

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57223; File No. SR-NYSE-2007-110]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Amend Listing Fees for Structured Products, Short-Term Securities, and Debt Securities

January 29, 2008.

On November 28, 2007, New York Stock Exchange, LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend listing fees for structured products, short-term securities, and debt securities. On December 17, 2007, NYSE filed Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change for comment in the **Federal Register** on December 27, 2007.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Exchange's proposal would amend Section 902 of the Listed Company Manual to alter the Exchange's listing fees applicable to structured products, short-term securities, and debt securities. The proposal would not amend the listing fees applicable to equity securities of operating companies.

Annual fees for structured products (Section 902.05) and short-term securities (Section 902.06) are currently a minimum of \$5,000 per year. Under the proposal, the Exchange would charge a supplement to the 2008 Annual Fees for the period from February 1, 2008, until year end. An issuer that would pay less than \$15,000 in Annual Fees for 2008 would be required to pay a supplemental amount equal to the difference between its Annual Fee and \$15,000. For 2009 and thereafter, the Exchange would increase the minimum annual fee to \$15,000. Annual fees would not be increased for short-term warrants to purchase equity securities (which would continue to be subject to a \$5,000 minimum annual fee) and such warrants would not be subject to the supplemental payment for 2008.

The Exchange currently applies the debt securities fee schedule set forth in Section 902.08 to securities listed under Section 703.19 and traded on NYSE Bonds. The proposed rule change would amend Section 902.08 to impose a flat initial listing fee of \$15,000 on all structured products (including short-term securities) listed under Section 703.19 and traded on NYSE Bonds. Currently, NYSE-listed companies and their affiliates pay no fees on structured products that trade on NYSE Bonds; the new proposed \$15,000 initial listing fee would apply to all structured products listed on NYSE Bonds going forward. Section 902.08 would also be amended to impose a \$15,000 initial listing fee on securities listed under the debt standard of Section 102.03 in place of the current fees. Debt listed under Section 102.03 of NYSE equity issuers and affiliated companies and of issuers exempt from registration under the Exchange Act would continue to be exempt from listing fees.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires that an exchange have rules designed, among other things, 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 Commission also finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which requires the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Commission notes that no comments were filed in this matter.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NYSE-2007-110), as modified by Amendment No. 1, be, and it hereby is, approved.

<sup>4</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-1968 Filed 2-4-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57232; File No. SR-NYSE-2008-08]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Listed Company Manual Section 806.01 (Change of Specialist Unit Upon Request of Company)

January 30, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("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 and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as "non-controversial" under Section 19(b)(3)(A)(iii)<sup>3</sup> of the Act and Rule 19b-4(f)(6) 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

The Exchange is proposing to amend Listed Company Manual Section 806.01 to eliminate the mediation procedure required when a listed company requests a change of its specialist firm.

The text of the proposed rule changes 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.

<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)(iii).

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 56984 (December 18, 2007), 72 FR 73392.

## 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 Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

Through this filing, the NYSE seeks to amend Listed Company Manual Section 806.01 to eliminate the mediation procedure required when a listed company requests a change of its specialist firm.

#### Current Operation of Section 806.01

Listed Company Manual Section 806.01 currently provides that a listed company (or issuer) must file written notice with the Corporate Secretary of the Exchange in order to request a change of the specialist firm assigned to trade its security.<sup>5</sup> The NYSE currently notifies the subject specialist firm that a Change of Specialist Mediation will commence, and a copy of the issuer's written notice is provided to the specialist firm.<sup>6</sup> The specialist firm then has two weeks from receipt of the notice of the listed company's request to submit a written response to the Exchange's Corporate Secretary.<sup>7</sup> The Corporate Secretary provides copies of the listed company's notice and any response submitted by the specialist firm to the Exchange's New Listings & Client Service Division and to the Regulatory Group.<sup>8</sup> The Regulatory Group reviews the notice from the listed company and any specialist response to consider any regulatory issues.<sup>9</sup>

Concurrent with the regulatory review, the Exchange facilitates a mediation of the issues that have arisen between the listed company and the specialist firm by appointing a committee of senior members of the Exchange's constituency, including at least one floor broker representative from the Exchange's Board of Executives ("BOE"), one BOE investor representative, and one BOE listed company representative.<sup>10</sup> The Committee meets with both the listed company and the specialist firm to mediate the matters indicated in the listed company's notice.<sup>11</sup> During the mediation process, the listed company may file with the Exchange's Corporate Secretary its desire to remain with the specialist firm and conclude the mediation.<sup>12</sup>

If the issues have not been resolved within three months after the Specialist Response Date, the listed company may file written notice signed by the company's chief executive officer that it wishes to proceed with the change of its specialist firm.<sup>13</sup> Once the listed company confirms its request to change its specialist firm after the mediation period, the security will be put up for reallocation as soon as practicable, in accordance with Exchange Rule 103B.<sup>14</sup>

#### Proposed Changes to Mediation Process

The Exchange seeks to simplify the existing procedures for reallocating securities based upon the request of the listed company by eliminating the mediation process contained in Section 806.01 as described above.

