

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 24	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2012 - * 35 Amendment No. (req. for Amendments *)
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Proposed Rule Change by NYSE MKT LLC.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>			
			Rule					
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	19b-4(f)(1) <input type="checkbox"/>	19b-4(f)(2) <input checked="" type="checkbox"/>	19b-4(f)(3) <input type="checkbox"/>	19b-4(f)(4) <input type="checkbox"/>	19b-4(f)(5) <input type="checkbox"/>	19b-4(f)(6) <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).
Proposal to amend the NYSE MKT LLC Price List to establish pricing for the Retail Liquidity Program

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Martha Last Name * Redding
Title * Chief Counsel
E-mail * mredding@nyx.com
Telephone * (212) 656-2938 Fax (212) 656-8101

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 07/31/2012
By Janet McGinness (Name *) Corporate Secretary (Title *)
NYX Janet McGinness,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) NYSE MKT LLC (“NYSE MKT” or the “Exchange”) proposes to amend its Price List to establish pricing for the Retail Liquidity Program. The Exchange proposes to implement the fee changes on August 1, 2012. The amended section of the Price List is included as Exhibit 5 hereto. A copy of this filing is available on the Exchange’s website at www.nyse.com, at the Exchange’s principal office and at the Public Reference Room of the Securities and Exchange Commission (“Commission”).
- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Martha M. Redding
Chief Counsel
NYSE Euronext
(212) 656-2938

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to amend its Price List to establish pricing for the Retail Liquidity Program, which has been approved by the Commission to operate for one year as a pilot program.¹ The Exchange proposes to implement the fee changes on August 1, 2012. The Retail Liquidity Program is designed to attract additional retail order flow to the Exchange for NYSE MKT Equities-traded

¹ See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSEAmex-2011-84).

securities² while also providing the potential for price improvement to such order flow.

Two new classes of market participants were created under the Retail Liquidity Program: (1) Retail Member Organizations (“RMOs”),³ which are eligible to submit certain retail order flow (“Retail Orders”)⁴ to the Exchange, and (2) Retail Liquidity Providers (“RLPs”),⁵ which are required to provide potential price improvement for Retail Orders in the form of non-displayed interest (“Retail Price Improvement Orders” or “RPIs”)⁶ that is better than the best protected bid (“PBB”) or the best protected offer (“PBO”) (together, the “PBBO”).⁷ Member

² “NYSE MKT Equities-traded securities” refers to all securities available to be traded on the Exchange, including, but not limited to, NYSE MKT-listed securities as well as those listed on the NASDAQ Stock Market LLC (“NASDAQ”) traded pursuant to unlisted trading privileges. *See, e.g.*, Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR-NYSEAmex-2010-31).

³ “RMO” is defined in Rule 107C(a)(2) - Equities as a member organization (or a division thereof) that has been approved by the Exchange to submit Retail Orders.

⁴ “Retail Order” is defined in Rule 107C(a)(3) - Equities as an agency order that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Order is an Immediate or Cancel Order and must operate in accordance with Rule 107C(k) - Equities. A Retail Order may be an odd lot, round lot or a partial round lot (“PRL”).

⁵ “RLP” is defined in Rule 107C(a)(1) - Equities as a member organization that is approved by the Exchange to act as such and that is required to submit Retail Price Improvement in accordance with Rule 107C - Equities.

⁶ “RPI” is defined in Rule 107C(a)(4) - Equities and consists of non-displayed interest in NYSE MKT Equities-traded securities that is priced better than the PBB or PBO, as such terms are defined in Regulation NMS Rule 600(b)(57), by at least \$0.001 and that is identified as such. Exchange systems will monitor whether RPI buy or sell interest, adjusted by any offset and subject to the ceiling or floor price, is eligible to interact with incoming Retail Orders. An RPI remains non-displayed in its entirety (the buy or sell interest, the offset, and the ceiling or floor). An RLP may only enter an RPI for securities to which it is assigned as RLP. An RPI may be an odd lot, round lot or a PRL.

⁷ The terms “protected bid” and “protected offer” have the same meaning as defined in Regulation NMS Rule 600(b)(57). The PBB is the best-priced protected bid and the PBO is the best-priced protected offer. Generally, the PBB and PBO and the national best bid (“NBB”) and national best offer (“NBO”), respectively, will be the same. However, a market center is not required to route

organizations other than RLPs are also permitted, but not required, to submit RPIs.

