

The Exchange proposes to amend NYSE Rule 2(b) to provide that membership in FINRA is a condition to becoming a member organization of NYSE. NYSE intends to retain for itself the discretion to deem an applicant unacceptable for NYSE membership, and is retaining Rule 308 (Acceptability Proceedings) for this purpose.

The Exchange recognizes that the proposed amendments to both the NYSE's and NASD's membership rules will not be approved as of the date of the closing of the Transaction and therefore, as of the closing of the Transaction, NYSE-only firms may not yet be approved FINRA members. Accordingly, the Exchange proposes that NYSE-only member organizations be provided a 60-day grace period within which they must apply for and be approved for FINRA membership. This grace period would run from the later of the date of Commission approval of either this proposed filing or NASD's proposed filing to amend its membership rules.

## 2. Statutory Basis

The Exchange states that the statutory basis for proposed rule change is the requirement under section 6(b)(5)<sup>10</sup> of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be 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 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 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

Euronext, Inc., a publicly-traded corporation, the Exchange amended its rules to reflect the separation of trading privileges at the Exchange from equity ownership in the Exchange. Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (File No. SR-NYSE-2005-77).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-2007-67 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-2007-67. 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 a.m. and 3 p.m.

Copies of such filing also will be available for inspection and copying at the principal office of the 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-2007-67 and should be submitted on or before August 28, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-15274 Filed 8-6-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56181; File No. SR-NYSE-2007-70]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Amend the Gross FOCUS Fee

August 1, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 27, 2007, 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, II, and III below, which Items have been prepared by the NYSE. On August 1, 2007, NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The NYSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the NYSE under section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) 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

<sup>11</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.

<sup>3</sup> Amendment No. 1 deleted a sentence in the statutory basis section of Exhibit 1 to the proposed rule change that was mistakenly included in the proposal and amended the Fee Schedule in Exhibit 5 to reference the file number of this proposal.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

change, as modified by Amendment No. 1, from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to reduce its gross FOCUS (Financial and Operational Combined Uniform Single Report) fee by 75% as of January 1, 2008. In addition, following the closing of the proposed consolidation of the member firm regulatory functions of the National Association of Securities Dealers, Inc. ("NASD") and NYSE Regulation, Inc. ("NYSE Regulation"), the Exchange will transfer 75% of the gross FOCUS fees paid by member organizations for the remainder of 2007 to the resultant combined self-regulatory organization, Financial Industry Regulatory Authority, Inc. ("FINRA").

The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the principal office of the NYSE, 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 NYSE 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**

On November 28, 2006, NYSE Regulation and NASD announced a plan to consolidate their member regulation operations into a combined organization that will be the sole U.S. private-sector provider of member firm regulation for securities firms that conduct business with the public (the "Transaction"). The objective of the Transaction is to increase consistency and efficiency of member firm regulation, including examination, enforcement, and rule making, for the benefit of individual investors and overall market integrity. It is also an objective of the Transaction to reduce the regulatory and financial burdens placed on member firms as a result of duplicate self-regulatory structures.

The Exchange charges its member organizations a fee of \$0.42 per \$1,000 of gross revenues as reported by each member firm in its FOCUS report,<sup>6</sup> subject to minimum annual fees of \$180.00 for member organizations who do not conduct a public business, \$1,000.00 for introducing firms, and \$2,000.00 for carrying firms and specialists. These fees are imposed on all Exchange member organizations other than those members for whom another self-regulatory organization is the designated examining authority ("DEA") under Rule 17d-1<sup>7</sup> of the Act. The Exchange allocates the FOCUS fees to NYSE Regulation to fund its performance of its regulatory activities with respect to member organizations.

As a substantial proportion of these regulatory activities will be performed by FINRA after the Transaction, the Exchange has agreed with the NASD that, subject to the closing of the Transaction, 75% of the gross FOCUS fees paid to the Exchange during the remainder of 2007 after the closing of the Transaction will be remitted to FINRA. The Exchange believes that this apportionment of the FOCUS fee revenues is consistent with the relative regulatory activities that will be performed by NYSE Regulation and FINRA respectively after the Transaction. NYSE Regulation and the NASD have agreed upon this transitional period in which the Exchange remits FOCUS fee revenue to FINRA as a matter of administrative convenience to avoid the need for substantial adjustment of member firm billing arrangements mid-year. Assuming that the Transaction has closed, commencing January 1, 2008, the Exchange will reduce its FOCUS fees, including the minimum fees, by 75%, but will charge these fees to all members notwithstanding that they will be members of both the Exchange and FINRA.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the objectives of section 6 of the Act<sup>8</sup> in general and furthers the objectives of section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its

<sup>6</sup> FOCUS (Securities Exchange Act Form X-17A-5) is an acronym for Financial and Operational Combined Uniform Single Report. The report is filed periodically with the Commission pursuant to Rule 17a-5 under the Act.

<sup>7</sup> 17 CFR 240.17d-1.

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

members and other persons using its facilities.

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

The Exchange believes that the proposed rule change does not 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*

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 has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of such 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.<sup>12</sup>

### **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-2007-70 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

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

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> The effective date of the original proposed rule is July 27, 2007. The effective date of Amendment No. 1 is August 1, 2007. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 1, 2007, the date on which the NYSE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-70. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2007-70 and should be submitted on or before August 28, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris,

Secretary.

[FR Doc. E7-15313 Filed 8-6-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56180; File No. SR-NYSEArca-2007-72]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Auction Only Limit Order Type

August 1, 2007.

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 July 25, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities" or "Corporation") 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 filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing with the Commission.<sup>4</sup> 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, through NYSE Arca Equities, is proposing to amend its Rule 7.31(t) in order to modify the Auction Only Limit Order. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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 Exchange 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 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

As part of its continuing efforts to provide additional flexibility and increased functionality to its system and its Users,<sup>5</sup> the Exchange proposes to modify the Auction Only Limit Order ("Auction Only"). Currently, this order type is defined as a limit order that may be executed only during the Market Order Auction<sup>6</sup> or the Trading Halt Auction.<sup>7</sup> The Exchange proposes to

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

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

<sup>5</sup> See NYSE Arca Rule 1.1(yy) for the definition of "User."

<sup>6</sup> See NYSE Arca Rule 7.35(c) for a description of the "Market Order Auction."

<sup>7</sup> See NYSE Arca Rule 7.35(f) for a description of the "Trading Halt Auction."

amend and expand Rule 7.31(t) to include market orders and to make the order available in all auctions.

According to the proposed rule change, the Auction Only order will be executable during the next auction following entry of the order and that any unexecuted balance will be cancelled. Auction Only orders are only available for auctions on the Exchange and are not routed to other exchanges.

The Exchange believes that the implementation of the aforementioned rule change will enhance order entry and execution opportunities on NYSE Arca.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

##### 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 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 foregoing 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)<sup>10</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>11</sup> At any time within 60 days of the filing of the proposed rule

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

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

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

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

<sup>13</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.