

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58850; File No. SR-NYSE-2008-107)

October 24, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending NYSE Rule 17 to Rescind the Provisions of Paragraph (b) Governing Vendor Liability

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 20, 2008, New York Stock Exchange LLC (“NYSE” or “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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)<sup>4</sup> of the Act and Rule 19b-4(f)(6) 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 from interested persons.

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

The Exchange proposes to amend NYSE 17 to rescind the provisions of paragraph (b) governing vendor liability. The text of the proposed rule change is available at the principal office of the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

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 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 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 amend NYSE Rule 17 to rescind the provisions of paragraph (b) governing vendor liability.

Current Vendor Liability Provisions

On July 10, 2008, the Exchange amended NYSE Rule 17 to provide, among other things, that its vendors and/or its subcontractors of electronic systems, services or facilities not be liable for any loss sustained by a member or member organization arising from use of the vendor and/or subcontractor systems, services or facilities.<sup>6</sup> The Rule further required members and member organizations to indemnify the Exchange and its vendors and/or subcontractors. It further set forth certain provisions that the Exchange may include in contracts connected to a member or member organization's use of any electronic systems, services or facilities provided by the Exchange.

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<sup>6</sup> See Securities Exchange Release No. 58137 (July 10, 2008), 73 FR 41145 (July 17, 2008) (SR-NYSE-2008-55). The amendments to NYSE Rule 17 were based on American Stock Exchange ("Amex") Rule 60 and were part of the process to reconcile the differences in NYSE and Amex rules. NYSE completed its acquisition of the Amex on October 1, 2008. See Securities Exchange Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-AMEX-2008-62 and SR-NYSE-2008-60).

### Rescission of Vendor Liability Provisions

The Exchange adopted the vendor liability provisions of NYSE Rule 17 to address concerns about vendors being exposed to great risk of liability from exchange members when such vendors provide facilities and services directly to an exchange and not directly to actual users, *i.e.*, exchange members. The possibility of liability to end-users with whom vendors have no contractual relationship could result in vendors being unwilling to enter into agreement to provide their services to exchanges. In order for the Exchange to maintain its ability to deliver faster and more efficient trading tools to market participants, the Exchange adopted the vendor liability provisions of NYSE Rule 17 to address the risk of liability concerns.

In reviewing the current rule with NYSE constituency, it is clear that the NYSE must also consider the possible risk presented to members and member organizations with regard to requiring members and member organizations to indemnify the Exchange vendors and its subcontractors. The Exchange therefore seeks to rescind the vendor liability provisions of NYSE 17, *i.e.*, paragraph (b) of the current rule, thereby reverting the rule to its original content prior to the effectiveness of SR-NYSE-55 [sic].<sup>7</sup> The Exchange will work with its constituency and vendors to create a proposed rule that addresses all of the aforementioned concerns at which time the Exchange will formally submit its proposal to the Commission pursuant to Section 19b of the Securities Exchange Act of 1934 (the “Act”).

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<sup>7</sup> The Exchange notes that a minor stylistic change that was part of this amendment is not being rescinded.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the rescission of the liability provisions promotes just and equitable principles of trade and protects investors and the public interest because it removes potential risks to its members and member organizations until the Exchange can create a mechanism that adequately addresses issues of liability for all parties concerned.

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

The Exchange does not believe that the proposed rule change would 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

The Exchange received feedback from its constituents raising concerns about the possible risk presented to members and member organizations with regard to the provisions of NYSE Rule 17 that require members and member organizations to indemnify Exchange vendors and the subcontractors of vendors.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange has designated the proposed rule change as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not 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. Therefore, the foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative until 30 days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day delayed operative date, so that the proposed rule change may become immediately operative pursuant to Section 19(b)(3)(A) and Rule 19b-4(f)(6) thereunder.

The Exchange believes that good cause exists to justify waiver of the operative delay in order to immediately remove potential risks to its members and member organizations. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore grants the Exchange's request and

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> Id. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give 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 Exchange has satisfied this requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

designates the proposal to be operative upon filing.<sup>14</sup>

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 Exchange 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-2008-107 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-2008-107. 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

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<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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 available publicly. All submissions should refer to File Number SR-NYSE-2008-107 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>15</sup>

Florence E. Harmon  
Acting Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).