

these comments received in response to NYSE's filing, SR-NYSE-2008-55.<sup>17</sup>

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act.<sup>18</sup> The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.<sup>19</sup>

The Exchange believes that the instant filing is non-controversial. The Commission has approved a third-party vendor liability provision that was filed by the American Stock Exchange which required members and member organizations to indemnify the Exchange and its vendors and/or subcontractors and provided that such vendor and its subcontractors shall not be liable to the member or member organization for any damages sustained by a member or member organization from use of these third-party vendor systems.<sup>20</sup> The Exchange submits that its proposed rule change is less expansive than Amex Rule 60—AEMI and affords a member or member organization the ability to recover from a loss sustained by use of a third-party vendor system. The proposed rule change offers its members and member organizations two layers of recourse in the event of a third-party vendor system malfunction, *i.e.*, filing a claim pursuant to NYSE Rule 18 and then filing a claim directly against the third-party vendor for any remaining balance of the loss amount. Therefore, the Exchange submits that this proposed rule filing, in light of the more restrictive vendor liability disclaimer rules previously approved by the Commission, is non-controversial.

<sup>17</sup> See March 2nd E-mail, *supra* note 6.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement. 17 CFR 240.19b-4(f)(6)(iii).

<sup>20</sup> Amex Rule 60—AEMI ("Vendor Liability Disclaimer"). AEMI ("Auction & Electronic Market Integration") System was Amex's Hybrid Market Structure for equities and exchange-traded funds prior to the merger with NYSE.

The Exchange proposes this rule amendment in light of feedback from its member and customer constituencies. Accordingly, the Exchange submits that this proposed amendment is non-controversial and reflects the public interest.

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 Exchange 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-2009-16 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-NYSE-2009-16. 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-2009-16 and should be submitted on or before March 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59491; File No. SR-NYSE-2009-20]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending a Temporary Equity Transaction Fee for Shares Executed on the NYSE MatchPoint<sup>SM</sup> System, Effective March 1, 2009 Until April 30, 2009

March 3, 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 February 26, 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 extend a temporary equity transaction fee for shares executed on the NYSE MatchPoint<sup>SM</sup> ("NYSE MatchPoint" or "MatchPoint") system, effective March 1, 2009 until April 30, 2009. The Exchange will charge each member organization using the MatchPoint system a per share fee scaled to the

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

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

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

average daily volume of shares it executes on the MatchPoint system.

## 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 Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

On January 7, 2009, the Exchange filed with the Securities and Exchange Commission (the "Commission") a proposed rule change to adopt a temporary equity transaction fee for shares executed on the NYSE MatchPoint<sup>SM</sup> system, effective until February 28, 2009 (the "January filing").<sup>4</sup> Through this filing, the Exchange proposes to extend this equity transaction fee to be effective March 1, 2009 until April 30, 2009.

Prior to the January filing, the equity transaction fee was \$.0015 per share executed on the MatchPoint system. In the January filing, the Exchange proposed to adopt a scaled fee for MatchPoint users based on the average daily volume of shares executed during a calendar month through the MatchPoint system as follows:

Average daily volume of shares executed	rate
50,000 shares or less .....	\$.0015 per share
Over 50,000 to 499,999 ...	\$.0010 per share
500,000 and greater .....	\$.0005 per share

The Exchange believes that the extension of the fee schedule until April 30, 2009 will continue to reward those who have been using the MatchPoint system for share execution, and will provide a continued incentive for new participants in MatchPoint.

It is intended that the MatchPoint fee will revert to the equity transaction fee of \$.0015 per share beginning May 1, 2009.

#### 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")<sup>5</sup> for the proposed rule change is the requirement under Section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the fees are reasonable in that they carry forward a reduction in fees that the January filing established, and are equitable in that they are available to all members who access the MatchPoint 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

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>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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-NYSE-2009-20 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-NYSE-2009-20. 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-2009-20 and should be submitted on or before March 30, 2009.

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

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

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<sup>4</sup> See Securities Exchange Act Release No. 59229 (January 12, 2009) 74 FR 3119 (January 16, 2009), approving SR-NYSE-2009-01[*sic*].

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

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