph (m)(3) of Rule 17a-5 to extend by 30 calendar days the deadline for certain smaller broker-dealers to file their annual reports.⁴ In FINRA's request, it indicated that it had been informed by smaller broker-dealers and auditors that permitting an additional 30 days for filing of the annual reports may help to reduce the burdens in obtaining audit services by providing an expanded time frame for the completion of such audits thereby easing the availability of auditors.⁵ FINRA stated in the letter that the fiscal year for most broker-dealers ends on the last calendar day of the year (December 31), which results in the greatest demand for audit services in the 60 calendar days following that date. Further, much of the work required to complete these audits is performed after the broker-dealer files the final FOCUS Report (Form X-17A-5 Part II or IIA) for the audit year, which is due to be filed with the Commission 17 business days after the end of the prior month (*i.e.*, January 27 for broker-dealers with December 31 fiscal year ends). As a result, the required audit work is conducted within a compressed period when audit services are in greatest demand and the availability of independent public accountants and

of 2002 ("Sarbanes-Oxley Act"). See Public Law 107-204, 116 Stat. 745 (2002); 17 CFR 240.17a-5(f)(1).

² See 17 CFR 240.17a-5(d)(5).

³ See 17 CFR 240.17a-5(m)(3) (stating that on written request of any national securities exchange, registered national securities association, broker-dealer, or on its own motion, the Commission may grant an extension of time or an exemption from any of the requirements of Rule 17a-5 either unconditionally or on specified terms and conditions).

⁴ See Letter from Kris Dailey, Vice President, Office of Financial and Operational Risk Policy, FINRA to Michael A. Macchiaroli, Associate Director, SEC (February 11, 2021).

⁵ See *id.* at 2.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(2).

¹⁸ 15 U.S.C. 78s(b)(2)(B).