all tapes through the Order Delivery Mode, through Auto Ex, and as liquidity providing trades and quotes. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to make the proposed credit and rebate structure effective on filing of this proposed rule for trading on September 23, 2008. Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will provide a copy of the rule filing on the Exchange's Web site (*http://www.nsx.com*).

Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] 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 the facilities of the Exchange. Moreover, the proposed fee and rebate structure is not discriminatory in that all ETP Holders are eligible to submit (or not submit) liquidity adding trades and quotes in Order Delivery Mode in all tapes and may do so at their discretion.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because, as provided in (f)(2), it ''changes a due, fee or other charge imposed by the Exchange applicable only to a member'' (known on the Exchange as an ETP Holder). At any time within sixty (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.

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*. Please include File Number SR–NSX–2008–17 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–NSX–2008–17. 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 Exchange. 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–NSX–2008–17 and should be submitted on or before October 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–24118 Filed 10–9–08; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4 [sic].

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58741; File No. SR–NYSE–2008–97]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC To Adopt an Initial Listing Standard Applicable Only to Companies Transferring From NYSE Arca

October 6, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 1, 2008, New York Stock Exchange LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange 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 proposes to amend Section 102.01C of the Exchange's Listed Company Manual (the ''Manual'') to adopt an initial listing standard that will be applicable only to companies that are listed on NYSE Arca, Inc. (''NYSE Arca'') as of October 1, 2008 and that transfer to the Exchange on or before March 31, 2009. The Exchange also proposes to apply the continued listing standard applicable under Section 802.01B to companies listed under the Earnings Test to companies listed under the proposed new initial listing standard.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Commission notes that NYSE is also proposing to adopt a new initial listing standard for

The text of the proposed rule change is available at *http://www.nyse.com,* the NYSE, and 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 proposes to amend Section 102.01C of the Manual to adopt an initial listing standard that will be applicable only to companies that are listed on NYSE Arca, Inc. (''NYSE Arca'') as of October 1, 2008 and that transfer to the Exchange on or before March 31, 2009. The Exchange also proposes to apply the continued listing standard applicable under Section 802.01B to companies listed under the Earnings Test [5] to companies listed under the proposed new initial listing standard.

Upon completion of its acquisition of the American Stock Exchange (to be renamed NYSE Alternext US LLC at the time of the acquisition), NYSE Euronext will have three equity listing markets: The NYSE; NYSE Arca; and NYSE Alternext US. NYSE Euronext management has made a strategic business decision to move forward with only two operating company equity listing markets and, consequently, has decided to discontinue the operating company equity listing program on NYSE Arca. As part of this transition, the Exchange wishes to offer the opportunity to list on the NYSE to all suitable NYSE Arca companies. NYSE Arca listed companies wishing to transfer to the NYSE will be required to submit a listing application and be subject to the same listing application process as all other applicant companies. Most companies currently listed on NYSE Arca would meet the NYSE's continued listing requirements set forth in Section 802.01B of the Manual for companies listed under the Exchange's Earnings Test.[6] However, a number of these companies that meet the NYSE's continued listing standards do not qualify to list under any of the existing NYSE initial listing standards. In order to list these companies, the Exchange proposes to adopt a special listing standard applicable only to those companies listed on NYSE Arca on the date of initial submission of this filing and the Exchange would only utilize this standard for a brief period, ending on March 31, 2009.

Companies transferring from NYSE Arca under the proposed standard (the ''NYSE Arca Transfer Standard'') would be required to have $75 million in total market capitalization for 90 consecutive days prior to applying for listing and $20 million in market value of publicly-held shares (but not the $100 million market value of publicly-held shares requirement of Section 102.01B). Such companies would have to meet the holders, publicly-held shares and trading volume requirements as set forth in Section 102.01A as companies that list under the existing initial listing standards and the $4 stock price requirement of Section 102.01B.[7]

The Exchange believes it is appropriate to adopt a short-term listing standard applicable only to NYSE Arca companies. These companies listed on NYSE Arca on the assumption that it would exist as a permanent listing market and it is solely because of a business decision made by NYSE Euronext that these companies will need to transfer their listings. Many of these companies listed on NYSE Arca because of its association with the NYSE and in the expectation that they would ultimately switch their listing to the NYSE when they met the NYSE's listing standards. As such, the Exchange believes that fairness dictates that it should seek to list these companies on the NYSE where such a listing is appropriate and in the interests of the investing public.

