

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56337; File No. SR-NYSE-2007-78]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Institute a Revised System of Payments to Specialist Firms

August 29, 2007.

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> notice is hereby given that on August 28, 2007, the New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 change its system of payments to specialist firms by aligning specialist firms' compensation with their performance. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, and at 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 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 Change

##### 1. Purpose

On December 1, 2006, the Exchange instituted a six-month revenue sharing program for specialist firms<sup>3</sup> in connection with the adoption of Exchange Rule 104B, which prohibits specialist firms from charging commissions.<sup>4</sup> The program was subsequently extended for an additional three-month period ending August 31, 2007.<sup>5</sup> The Exchange now proposes to replace the revenue sharing program with a system that provides variable payments to specialist firms for liquidity provision ("Liquidity Provision Payment" or "LPP").

LPPs will be based on two revenue sources in NYSE-listed securities (excluding exchange traded funds): (a) The Exchange's share of market data revenue derived from its quoting share; and (b) the Exchange's transaction fee revenue.

##### a. Share of Market Data Revenue Derived From Its Quoting Share

Pursuant to Regulation NMS,<sup>6</sup> the Commission revised the formula for the distribution by the Consolidated Tape Association ("CTA") of market data quote revenue in NYSE-listed securities (Network A) among the various markets (the "Revenue Allocation Formula"). The Revenue Allocation Formula established a "Quoting Share" to reward markets that quote at the National Best Bid and Offer ("NBBO").<sup>7</sup> The Exchange

<sup>3</sup> See Securities Exchange Act Release No. 54856 (December 1, 2006); 71 FR 71215 (December 8, 2006) (SR-NYSE-2006-106).

<sup>4</sup> See Securities Exchange Act Release No. 54850 (November 30, 2006); 71 FR 71217 (December 8, 2006) (SR-NYSE-2006-105).

<sup>5</sup> See Securities Exchange Act Release No. 55904 (June 13, 2007), 72 FR 34054 (June 20, 2007) (SR-NYSE-2007-50).

<sup>6</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Adopting Release").

<sup>7</sup> See Regulation NMS Adopting Release at page 37568. Under Regulation NMS, a market's Quoting Share in a particular security is equal to: (1) 50% of the Security Income Allocation for the security, multiplied by (2) the applicable market's Quote Rating in the security. The Security Income Allocation is the method by which the total distributable revenues are allocated among the eligible securities. Revenues are allocated based on the square root of the dollar volume of trading in each security, capped at \$4 per qualified transaction report to limit disproportionate allocations for inactively traded securities. A transaction report with a dollar volume of \$5,000 or more constitutes one qualified report; transaction reports with dollar volumes of less than \$5,000 are calculated as

proposes to base a portion of its total LPP to specialist firms on the actual revenue associated with its market data Quoting Share. The Exchange will use the actual CTA-derived results from the Revenue Allocation Formula's Security Income Allocation and Quoting Share components and determine its revenue associated from the Quoting Share on a symbol-by-symbol basis, which is then aggregated by specialist firms. The Exchange will then use the results to provide each specialist firm with their quoting component of the LPP payment. In effect, the Exchange will pass through to the specialist firm for each security all of the Quoting Share revenue associated with that security. The Exchange believes that this will provide an additional incentive to the specialist firms to post quotes more frequently at the NBBO and also to increase the size of the quote at the NBBO, as they will benefit directly from the related increase in the Exchange's Quoting Share revenue. The LPPs are consistent with the goal of the Revenue Allocation Formula to reward markets for quoting at the NBBO and to provide incentives to specialist firms for displaying significant liquidity at the best price.

##### b. Transaction Fee Revenue

The Exchange further proposes to create a payment pool (the "LPP Pool") consisting of the Exchange's NYSE-listed stock transaction revenue on matched volume (excluding crossing services) in both electronic and manually executed transactions to provide LPPs to the specialist firms. The LPP Pool size has been set at 25% of the above-noted Exchange transaction revenue and this percentage may change if the Exchange adjusts its pricing and/or based on other conditions such as specialist performance, including liquidity-enhancing participation levels.<sup>8</sup> The size of the LPP Pool will vary month-to-month as Exchange volume changes. Each individual specialist firm will be allocated a

proportional fractions of qualified transaction reports. The Quote Rating represents a market's percentage of all best bids and best offers equaling the NBBO price during the year ("Quote Credits"). A market earns one Quote Credit for each second of time and dollar value of size that the market's automated best bid or best offer equals the NBBO price during regular trading hours without locking or crossing a previously displayed automated quotation. To qualify for credits, the quoted price must be displayed for at least one full second, and the relevant size is the minimum size that was displayed during the second. Transactions executed manually are excluded from the Revenue Allocation Formula and, thus, the market's manual quotes will not be entitled to earn any Quote Credits.

<sup>8</sup> The Exchange states that it would file a rule filing with the Commission pursuant to the Act and the rules thereunder in relation to any such changes prior to their implementation.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

portion of these revenues based exclusively on its trading performance in any month. Specialist firms' trading performance will be measured by the liquidity enhancing behavior that each specialist firm provides to the Exchange. In order to measure the liquidity enhancing behavior provided by the specialist firms, the Exchange will calculate each specialist firm's executed volume in four categories: (1) Price improvement; (2) size improvement; (3) providing liquidity from posting bids or offers on the book; and (4) matching better bids or offers published by other market centers to reduce client routing costs. Specialist trading activity that does not provide liquidity, for example Hit Bid/Take Offer, will not be valued in the allocation process. A specialist firm's allocation will increase if its performance as a liquidity provider improves relative to the other specialist firms. The allocation formula will weight specialist liquidity in a given security by a 0.75 exponential calculation and will then re-weight the resultant number for each security by multiplying it by the percentage representing the Exchange's regular-hours market share in that security. As with the Commission's use of a square root calculation (0.50 exponential) in connection with the Revenue Allocation Formula, the 0.75 exponential calculation will provide additional weighting to less liquid stocks, but to a lesser degree than the square root weighting.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6 of the Act<sup>9</sup> in general and furthers the objectives of section 6(b)(4) of the Act<sup>10</sup> 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 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 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

Written comments were neither solicited nor received.

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

The foregoing proposed rule change is effective upon filing pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange.

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.

## III. 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-2007-78 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-2007-78. 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 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-2007-78 and should be submitted on or before September 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## DEPARTMENT OF STATE

### [PUBLIC NOTICE 5927]

### Culturally Significant Objects Imported for Exhibition Determinations: "Impressionists by the Sea"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Impressionists by the Sea", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Phillips Collection, Washington, DC, from on or about October 20, 2007, until on or about January 13, 2008, and at the Wadsworth Atheneum Museum of Art, Hartford, CT, from on or about February 9, 2008, until on or about May 11, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 19b-4(f)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).