Commission believes that the proposal is consistent with Sections 6(b)(5) and 6(b)(7) of the Act,[6] which require, among other things, that an exchange have rules designed to promote just and equitable principles of trade, protect investors and the public interest, and enhance the effectiveness and fairness of the Exchange's disciplinary procedures. The Commission believes that CBOE's proposed rule changes should help to improve the efficiency of CBOE's market by eliminating unnecessary costs now borne by the Exchange's DPMs relating to the maintenance of back-up quotation systems.

As set forth in the Notice, CBOE Rules 8.85(a)(xi) and (xii) both impose an obligation on DPMs to maintain independent backup autoquote systems that can be employed in the event that a DPM's proprietary autoquote system should fail or be otherwise unavailable. Rule 8.85(a)(xi) governs non-CBOE Hybrid System (''non-Hybrid'') classes, while Rule 8.85(a)(xii) governs CBOE Hybrid System (''Hybrid'') classes.

With regard to CBOE Rule 8.85(a)(xi), the Commission notes that the Exchange has converted all of its DPM option classes to the CBOE Hybrid System. Thus, because non-Hybrid option classes no longer exist, CBOE Rule 8.85(a)(xi) has no applicability. Its repeal will have no impact on market participants.

As regards CBOE Rule 8.85(a)(xii), which requires DPMs to maintain an independent backup autoquote system that it may employ in the event its proprietary autoquote system fails, the Commission believes that the CBOE has made a reasonable determination that the backup obligation is no longer necessary. The Commission has no basis at this time to disagree with the CBOE's assessment that the recent adoption and implementation of the electronic DPM (''e-DPM'') program[7] on the Exchange should provide a more appropriate and cost effective safeguard against a DPM's inability to generate quotes in such option classes. Pursuant to the Exchange's rules governing the program, CBOE may allocate an option class that is already allocated to a DPM to one or more e-DPMs.[8] Such e-DPMs provide competing quotations accessible by CBOE market participants.

Thus, the Commission believes that, given the CBOE's current trading environment, the exchange has made a reasonable determination that the requirement to maintain a backup quotation system is unnecessary and unduly burdensome on DPMs. The proposed rule changes appear to be reasonably designed to help to put DPMs on a more equal competitive footing other market participants, including electronic DPMs, which do not have a backup quotation system maintenance requirement. Moreover, the Commission notes that deletion of the backup autoquote rules would not affect a DPM's separate obligation to provide continuous market quotations for each of its allocated classes and respective series.[9]

Finally, the Commission approves CBOE's proposal to remove references to Rules 8.85(a)(xi) and 8.85(a)(xii) in its Minor Rule Violations Plan.[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–2005–28) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5) and 78f(b)(7).

[7] *See* Exchange Act Release Nos. 49577 (April 19, 2004), 69 FR 22576 (April 26, 2004) (order approving the process for approving e-DPMs on the Exchange); 50003 (July 12, 2004), 69 FR 25647 (July 19, 2004) (order approving e-DPM trading rules).

[8] *See* CBOE Rules 8.92 and 8.93.

[9] *See* CBOE Rule 8.85(a)(i).

[10] *See* CBOE Rule 17.50(g)(10).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52316; File No. SR–NYSE–2005–56]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Exchange Rule 629 (''Schedule of Fees'') To Establish Processing Fees for Members, Member Organizations, and Allied Members That Are Parties to Arbitration Proceedings

August 22, 2005.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''), and Rule 19b–4[2] thereunder, notice is hereby given that on August 10, 2005, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. For purposes of Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] NYSE has designated the proposed rule change as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on its members, which renders the proposal effective upon filing with the Commission. 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 proposed rule change consists of amendments to Rule 629 to impose processing fees on members, member organizations, and allied members in connection with arbitration proceedings in which more than $25,000 is in dispute. Below is the text of the proposed rule change to Rule 629. Proposed new language is in *italics*; proposed deletions are in [brackets].

Rule 629 Schedule of fees

(a) through (j) No Change.

* * * * *

(k) *Arbitrator Selection and Hearing Scheduling Processing Fees*

(1) *Each member, member firm, member corporation or allied member (hereinafter referred to as any ''entity'') that is a party to an arbitration proceeding in which more than $25,000 is in dispute will pay the following non-refundable processing fees:*

(a) *An arbitrator selection fee of $750, due at the time the parties are sent the names of proposed arbitrators; and,*

(b) *A hearing scheduling fee in the applicable amount set forth in the schedule below, due when the parties are notified of the date and location of the first hearing session.*

Amount of dispute	*Hearing scheduling fee*
$1–$25,000	*$0*
$25,000.01–$50,000	*$1,000*
$50,000.01–$100,000	*$1,700*
$100,000.01–$500,000	*$2,750*
$500,000.01–$1,000,000	*$4,000*
$1,000,000.01–$5,000,000	*$5,000*
More than $5,000,000	*$5,500*
Unspecified	*$2,200*

(2) *If an associated person of an entity is a party, the entity or entities that*

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).

employed the associated person at the time of the events which gave rise to the dispute, claim or controversy will be charged the processing fees, even if the entity is not a party. No entity shall be assessed more than one arbitrator selection processing fee and one hearing scheduling processing fee in any arbitration proceeding.

(3) *The processing fees for arbitrator selection and hearing scheduling shall not be chargeable under 629(c) to a party other than the entity.*

* * * * *

A. 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 text of these 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 aspects of such statements.

1. Purpose

The proposed amendments to Rule 629 would establish certain processing fees for members, member organizations, and allied members that are parties to arbitration proceedings in which more than $25,000 is in dispute. These fees would be assessed: (1) When the names of the proposed arbitrators are sent to the parties; and (2) when the date and location of the hearing are sent to the parties. The processing fees would be assessed on the members, member organizations, and allied members when their associated person(s) are the subject of claims, even if the member, member organization, or allied member is not a party. However, no member, member organization, or allied member would be assessed more than one arbitrator selection fee and one hearing scheduling fee in any arbitration proceeding.

The processing fee, assessed when the names of the arbitrators are sent to the parties, would be fixed and not vary based on the amount in dispute. The processing fee, assessed when the date and location of the hearing are sent to the parties, would vary based on the amount in dispute. Processing fees would not be assessed on claims of $25,000 or less, as these claims are generally decided by one arbitrator on the papers, without an actual hearing being held.

These fees would be assessed only on members, member organizations, and allied members; in no circumstances would processing fees be charged to or assessed against public customers.

As the arbitration caseload has increased over the past several years, the attendant costs to the Exchange in maintaining the arbitration forum have also increased. The assessment of processing fees would offset a portion of the increased costs.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[5] 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.

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 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and Rule 19b–4(f)(2)[7] under the Act. The NYSE shall implement the proposed rule change thirty days after publication of the proposed rule change in the **Federal Register**.[8] At any time within 60 days of the filing of this 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–56. 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. Copies of such filing will also 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 the File Number SR–NYSE–2005–56 and should be submitted on or before September 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] Telephone conversation between Karen Kupersmith, Director of Arbitration, NYSE, and Lourdes Gonzalez, Assistant Chief Counsel, Division of Market Regulation, Commission, (August 22, 2005).

[9] 17 CFR 200.30–3(a)(12).