

## 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 ISE 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 ISE 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

The purpose of this proposed rule change is to (1) adopt a tiered structure for the displayed market and (2) simplify the pricing structure for MidPoint Match executions.

Effective May 1, 2008, the ISE proposes to increase the rebate paid to Equity Electronic Access Members ("Equity EAMs") for posting liquidity in securities that trade at or above \$1.00 on the ISE Stock Exchange's displayed market. Equity EAMs will receive an increased rebate of \$0.0035 per share across all tapes when the monthly average daily volume ("ADV") of executed maker shares is over five million. The first five million shares per day will continue to receive a rebate of \$0.0032 per share. The taker price per share will remain at \$0.0030 for all volume levels.

Additionally, the ISE proposes to simplify the fees for MidPoint Match by introducing a three-tiered structure with a lower starting level of \$0.0015 per share for its initial pricing tier, which applies to members trading an ADV of up to one million shares. The second tier, for ADV between one million and three million shares, is \$0.0010 per share. Once volume exceeds the three million share ADV threshold of the third tier, fees are adjusted retroactively so that a \$0.0010 per share fee applies to all volume.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and

other charges among ISE members and other persons using ISE facilities.

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

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(2)<sup>8</sup> thereunder. At any time within 60 days of the filing of such 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 No. SR-ISE-2008-38 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-ISE-2008-38. 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 ISE. 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-ISE-2008-38 and should be submitted on or before June 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57841; File No. SR-NYSE-2008-26]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Rule 412 To Conform to FINRA Incorporated Versions of NYSE Rule 412

May 20, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 2, 2008, the New York Stock Exchange LLC ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 19b-4(f)(2).

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

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

change as described in Items I and II below, which Items have been substantially prepared by the NYSE. The NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>2</sup> and Rule 19b-4(f)(6)<sup>3</sup> thereunder so that the proposal was 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 NYSE proposes to amend NYSE Rule 412 (Customer Account Transfer Contracts) to make the time frames in the rules for validating or taking exception to an instruction to transfer a customer's securities account consistent with the time frames in the Automated Customer Account Transfer Service (ACATS) of the National Securities Clearing Corporation ("NSCC") and to make the NYSE's version of Rule 412 consistent with the recently approved amendments filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") to its incorporated version of NYSE Rule 412.<sup>4</sup>

### 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 NYSE 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 NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.<sup>5</sup>

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

##### 1. Purpose

On July 30, 2007, NASD and NYSE Regulation, Inc. consolidated their member firm regulation operations into a combined organization, FINRA.<sup>6</sup>

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> *Supra* note 5 and accompanying text.

<sup>5</sup> The Commission has modified the text of the summaries prepared by the NYSE.

<sup>6</sup> Pursuant to Rule 17d-2 under the Exchange Act, NYSE, NYSE Regulation, Inc., and NASD entered into an agreement (the "17d-2 Agreement") to reduce regulatory duplication for firms that are members of FINRA and also members of NYSE on

Pursuant to FINRA's new regulatory responsibilities, FINRA amended FINRA's incorporated NYSE Rule 412 (Customer Account Transfer Contracts) to make the time frames in the rule for validating or taking exception to an instruction to transfer a customer's securities account consistent with those of NSCC's ACATS.<sup>7</sup> In order to maintain Rule 412 as a Common Rule, the NYSE is proposing to amend its version of Rule 412 to conform it to the recently approved changes to FINRA's incorporated version of NYSE Rule 412.

##### 2. Statutory Basis

The NYSE believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will have any impact or impose any burden on competition.

#### (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

Because the foregoing proposed rule change does not: (i) Significantly affect

or after July 30, 2007 ("Dual Members"), by allocating to FINRA certain regulatory responsibilities for selected NYSE rules. The 17d-2 Agreement includes a list of all of those rules ("Common Rules") for which FINRA has assumed regulatory responsibilities. See Securities and Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules are NYSE rules that FINRA has incorporated into its rulebook. Securities Exchange Act Release No. 56417 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct) [SR-NASD-2007-054]. Paragraph 2(b) of the 17d-2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

<sup>7</sup> Securities and Exchange Act Release No. 56677 (October 19, 2007), 72 FR 60699 (October 25, 2007) [SR-FINRA-2007-05].