In proposing the Retail Liquidity Program, the Exchange stated that it would submit a separate proposal to amend its Price List in connection with the Retail Liquidity Program.⁸ Accordingly, the Exchange proposes to adopt the following pricing:⁹

- RPIs of RLPs will be free if executed against Retail Orders. The Exchange notes that, as provided under Rule 107C(f)(3) - Equities, the percentage requirement provided under Rule 107C(f)(1) - Equities is not applicable in the first two calendar months that a member organization operates as an RLP. Instead, the percentage requirement takes effect on the first day of the third consecutive calendar month that the member organization operates as an RLP. The Exchange proposes that, during the first two calendar months that a member organization operates as an RLP, the RLP's RPIs will be free if executed against Retail Orders, regardless of the percentage of the trading day at which the RLP maintains an RPI that is priced better than the PBBO. Thereafter, this proposed rate would only be applicable if the RLP satisfies the percentage requirement of Rule 107C(f)(1) - Equities. An RLP that does not satisfy the percentage requirement of Rule 107C(f)(1) - Equities would be charged the \$0.0003 per share rate described below for non-RLP member organizations.¹⁰
- RPIs of non-RLP member organizations will be charged \$0.0003 per share if executed against Retail Orders; provided, however, that RPIs of non-RLP member organizations that execute an average daily volume

to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the PBB or PBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

⁸ See Securities Exchange Act Release No. 65671 (November 2, 2011), 76 FR 69774 (November 9, 2011) (SR-NYSEAmex-2011-84).

⁹ The Exchange notes that participation in the Retail Liquidity Program is optional and, accordingly, the pricing proposed herein would not apply to a member organization that does not choose to participate.

¹⁰ The Exchange notes that the RPI executions of a member organization disqualified from acting as an RLP would thereafter be subject to the transaction pricing applicable to non-RLP member organizations.

(“ADV”)¹¹ during the month of at least 10,000 shares of RPIs will be free if executed against Retail Orders.¹²

- Retail Orders of RMOs will receive a credit of \$0.0005 per share if executed against RPIs of RLPs and other member organizations. The Exchange notes that an RMO submitting a Retail Order could choose one of three ways for the Retail Order to interact with available contra-side interest. First, a Type 1-designated Retail Order could interact only with available contra-side RPIs. These Type 1-designated Retail Orders would not interact with other available contra-side interest in Exchange systems or route to other markets. Portions of a Type 1-designated Retail Order that are not executed would be cancelled. Second, a Type 2-designated Retail Order could interact first with available contra-side RPIs and any remaining portion would be executed as a non-routable Regulation NMS-compliant Immediate or Cancel Order, which would sweep the Exchange’s Book without being routed to other markets, and any remaining portion would be cancelled. Finally, a Type 3-designated Retail Order could interact first with available contra-side RPIs and any remaining portion would be executed as a routable Exchange Immediate or Cancel Order, which would sweep the Exchange’s Book and be routed to other markets, and any remaining portion would be cancelled. A Retail Order that executes against the Book will be charged according to the standard rate applicable to non-Retail Orders, which is currently \$0.0028 per share (or 0.0030 for NASDAQ securities traded pursuant to unlisted trading privileges). Also, the standard routing fee (i.e., \$0.0030 per share) would apply to a Retail Order that is routed away from the Exchange and executed on another market.

The Exchange proposes that the pricing described herein be applicable, unless otherwise amended at a later date, for so long as the Retail Liquidity Program is in effect. Because the Retail Liquidity Program has been approved to operate as a one-year pilot program, the Exchange anticipates that it will periodically review this pricing to seek to ensure that it contributes to the goal of the Retail Liquidity Program, which is designed to attract additional retail order flow to the Exchange for NYSE MKT Equities-traded securities while also providing the potential for price improvement to such order flow.

¹¹ ADV calculations exclude early closing days.

¹² The proposed 10,000 share threshold would include executions of all NYSE MKT Equities-traded securities, including, but not limited to, executions of NYSE MKT-listed securities as well as those listed on NASDAQ traded pursuant to unlisted trading privileges.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁴ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would establish pricing designed to increase competition among execution venues, encourage additional liquidity and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.¹⁵

The Exchange believes that the \$0.0005 credit proposed herein for executions of RMOs against RPIs is reasonable, equitable and not unfairly discriminatory because it will create a financial incentive to bring additional retail order flow to a public market. The Exchange also believes applying standard non-Retail Order rates to Retail Orders that execute against the Book or that are routed away from the Exchange and executed on another market is reasonable, equitable and not unfairly discriminatory because these are the rates that would apply to such orders, but for the Retail Order designation.

