

protection of investors and the public interest to allow limited partnerships to distribute annual reports to their limited partners under the same terms and conditions as Nasdaq's other listed operating companies. The Commission believes that waiving the 30-day operative delay for limited partnerships will also allow these partnerships who have just filed, or are about to file, their annual reports with the Commission, to immediately take advantage of the same means of distribution under Nasdaq rules that are available for any other operating company. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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-NASDAQ-2009-003 on the subject line.

##### *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-NASDAQ-2009-003. 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 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-NASDAQ-2009-003 and should be submitted on or before February 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59327; File No. SR-NYSE-2009-09]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing an Equity Transaction Fee for Shares Executed on or Through the New York Block Exchange Effective Upon Filing With the Commission

January 30, 2009.

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 January 28, 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 implement an equity transaction fee effective January 29, 2009, for shares executed on the New York Block Exchange<sup>SM</sup> ("NYBX" or the "Facility").<sup>4</sup> The Exchange will charge each Member Organization \$.0025 per share executed on the NYBX.

The text of the proposed rule change is available at <http://www.nyse.com>, the Exchange, 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 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

The Exchange proposes to implement an equity transaction fee for executions on or through the New York Block Exchange system with effect from the scheduled launch date of January 29, 2009. The NYBX will be an electronic facility of the Exchange to provide for the continuous matching and execution of securities listed on the NYSE of all non-displayed orders with the aggregate of all displayed and non-displayed orders of the NYSE Display Book<sup>®</sup> ("Display Book" or "DBK") while also considering protected quotations of all automated trading centers ("away markets"). The proposed transactional fee of \$.0025 per executed share will be charged to both the buyer(s) and seller(s) of the executed shares. The fee will be charged for all executions of NYBX orders, including those NYBX executions that take place in the DBK or

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

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

<sup>4</sup> See Securities Exchange Act Release No. 59281 (January 22, 2008) 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) and Securities Exchange Act Release No. 59282 (January 22, 2009), 74 FR 5009 (January 28, 2009) (SR-NYSE-2008-119).

in away markets. Only NYSE members, member organizations and sponsoring member organizations will be charged this transaction fee. Transaction fees for executions of orders entered by sponsored participants will be charged to the sponsoring member organization.

The following example will demonstrate how the proposed NYBX transactional fee will be charged:

Example No 1:

User A enters a buy order into NYBX for 10,000 shares of XYZ security. User B enters a sell order into NYBX for 10,000 shares of XYZ security. User A's buy order for 10,000 shares of XYZ security and User B's sell order for 10,000 shares of XYZ security execute in or through NYBX. User A is charged \$.0025 per executed share (10,000 shares  $\times$  \$.0025 = \$25.00). User B is also charged \$.0025 per executed share (10,000 shares  $\times$  \$.0025 = \$25.00).

NYBX Executions in the DBK or in Away Markets:

The NYBX transactional fee will be charged for all executions of all orders entered into the NYBX facility, whether such executions take place in the NYBX facility, the DBK or in away markets. Therefore, in the example above, if the execution of 10,000 shares of XYZ security takes place within the NYBX facility, Users A and B would each be charged \$.0025 per executed share (10,000 shares  $\times$  \$.0025 = \$25.00). However, if Users A and B's NYBX orders are routed to the DBK for execution, and the execution of the orders take place in the DBK, Users A and B would each be charged \$.0025 per executed share (10,000 shares  $\times$  \$.0025 = \$25.00). Similarly, if Users A and B's NYBX orders are routed to away markets pursuant to Rule 611 of Regulation NMS, and the execution of the orders take place on the away markets, Users A and B would each be charged \$.0025 per executed share (10,000 shares  $\times$  \$.0025 = \$25.00). Therefore, Users A and B will not pay any additional transactional fee for the execution of NYBX orders to the extent that an NYBX order or a portion thereof may be executed in the DBK or in the away markets.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6<sup>5</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>6</sup> in general and Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable

dues, fees and other charges among its members and other persons using its facilities. Specifically, the proposed transaction fee is reasonable in light of the costs incurred by the Exchange for the operation of the NYBX system. Further, the NYBX fee is consistent with some exchanges' fees and lower than other exchanges' fees for removal of liquidity. For example, the BATS Exchange, Inc. fee for removal of liquidity is \$.0025 per execution,<sup>8</sup> while the Nasdaq<sup>9</sup> and International Securities Exchange ("ISE")<sup>10</sup> fee is \$.0030, NYSE Arca is \$.0029<sup>11</sup> and Direct Edge is \$.0026.<sup>12</sup> Additionally, the transaction fee is equitable as the fee is applied to all users of the NYBX system equally.

### 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

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>13</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>14</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE. 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.

## 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

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### 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-2009-09. 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-NYSE-2009-09 and should be submitted on or before February 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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

<sup>6</sup> 15 U.S.C. 78a.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> See the BATS Exchange, Inc. Price List for 2009.

<sup>9</sup> See the Nasdaq Price List for 2009.

<sup>10</sup> See the International Securities Exchange Price List for 2009.

<sup>11</sup> See the NYSE Arca Price List for 2009.

<sup>12</sup> See the Direct Edge Price List for 2009.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).