

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56589; File No. SR-NYSE-2007-85)

October 1, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Temporary Waiver of the Specialist Marketing and Investor Education Fee for Specialists in Certain Listed Investment Company Units

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 25, 2007, 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. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by NYSE under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 Exchange proposes, for the period from August 1, 2007 to December 1, 2007, to waive the Specialist Marketing and Investor Education Fee (“Fee”) for those specialists in listed Investment Company Units (“ICUs”) otherwise subject to such fee that have been reallocated following the previous specialist’s withdrawal from registration as specialist in such ICUs.

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).

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. NYSE has substantially 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 Exchange currently imposes the Fee on Exchange specialists in ICUs in circumstances where the Exchange undertakes to provide funds to a third party for marketing and investor education in connection with the listing of those ICUs (also known as exchange traded funds).⁵ The Exchange states that the fee is imposed in a fair and equitable manner on all specialists trading the securities subject to a third party fee or payment.

The amount paid by the specialists is calculated and apportioned following each calendar quarter among the specialist units allocated ICUs that are subject to an Exchange payment to third parties. This amount represents five-sixths (83.33%) of the annual amount payable by the Exchange, as apportioned for the quarter. Such amount is apportioned to specialist units for each ICU that is subject to the Fee, calculated based on the "Notional NYSE ADV" for each relevant ICU. Notional NYSE ADV is defined as the average daily share volume on the NYSE for the calendar quarter for the particular ICU multiplied by the average consolidated closing price for the quarter for such ICU.

⁵ See Securities Exchange Act Release No. 51872 (June 17, 2005), 70 FR 36683 (June 24, 2005) (SR-NYSE-2005-42).

One of the specialist units previously registered in a number of the ICUs subject to the Fee notified the Exchange in July 2007 of its intention to withdraw from registration as specialist from the Exchange in all listed products. As a result, the Exchange was required to reallocate these ICUs to other specialist units within a short time frame following notification by the previous specialist unit. This reallocation was accomplished on August 1, 2007. Under these circumstances, given that the specialist firms, to which the ICUs were reallocated on short notice, were not able to anticipate or budget for the expense, the Exchange considered it necessary, appropriate, and equitable to waive the Fee with respect to such reallocated ICUs for the period August 1, 2007 to December 1, 2007.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the facilities of the Exchange.

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

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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

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 proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2)⁹ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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 the 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. Please include File Number SR-NYSE-2007-85 on the subject line.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

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-2007-85. 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 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2007-85 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).