

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be the date of filing.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>8</sup> in general, and with Section 15A(b)(5) of the Act,<sup>9</sup> in particular, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change is a reasonable fee structure in that it will be applied uniformly to all FINRA members that submit non-media reports to the NASD/NSX TRF.

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

FINRA does not believe that the proposed rule change will result in 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 proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed on members by FINRA. Accordingly, the proposal is effective upon filing with the Commission. 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-FINRA-2008-004 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-004. 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 FINRA. 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 publicly available. All submissions should refer to File Number SR-FINRA-2008-004 and should be submitted on or before March 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57305; File No. SR-NYSE-2007-119]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Relating to the Adoption of New Exchange Rule 309 (Failure To Pay Fees)

February 11, 2008.

## I. Introduction

On December 21, 2007, the New York Stock Exchange LLC ("NYSE") 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 adopt new Exchange Rule 309, which delineates procedures for the collection of fee arrearages due to the Exchange. The proposed rule change was published for comment in the **Federal Register** on January 7, 2008.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange has proposed to establish new procedures to address members, member organizations, and allied members who fail to pay "fee[s] or any other sums due to the Exchange."<sup>4</sup> Types of payments that the Exchange would consider to be a "fee" under proposed Rule 309 include, but are not limited to, regulatory fees (*i.e.*, Gross Financial and Operational Combined Uniform Single Report (FOCUS) revenue fees and trading floor regulatory fees), trading license fees, and transaction charges. Types of payments that the Exchange would consider to be covered by the term "any other sums" include, but are not limited to, charges for using Exchange Floor

<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. 57065 (December 28, 2007), 73 FR 1248 ("Notice").

<sup>4</sup> See proposed Rule 309. Currently, Exchange Rule 476(k) sets forth the procedures for addressing the failure of members, member organizations, or allied members to pay "a fine, or any other sums due to the Exchange." Rule 476(k) provides that upon written notice to such members, member organizations, or allied members and notification of the Chairman of the Board of Directors of the Exchange of the arrearage, the Board of Directors may suspend the member, member organization, or allied member for failure to pay the arrearages due the Exchange until payment is made.

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

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

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

facilities and equipment and phone service charges.<sup>5</sup>

Pursuant to proposed Rule 309, if a member, member organization, or allied member fails to make payment within forty-five days after the fee or other sum becomes payable, notice of the arrearage will be given to the member and the member will be reported to the Chief Financial Officer (“CFO”) of the Exchange or a designee. The CFO or designee will be responsible for taking any remedial action he or she deems appropriate, including suspension of the delinquent member’s, member organization’s, or allied member’s access to some or all Exchange facilities.

In its filing, the Exchange stated that the terms “fees” and “any other sums” in the text of proposed Rule 309 will not include fines levied in connection with a disciplinary proceeding. The proposed rule provides that failure to pay such disciplinary fines will continue to be governed by the provisions of Exchange Rule 476(k) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or Others).<sup>6</sup>

### III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>7</sup> and, in particular, the requirements of section 6 of the Act.<sup>8</sup> Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities 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.

Currently, under Exchange Rule 476(k), the ability to suspend members,

<sup>5</sup> Telephone bills for Exchange-provided portable phones are paid by the Exchange and thereafter the Exchange submits an invoice to the member, member organization, or allied member for reimbursement.

<sup>6</sup> The Exchange stated that in the context of Rule 476(k), “fine” includes a fine levied in connection with a disciplinary proceeding and related fees also associated with a disciplinary proceeding.

<sup>7</sup> In approving this proposed rule change the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>9</sup> 15 U.S.C. 78f(b)(2).

member organizations, and allied members for non-payment of sums due to the Exchange becomes operative after 45 days. According to the Exchange, this provision currently is not utilized by the Exchange; instead, arrearages are referred to the Exchange’s collections department for resolution, which generally does not avail itself of the recourse provided in Exchange Rule 476(k). The Exchange has proposed to have notice of certain overdue fees (other than disciplinary fines and fees) reported to the CFO (or his or her designee), and to vest in the CFO (or his or her designee) the authority to determine what if any remedial action should be taken upon receipt of a report that a member, member organization, or allied member failed to pay a fee. Specifically, the CFO, or his or her designee, would be empowered to suspend access to some or all of the facilities of the Exchange until payment of the arrearage is made.

The Commission believes that the Exchange’s proposal to empower its Chief Financial Officer, or his or her designee, to consider and address non-payment of certain fees and other sums due to the Exchange, other than disciplinary fines, after notice has been given of the arrearage to such member, member organization, or allied member, is consistent with the Act.

The proposed rule would not preclude the Exchange’s CFO from presenting notice of any arrearage to the Board pursuant to Exchange Rule 476(k) where appropriate, but rather provides a more efficient process for the Exchange’s senior management to address non-payment of certain fees and other sums due to the Exchange, other than disciplinary fines, without the need to involve the Exchange’s Board of Directors in what is normally a purely business matter.

In approving the proposed rule change, the Commission has relied on the Exchange’s representation that failure to pay disciplinary fines and any fees assessed in connection with disciplinary matters will continue to be governed solely by Rule 476(k), and that suspension of members for failure to pay fines or fees arising out of disciplinary actions continues to be subject to consideration by the Exchange’s Board of Directors pursuant to that rule.

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR–

NYSE–2007–119) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57294; File No. SR–NYSEArca–2007–78]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Units of the United States Heating Oil Fund, LP and the United States Gasoline Fund, LP Pursuant to Unlisted Trading Privileges

February 8, 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 July 30, 2007, NYSE Arca, Inc. (“Exchange”), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), 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. This order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to trade pursuant to unlisted trading privileges (“UTP”) units (“Units”) of the United States Heating Oil Fund, LP (“USHO”) and the United States Gasoline Fund, LP (“USG”) (each, a “Partnership,” and collectively “Partnerships”) pursuant to NYSE Arca Equities Rule 8.300. The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nyse.com>, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

<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>10</sup> 15 U.S.C. 78s(b)(2).