

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57139; File No. SR-NYSE-2008-01)

January 14, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to NYSE Rule 129 to Reflect the Changes to the NYSE's Gross FOCUS (Financial and Operational Combined Uniform Single Report) Fee That Commenced on January 1, 2008

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 2, 2008, the New York Stock Exchange LLC ("NYSE" or "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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal on an accelerated basis.

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

NYSE proposes to amend, retroactively effective to January 1, 2008, NYSE Rule 129 to reflect the changes to the NYSE's gross FOCUS (Financial and Operational Combined Uniform Single Report) fee that commenced on that date. The text of the proposed rule change is available on the Exchange's Web site (www.nyse.com), at 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 NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend, retroactively effective to January 1, 2008, NYSE Rule 129 to reflect the reduction in gross FOCUS fees that will be charged to member organizations after that date.

In connection with the transfer of certain NYSE Regulation, Inc. ("NYSE Regulation") functions to the Financial Industry Regulatory Authority, Inc. ("FINRA"), the Exchange filed with the Commission to reduce its gross FOCUS fees by 75%, effective January 1, 2008.³ That proposal was effective on filing with the Commission.

As noted in that filing, the Exchange currently charges its member organizations a fee of \$0.42 per \$1,000 of gross revenues as reported by each member organization in its FOCUS report,⁴ subject to minimum annual fees of \$180.00 for member organizations that do not conduct a public business, \$1,000 for introducing firms, and \$2,000 for carrying firms and specialists. The Exchange allocates the FOCUS fees to NYSE Regulation to fund its performance of its regulatory activities with respect to member organizations.

³ See Securities Exchange Act Release No. 56181 (August 1, 2007), 72 FR 44206 (August 7, 2007) (SR-NYSE-2007-70) ("Release No. 34-56181").

⁴ FOCUS (Securities Exchange Act Form X-17A-5) is an acronym for Financial and Operational Combined Uniform Single Report. The report is filed periodically with the Commission pursuant to Securities Exchange Act Rule 17a-5, 17 CFR 240.17a-5.

Because FINRA now performs a substantial portion of the regulatory activities for NYSE member organizations, for the period July 31, 2007 through the end of 2007, the Exchange agreed to pay FINRA 75% of the gross FOCUS fees paid to the Exchange. Beginning January 1, 2008, the Exchange reduced its FOCUS fees, including the minimum fees, by 75%.

NYSE Rule 129 sets forth the gross FOCUS fee schedule and minimum annual fees, as described above. Because those fees were reduced effective January 1, 2008, to reflect those changes, the Exchange proposes to amend the text of NYSE Rule 129 to set forth the revised fee schedule, retroactively effective to January 1, 2008.

2. Statutory Basis

The Exchange states that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁵ 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.

⁵ 15 U.S.C. 78f(b)(5).

III. 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2008-01 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2008-01. 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 Web site (<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 inspection and copying 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 such filing also will be available for inspection and copying at the principal

office of the NYSE. 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-NYSE-2008-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, in particular, the requirements of Section 6 of the Act.⁷ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of a national securities exchange be 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. The Commission also finds that the proposal is consistent with Section 6(b)(4) of the Act,⁹ which requires the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Commission believes that the proposed rule change to amend NYSE Rule 129 to incorporate the reduced gross FOCUS fees is appropriate and consistent with the Act.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the proposal was published for comment in the Federal Register. This approval allows the

⁶ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(4).

NYSE to immediately update its rule to accurately reflect the revised gross FOCUS fees. The proposal to reduce the gross FOCUS fees was already published for comment,¹⁰ the Commission received no comments on the earlier proposal, and interested persons were provided the opportunity to submit comments on an essentially identical proposal. For these reasons, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to grant accelerated approval to the proposal.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2008-01) is hereby approved on an accelerated basis.¹¹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹⁰ See Release No. 34-56181, supra note 3.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).