

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57216; File No. SR-NYSE-2008-06)

January 28, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Implement Transaction Fees for NYSE MatchPoint

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 January 22, 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, II, and III below, which Items have been prepared by the NYSE. 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>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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 from interested persons.

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

NYSE proposes to implement an equity transaction fee effective January 22, 2008, for shares executed on the new NYSE MatchPoint<sup>SM</sup> (“NYSE MatchPoint” or “MatchPoint”)<sup>5</sup> system. The Exchange will charge each Member Organization \$.0015 per share executed on the MatchPoint system, with the exception of MatchPoint executions that are effectuated through an

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> See Securities Exchange Act Release No. 57058 (December 28, 2007), 73 FR 903 (January 4, 2008) (SR-NYSE-2007-102).

optional “internal match” process. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

The Exchange proposes to implement an equity transaction fee for executions on the NYSE MatchPoint system to take effect with the scheduled launch of MatchPoint on January 22, 2008. The MatchPoint system is an electronic facility of the Exchange that matches aggregated orders at predetermined, one-minute sessions throughout regular hours and after hours of the Exchange. The proposed transactional fee of \$.0015 per executed share, for single and portfolio orders, will be charged to both the buyer(s) and seller(s) of the executed shares, with the exception of MatchPoint executions that are effectuated through an optional “internal match” process.<sup>6</sup> More specifically, when the same user enters different orders into MatchPoint for

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<sup>6</sup> See NYSE Rule 1500 (NYSE MatchPoint<sup>SM</sup>), subparagraph (b)(2)(D): “‘NYSE MatchPoint Internal Match Constraint’ or ‘internal match constraint’ shall mean an optional order constraint that limits the execution of portfolios and single orders by directing the portfolio and single orders to first trade with other portfolios or single orders of the same User before trading with other orders in a particular matching session. If, after an internal match occurs and residual orders remain, the residual orders will be available to trade with all other orders. These constraints are only active for a single matching session.”

internal matching purposes under the same mnemonic and for the same matching session, any resulting executions will not be subject to this transaction fee.<sup>7</sup> Only NYSE members, member organizations and sponsoring member organizations will be charged this transaction fee. Transaction fees for executions of orders entered by sponsored participants (who are non-members) will be charged to the sponsoring member organization.

The following examples will demonstrate how the proposed MatchPoint transactional fee will be charged:

Example 1:

User A enters a buy order into MatchPoint for 1,000 shares of XYZ security and designates the order for the 11:00 a.m. matching session. User B enters a sell order into MatchPoint for 1,000 shares of XYZ security and designates the order for the 11:00 a.m. matching session. During the 11:00 a.m. matching session, User A's buy order for 1,000 shares of XYZ security and User B's sell order for 1,000 shares of XYZ security match and execute. User A is charged \$.0015 per executed share (1,000 shares X \$.0015 = \$1.50). User B is also charged \$.0015 per executed share (1,000 shares X \$.0015 = \$1.50).

Example 2:

User A enters a portfolio order into MatchPoint for a customer to buy 1,000 shares of XYZ security with an internal match constraint under the mnemonic "Q" for the 2:00 p.m. matching session. User A then enters another portfolio order into MatchPoint for a second customer to sell 1,000 shares of XYZ security with an internal match constraint under the same

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<sup>7</sup> Because orders are entered by a "mnemonic" (i.e., member identifier and/or account identifier) and because mnemonics are categorized as either "agency" or "proprietary," agency and proprietary orders cannot be entered under the same mnemonic. Thus, agency and proprietary orders cannot match and execute against each other in an internal match.

mnemonic (“Q”) for the 2:00 p.m. matching session. During the 2:00 p.m. matching session, the above described portfolio orders entered by User A internally match and execute. Thus, User A’s customers both receive executions of 1,000 shares of XYZ security, but no transaction fee is charged to A for these internally matched executions.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6<sup>8</sup> of the Act<sup>9</sup> in general, and Section 6(b)(4) of the Act<sup>10</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. Specifically, the proposed transaction fee is reasonable in light of the costs incurred by the Exchange for the operation of the MatchPoint system. Additionally, the transaction fee is equitable as the fee is applied to all users of the MatchPoint system equally.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

NYSE 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)(A) of the

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

<sup>9</sup> 15 U.S.C. 78a.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder because it establishes a due, fee, or other charge applicable to a member imposed by 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.

#### 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-2008-06 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-2008-06. 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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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-2008-06 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>13</sup>

Florence E. Harmon  
Deputy Secretary

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