

fees, which also range from \$20,000 to \$100,000, would be tiered based on the number of users authorized for access and the number of the years for which data is requested. The total cost of access to the full database would be capped based on the number of users at a particular firm.

### III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it 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, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using any facility or system which the exchange operates or controls.

Nasdaq represented that it incurred hardware and software costs, as well as personnel and other technology costs, to establish the PORTAL Reference Database. Establishing the database required the retrieval, review, conversion, and organization of large volumes of documents. Nasdaq stated that there will be ongoing costs to maintain and update the database, as well. The Commission notes that the pricing structure should allow users to align and control the costs of access with their data needs, and that the information will be available to any participant that pays the fees. The Commission believes that the PORTAL Reference Database will make historical information about issuances of restricted equity and debt more available, which should assist market participants to make better-informed investment decisions regarding such securities.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change, (SR-NASDAQ-2008-072), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Florence E. Harmon,

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58889; File No. SR-NYSE-2008-110]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing a Financial Rebate of \$.0015 per Share to the SLP That Posts Liquidity in Its Assigned Securities That Results in an Execution, Provided the SLP Meets Its Monthly Quoting Requirement for Rebates Averaging at Least 3% at the National Best Bid or the National Best Offer in Its Assigned Securities in Round Lots

October 30, 2008.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 28, 2008, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 to offer a financial rebate of \$.0015 per share to the SLP that posts liquidity in its assigned securities that results in an execution, provided the SLP meets its monthly quoting requirement for rebates averaging at least 3% at the National Best Bid ("NBB") or the National Best Offer ("NBO") in its assigned securities in round lots.

The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at NYSE's principal office, and at the Commission's Public Reference Room.

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 15 U.S.C. 78a.

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

#### 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 IV 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

The Exchange has proposed a six-month pilot program ("Pilot" or "program") to establish a new class of NYSE market participants that will be referred to as "Supplemental Liquidity Providers" ("SLPs") and will be designated as Exchange Rule 107B.<sup>4</sup> The proposed pilot program will commence on the date upon which the SEC will approve the New Market Model and will continue for six months thereafter ending on April 30, 2009. During this proposed pilot program, the Exchange will offer a financial rebate of \$.0015 per share to the SLP that posts liquidity in its assigned securities that results in an execution, provided the SLP meets its monthly quoting requirement for rebates averaging at least 3% at the National Best Bid ("NBB") or the National Best Offer ("NBO") in its assigned securities in round lots.

##### SLP Obligations

In a given calendar month, an SLP is required to maintain a bid or an offer at the NBB or NBO on the Exchange averaging at least 5% of the trading day in round lots for each assigned security (see Rule 107B(a)). If an SLP fails to meet the 5% quoting requirement for three consecutive calendar months in any assigned security, the SLP Liaison Committee may, in its discretion, take the following non-regulatory action: (1) Revoke the assignment of the affected security(ies); (2) revoke the assignment of an additional, unaffected security from an SLP; and (3) disqualify a member organization's status as an SLP (see Rule 107B(i)(1)(B), (C)(i)-(iii)).

In order for an SLP to be entitled to a rebate, an SLP must post liquidity on

<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. 78s(b)(2).

<sup>4</sup> See SR-NYSE-2008-108 (NYSE Rule 107B. Supplemental Liquidity Providers).

the Exchange that executes against incoming orders and meet the monthly quoting requirement averaging at least 3% at the NBB or the NBO in round lots in its assigned securities (see Rule 107B(b) and (i)(1)(A)). In a given calendar month, if an SLP maintains a quote at the NBB or the NBO averaging 3% of the trading day but less than the average of 5% of the trading day in any assigned security, the SLP will receive a financial rebate for that calendar month for all executed transactions, but failure to meet the 5% quoting requirement for each assigned security will be counted towards the three month disqualification period. In a given calendar month, if an SLP maintains a quote at the NBB or the NBO averaging less than 3% of the regular trading day in an assigned security, the SLP will not receive the financial rebate for that month for executed transactions in that particular security, and failure to meet the 5% quoting requirement for any assigned security will be counted towards the three month disqualification period (see Rule 107B(i)(1)(B) and (C)).

#### *SLP Rebate Calculation*

The SLP rebate will be \$.0015 per share on executed volume when the SLP provides liquidity. The rebate will be paid for displayed and non-displayed orders provided the SLP meets the quoting requirement averaging 3% or more at the NBB or NBO in its assigned securities for a given month (see Rule 107B(i)(1)(A)). If an SLP does not meet the 3% or better average quoting requirement described above, such SLP will not be entitled to a rebate for the executions of the affected security(ies) (see Rule 107B(i)(1)(B)).

#### *2. Statutory Basis*

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6<sup>5</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>6</sup> in general and Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that by providing SLPs with a rebate for posting quotes that result in an execution, the SLP will be motivated to aggressively add liquidity to the market. The SLP rebate of \$.0015 is the median fee amount between the customer rebate and the Designated Market Maker

("DMM") rebate in the New Market Model. On balance, the customers have no quoting requirements and the SLPs have fewer quoting requirements than the DMMs. Therefore, the rebate is reasonable because, among other things, the rebate is commensurate with the SLP's quoting requirement. The SLP rebate is also less than the rebates currently offered on any other exchanges or electronic communication networks ("ECNs"). Therefore, the SLP rebate constitutes a reasonable allocation of fees to its members. By providing this rebate to SLPs, the Exchange will encourage the SLP to add liquidity to the market thereby providing customers with a higher quality venue for price discovery, liquidity, competitive quotes and price improvement.

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

The Exchange does not believe that the 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*

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**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE that is applicable only to a member. 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 Number SR-NYSE-2008-110 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-NYSE-2008-110. 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 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 No. SR-NYSE-2008-110 and should be submitted on or before November 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

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

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

<sup>6</sup> 15 U.S.C. 78a.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).