

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58975; File No. SR-NYSE-2008-121)

November 19, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Fees for Transactions in Stocks with a Price of Less than \$1.00 per Share

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 14, 2008, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“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 is proposing to establish a fee for all transactions in stocks that have a trading price below \$1.00 equal to the lesser of (i) .3% of the aggregate transaction value and (ii) the fee that would have applied if the stock did not have a trading price below \$1.00.

Transactions subject to this fee limitation will include orders routed to other markets, but not transactions that would not otherwise be subject to a transaction fee. With respect to transactions in stocks with a trading price below \$1.00, Designated Market Makers (“DMMs”) will receive a rebate of \$0.0004 per share for all transactions when adding liquidity in round lots in both Less Active Securities and More Active Securities. This filing also deletes the Exchange Traded Funds (“ETFs”) pricing from the Exchange’s 2008 Price List, as ETFs are no longer traded on the Exchange. The text of the proposed rule change is available on the Exchange’s Web site

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(<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 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 is proposing to establish a fee for all transactions in stocks that have a trading price below \$1.00 equal to the lesser of (i) .3% of the aggregate transaction value and (ii) the fee that would have applied if the stock did not have a trading price below \$1.00.

Transactions subject to this fee limitation will include orders routed to other markets, but not transactions that would not otherwise be subject to a transaction fee. With respect to transactions in stocks with a trading price below \$1.00, DMMs will receive a rebate of \$0.0004 per share for all transactions when adding liquidity in round lots in both Less Active Securities and More Active Securities.

Regulation NMS, adopted by the Securities and Exchange Commission ("SEC"),³ provides that each trading center intending to qualify for trade-through protection under

³ 17 CFR 242.600 to 242.612. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Adopting Release").

Regulation NMS Rule 611⁴ is required to have a Regulation NMS-compliant trading system fully operational by March 5, 2007 (the “Trading Phase Date”).⁵

For stocks priced below \$1.00 per share, Regulation NMS Rule 612⁶ permits markets to accept bids, offers, orders and indications of interest in increments smaller than a \$0.01, but not less than \$0.0001, and to quote and trade such stocks in sub-pennies. Markets may choose not to accept such bids, offers, orders or indications of interest and the NYSE has done so, maintaining a minimum trading and quoting variation of \$0.01 for all securities trading below \$100,000.00. See NYSE Rule 62.

The SEC’s interpretation of Rule 612 requires a market that routes an order to another market in compliance with Rule 611 and receives a sub-penny execution, to accept the sub-penny execution, report that execution to the customer, and compare, clear and settle that trade. The SEC, however, provided a limited exemption to Rule 611’s proscription against trade-throughs to protected quotes that include a sub-penny component to such quotes that are better-priced by a minimum of \$0.01.⁷

In March, 2007, the Exchange amended Rule 123D to provide for a “Sub-penny trading” condition because the Exchange’s trading systems did not then accommodate sub-penny executions on orders routed to better-priced protected quotations, nor could it recognize a quote

⁴ See 17 C.F.R. § 242.611.

⁵ See Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007) (S7-10-04).

⁶ 17 C.F.R. § 242.612. Rule 612 originally was to become effective on August 29, 2005, but the date was later extended to January 31, 2006. See Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005) (S7-10-04).

⁷ See Securities Exchange Act Release No. 54714 (November 6, 2006), 71 FR 66352 (November 14, 2006). (Order Granting National Securities Exchanges a Limited Exemption from Rule 612 of Regulation NMS under the Securities Exchange Act of 1934 to Permit Acceptance by Exchanges of Certain Sub-Penny Orders.)

disseminated by another market center if such quote had a sub-penny component and, therefore, could have inadvertently traded through better protected quotations. The amended rule allowed the Exchange to halt trading in a security whose price was about to fall below \$1.00, without delisting the security, so that the security could continue to trade on other markets that deal in bids, offers, orders or indications of interest in sub-penny prices, until the price of the security had recovered sufficiently to permit the Exchange to resume trading in minimum increments of no less than one penny or the issuer is delisted for failing to correct the price condition within the time provided under NYSE rules.⁸ A subsequent amendment established that any orders received by the NYSE in a security subject to a “Sub-penny trading” condition would be routed to NYSE Arca, Inc. and handled in accordance with the rules governing that market.⁹

The NYSE now has the technical capability to recognize protected quotations with a sub-penny component in its round-lot market and accommodate away market executions in sub-pennies, in compliance with SEC Rules 611 and 612. Accordingly, the Exchange has filed an immediately effective rule filing to eliminate the “Sub-penny trading” condition in its entirety.¹⁰

Rule 610(c) of Regulation NMS imposes a limit of .3% of the aggregate dollar value on transaction fees charged by the executing market with respect to transactions in stocks that have trading prices below \$1.00. As the Exchange will now be trading stocks with trading prices below \$1.00, it proposes to adopt this .3% transaction fee limit with respect to all transactions in equities whether executed on the Exchange or routed to another market. This limit will apply to all customers, including Designated Market Makers. However, the Exchange will not be

⁸ See Securities Exchange Act Release No. 55398, 72 FR 11072 (March 12, 2007) (SR-NYSE-2007-25).

⁹ See Securities Exchange Act Release No. 55537 (Mar. 27, 2007), 72 FR 15749 (April 2, 2007) (SR-NYSE-2007-30).

¹⁰ See SR-NYSE-2008-111 [sic] (November 6, 2008).

imposing this fee on any transaction that would otherwise be free of charge or qualify for a credit. As, in certain cases, .3% of the transaction value may exceed the fee that would otherwise be charged, in such cases the Exchange will charge the lesser of (i) .3% of the aggregate transaction value and (ii) the fee that would have applied if the stock did not have a trading price below \$1.00.

DMMs currently 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) (“More Active Securities); 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”). Because of the very low price per share of stocks trading below a dollar, DMMs will receive a rebate of \$0.0004 per share for all transactions when adding liquidity in round lots in both Less Active Securities and More Active Securities that have a trading price below \$1.00.

The Exchange is eliminating all references to ETFs from its Price List as the Exchange no longer lists ETFs or trades them on an unlisted trading privilege basis. As a consequence, these references no longer have any relevance.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6¹¹ of the Act in general and Section 6(b)(4) of the Act¹² 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 conforms the

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

Exchange's pricing policies to the requirements of Rule 610(c) of Regulation NMS and the lower rebates to DMMs are consistent with the very low trading price per share of the affected securities.

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)¹³ of the Act and Rule 19b-4(f)(2)¹⁴ thereunder.

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:

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

- 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 Number SR-NYSE-2008-121 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-2008-121. 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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-121 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.¹⁵

Florence E. Harmon
Acting Secretary

¹⁵ 17 CFR 200.30-3(a)(12).