SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57305; File No. SR-NYSE-2007-119)

February 11, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Relating to the Adoption of New Exchange Rule 309 (Failure to Pay Fees)

I. Introduction

On December 21, 2007, the New York Stock Exchange LLC ("NYSE") filed with the Securities and Exchange Commission ("Commission"), 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 adopt new Exchange Rule 309, which delineates procedures for the collection of fee arrearages due to the Exchange. The proposed rule change was published for comment in the Federal Register on January 7, 2008.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to establish new procedures to address members, member organizations, and allied members who fail to pay "fee[s] or any other sums due to the Exchange."[4] Types of payments that the Exchange would consider to be a "fee" under proposed Rule 309 include, but are not limited to, regulatory fees (i.e., Gross Financial and Operational

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 57065 (December 28, 2007), 73 FR 1248 ("Notice").

4 See proposed Rule 309. Currently, Exchange Rule 476(k) sets forth the procedures for addressing the failure of members, member organizations, or allied members to pay "a fine, or any other sums due to the Exchange." Rule 476(k) provides that upon written notice to such members, member organizations, or allied members and notification of the Chairman of the Board of Directors of the Exchange of the arrearage, the Board of Directors may suspend the member, member organization, or allied member for failure to pay the arrearages due the Exchange until payment is made.

Combined Uniform Single Report (FOCUS) revenue fees and trading floor regulatory fees), trading license fees, and transaction charges. Types of payments that the Exchange would consider to be covered by the term "any other sums" include, but are not limited to, charges for using Exchange Floor facilities and equipment and phone service charges.[5]

Pursuant to proposed Rule 309, if a member, member organization, or allied member fails to make payment within forty-five days after the fee or other sum becomes payable, notice of the arrearage will be given to the member and the member will be reported to the Chief Financial Officer ("CFO") of the Exchange or a designee. The CFO or designee will be responsible for taking any remedial action he or she deems appropriate, including suspension of the delinquent member's, member organization's, or allied member's access to some or all Exchange facilities.

In its filing, the Exchange stated that the terms "fees" and "any other sums" in the text of proposed Rule 309 will not include fines levied in connection with a disciplinary proceeding. The proposed rule provides that failure to pay such disciplinary fines will continue to be governed by the provisions of Exchange Rule 476(k) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or Others).[6]

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder

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5 Telephone bills for Exchange-provided portable phones are paid by the Exchange and thereafter the Exchange submits an invoice to the member, member organization, or allied member for reimbursement.

6 The Exchange stated that in the context of Rule 476(k), "fine" includes a fine levied in connection with a disciplinary proceeding and related fees also associated with a disciplinary proceeding.

applicable to a national securities exchange[7] and, in particular, the requirements of Section 6 of the Act.[8] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] 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.

Currently, under Exchange Rule 476(k), the ability to suspend members, member organizations, and allied members for non-payment of sums due to the Exchange becomes operative after 45 days. According to the Exchange, this provision currently is not utilized by the Exchange; instead, arrearages are referred to the Exchange's collections department for resolution, which generally does not avail itself of the recourse provided in Exchange Rule 476(k). The Exchange has proposed to have notice of certain overdue fees (other than disciplinary fines and fees) reported to the CFO (or his or her designee), and to vest in the CFO (or his or her designee) the authority to determine what if any remedial action should be taken upon receipt of a report that a member, member organization, or allied member failed to pay a fee. Specifically, the CFO, or his or her designee, would be empowered to suspend access to some or all of the facilities of the Exchange until payment of the arrearage is made.

The Commission believes that the Exchange's proposal to empower its Chief Financial Officer, or his or her designee, to consider and address non-payment of certain fees and other

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

8 15 U.S.C. 78f.

9 15 U.S.C. 78f(b)(5).

sums due to the Exchange, other than disciplinary fines, after notice has been given of the arrearage to such member, member organization, or allied member, is consistent with the Act.

The proposed rule would not preclude the Exchange's CFO from presenting notice of any arrearage to the Board pursuant to Exchange Rule 476(k) where appropriate, but rather provides a more efficient process for the Exchange's senior management to address non-payment of certain fees and other sums due to the Exchange, other than disciplinary fines, without the need to involve the Exchange's Board of Directors in what is normally a purely business matter.

In approving the proposed rule change, the Commission has relied on the Exchange's representation that failure to pay disciplinary fines and any fees assessed in connection with disciplinary matters will continue to be governed solely by Rule 476(k), and that suspension of members for failure to pay fines or fees arising out of disciplinary actions continues to be subject to consideration by the Exchange's Board of Directors pursuant to that rule.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR-NYSE-2007-119) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon
Deputy Secretary

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10 15 U.S.C. 78s(b)(2).

11 17 CFR 200.30-3(a)(12).