SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57966; File No. SR–NYSE–2007–04]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Approval of Fee for NYSE Real-Time Reference Prices

June 16, 2008.

I. Introduction

On January 12, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a flat monthly fee for the receipt and use of real-time last sale prices of transactions that take place on the Exchange (''Last Sale Proposal''). The proposal was published for comment in the **Federal Register** on March 5, 2007.[3] On March 30, 2007, NYSE filed Amendment No. 1 to the Last Sale Proposal.[4] The Commission received six comment letters regarding the proposal.[5] On November 30, 2007, NYSE responded to the comment letters.[6] On June 11, 2008, NYSE filed Amendment No. 2 to the Last Sale Proposal. In Amendment No. 2, NYSE proposed to impose fees for the Last Sale Proposal only for a four-month pilot period beginning July 1, 2008.[7]

The Commission is publishing this notice to solicit comments on the proposed rule change as modified by Amendment Nos. 1 and 2 and is simultaneously approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Last Sale Proposal

The Exchange proposes to establish a four-month pilot program beginning on July 1, 2008, called NYSE Real-Time Reference Prices (''NYSE RTRP'') [8] that would allow vendors to receive and redistribute, on a real-time basis, last sale prices of transactions that take place on the Exchange (''NYSE Trade Prices'') and to establish a flat monthly fee for this service. The NYSE RTRP would only include pricing information for the securities transactions. The Exchange intends to make the NYSE RTRP available to internet service providers, traditional market data vendors, and others (''NYSE-Only Vendors''). The Exchange has represented that it would not permit any NYSE-Only Vendor to provide NYSE Trade Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE-Only Vendor also provides consolidated displays of Network A last sale prices in accordance with Rule 603(c)(1) of Regulation NMS.

The Exchange proposes to establish a flat monthly fee of $100,000 for NYSE-Only Vendors to receive access to the NYSE RTRP data feed. The NYSE-Only Vendor may use that access to provide unlimited NYSE Trade Prices to an unlimited number of the NYSE-Only Vendor's subscribers and customers. The Exchange will not impose any device or end-user fee for the NYSE-Only Vendors' distribution of NYSE Trade Prices. The Exchange would also require the NYSE-Only Vendor to identify the NYSE trade price by placing the text ''NYSE Data'' in close proximity to the display of each NYSE Trade Price or series of NYSE Trade Prices.

The Exchange proposes to allow NYSE-Only Vendors to provide NYSE Trade Prices to their subscribers and customers without requiring the end-users to enter into contracts for the benefit of the Exchange. Instead, the Exchange will require NYSE-Only Vendors to provide a readily visible hyperlink that will send the end-user to a warning notice about the end-user's receipt and use of market data.

The Exchange also proposes to use the existing CTA and CQ Plan vendor contracts (''Network A Vendor Form'') to govern the distribution of the NYSE Trade Prices to the NYSE-Only Vendors. The Exchange proposes supplementing the Network A Vendor Form with an Exhibit C that would include terms that will govern such things as (i) the restriction against providing the service in the context of a trading or order-routing service, (ii) the replacement of end-user agreements with a hyperlink to a notice, (iii) the substance of the notice, and (iv) the ''NYSE Data'' labeling requirement. In addition, Exhibit C will specify that the NYSE-Only Vendor's authorization to provide the service will terminate at the expiration date of the pilot program unless the Exchange submits a proposed rule change to extend the program or to make it permanent and the Commission approves that proposed rule change. Lastly, Exhibit C would require NYSE-Only Vendors to share with the Exchange any research they may conduct regarding the pilot program or the results of their experience with the program and to consult with the Exchange regarding their views of NYSE RTRP.

III. Discussion

The Commission finds that the proposed rule change, to be implemented on a four-month pilot basis, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, it is consistent with Section 6(b)(4) of the Act,[10] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55354 (February 26, 2007), 72 FR 9817 (''Notice'').

[4] In Amendment No. 1, the Exchange submitted a copy of the Exhibit C that the Exchange described in the Notice. As described below, the contractual terms of this Exhibit C would govern how vendors receive and redistribute the NYSE last sale market data.