The Exchange believes that not charging RLPs that satisfy the percentage requirement of Rule 107C(f)(1) - Equities for their executions of RPIs is reasonable, equitable and not unfairly discriminatory because it will incentivize member organizations to become RLPs and therefore could result in greater price improvement for Retail Orders. Similarly, the Exchange believes that not charging non-RLP member organizations that execute an ADV of at least 10,000 shares of RPIs during the month for their executions of RPIs is reasonable,

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission’s website). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

equitable and not unfairly discriminatory because it will incentivize such non-RLPs to submit RPIs for interaction with Retail Orders.¹⁶ Conversely, the Exchange believes that charging RLPs and non-RLP member organizations that do not satisfy the percentage requirements of Rule 107C(f)(1) - Equities and the 10,000-share ADV threshold, respectively, is reasonable, equitable and not unfairly discriminatory because it will incentivize RLPs and non-RLPs to submit RPIs and, therefore, contribute to robust amounts of RPI liquidity being available for interaction with the Retail Orders submitted by RMOs.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to not charge an RLP for its executions of RPIs against a Retail Order during the first two calendar months of operation as an RLP, but to charge a non-RLP member organization for such executions unless it satisfies the 10,000-share ADV threshold. Specifically, while the Exchange believes that member organizations that elect to become RLPs will promptly endeavor to satisfy the applicable percentage requirement provided under Rule 107C(f)(1) - Equities, the Exchange anticipates that RLPs will require a reasonable period of time to adjust their systems and trading to the Retail Liquidity Program. In this regard, the Exchange notes that non-RLP member organizations will not need to make such adjustments, as they are not subject to the percentage requirements of Rule 107C(f) - Equities. Also, whereas an RLP may only enter an RPI for securities to which it is assigned, non-RLP member organizations may submit RPIs in all NYSE MKT Equities-traded securities. Accordingly, while non-RLP member organization executions of RPIs for all NYSE MKT Equities-traded securities would count toward satisfying the 10,000-share ADV threshold, only RLP executions of RPIs in assigned securities would count toward satisfying the percentage requirements of Rule 107C(f)(1) - Equities.¹⁷

While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The pricing proposed herein, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a

¹⁶ The Exchange believes that the 10,000-share ADV threshold is reasonable, equitable and not unfairly discriminatory because it is set at a level that, based on existing volume on the Exchange, the Exchange believes non-RLP member organizations would be reasonably able to satisfy. In this regard, the Exchange anticipates that it will assess non-RLP member organization RPI volume over time, and, to the extent the Exchange considers it reasonable and appropriate, may propose to modify the ADV threshold from the level proposed herein.

¹⁷ The Exchange notes that not charging RLPs during the first two calendar months of operation as an RLP is similar to the treatment of Supplemental Liquidity Providers during their first month of operating in such capacity. *See* Rule 107B - Equities.

competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would result in better prices for retail investors. Additionally, the Exchange notes that participation in the Retail Liquidity Program is optional and, accordingly, the pricing proposed herein would not apply to a member organization that does not choose to participate.

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

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

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁸ and subparagraph (f)(2) of Rule 19b-4¹⁹ 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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 240.19b-4(f)(2).

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Amendment to the Exchange's 2012 Price List

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEMKT-2012-35)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Amendments to the NYSE MKT LLC Price List to Establish Pricing for the Retail Liquidity Program

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 July 31, 2012, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) 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 implementing amendments to the NYSE MKT LLC Price List to Establish Pricing for the Retail Liquidity Program. The text of 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 establish pricing for the Retail Liquidity Program, which has been approved by the Commission to operate for one year as a pilot program.⁴ The Exchange proposes to implement the fee changes on August 1, 2012. The Retail Liquidity Program is designed to attract additional retail order flow to the Exchange for NYSE MKT Equities-traded securities⁵ while also providing the potential for price improvement to such order flow.

Two new classes of market participants were created under the Retail Liquidity Program: (1) Retail Member Organizations (“RMOs”),⁶ which are eligible to submit

⁴ See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSEAmex-2011-84).

⁵ “NYSE MKT Equities-traded securities” refers to all securities available to be traded on the Exchange, including, but not limited to, NYSE MKT-listed securities as well as those listed on the NASDAQ Stock Market LLC (“NASDAQ”) traded pursuant to unlisted trading privileges. See, e.g., Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR-NYSEAmex-2010-31).

