

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56181; File No. SR-NYSE-2007-70)

August 1, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Gross FOCUS 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 27, 2007, 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, II, and III below, which Items have been prepared by the NYSE. On August 1, 2007, NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The NYSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the NYSE under Section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The Exchange proposes to reduce its gross FOCUS (Financial and Operational Combined Uniform Single Report) fee by 75% as of January 1, 2008. In addition, following the closing of the proposed consolidation of the member firm regulatory functions of the National Association

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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> Amendment No. 1 deleted a sentence in the statutory basis section of Exhibit 1 to the proposed rule change that was mistakenly included in the proposal and amended the Fee Schedule in Exhibit 5 to reference the file number of this proposal.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

of Securities Dealers, Inc. (“NASD”) and NYSE Regulation, Inc. (“NYSE Regulation”), the Exchange will transfer 75% of the gross FOCUS fees paid by member organizations for the remainder of 2007 to the resultant combined self-regulatory organization, Financial Industry Regulatory Authority, Inc. (“FINRA”).

The text of the proposed rule change is available on the NYSE’s Web site (<http://www.nyse.com>), at the principal office of the NYSE, 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 28, 2006, NYSE Regulation and NASD announced a plan to consolidate their member regulation operations into a combined organization that will be the sole U.S. private-sector provider of member firm regulation for securities firms that conduct business with the public (the “Transaction”). The objective of the Transaction is to increase consistency and efficiency of member firm regulation, including examination, enforcement, and rule making, for the benefit of individual investors and overall market integrity. It is also an objective of the Transaction to reduce the regulatory and financial burdens placed on member firms as a result of duplicate self-regulatory structures.

The Exchange charges its member organizations a fee of \$0.42 per \$1,000 of gross revenues as reported by each member firm in its FOCUS report,<sup>6</sup> subject to minimum annual fees of \$180.00 for member organizations who do not conduct a public business, \$1,000.00 for introducing firms, and \$2,000.00 for carrying firms and specialists. These fees are imposed on all Exchange member organizations other than those members for whom another self-regulatory organization is the designated examining authority (“DEA”) under Rule 17d-1<sup>7</sup> of the Act. The Exchange allocates the FOCUS fees to NYSE Regulation to fund its performance of its regulatory activities with respect to member organizations.

As a substantial proportion of these regulatory activities will be performed by FINRA after the Transaction, the Exchange has agreed with the NASD that, subject to the closing of the Transaction, 75% of the gross FOCUS fees paid to the Exchange during the remainder of 2007 after the closing of the Transaction will be remitted to FINRA. The Exchange believes that this apportionment of the FOCUS fee revenues is consistent with the relative regulatory activities that will be performed by NYSE Regulation and FINRA respectively after the Transaction. NYSE Regulation and the NASD have agreed upon this transitional period in which the Exchange remits FOCUS fee revenue to FINRA as a matter of administrative convenience to avoid the need for substantial adjustment of member firm billing arrangements mid-year. Assuming that the Transaction has closed, commencing January 1, 2008, the Exchange will reduce its FOCUS fees, including the minimum fees, by 75%, but will charge these fees to all members notwithstanding that they will be members of both the Exchange and FINRA.

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<sup>6</sup> 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 Rule 17a-5 under the Act.

<sup>7</sup> 17 CFR 240.17d-1.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)(4) of the Act<sup>9</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 believes that the proposed rule change does not 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

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)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder because it changes a fee imposed by the Exchange. 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>12</sup>

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<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> The effective date of the original proposed rule is July 27, 2007. The effective date of Amendment No. 1 is August 1, 2007. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 1, 2007, the date on which the NYSE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

#### 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-2007-70 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-2007-70. 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 am and 3:00 pm. 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-2007-70 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).