

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56718; File No. SR-NYSE-2007-95)

October 29, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 18 (Compensation in Relation to Exchange System Failure)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 12, 2007, the New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The NYSE filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 is proposing to amend Exchange Rule 18 to reduce the dollar amount required in order for a member organization to seek compensation in the event of an Exchange System failure. The Exchange is further seeking to make technical amendments to the rule text.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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

<sup>2</sup> 17 CFR 240.19b-4.

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

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

proposed rule change. The text of these 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 aspects of such statements.

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

1. Purpose

Through this filing, the NYSE seeks to amend Exchange Rule 18 to reduce the dollar amount required for a member organization to seek compensation in the event of an Exchange system failure. Pursuant to the proposal, the Exchange seeks to reduce the current requirement that a net loss be in the amount of \$5,000 or higher in order for a member organization to be eligible to make a claim for compensation. Rather, the Exchange seeks to lower the net loss requirement to \$500.

Current Exchange Rule 18 (Compensation in Relation to Exchange System Failure)

Today, Exchange Rule 18 sets forth that member organizations that sustain a loss in relation to an Exchange system failure<sup>5</sup> are eligible to submit a claim for compensation to the Exchange, if certain requirements are met. Pursuant to the current rule, in order for a member organization to be eligible to receive payment for a claim, it must incur a net loss equal to or greater than \$5,000. That is, the loss must total \$5,000 after any profits received in relation to the same incident are subtracted.<sup>6</sup> Claims must be submitted on a per incident basis. Member

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<sup>5</sup> An Exchange system failure is defined as a malfunction of the Exchange's physical equipment, devices and/or programming which results in an incorrect execution of an order or no execution of an order that was received in Exchange systems. See Exchange Rule 18(b).

<sup>6</sup> In addition to the net loss requirement, Exchange Rule 18 requires that the Exchange's Division of Floor Operations ("Floor Operations") determines that: (i) a valid order was accepted by the Exchange's systems; and that (ii) an Exchange system failure occurred. The member organization is further responsible for providing the Floor Operations with

organizations are not permitted to aggregate losses incurred as a result of more than one system failure in order to satisfy the \$5,000 minimum claim requirement.

### Proposed Amendments to Rule 18

#### Reduction of Net Loss Dollar Amount

Exchange Rule 18 was put into effect on July 17, 2007.<sup>7</sup> A newly implemented rule, the initial \$5,000 threshold for net loss seemed to be a reasonable dollar amount at the time.

However, as the Exchange has gained experience with the administration of the Rule, it has observed that over 40% of the sustained net loss amounts were less than \$2,000. Nearly 12% of the net loss amounts were less than \$1,000. As a result, only approximately half of the net losses sustained by member organizations were eligible to receive compensation.

In establishing Exchange Rule 18, the NYSE sought to provide a mechanism for member organizations to receive compensation for losses sustained in relation to an Exchange system failure. The Exchange seeks to have the rule be more inclusive of its member organizations that may sustain a loss in the event of an Exchange system failure. In practice the requirement that the net loss equal at least \$5,000 has resulted in the exclusion of approximately half the member organizations that have sustained losses in relation to an Exchange system failure from qualifying to receive compensation. Accordingly, the Exchange seeks to lower the net loss amount to \$500. The Exchange believes that \$500 is a more appropriate threshold. The Exchange believes that this threshold amount will be more inclusive and give more member

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verbal notice of the incident by the market opening on the next business day following the system failure. The member must also provide written notice by the end of the third business day following the system failure. See Exchange Rule 18(a).

<sup>7</sup> The operation of the rule was retroactive to September 2006. See Securities Exchange Act Release No. 55555 (March 27, 2007), 72 FR 16841 (April 5, 2007) (SR-NYSE-2007-09).

organizations opportunities to seek compensation for losses sustained in relation to an Exchange system failure.

#### Technical Amendments to the Rule

The Exchange further proposes to make technical, non-substantive amendments to subparagraphs (d), (e), and (f) of Exchange Rule 18. Specifically, subparagraph (d) provides that an “Exchange-designated panel” will be responsible for determining the eligibility of claim for payment. The Exchange seeks to amend the rule to state that the name of the Exchange-designated panel is the “Compensation Review Panel” for the sake of specificity and clarity. As such, references to this panel have been changed to read “Compensation Review Panel” in subparagraphs (d), (e), and (f) of the Rule.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act<sup>8</sup> that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

#### 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

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

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<sup>8</sup> 15 U.S.C. 78f(b)(5).