[5] *See* letters from Alan Davidson, Senior Policy Counsel, Google Inc., to the Honorable Christopher Cox, Chairman, SEC, dated June 12, 2007 (''Google Letter''); Chuck Thompson, President, eSignal, to Nancy M. Morris, Secretary, SEC, dated March 27, 2007 (''eSignal Letter''); Gregory Babyak and Christopher Gilkerson, Co-Chairs of the Market Data Subcommittee of the Technology and Regulation Committee, the Securities Industry and Financial Markets Association (''SIFMA''), to Nancy M. Morris, Secretary, SEC, dated March 26, 2007 (''SIFMA Letter''); Scott Drake, Vice President, Digital Products, CNBC, to Nancy M. Morris, Secretary, SEC, dated February 16, 2007 (''CNBC Letter''); David Keith, Vice President, The Globe and Mail, to the Honorable Christopher Cox, Chairman, SEC, dated January 17, 2007 (''Globe and Mail Letter''); and Clem Chambers, CEO, ADVFN, to Nancy Morris, Secretary, SEC, dated January 16, 2007 (''ADVFN Letter'').

[6] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy M. Morris, Secretary, SEC, dated November 30, 2007.

[7] In Amendment No. 2, the Exchange removed language regarding syndication of the NYSE RTRP and stated that the Exchange may provide NYSE RTRP without charge upon Commission approval prior to July 1, 2008.

[8] In Amendment No. 2, the Exchange also changed the name of the service from NYSE Real-Time Trade Prices to NYSE Real-Time Reference Prices.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[12] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[13] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[14]

The Commission received four comment letters expressing concern over the proposed rule change and two comment letters supporting the proposed rule change. Generally, SIFMA, Globe and Mail, eSignal, and ADVFN each suggested that NYSE did not adequately demonstrate that the proposed rule change was consistent with the Act.[15] SIFMA asserted that NYSE had failed to demonstrate that its proposal met the relevant requirements of the Act, including that its market data fees be fair and reasonable and not unreasonably discriminatory.[16] SIFMA, Globe and Mail, eSignal, and ADVFN each asserted that the NYSE proposal would unreasonably discriminate against smaller market data distributors.[17] Google and CNBC, however, expressed strong support for the proposal and noted their enthusiasm regarding the opportunity to give more of their users access to real-time financial information online.[18]

The Commission notes that NYSE amended the proposed rule change so that its fees would be imposed only for a four-month pilot period. On June 4, 2008, the Commission published for public comment a draft approval order that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for ''non-core'' market data products that would encompass the NYSE RTRP.[19] The Commission believes that NYSE's proposal is consistent with the Act for the reasons noted preliminarily in the Draft Approval Order. Pending review by the Commission of comments received on the Draft Approval Order, and final Commission action thereon, the Commission believes that approving NYSE's proposal on a pilot basis would be beneficial to investors and in the public interest, in that it should result in broad public dissemination of real-time pricing information. Therefore, the Commission is approving NYSE's proposed fees for a four-month pilot beginning July 1, 2008. The broader approach ultimately taken by the Commission with respect to non-core market data fees will necessarily guide Commission action regarding fees for the NYSE RTRP beyond the four-month pilot period.

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As noted above, accelerating approval of this proposal should benefit investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the NYSE Trade Prices. In addition, the Commission notes that the proposal is approved only on a four-month pilot period while the Commission analyzes comments on the Draft Approval Order. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[20] to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2 to the Last Sale Proposal, including whether Amendment Nos. 1 and 2 to the Last Sale Proposal are 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.* Please include File No. SR–NYSE–2007–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NYSE–2007–04. 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 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–2007–04 and should be submitted on or before July 11, 2008.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSE–2007–04), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis until October 31, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

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[12] 15 U.S.C. 78f(b)(8).

[13] 17 CFR 242.603(a).

[14] NYSE is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

[15] *See* SIFMA Letter, Globe and Mail Letter, eSignal Letter and ADVFN Letter.

[16] *See* SIFMA Letter.

[17] *See* SIFMA Letter, Globe and Mail Letter, eSignal Letter and ADVFN Letter.

[18] *See* Google Letter and CNBC Letter.

[19] *See* Securities Exchange Act Release No. 57917 (June 4, 2008), 73 FR 32751 (June 10, 2008) (Notice of Proposed Order Approving Proposal by NYSE Arca, Inc. to Establish Fees for Certain Market Data and Request for Comment) (''Draft Approval Order'').

[20] 15 U.S.C. 78s(b)(2).

[21] 15 U.S.C. 78s(b)(2).