

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56162; File No. SR-NYSE-2007-013]

### Self-Regulatory Organizations; New York Stock Exchange LLC, Notice of Filing of Proposed Rule and Amendment No. 1 Relating to a Proposed New Rule on Notification of Fees

July 27, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 6, 2007, the New York Stock Exchange ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed new rule as described in Items I, II and III below, which Items have been substantially prepared by NYSE. On July 27, 2007, NYSE filed Amendment No. 1 to the proposed rule. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

NYSE is filing with the Commission proposed new Rule 405B ("Notification of Fees").

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, 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.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

###### 1. Purpose

The NYSE is proposing new Rule 405B ("Notification of Fees") which would require member organizations to provide their customers with written notification of all fees related to their customers' accounts as well as require that fees be reasonable and not unfairly discriminatory between customers.

###### a. Background

A significant number of operational complaints that were reported to the

Exchange pursuant to NYSE Rule 351(d)<sup>3</sup> concerned member organizations' insufficient notification of fees to their customers.<sup>4</sup> Specifically, many of these complaints involved increases in account fees and service charges or other charges which customers felt were imposed on them without notification. In June of 2005, the Exchange published Information Memo 05-41 ("Customer Notification of Service Fees and Service Fee Changes"), which provided guidance to firms regarding notification of fees. New Rule 405B is proposed to codify such guidance so as to emphasize the importance of notification of fees to customers.<sup>5</sup>

###### b. Proposed Rule

As proposed, Rule 405B would require member organizations to provide their customers with written notification of relevant fees regarding their accounts. Specifically, Rule 405B(1)(a) would require member organizations to provide each of its customers with written notification of all fees that are in effect at the time the account is opened, or that will take effect within 30 days of the account being opened. Additionally, Rule 405B(1)(b) would require member organizations to mail written notification of increased fees, or imposition of any new fees, at least 30 days prior to the increase or imposition related to an account to the last known address of every customer whose account is subject to such fees. Further, member organizations would be required to post a notification of the types of fee changes, and the projected date of such changes, on their internet website (if they maintain a website). This proposed Rule would better allow customers to stay apprised of their account fees as well as any changes to such fees.

Proposed Rule 405B(2) provides for methods of notification. Specifically, the proposed new rule would allow member organizations to either send a separate written notification to inform customers of fees or include the fee

<sup>3</sup> NYSE Rule 351 ("Reporting Requirements") specifies certain occurrences, incidents, and periodic information that member organizations must report to the Exchange.

<sup>4</sup> See NYSE Information Memo 05-41 (June 13, 2005) (Customer Notification of Service Fees and Service Fee Changes) stating that over 25% of customer operational complaints made to the Exchange in 2004 concerned "fee/commissions" problems.

<sup>5</sup> There has continued to be abuses in this area of excessive fees charged to customers and fee notification to customers. See NASD action involving McLaughlin, Piven and Vogel Securities (October 26, 2006).

notices with account statements or newsletters.

Furthermore, Rule 405B(3) describes the types of fees which are included under the notification requirements of Rule 405B. Specifically, proposed Rule 405B(3) states, in part, that fees "shall be construed broadly to include, but not be limited to, charges such as commissions, charges for any managed or non-managed accounts, or charges for other account-related services, such as reinvestment of dividends or interest, transfer or custody of securities, appraisals, safe-keeping, or margin."

Also, proposed Rule 405B(4) would require that fees imposed on customers by member organizations be reasonable and not unfairly discriminatory.<sup>6</sup> The Exchange recognizes that fees charged to certain customers by member organizations may differ in some circumstances depending on various factors including, for example, the type of account, the amount invested, and the length and type of relationship. Thus, the proposed rule would not prohibit or restrict firms' ability to structure their pricing schedules based upon the uniqueness of their various customer relationships.

In addition, proposed Rule 405B(5) would provide customers with an option to receive notification of fees electronically in lieu of by mail, provided the customer affirmatively opts out of receiving such notification in writing.<sup>7</sup> This proposed rule is an effort to provide greater convenience to the investing public by providing customers with an option as to how they would like to receive fee notifications.