The NYSE will only list companies under the NYSE Arca Transfer Standard if it believes that those companies are suitable for trading on the NYSE. All of the companies that would be listed under the NYSE Arca Transfer Standard will far exceed the NYSE's continued listing standards at the time of initial listing and will be in compliance with NYSE Arca continued listing standards. In addition, the same staff in NYSE Regulation's Financial Compliance and Corporate Governance groups is responsible for ongoing compliance reviews of both NYSE and NYSE Arca companies. As such, the NYSE Regulation staff involved in making initial listing determinations on the NYSE is extremely familiar with the companies currently listed on NYSE Arca and is uniquely positioned to determine whether those companies are suitable for listing on the NYSE. The Exchange believes its depth of knowledge with respect to NYSE Arca companies makes it appropriate to list them on this one time basis under a less onerous standard than the Exchange applies to other listing applicants. Companies listing under the NYSE Arca Transfer Standard will be subject to the standard listing application and review process applicable to all listing applicants and, if Exchange staff determine that an NYSE Arca company is not suitable for listing on the NYSE—notwithstanding its qualification under the numerical requirements of the NYSE Arca Transfer Standard—the Exchange will not list that company.

The requirements of the NYSE Arca Transfer Standard will exceed those established by the Exchange Act Rule 3a51–1(a)(2) (the ''Penny Stock Rule'').[8] The proposed standard's requirement that an applicant have $75 million in global market capitalization for 90 days prior to transferring from NYSE Arca exceeds the $50 million market capitalization for 90 days prior to listing option in the Penny Stock Rule, as well as the $50 million market capitalization requirement of Rule 3a51–1(a)(2)(i)(B). In addition, companies listing under the NYSE Arca Transfer Standard will be required at the time of transfer to have a $4 stock price, 400 round lot holders and 1.1 million publicly held shares, thereby meeting or exceeding all of the

operating companies. *See* Securities Exchange Act Release No. 58740 (October 6, 2008) (SR–NYSE–2008–98).

[5] As set forth in Section 802.01B(1) of the Manual.

[6] Companies listed under the Earnings Test are considered to be below compliance standards if their average global market capitalization over a consecutive 30 trading-day period is less than $75,000,000 and, at the same time, total stockholders' equity is less than $75,000,000. In addition Section 802.01B requires all listed companies to maintain a minimum of $25 million in global market capitalization and Section 802.01C requires all listed companies to maintain a $1.00 minimum stock price. The Exchange represents that the holders, trading volume and publicly-held shares requirements of Section 802.01A along with the requirements of Sections 802.01D (''Other Criteria'') and 802.01E (''SEC Annual Report Timely Filing Criteria'') would also apply. Telephone conversation between John Carey, Chief Counsel, NYSE and David J. Michehl, Special Counsel, Division of Trading and Markets, Commission on October 6, 2008.

[7] The total market capitalization and market value of publicly-held shares requirements of the NYSE Arca Transfer Standard equal those of Amex Initial Listing Standard 4 (Amex Company Guide Section 101(d)).

[8] 17 CFR 240.a51–1(a)(ii).

Penny Stock Rule's remaining requirements.

Companies listing under the NYSE Arca Transfer Standard will have to comply with all other applicable Exchange listing rules, including the Exchange's corporate governance requirements. As with all other listing applicants, the Exchange reserves the right to deny listing to any company seeking to list under the NYSE Arca Transfer Standard if the Exchange determines that the listing of any such company is not in the interests of the Exchange or the public interest.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [9] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the protection of investors and the public interest in that the requirements of the NYSE Arca Transfer Standard are sufficiently stringent that the proposed amendment will not lead to the listing of any companies that are not suited for listing on the NYSE. In addition, the proposal applies for a very brief period to a small number of companies that are subject to unique and disadvantageous circumstances.

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

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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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 Exchange 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.* Please include File Number SR–NYSE–2008–97 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–2008–97. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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–2008–97 and should be submitted on or before October 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

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[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58736; File No. SR–NYSE–2008–91]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC To Adopt a Policy Relating to its Treatment of Trade Reports That It Determines To Be Inconsistent With the Prevailing Market

October 6, 2008.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Exchange Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 26, 2008, New York Stock Exchange, LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change 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 change from interested persons.

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

The Exchange proposes to adopt a policy relating to its treatment of trade reports that it determines to be inconsistent with the prevailing market. The Exchange does not expect that the proposed rule change will have any direct effect, or significant indirect effect, on any other Exchange rule in effect at the time of this filing.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et SEC* [sic].

[3] 17 CFR 240.19b–4.