⁶ “RMO” is defined in Rule 107C(a)(2) - Equities as a member organization (or a division thereof) that has been approved by the Exchange to submit Retail Orders.

certain retail order flow (“Retail Orders”)⁷ to the Exchange, and (2) Retail Liquidity Providers (“RLPs”),⁸ which are required to provide potential price improvement for Retail Orders in the form of non-displayed interest (“Retail Price Improvement Orders” or “RPIs”)⁹ that is better than the best protected bid (“PBB”) or the best protected offer (“PBO”) (together, the “PBBO”).¹⁰ Member organizations other than RLPs are also permitted, but not required, to submit RPIs.

⁷ “Retail Order” is defined in Rule 107C(a)(3) - Equities as an agency order that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Order is an Immediate or Cancel Order and must operate in accordance with Rule 107C(k) - Equities. A Retail Order may be an odd lot, round lot or a partial round lot (“PRL”).

⁸ “RLP” is defined in Rule 107C(a)(1) - Equities as a member organization that is approved by the Exchange to act as such and that is required to submit Retail Price Improvement in accordance with Rule 107C - Equities.

⁹ “RPI” is defined in Rule 107C(a)(4) - Equities and consists of non-displayed interest in NYSE MKT Equities-traded securities that is priced better than the PBB or PBO, as such terms are defined in Regulation NMS Rule 600(b)(57), by at least \$0.001 and that is identified as such. Exchange systems will monitor whether RPI buy or sell interest, adjusted by any offset and subject to the ceiling or floor price, is eligible to interact with incoming Retail Orders. An RPI remains non-displayed in its entirety (the buy or sell interest, the offset, and the ceiling or floor). An RLP may only enter an RPI for securities to which it is assigned as RLP. An RPI may be an odd lot, round lot or a PRL.

¹⁰ The terms “protected bid” and “protected offer” have the same meaning as defined in Regulation NMS Rule 600(b)(57). The PBB is the best-priced protected bid and the PBO is the best-priced protected offer. Generally, the PBB and PBO and the national best bid (“NBB”) and national best offer (“NBO”), respectively, will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the PBB or PBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

In proposing the Retail Liquidity Program, the Exchange stated that it would submit a separate proposal to amend its Price List in connection with the Retail Liquidity Program.¹¹ Accordingly, the Exchange proposes to adopt the following pricing:¹²

- RPIs of RLPs will be free if executed against Retail Orders. The Exchange notes that, as provided under Rule 107C(f)(3) - Equities, the percentage requirement provided under Rule 107C(f)(1) - Equities is not applicable in the first two calendar months that a member organization operates as an RLP. Instead, the percentage requirement takes effect on the first day of the third consecutive calendar month that the member organization operates as an RLP. The Exchange proposes that, during the first two calendar months that a member organization operates as an RLP, the RLP's RPIs will be free if executed against Retail Orders, regardless of the percentage of the trading day at which the RLP maintains an RPI that is priced better than the PBBO. Thereafter, this proposed rate would only be applicable if the RLP satisfies the percentage requirement of Rule 107C(f)(1) - Equities. An RLP that does not satisfy the percentage requirement of Rule 107C(f)(1) - Equities would be charged the \$0.0003 per share rate described below for non-RLP member organizations.¹³

¹¹ See Securities Exchange Act Release No. 65671 (November 2, 2011), 76 FR 69774 (November 9, 2011) (SR-NYSEAmex-2011-84).

¹² The Exchange notes that participation in the Retail Liquidity Program is optional and, accordingly, the pricing proposed herein would not apply to a member organization that does not choose to participate.

¹³ The Exchange notes that the RPI executions of a member organization disqualified from acting as an RLP would thereafter be subject to the transaction pricing applicable to non-RLP member organizations.

