III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[4] The rule change is consistent with the requirements of Section 17A of the Act, because it should promote the prompt and accurate clearance and settlement of securities transactions by modifying an NSCC service in order to reduce the inherent risks associated with securities certificates. Since NSCC's Profile database is widely used by mutual fund distributors in processing the distribution of mutual fund shares, the proposed rule change should facilitate the prompt and accurate clearance and settlement of securities transactions by assisting in the overall processing efficiency of mutual fund transactions and reducing processing difficulties resulting from incomplete or inaccurate information.

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with NSCC's obligation under Section 17A of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.[5]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2008–08) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2854 Filed 2–10–09; 8:45 am]

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[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59320; File No. SR–NYSE–2008–112]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change To Discontinue Policy of Prohibiting Transfer Agents From Charging Fees for Issuing Stock Certificates

January 30, 2009.

I. Introduction

On October 30, 2008, the New York Stock Exchange LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NYSE–2008–112 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 29, 2008.[2] The Commission received two comment letters.[3] For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

As a part of the securities industry moving towards eliminating the use of physical certificates (*i.e.*, dematerialization) by encouraging investors to hold securities positions in book-entry form either in street name at a broker-dealer or through the Direct Registration System (''DRS''), the NYSE is discontinuing its long-standing, unwritten policy of prohibiting NYSE listed companies from charging for the issuance of stock certificates. DRS allows investors to have securities directly registered in book-entry form on the records of the issuer or its transfer agent without having a certificate issued.[4]

In its letter to the NYSE, the Securities Industry and Financial Markets Association (''SIFMA''), which is one of the leaders in the movement towards dematerialization, requested that the NYSE discontinue its prohibition of issuers or their transfer agents charging fees in connection with the issuance of securities certificates (''SIFMA Letter'').[5] SIFMA noted that almost 75% of physical certificates deposited by broker-dealers and bank custodians at The Depository Trust Company (''DTC''), a registered clearing agency that is the primary custodian of securities traded in the United States, were issued within the last six months. SIFMA stated its beliefs that these recent deposits indicate that DTC participants (*i.e.*, broker-dealers and banks) are providing physical certificates to their customers only to have the securities moved back into street name in a short period of time. In SIFMA's view, this activity results in unnecessary expense and in the risk that the certificates may be lost, destroyed, or stolen. SIFMA stated that it had recently conducted a survey that showed that more than 1.2 million certificates each year need to be replaced because of loss, destruction, or theft at an approximate cost to the transfer agents of $65 million.[6]

NYSE believes that securityholders derive no apparent benefit from continuing to hold their securities in certificated form rather than in uncertificated form in street name or through DRS and that the inability of the issuers or their transfer agents to charge for the issuance of securities certificates imposes a considerable cost on issuers and transfer agents. Therefore, NYSE is discontinuing its prohibition of issuers or their transfer agents charging fees for the issuance of new certificates. Allowing transfer agents to charge for the issuance of certificates should not only shift the cost of the issuance of certificates from the issuers and transfer agents to the requesting securityholders but should also have the added effect of encouraging more securityholders to hold their securities in street name or through DRS, which should further the dematerialization movement. NYSE listed companies that want their investors to continue to have access to the free issuance of new certificates will be able to ensure the continuation of such practice through their contractual arrangements with their transfer agents.

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

[2] Securities Exchange Act Release No. 59106 (December 16, 2008), 73 FR 79531.

[3] Letters from Charles V. Rossi, President, The Securities Transfer Association, Inc. (January 16, 2009); and Martin J. McHale, Jr., President, U.S. Equity Services, Computershare (January 20, 2009).

[4] DRS allows securities positions to be electronically transferred to a broker-dealer in order to effect a transaction without the risk and delay associated with the use of paper certificates. Since March 31, 2008, Section 501.00 of NYSE's Listed Company Manual has required that all securities listed on the NYSE must be eligible for participation in DRS. Approximately 2,428 NYSE listed securities currently participate in DRS. Securities Exchange Act Release No. 58398 (August 20, 2008), 73 FR 51546 (September 3, 2008) [File No. SR-NYSE–2008–069).