###### 2. Statutory Basis

The statutory basis for this proposed rule change is section 6(b)(5) of the Exchange Act.<sup>8</sup> Under that section, rules of the Exchange must be designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Proposed new Rule 405B would require member

<sup>6</sup> This is substantially similar to NASD Rule 2430 ("Charges for Services Performed"), but proposed NYSE Rule 405B contains notification requirements, whereas NASD Rule 2430 does not.

<sup>7</sup> This approach is similar to a recently approved amendment to NYSE Rule 409 ("Statements of Accounts to Customers") permitting institutional customers doing business solely on a deliver versus payment/receive versus payment basis ("RVP/DVP") to opt out of receiving statements as otherwise required by the rule. See Release No. 34-54810 (November 22, 2006), 71 FR 69165 (November 29, 2006) (SR-NYSE-2005-90). The SEC also approved similar revisions to NASD Rule 2340 in Release No. 34-54811 (November 22, 2006), 71 FR 69161 (November 29, 2006) (SR-NASD-2006-066). See also NYSE Information Memo 06-80 (November 30, 2006).

<sup>8</sup> 15 U.S.C. 78a et. seq.

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

<sup>2</sup> 17 CFR 240.19b-4.

organizations to provide their customers with written notification of fees. This proposed new rule is, therefore, consistent with section 6(b)(5) of the Exchange Act because it would provide for greater transparency to customers with respect to fees charged and will provide guidance to firms with respect to the fees they impose upon their customers.

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

The Exchange believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Received from Members, Participants or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule 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 such proposed rule, or

B. institute proceedings to determine whether the proposed rule 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 is consistent with the Act. We invite interested persons to discuss whether a de minimis exception to paragraph (1) would help member organizations comply with the proposed rule and/or increase the effectiveness of the disclosures. If a de minimis exception is warranted, we also invite interested persons to discuss under what circumstances a fee or fee increase should be considered "de minimis." 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-2007-013 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSE-2007-013. 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 that are filed with the Commission, and all written communications relating to the proposed rule 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 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 File Number SR-NYSE-2007-013 and should be submitted on or before August 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E7-14990 Filed 8-1-07; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56158; File No. SR-NYSE-2005-48]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change as Modified by Amendment Nos. 1, 2, 3, and 4 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 to Revise Rule 619 Pertaining to Subpoenas for the Production of Documents and Appearances of Witnesses**

July 27, 2007.

#### **I. Introduction**

On July 13, 2005, the New York Stock Exchange LLC ("NYSE" or "Exchange") 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 amending NYSE Rule 619, which pertains to subpoenas for the production of documents and the appearance of witnesses. On September 26, 2005, the Commission published for comment the proposed rule change in the **Federal Register**.<sup>3</sup> The Commission received no comments on the proposal. On April 18, 2006, November 2, 2006, December 22, 2006, and February 8, 2007, the NYSE submitted Amendment Nos. 1, 2, 3, and 4, respectively, to the proposed rule change.<sup>4</sup> On April 13, 2007, the Commission published for comment the proposed rule change, as amended, in the **Federal Register**.<sup>5</sup> The Commission received two comments on the proposal.<sup>6</sup> On July 13, 2007, NYSE

<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. 52468 (Sept. 19, 2005), 70 FR 56201 (Sept. 26, 2005).

<sup>4</sup> Amendment No. 1 clarified that only the arbitrator(s) may issue subpoenas and delineated the manner in which a party may request the issuance of a subpoena. Amendment No. 2 established a time frame for the parties to make and respond to objections to the requested subpoena and clarified that the arbitrator(s) may not rule on such a request until this time period has elapsed. Amendment No. 3 made technical changes to the rule and clarified that the arbitrator(s) must receive copies of any objections to the issuance of a subpoena. Amendment No. 4 clarified that a party requesting a subpoena may not serve the request or the draft subpoena on a non-party.

<sup>5</sup> See Securities Exchange Act Release No. 55594 (April 6, 2007), 72 FR 18710 (April 13, 2007).

<sup>6</sup> See letters from Steven B. Caruso, President, Public Investors Arbitration Bar Association ("PIABA"), dated April 17, 2007; and Martin L. Feinberg, dated May 4, 2007 ("Feinberg"). The NYSE responded to these comments in telephone conversations with Commission staff. Telephone conversations among Karen Kupersmith, Director of Arbitration, NYSE; Lourdes Gonzalez, Assistant

<sup>9</sup> 17 CFR 200.30-3(a)(12).