

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58921; File No. SR-NYSE-2008-111)

November 7, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC to Establish System of Rebates for Designated Market Makers

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 October 30, 2008, New York Stock Exchange LLC (the “NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

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

The Exchange proposes to adopt a schedule of fees and rebates applicable to Designated Market Makers (“DMMs”). While the change to the Exchange’s 2008 Price List pursuant to this proposal will be effective upon filing, the change will become operative as of November 3, 2008. 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.

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

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

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

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

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 adopt a schedule of fees and rebates applicable to DMMs. While the change to the Exchange's 2008 Price List pursuant to this proposal will be effective upon filing, the change will become operative as of November 3, 2008.

DMMs are a new category of market makers that the Exchange has created as a replacement for the specialists.<sup>1</sup> As was the case historically for the specialists, the DMMs will not be charged any fees on transactions executed on the Exchange for their own account in their capacity as DMMs that remove liquidity from the Exchange. However, as was the case with specialists in the period immediately prior to the adoption of the new market model, DMMs will be charged a \$0.0030 per share routing fee for orders routed to away markets, which is the same rate charged to all other market participants.<sup>2</sup>

Prior to the adoption of the new market model, the Exchange operated a revenue sharing program for the specialists (the "liquidity provision payments" or "LPPs") that was structured to provide incentives to the specialists to add liquidity to the Exchange. The Exchange is discontinuing the LPP program in connection with the adoption of the new market model. The Exchange proposes to provide incentives to the DMMS that will be similar in effect to the LPPs,

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<sup>1</sup> See 34-58845 (October 24, 2008).

<sup>2</sup> Except floor brokers, who pay \$0.0029 per share.

by awarding rebates to the DMMs when they add liquidity to the Exchange.<sup>3</sup> The following liquidity-adding activities will qualify a DMM for a rebate:

- posting displayed and non-displayed orders on the Display Book, including s-quote and s-quote reserve orders;
- providing liquidity on non-displayed interest using the Capital Commitment Schedule; or, prior to the implementation of the Capital Commitment Schedule, using the following message activities: price improvement, size improvement (PRIN FILL), matching away market quotes;
- executing trades in the crowd and at Liquidity Replenishment Points; and
- providing liquidity on market-at-the-close and limit-at-the-close transactions.

Rebates will not apply to executions at the open, as trades at the open are free to all Exchange users and the DMM is therefore not generating any revenue for the Exchange from the DMM's counterparty in the transaction.

DMMs will receive (i) a rebate of \$0.0030 per share when adding liquidity in round lots in active securities (i.e., securities with a consolidated average daily trading volume ("ADV") of greater than or equal to one million shares) ("Active Securities");<sup>4</sup> and (ii) a rebate of \$0.0035 per share when they add liquidity in round lots in securities with a consolidated ADV of less than one million shares ("Less Active Securities").<sup>3</sup> The Exchange will also pay DMMs a rebate of

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<sup>3</sup> Not all stocks will be traded under the DMM model immediately. For a brief transitional period, some stocks will continue to be traded under the specialist model. Commencing November 3, 2008, continuing for the duration of this transition, specialists will be subject to the same pricing and rebate regime as DMMs.

<sup>4</sup> The Exchange will determine whether a security is an Active Security or Less Active Security based on the previous month's consolidated ADV.

\$0.0004 per share for executions at the close. This rebate equals the \$0.0004 fee the Exchange charges other Exchange users for executions at the close.

In addition, each DMM will also receive all of the market data quote revenue (the “Quoting Share”) received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS with respect to any Less Active Security in any month in which the DMM meets the quoting requirement of Rule 104(a)(1)(A) for that individual stock.<sup>5</sup>

DMMs will receive a rebate of \$0.0004 per share when providing liquidity with respect to odd lots and the odd lot portions of partial round lots. This rebate equals the \$0.0004 fee the Exchange charges other Exchange users for executions in odd lots and partial round lots.

The Exchange is making a number of changes to the Price List to reflect the replacement of the specialists by the DMMs. The Specialist License Fee, the Specialist Marketing and Investor Education Fee and the various fees payable by specialists set forth under the heading “Registration and Regulatory Fees”, will be payable by the DMMs in place of the specialists upon adoption of the new market model. In addition, the Exchange is removing a footnote from the “Registration and Regulatory Fees” section of the Price List that makes reference to a 75% reduction in the amount of certain regulatory fees as of January 1, 2008, which is no longer relevant because the reduction in those fees is already reflected in the Price List.

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<sup>5</sup> For Less Active Securities, a DMM must maintain a bid and an offer at the National Best Bid (“NBB”) and National Best Offer (“NBO”) (collectively herein “NBBO”) for an aggregate average monthly NBBO of 10% or more during a calendar month. For purposes of passing through the Quoting Share with respect to an individual stock, the Exchange will require the DMM to maintain the average monthly NBBO of 10% or more for that individual stock.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6<sup>6</sup> of the Act in general and furthers the objectives of Section 6(b)(4)<sup>7</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. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as it provides the DMMs appropriate incentives to act as liquidity providers and supports them in performing their central function in the Exchange's market model.

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 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 is effective upon filing pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and Rule 19b-4(f)(2)<sup>9</sup> thereunder.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-111 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-2008-111. 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 such filing also will be available for inspection and copying at the principal office of 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-2008-111 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>10</sup>

Florence E. Harmon  
Acting Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).