

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58246; File No. SR-NYSE-2008-64)

July 29, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Eliminate the Exceptional Messaging Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 28, 2008, the New York Stock Exchange LLC (the "Exchange" or the "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to eliminate the exceptional system message fee of \$0.01 per exceptional system message. While the change to the Exchange's 2008 Price List pursuant to this proposal will be effective upon filing, the change will become operative as of August 1, 2008. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, 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 these statements may be examined at the

---

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

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

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate the exceptional system message fee of \$0.01 per exceptional system message.<sup>3</sup> This fee was originally introduced to compensate the Exchange for the cost of the incremental system capacity that needed to be readily available to accommodate trading strategies that resulted in significant volumes of system messages and cancellations. Since that time, the Exchange has increased its system capacity to a degree that it no longer incurs significant costs in maintaining system capacity to accommodate these sorts of trading strategies. As such, the Exchange no longer needs the fee revenue to cover the related costs. While the change to the Exchange's 2008 Price List pursuant to this proposal will be effective upon filing, the change will become operative as of August 1, 2008.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6<sup>4</sup> of the Act, in general, and furthers the objectives of Section 6(b)(4),<sup>5</sup> in particular, in

---

<sup>3</sup> An exceptional system message is defined as any system (*i.e.*, SuperDOT<sup>®</sup>, the Exchange's Designated Order Turnaround System) message, as measured by mnemonic (mnemonics, which are alphabetical identifiers issued by the NYSE to its member firms and their customers, are required for order entry and identification purposes) on a daily basis, that exceeds the following criteria: (i) the ratio of a mnemonic's share of the total system messages to the mnemonic's share of total executed system volume exceeds 10:1; and (ii) the mnemonic's cancelled system orders as a percentage of its total system orders exceeds 90.0%. See Securities Exchange Act Release No. 53071 (January 6, 2006), 71 FR 2281 (January 13, 2006) (SR-NYSE-2005-91).

<sup>4</sup> 15 U.S.C. 78f.

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

that it is designed provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposed elimination of the exceptional message fee is equitable as the costs it was designed to defray are not now material to the Exchange and, therefore, the Exchange will not have to recoup the lost revenues through the imposition of any other fees or charges.

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 purpose of the Act.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act<sup>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> thereunder because it establishes or changes a due, fee, or other charge imposed on members by the NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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.

---

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 19b-4(f)(2).

#### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-64 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-2008-64. 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 Exchange. 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 publicly available. All submissions should refer to File Number SR-NYSE-2008-64 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.<sup>8</sup>

Florence E. Harmon  
Acting Secretary

---

<sup>8</sup> 17 CFR 200.30-3(a)(12).