- RPIs of non-RLP member organizations will be charged \$0.0003 per share if executed against Retail Orders; provided, however, that RPIs of non-RLP member organizations that execute an average daily volume (“ADV”)¹⁴ during the month of at least 10,000 shares of RPIs will be free if executed against Retail Orders.¹⁵
- Retail Orders of RMOs will receive a credit of \$0.0005 per share if executed against RPIs of RLPs and other member organizations. The Exchange notes that an RMO submitting a Retail Order could choose one of three ways for the Retail Order to interact with available contra-side interest. First, a Type 1-designated Retail Order could interact only with available contra-side RPIs. These Type 1-designated Retail Orders would not interact with other available contra-side interest in Exchange systems or route to other markets. Portions of a Type 1-designated Retail Order that are not executed would be cancelled. Second, a Type 2-designated Retail Order could interact first with available contra-side RPIs and any remaining portion would be executed as a non-routable Regulation NMS-compliant Immediate or Cancel Order, which would sweep the Exchange’s Book without being routed to other markets, and any remaining portion would be cancelled. Finally, a Type 3-designated Retail Order could interact first with available contra-side RPIs and any remaining portion would be executed as a routable Exchange Immediate or Cancel Order, which would sweep the

¹⁴ ADV calculations exclude early closing days.

¹⁵ The proposed 10,000 share threshold would include executions of all NYSE MKT Equities-traded securities, including, but not limited to, executions of NYSE MKT-listed securities as well as those listed on NASDAQ traded pursuant to unlisted trading privileges.

Exchange's Book and be routed to other markets, and any remaining portion would be cancelled. A Retail Order that executes against the Book will be charged according to the standard rate applicable to non-Retail Orders, which is currently \$0.0028 per share (or \$0.0030 for NASDAQ securities traded pursuant to unlisted trading privileges). Also, the standard routing fee (i.e., \$0.0030 per share) would apply to a Retail Order that is routed away from the Exchange and executed on another market.

The Exchange proposes that the pricing described herein be applicable, unless otherwise amended at a later date, for so long as the Retail Liquidity Program is in effect. Because the Retail Liquidity Program has been approved to operate as a one-year pilot program, the Exchange anticipates that it will periodically review this pricing to seek to ensure that it contributes to the goal of the Retail Liquidity Program, which is designed to attract additional retail order flow to the Exchange for NYSE MKT Equities-traded securities while also providing the potential for price improvement to such order flow.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁷ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would establish pricing designed to increase competition among execution venues, encourage additional liquidity and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.¹⁸

The Exchange believes that the \$0.0005 credit proposed herein for executions of RMOs against RPIs is reasonable, equitable and not unfairly discriminatory because it will create a financial incentive to bring additional retail order flow to a public market. The Exchange also believes applying standard non-Retail Order rates to Retail Orders that execute against the Book or that are routed away from the Exchange and executed on another market is reasonable, equitable and not unfairly discriminatory because these are the rates that would apply to such orders, but for the Retail Order designation.

The Exchange believes that not charging RLPs that satisfy the percentage requirement of Rule 107C(f)(1) - Equities for their executions of RPIs is reasonable, equitable and not unfairly discriminatory because it will incentivize member organizations to become RLPs and therefore could result in greater price improvement for Retail Orders. Similarly, the Exchange believes that not charging non-RLP member organizations that execute an ADV of at least 10,000 shares of RPIs during the month for

¹⁸ See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's website). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

their executions of RPIs is reasonable, equitable and not unfairly discriminatory because it will incentivize such non-RLPs to submit RPIs for interaction with Retail Orders.¹⁹

Conversely, the Exchange believes that charging RLPs and non-RLP member organizations that do not satisfy the percentage requirements of Rule 107C(f)(1) - Equities and the 10,000-share ADV threshold, respectively, is reasonable, equitable and not unfairly discriminatory because it will incentivize RLPs and non-RLPs to submit RPIs and, therefore, contribute to robust amounts of RPI liquidity being available for interaction with the Retail Orders submitted by RMOs.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to not charge an RLP for its executions of RPIs against a Retail Order during the first two calendar months of operation as an RLP, but to charge a non-RLP member organization for such executions unless it satisfies the 10,000-share ADV threshold. Specifically, while the Exchange believes that member organizations that elect to become RLPs will promptly endeavor to satisfy the applicable percentage requirement provided under Rule 107C(f)(1) - Equities, the Exchange anticipates that RLPs will require a reasonable period of time to adjust their systems and trading to the Retail Liquidity Program. In this regard, the Exchange notes that non-RLP member organizations will not need to make such adjustments, as they are not subject to the percentage requirements of Rule 107C(f) - Equities. Also, whereas an RLP may only

¹⁹ The Exchange believes that the 10,000-share ADV threshold is reasonable, equitable and not unfairly discriminatory because it is set at a level that, based on existing volume on the Exchange, the Exchange believes non-RLP member organizations would be reasonably able to satisfy. In this regard, the Exchange anticipates that it will assess non-RLP member organization RPI volume over time, and, to the extent the Exchange considers it reasonable and appropriate, may propose to modify the ADV threshold from the level proposed herein.

