

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54856; File No. SR-NYSE-2006-106)

December 1, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fees Charged to Member Organizations for Transactions in Equity Securities

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 November 30, 2006, the New York Stock Exchange LLC (“Exchange” or “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. NYSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by NYSE under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change 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 proposes to revise the fees it charges to its member organizations for transactions in equity securities by eliminating the \$750,000 monthly fee cap and establishing a flat fee of \$0.000275 per share. The Exchange will also begin charging the standard Exchange Traded Fund (“ETF”) fee of \$0.0030 per share on transactions in ETFs traded on an unlisted trading privilege basis. The Exchange also is eliminating the specialist trading privilege fee and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

the specialist allocation fee. In addition, simultaneously with the implementation of the revised trading fees, the Exchange intends, by means of a separate filing (the “Commission Elimination Filing”), to eliminate specialist commissions.⁵ The proposed rule changes will take effect as of December 1, 2006.

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 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.

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.

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

1. Purpose

The Exchange proposes to revise the fees it charges to its member organizations for transactions in equity securities by eliminating the \$750,000 monthly fee cap and establishing a flat fee of \$0.000275 per share. The Exchange will also begin charging the standard ETF fee of \$0.0030 per share on transactions in ETFs traded on an unlisted trading privileges basis. In addition, simultaneously with the implementation of the revised trading fees, the Exchange proposes in the Commission Elimination Filing to eliminate specialist commissions. The

⁵ See Securities Exchange Act Release No. 54850 (November 30, 2006) (notice of filing and immediate effectiveness of SR-NYSE-2006-105).

proposed fee changes will take effect as of December 1, 2006. The Exchange has requested that the Commission make the effectiveness of the Commission Elimination Filing operative on December 1, 2006, the same day the changes contained in this filing take effect.

The Exchange currently charges a fee of \$0.00025 per share on equity transactions, subject to a monthly fee cap of \$750,000 per member organization. The Exchange proposes to eliminate the monthly fee cap and raise the equity transaction fee to \$0.000275 per share. Under the current fee structure, the member organizations with the highest trading volume on the Exchange benefit from a lower effective fee level than member organizations sending smaller volumes to the Exchange, because they benefit from the monthly cap. After the elimination of the monthly cap, the effective fee rate will be the same for all member organizations regardless of how much volume they send to the Exchange.⁶ Moreover, while the transaction fee is increasing from \$0.00025 to \$0.000275, the prohibition of specialist commissions referenced above will lead to a lower effective trading cost when compared to the combined costs of transaction fees and specialist commissions under the current structure. As such, the Exchange believes that the combined effect of the fee change and the prohibition of specialist commissions will be to make its pricing structure more competitive, more equitable, more transparent and easier to understand.

Unlike transactions in listed ETFs, on which the Exchange charges a \$0.0030 per share fee, the Exchange does not currently charge fees on transactions in ETFs traded on an unlisted trading privileges basis. As of December 1, 2006, the Exchange proposes to charge the same fee on transactions in ETF securities traded on a UTP basis as it charges on listed ETFs.

⁶ The Exchange's \$80 per transaction cap on fees will continue to be applied.

In order to partially offset the specialists' loss of commissions, the Exchange is eliminating the specialist trading privilege fee and the specialist allocation fee. The specialist allocation fee is charged to the specialist allocated a new equity listing and for any specific allocation the fee payable is an amount equal to the difference between the initial listing fee the company is required to pay subject to the Exchange's \$250,000 cap on initial listing fees and the amount the company would have to pay if the listing fee cap was \$500,000.⁷ Initial listing fees payable by companies will continue to be capped at \$250,000, notwithstanding the elimination of the specialist allocation fee.

The Exchange is also instituting a program of revenue sharing with Exchange specialists. Revenue sharing payments to specialists will be made from the Exchange's general revenues and will not be limited to a particular revenue source. Given the uncertainties faced by specialists in light of the complete implementation of the Exchange's hybrid market initiative over the next several months coupled with the loss of commission income, in order to provide to the specialist firms a source of payments in lieu of commissions for a transitional period, the Exchange will distribute a fixed amount of \$53 million among the specialists with respect to the six-month period commencing on December 1, 2006. This fixed amount will be allocated among the specialist firms based on their performance in October 2006, and will be allocated in proportion to the rebates each of the specialist firms would be entitled to under the formulas set forth in items (2) and (3) (but not item (1)) of the next paragraph. The transitional rebate will be paid in six equal monthly installments.

Commencing June 1, 2007, the Exchange intends to institute a revenue sharing program that will provide variable payments to the specialist firms depending on performance. The

⁷ See Exchange Act Release No. 34-43700 (December 11, 2000); 65 FR 79147 (December 18, 2000) (SR-NYSE-00-48).

Exchange will file a rule filing with the Commission pursuant to the Act and the rules thereunder in relation to such revenue sharing program prior to its implementation. While the nature of the revenue sharing program that the Exchange will ultimately propose may change depending on market conditions in the intervening period, it is currently anticipated that the revenue sharing program will have the following three components:

(1) Specialists would receive a rebate (calculated on a monthly basis) of \$0.000275 per share for each share of their specialty securities they either buy or sell on the Exchange.

(2) Specialists would receive a rebate each month relating to their absolute market share in each of their specialty stocks if that market share exceeds 35%. A market share in a stock that is equal to or exceeds 35% would entitle a specialist to a rebate of (i) \$15 for each percentage point above or equal to 35% up to and including 50%, (ii) \$25 for each percentage point above 50% up to and including 65%, (iii) \$35 for each percentage point above 65% up to and including 80%, and (iv) \$45 for each percentage point above 80%. The following are examples of how this rebate would be paid:

- If Specialist X trades XYZ stock in which the Exchange has a 50% market share, it would receive \$225 per month, which is 15% multiplied by \$15.
- If Specialist X trades XYZ stock in which the Exchange has a 65% market share, it would receive \$600 per month, which is 15% multiplied by \$15, plus 15% multiplied by \$25.

(3) Specialists would receive a volume-weighted rebate each month for every share traded in a stock in which the Exchange has a greater than 35% market share. If the Exchange has a market share:

- Equal to or greater than 35% up to and including 50%, the rebate would be \$0.00013 per share.
- Greater than 50% up to and including 65%, the rebate would be \$0.00014 per share.

- Greater than 65% up to and including 80%, the rebate would be \$0.00015 per share.
- Greater than 80% the rebate would be \$0.00016 per share.

The following are examples of how the volume-weighted rebate would be paid:

- If Specialist X trades XYZ stock in which the Exchange has a 50% market share, it would receive a rebate of \$0.00013 for every share traded above the 35% market share threshold.
- If Specialist X trades XYZ stock in which the Exchange has a 65% market share, it would receive a rebate of \$0.00013 per share for every share traded above the 35% market share threshold up to and including a 50% market share, and then would receive \$0.00014 for every share above the 50% level.

The Exchange may alter the provisions of the revenue sharing program in the future in response to its experience with its application over time, in particular in light of the Exchange's full implementation of its hybrid market initiative.⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act⁹ in general and furthers the objectives of Section 6(b)(4)¹⁰ 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.

⁸ The Exchange will file a rule filing with the Commission pursuant to the Act and the rules thereunder in relation to any such changes prior to their implementation.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

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 proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(2)¹² thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of the 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. Please include File No. SR-NYSE-2006-106 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.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 19b-4(f)(2).

All submissions should refer to File Number SR-NYSE-2006-106. 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 Commissions 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. 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-2006-106 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).