

interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, 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>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>17</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>18</sup> The Exchange has requested that the Commission waive the 5-day pre-filing requirement and the 30-day operative delay.<sup>19</sup> The Commission believes that waiving the 5-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest because BSE has represented that the Instruments of Accession will be executed on August 29, 2008, and there is no reason to delay implementation of the changes to the BOX LLC Agreement pursuant to the Instruments of Accession. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.<sup>20</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.<sup>21</sup>

#### 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-BSE-2008-43 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-BSE-2008-43. 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 the filing also will be available for inspection and copying at the principal office of the BSE. 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-BSE-2008-43 and should be submitted on or before September 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-20869 Filed 9-8-08; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58443; File No. SR-NYSE-2008-79]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Reduce the Monthly Fee for NYSE Realtime Reference Prices

August 29, 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 August 28, 2008, the New York Stock Exchange LLC (the "NYSE" or the "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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

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

The Exchange proposes to reduce the fixed monthly fee that applies to its "NYSE Realtime Reference Prices" service, a service that the Exchange is currently providing on a pilot test basis. There is no new rule text.

#### 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 self-regulatory organization 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

In File No. SR-NYSE-2007-04 (the "NYSE Realtime Reference Prices

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

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

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> See Email from Lisa J. Fall, General Counsel and Corporate Secretary, BOX, to Molly Kim, Special Counsel, Division of Trading and Markets, Commission, on August 29, 2008.

<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>21</sup> See 15 U.S.C. 78s(b)(3)(C).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

Filing”),<sup>3</sup> the Exchange established a pilot program to provide a new NYSE-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange. The Exchange intends for the NYSE Realtime Reference Prices service to provide a low-cost service that will make real-time prices widely available to many millions of casual investors, to provide vendors with a real-time substitute for delayed prices, and to relieve vendors of all administrative burdens.

The pilot program, which is currently scheduled to terminate on November 1, 2008, allows internet service providers, traditional market data vendors, and others (“NYSE-Only Vendors”) to make available NYSE Realtime Reference Prices on a real-time basis.<sup>4</sup> NYSE Realtime Reference Prices information includes last sale prices for all securities that are traded on the Exchange. It includes only prices. It does not include the size of each trade and does not include bid/asked quotations.

During the pilot program, the Exchange will not permit NYSE-Only Vendors to provide NYSE Realtime Reference 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 available in an equivalent manner, as Rule 603(c)(1) of Regulation NMS requires.

The NYSE Realtime Reference Price pilot program features a flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements. For the duration of the pilot program, the Exchange established a monthly flat fee that entitles a vendor to receive access to the NYSE Realtime Reference Prices datafeed. The vendor may use that access to provide unlimited NYSE Realtime Reference Prices to an unlimited number of the vendor’s subscribers and customers.

The Exchange set the flat fee at \$100,000 per month. The purpose of this proposed rule change is to reduce the flat monthly fee from \$100,000 to \$70,000. This fee enables vendors to make NYSE Realtime Reference Prices available without having to differentiate between professional subscribers and nonprofessional subscribers, without

having to account for the extent of access to the data, and without having to report the number of users.

The Exchange believes that the existing fee enables internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange’s operating costs in a manner that is appropriate for their means of distribution. After consultation with some of the entities that have shown the most interest in the service, and after a few months of experience with the product, the Exchange believes that the proposed reduction in NYSE Realtime Reference Prices pilot program fees will make the product more attractive to vendors. An increase in the number of vendors that determine to provide free access to NYSE Realtime Reference prices to their internet users would benefit the investment community. The fee reduction will also respond to the price competition provided by alternative exchanges, ECNs and the market for delayed data. In addition, it will better reflect the perceived value of the NYSE product and provide a more equitable allocation of the Exchange’s overall costs to users of its facilities.

