

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59979; File No. SR-NYSE-2009-52)

May 27, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees Charged for the Floor Member Continuing Education Program for Qualified Floor Members Pursuant to NYSE Rule 103A

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 May 22, 2009, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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, effective immediately, the fees charged for the Floor Member Continuing Education Program for qualified Floor members pursuant to NYSE Rule 103A, from a fixed flat \$50 fee per training module, to an \$80 flat fee per training module. 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 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.

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

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

As required by NYSE Rule 103A, the Exchange provides Floor members with a mandatory continuing education program, known as the Floor Member Continuing Education Program ("FMCE Program"). The Exchange proposes to amend, effective immediately, the fees charged for the Floor Member Continuing Education Program for qualified Floor members. Currently, members pay a fee of \$50 per training module. The Exchange is proposing to increase the fee to \$80 per training module for 2009.

Members must complete all Exchange-mandated FMCE programs. As originally offered, the program consisted of live and video-taped lectures. Subsequently, the Exchange updated the program and began delivering FMCE content in a computerized learning laboratory, for which members were assessed a flat per-session fee of \$100. Beginning in March 2008, the Exchange began offering the FMCE Program via a web-based interactive program that members can access from an Internet-capable computer. To reflect the delivery method of the revised, web-based FMCE Program, starting in October 2007, the Exchange changed the fee structure from a per-session fee to a flat fee of \$50 for each training module offered. For this flat fee, members are able to access the FMCE Program during their own time and from their own computers under proper compliance supervision. Members are also able to stop and start a training module at any point and return to a module once completed without any additional charge.

Based upon experience, the revenues generated from the \$50 flat fee for each training module offered are insufficient to cover fully the costs associated with developing and delivering these modules. For that reason, the Exchange is proposing to increase the fee in order to achieve the goal of cost recovery for the program. The Exchange has evaluated the program's costs for 2009 and is proposing to assess a fee of \$80 for modules delivered in 2009. The new fee will not be retroactive and will be applied following the date of this filing.

Beginning in 2010, the Exchange will review the fee annually to ensure that the fee continues to accurately reflect the Exchange's development and delivery costs. Any revenues collected in a given year that exceed that year's actual development and delivery costs will be credited to the projected development and delivery costs for the succeeding year. Similarly, any deficit may be carried over to the next year for purposes of assessing the fee. If the Exchange determines that further fee changes are necessary, we will submit appropriate filings with the Commission.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6<sup>4</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>5</sup> in general and Section 6(b)(4) of the Act<sup>6</sup> in particular, in that the proposed rule change 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

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<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78a *et seq.*

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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 purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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-2009-52 on the subject line.

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-52. 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 Section, 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-2009-52 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>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).