<sup>8</sup> 15 U.S.C. 78f(b)(5).

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (*i.e.*, May 2, 2008), or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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-2008-26 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-2008-26. 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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). The Commission is waiving the five-day pre-filing notice requirement in order for the NYSE to ensure that Rule 412 maintains its status as a Common Rule under the 17d-2 Agreement.

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. The text of the proposed rule change is available at the NYSE, the Commission's Public Reference Room, and [http://apps.nyse.com/commdata/pub19b4.nsf/docs/E40ACA575EFD517085257420005CC603/\\$FILE/NYSE-2008-26.pdf](http://apps.nyse.com/commdata/pub19b4.nsf/docs/E40ACA575EFD517085257420005CC603/$FILE/NYSE-2008-26.pdf). 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-2008-26 and should be submitted on or before June 17, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57845; File No. SR-NYSE-2008-32]

### **Self-Regulatory Organizations; the New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, To Amend NYSE Rule 123A.30 To Permit Certain Convert-and-Parity Orders To Trade on Parity With Other Limit Orders, Including Orders Entered Through Its Designated Order Turnaround System<sup>®</sup>**

May 21, 2008.

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 April 24, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. Originally, NYSE filed the proposed rule change pursuant to Section 19(b)(2) of the Act.<sup>3</sup> On May 16,

2008, however, NYSE filed Amendment No. 1 to the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder.<sup>5</sup> Accordingly, the proposal became effective upon the filing of Amendment No. 1 with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend NYSE Rule 123A.30 to permit certain convert-and-parity ("CAP") orders to trade on parity with other limit orders, including orders entered through NYSE's Designated Order Turnaround ("DOT") system<sup>®</sup>. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### **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 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.

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

###### **1. Purpose**

This rule filing effects an amendment to NYSE Rule 123A.30, which, together with NYSE Rule 1000, governs the automatic execution of CAP orders. The amendment permits passively converted CAP orders—that is, CAP orders that are converted by the specialist for the purpose of bidding or offering—to trade on parity with other limit orders, including DOT system orders that were on NYSE's Display Book<sup>®</sup> at the time of the conversion and could trade on the same side of the market and at the same price as the converted CAP orders. Before this amendment, CAP orders were placed in the same parity group as DOT orders for purposes of parity

allocations among all orders upon execution. Within that parity group, those DOT orders had priority over the converted CAP orders.

###### **a. Background**

The Exchange states that CAP orders are not actually live orders, but rather are memoranda of orders that can be made live either automatically via an electing trade (a trade at a price that automatically triggers the CAP order to become a live order and immediately execute at the triggering price) or manually via conversion by the specialist. In the latter situation, the specialist converts the CAP into a limit order, and bids or offers on behalf of that order (referred to as a "passive conversion"). Thereafter, a trade may take place against some or all of the converted CAP order; any portions that are not executed may be "unconverted" and revert to their status as CAP orders.

The Exchange states that, although they are not live orders, CAP orders nevertheless represent public customer interest in which the customer has consented to trading on parity with the specialist when they are either elected or converted. Because CAP orders are linked, either through election or conversion, to other customer interest at a given price, CAP orders give customers a way to participate in trades—that is, to "go along" with other interest at a price—but protect them from either initiating a trade or constituting 100% of one side of a trade.

The Exchange states that, at the time that specialists were given the ability to passively convert CAP orders as agents for customers, the Commission was concerned that specialists not have unfettered discretion in representing those orders; although the Commission recognized that the specialist could exercise some degree of control over the timing and size of the conversions, the Commission insisted on, and the Exchange agreed to implement, certain restrictions that would prevent the specialist from misusing CAP orders to drive the price of a security up or down inappropriately.<sup>6</sup> Among these restrictions was the requirement that passively converted CAP orders could not be executed before "conventional" limit orders, e.g., DOT orders, that were on the Display Book at the time of the conversion and could trade at the same price and on the same side as the converted CAP order.

<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.

<sup>3</sup> 15 U.S.C. 78s(b)(2).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6). Amendment No. 1 superseded the original filing in its entirety.

<sup>6</sup> See Securities Exchange Act Release No. 24505 (May 22, 1987), 52 FR 20484 (June 1, 1987) (SR-NYSE-1985-01).