In modifying the level of the NYSE Realtime Reference Prices pilot program fee, the Exchange also took into consideration such other factors as:

- (1) The fees that Nasdaq and other markets are charging for similar services;
- (2) The contribution of market data revenues that the Exchange believes is appropriate for entities that provide market data to large numbers of investors, which are the entities most likely to take advantage of the proposed fees;
- (3) The contribution that revenues accruing from the proposed fees will make to meeting the overall costs of the Exchange’s operations;
- (4) Projected losses to the Exchange’s other sources of market data revenues (e.g., from its share of revenues derived from Network A nonprofessional subscriber fees) as a result of the NYSE Realtime Reference Prices service competing with those services;
- (5) The savings in administrative and reporting costs that the NYSE Realtime Reference Prices service will provide to NYSE-Only Vendors; and
- (6) The fact that the proposed fees provide an alternative to existing Network A fees under the CTA Plan, an alternative that vendors will purchase only if they determine that the perceived benefits outweigh the cost.

Prior to the end of the pilot program period, the Exchange will assess its

experience with the product. It either will submit a proposed rule change that seeks to extend or modify the pilot program or to make it permanent, or will announce publicly that it does not seek to extend the pilot program beyond the pilot program’s termination date.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In light of the Exchange’s experience with the NYSE Realtime Reference Prices pilot program and after consultation with entities participating in the pilot program, the Exchange believes that the proposed reduction of the NYSE Realtime Reference Prices fee is equitable.

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

The Exchange does not believe that this 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*

The Exchange has discussed the proposed rules change with entities that are participating in the pilot program. While those entities have not submitted formal, written comments on the proposal, the Exchange has consulted with them regarding the NYSE Realtime Reference Prices fee and the proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

## 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-2008-79 on the subject line.

<sup>3</sup> See Securities Exchange Act Release No. 57966 (June 16, 2008), 73 FR 35182 (June 20, 2008).

<sup>4</sup> The Exchange notes that it will make the NYSE Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

### Paper Comments

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

All submissions should refer to File Number SR-NYSE-2008-79. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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-2008-79 and should be submitted on or before September 30, 2008.

### IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change, to be implemented for the remainder of the pilot period, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, it is consistent with section 6(b)(4) of the Act,<sup>6</sup> 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,<sup>7</sup> which requires, among other things, that

<sup>5</sup> 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).

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 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,<sup>8</sup> 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,<sup>9</sup> 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.<sup>10</sup>

The Commission notes that the proposal reduces the flat monthly fee for NYSE Realtime Reference Prices from \$100,000 per month to \$70,000 per month without reducing the amount of data received through NYSE Realtime Reference Prices. In addition, the Commission notes that the reduced fee will apply for the remainder of the pilot period. The Commission approved the fee for NYSE Realtime Reference Prices for a pilot period which runs until October 31, 2008. On June 4, 2008, the Commission approved 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 Realtime Reference Prices.<sup>11</sup> The Commission believes that the 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

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

<sup>9</sup> 17 CFR 242.603(a).

<sup>10</sup> 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.

<sup>11</sup> 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").

NYSE's proposal to reduce the monthly fee for the remainder of the pilot period would be beneficial to investors and in the public interest, in that it should result in increased broad public dissemination of real-time pricing information. 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 Realtime Reference Prices beyond the pilot period.

The Commission notes that the Exchange reconsidered the original factors it used to establish the fee for NYSE Realtime Reference Prices in determining the proposed reduced flat monthly fee. In addition, the Commission notes that the Exchange's experience with NYSE Realtime Reference Prices, consultation with entities that have shown the most interest in NYSE Realtime Reference Prices, and price competition provided by other market data products were considered by NYSE in determining to reduce the flat monthly fee.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal should benefit investors by facilitating their access to widespread, free, real-time pricing information contained in the NYSE Realtime Reference Prices. In addition, the Commission notes that the proposal should benefit vendors that make real-time pricing information available by reducing their monthly fees. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>12</sup> to approve the proposed rule change on an accelerated basis only for a pilot period to expire on October 31, 2008, while the Commission analyzes comments on the Draft Approval Order.

### V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2008-79) is hereby approved on an accelerated basis until October 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
Acting Secretary.

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<sup>12</sup> 15 U.S.C. 78s(b)(2).

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