NYSE proposes to amend Section 806.01 to permit a listed company that seeks to change the specialist firm responsible for making a market in its security to simply file a written notice

with the Exchange's Corporate Secretary requesting the change. The notice should include the reasons for the change. The Exchange's Corporate Secretary will provide copies of the notice to NYSE Regulation, Inc. ("NYSER") and the Exchange's Global Corporate Client Group. Upon receipt of the notice, the Exchange would proceed to reallocate the security in accordance with the procedures of Exchange Rule 103B.

The proposed amendment would retain the mechanism for NYSE to review such requests or refer the matter for consideration of the relevant regulatory issues to the NYSE Board of Directors. NYSE also proposes to amend Section 806.01 to reflect the current structure of NYSE.

The Exchange believes that the management of the business relationship between a specialist firm and its listed company is more appropriately left to direct communications between the specialist firm and the listed company. Currently, specialist firms maintain corporate relations groups that serve to provide listed companies with information and act as liaisons between the listed company and the specialist firm. Listed company concerns are usually first raised with the specialist firms in this forum. Once the listed company has taken the affirmative step to formally request reallocation, it is clear that further mediation will not be productive. The Exchange therefore seeks to promote a more efficient administration of the NYSE reallocation process by allowing the listed companies to proceed directly to reallocation without a required intervention period by the Exchange.

Finally, within Section 806.01, the Exchange seeks to change the word "unit," as it relates to specialist corporate entities, to the word "firm."<sup>15</sup> The Exchange believes that the word "firm" more accurately describes the specialist corporate entity.

#### 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>16</sup> that an Exchange have rules that are designed 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

Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-05-77). Pursuant thereto, the oversight functions performed by the Regulatory Oversight Committee are now vested in the Board of Directors of NYSE Regulation, Inc. ("NYSER Board of Directors"). See *id.*

<sup>10</sup> Listed Company Manual Section 806.01(c) and (d). Pursuant to the NYSE's business combination with Archipelago Holdings, Inc., the BOE was dissolved. Duties previously assigned to the BOE were generally assumed by the Executive Floor Governors. See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-05-77).

<sup>11</sup> Listed Company Manual Sections 806.01(d) and (e).

<sup>12</sup> Listed Company Manual Section 806.01(f).

<sup>13</sup> Listed Company Manual Section 806.01(g). The specialist firm has two weeks from receipt of the notice of the listed company's request to change firms to submit a written response to the Exchange's Corporate Secretary. See Listed Company Manual Section 806.01(b). The last day of that two-week period is referred to as the "Specialist Response Date." See *id.*

<sup>14</sup> Listed Company Manual Section 806.01(g).

<sup>15</sup> For other Sections of the Listed Company Manual, the Exchange will change references to specialist "units" as those Sections are updated.

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> Listed Company Manual Section 806.01(a).

<sup>6</sup> Listed Company Manual Section 806.01(b).

<sup>7</sup> Listed Company Manual Section 806.01(b).

<sup>8</sup> Listed Company Manual Sections 806.01(a) and (b).

<sup>9</sup> Listed Company Manual Section 806.01(c) provides that the Regulatory Group may refer the matter for review by the Regulatory Oversight Committee. In the event of review by the Regulatory Oversight Committee, no change of specialist firm may occur until the Regulatory Oversight Committee makes its final determination. See *id.* In February 2006, after NYSE's business combination with Archipelago Holdings, Inc., the Exchange's Regulatory Group was incorporated as a separate not-for-profit entity, NYSE Regulation, Inc., with an independent board of directors. See Securities

general, to protect investors and the public interest.

#### *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 has neither solicited nor received written comments on the proposed rule change.

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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>18</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>19</sup> However, Rule 19b-4(f)(6)(iii)<sup>20</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 has satisfied the five-day pre-filing requirement.<sup>21</sup> In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to immediately implement this proposal and would simplify the existing procedures for reallocating securities based upon the request of the listed company by eliminating the mediation process contained in Section 806.01. The Commission designates the

proposal to become effective and operative upon filing.<sup>22</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 the 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-2008-08 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-2008-08. 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 on official business days between the hours of 10 a.m. and 3 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-2008-08 and should be submitted on or before February 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57220; File No. SR-NYSEArca-2008-08]

#### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Pertaining to the Imposition of Fines for Minor Rule Violations**

January 29, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 18, 2008, NYSE Arca, Inc. ("NYSE Arca" 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 substantially by the Exchange. 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 Arca Rule 6.24, "Exercise of Option Contracts," and NYSE Arca Rule 10.12, "Minor Rule Plan." The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's principal office, 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 Exchange included statements

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

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