enter an RPI for securities to which it is assigned, non-RLP member organizations may submit RPIs in all NYSE MKT Equities-traded securities. Accordingly, while non-RLP member organization executions of RPIs for all NYSE MKT Equities-traded securities would count toward satisfying the 10,000-share ADV threshold, only RLP executions of RPIs in assigned securities would count toward satisfying the percentage requirements of Rule 107C(f)(1) - Equities.²⁰

While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The pricing proposed herein, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would result in better prices for retail investors. Additionally, the Exchange notes that participation in the Retail Liquidity Program is optional and, accordingly, the pricing proposed herein would not apply to a member organization that does not choose to participate.

²⁰ The Exchange notes that not charging RLPs during the first two calendar months of operation as an RLP is similar to the treatment of Supplemental Liquidity Providers during their first month of operating in such capacity. *See* Rule 107B - Equities.

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

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

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²¹ of the Act and subparagraph (f)(2) of Rule 19b-4²² thereunder, because it establishes a due, fee, or other charge imposed by NYSE MKT.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(2).

<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2012-35 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2012-35. This file number should be included on the subject line if e-mail 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2012-35 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Kevin M. O'Neill
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Additions underscored
 Deletions [bracketed]

NYSE MKT Equities Price List 2012

* * * * *

Equity Transaction Fees and Credits for Listed Securities¹

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Credits Applicable to Supplemental Liquidity Providers

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Fees and Credits Applicable to Executions in the Retail Liquidity Program

<u>Retail Liquidity Provider (“RLP”) fee per share per execution of a Retail Price Improvement Order (“RPI”) against a Retail Order (this rate is applicable to an RLP during the first two calendar months of operation as an RLP, and, beginning on the first day of the third consecutive calendar month of operation as an RLP, is applicable to an RLP that satisfies the applicable percentage requirement of Rule 107C - Equities).</u>	<u>No Charge</u>
<u>Fee per share per execution of an RPI against a Retail Order by (i) a non-RLP member organization, unless the rate immediately below applies; and (ii) an RLP that, beginning on the first day of the third consecutive calendar month of operation as an RLP, does not satisfy the applicable percentage requirement of Rule 107C - Equities.</u>	<u>\$0.0003</u>
<u>Non-RLP member organization fee per share per execution of an RPI against a Retail Order, if the Non-RLP member organization executes an average daily volume during the month (excluding early closing days) of at least 10,000 shares of RPIs.</u>	<u>No Charge</u>
<u>Retail Member Organization (“RMO”) credit per share per execution of a Retail Order against an RPI (an RMO shall be charged according to standard fee applicable to non-Retail Orders for a Retail Order that executes against the Book. The standard routing fee shall apply to a Retail Order that is routed away from the Exchange and</u>	<u>\$0.0005</u>

¹ Does not apply to transactions by members acting as a Designated Market Maker for own account.

executed on another market)

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Equity Transaction Fees and Credits For Nasdaq Securities Traded Pursuant to Unlisted Trading Privileges

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Fees and Credits applicable to Supplemental Liquidity Providers (SLPs) for Transactions in Nasdaq Securities

* * * * *

Fees and Credits Applicable to Executions in the Retail Liquidity Program

Retail Liquidity Provider (“RLP”) fee per share per execution of a Retail Price Improvement Order (“RPI”) against a Retail Order (this rate is applicable to an RLP during the first two calendar months of operation as an RLP, and, beginning on the first day of the third consecutive calendar month of operation as an RLP, is applicable to an RLP that satisfies the applicable percentage requirement of Rule 107C - Equities). No Charge

Fee per share per execution of an RPI against a Retail Order by (i) a non-RLP member organization, unless the rate immediately below applies; and (ii) an RLP that, beginning on the first day of the third consecutive calendar month of operation as an RLP, does not satisfy the applicable percentage requirement of Rule 107C - Equities...... \$0.0003

Non-RLP member organization fee per share per execution of an RPI against a Retail Order, if the Non-RLP member organization executes an average daily volume during the month (excluding early closing days) of at least 10,000 shares of RPIs. No Charge

Retail Member Organization (“RMO”) credit per share per execution of a Retail Order against an RPI (an RMO shall be charged according to standard fee applicable to non-Retail Orders for a Retail Order that executes against the Book. The standard routing fee shall apply to a Retail Order that is routed away from the Exchange and executed on another market)..... \$0.0005