

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59112; File No. SR-NYSE-2008-125)

December 17, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC that the \$8,000,000 Annual Trading Floor Regulatory Fee Allocated Among the Designated Market Maker Firms, Formerly Referred to as the “Specialist Trading Floor Regulatory Fee,” be Reduced by 50% for 2008, and Eliminated Thereafter

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 15, 2008, 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 that the \$8,000,000 annual trading floor regulatory fee allocated among the Designated Market Maker firms (“DMMs” or “firms”)<sup>4</sup>, formerly referred to as the “specialist trading floor regulatory fee,” be reduced by 50% for 2008, and eliminated thereafter.

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 58845 (October 24, 2008) 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46). In this rule filing, which created a new market model for the Exchange, the role of the specialist was altered in certain respects and the term “specialist” was replaced with the term “Designated Market Maker (“DMM”).” Therefore, the annual trading floor regulatory fee previously paid by “specialist” firms will be referred to as the “Designated Market Maker” annual trading floor regulatory fee.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective retroactively to July 1, 2008, the Exchange proposes that the \$8,000,000 annual trading floor regulatory fee allocated among the DMMs be reduced by 50% for 2008 (i.e., \$4,000,000), and eliminated thereafter. The purpose of the trading floor regulatory fee has been to defray the costs incurred by the Exchange in connection with the monitoring of trading floor activity by the Exchange's Market Surveillance Division. Effective January 1, 2008, the Exchange reduced this fee from \$16,000,000 to \$8,000,000. At that time the Exchange noted that the dramatically increased percentage of NYSE trades automatically executed and the shifts in the specialists' trading role under the Hybrid Market initiative made it appropriate to reduce the direct annual contribution to the regulatory program. After further study this year, and in light of the launching of the New Market Model<sup>5</sup>, which was filed with the Commission for immediate effectiveness [sic] on October 24, 2008, the Exchange has determined that it is appropriate to eliminate this fee entirely. As a result, it is proposed that from July 1, 2008 to the end of 2008, this annual fee be reduced from \$8,000,000 to \$4,000,000 (the amount already

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<sup>5</sup> See Securities Exchange Act Release No. 58845 (October 24, 2008) 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46).

billed at the time this approach was discussed with the members) and that the fee be eliminated hereafter for all members.

### Background

In the past, what was formerly referred to as the “specialists’ annual trading floor regulatory fee” and now referred to as the “Designated Market Maker annual trading floor regulatory fee,” was billed to each firm in four quarterly installments. For the reasons stated above, in June 2008 the Exchange decided to reduce the fee from \$8,000,000 to \$4,000,000 (i.e., the amount that had already been billed to each firm by July 1, 2008), and to completely eliminate the fee in anticipation of the launching of the New Market Model in the fall of 2008.

In or about June and July, 2008, the Exchange informed each firm that they should not pay the third or fourth quarter installments of the annual trading floor regulatory fee as such reduced fee of \$4,000,000 had been satisfied by the installments in the first two quarters of the year ( $\$2,000,000 \times 2 = \$4,000,000$ ). By July 1, 2008, each firm had paid the full amount of the reduced regulatory fee. The Exchange instructed the firms to disregard any future bills for this fee, and in the event the firms had already paid the third quarter installment of the fee, the Exchange would give the firms a credit for any payment over \$4,000,000. The Exchange applied this reduced annual trading floor regulatory fee of \$4,000,000 to all DMM firms (formerly specialist firms). The fee will be eliminated henceforth, and will not appear on the 2009 NYSE Price List.

The elimination of the annual trading floor regulatory fee will not have any impact on the Exchange’s ability to maintain its current level of trading floor surveillance or to develop and adopt new surveillance technologies and procedures in the future.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6<sup>6</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>7</sup> in general and Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> At any time within 60 days of

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78a.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

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.

#### 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-2008-125 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-2008-125. 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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-125 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>11</sup>

Florence E. Harmon  
Acting Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).