[5] Letter to Stephen Walsh, Vice President, NYSE Euronext, from Lawrence Morillo, SIFMA Operations Legal & Regulatory Sub-Committee Chair. (August 26, 2008).

[6] ''Securities Industry Immobilization & Dematerialization Implementation Guide—The Phase-Out of the Stock Certificate'' (SIFMA, 2008).

NYSE believes that the rule change will help make the securities markets more safe and efficient by encouraging the dematerialization of securities and by correctly placing the cost of the use of certificates on those investors requesting certificates. NYSE also believes that the rule change is consistent with the protection of investors and the public interest because holding a securities position in street name or through DRS provides investors with the ability to hold their securities in a safe and cost-effective manner without incurring the costs associated with the issuance and processing of securities certificates.

III. Comment Letters

The Commission received two comment letters,[7] both in support of the proposed rule change. Computershare, a registered transfer agent, and The Securities Transfer Association, an industry association representing transfer agents, stated that the rule change was an important step toward the goal of dematerialization by decreasing the use of certificates in the marketplace and encouraging investors to hold shares in DRS, thereby reducing the risk and unnecessary expense for both issuers and shareholders of issuing and holding certificates.

IV. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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.[8] The Commission's approval of the rule change should remove impediments to and perfects the mechanism of a free and open market and a national market system in that it encourages the dematerialization of securities, which should improve the process of transferring securities in the public markets. The rule change is also consistent with the protection of investors and the public interest because investors can avoid the fees for the issuance of certificates by holding their securities in street name or through DRS which are safer and more cost effective alternatives to holding securities in certificated form.

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with NYSE's obligation under Section 6 of the Act.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 6 of the Act and the rules and regulations thereunder.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NYSE–2008–112) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2853 Filed 2–10–09; 8:45 am]

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[7] Supra note 3.

[8] 15 U.S.C. 78f(b)(5).

[9] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59353; File No. SR–NYSEALTR–2008–12]

Self-Regulatory Organizations; NYSE Alternext US LLC; Order Approving Proposed Rule Change To Establish the Risk Management Gateway Service

February 3, 2009.

I. Introduction

On December 12, 2008, NYSE Alternext US LLC (''Exchange'' or ''NYSE Alternext'') 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 establish the Risk Management Gateway (''RMG'') service. The proposed rule change was published for comment in the **Federal Register** on December 31, 2008.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59144 (December 22, 2008), 73 FR 80502.

II. Description of the Proposed Rule Change

The Exchange proposes to offer, through its wholly-owned subsidiary NYSE Euronext Advanced Trading Solutions, Inc., the RMG service to NYSE Alternext members and member organizations pursuant to voluntary, contractual arrangements.[4] NYSE Transact Tools, Inc., a division of the NYSE Euronext Advanced Trading Solutions Group (''NYXATS''), owns RMG.[5] NYSE Alternext Equities Rule 123B.30 permits NYSE Alternext members and member organizations (a ''Sponsoring Member Organization'') to provide sponsored access to non-member firms or customers (''Sponsored Participants'') to Exchange trading systems. Pursuant to this proposal, the Exchange would offer RMG to facilitate a Sponsoring Member Organization's ability to monitor and supervise the trading activity of its Sponsored Participants. RMG is a risk filter that verifies orders entered by Sponsored Participants prior to the receipt of the order by the Exchange's trading systems. Specifically, RMG verifies whether a Sponsored Participant's order complies with order criteria established by the Sponsoring Member Organization for the Sponsored Participant, including, amongst other things, criteria related to order size (per order or daily quantity limits), credit limits (per order or daily value), specific symbols or end users. If the order is consistent with the parameters set by the Sponsoring Member Organization, after RMG's verification, the order would be permitted to continue along its path to the Exchange's trading systems. However, if the order did not meet the specified parameters, RMG would return the order to the Sponsored Participant.

RMG would only interact with a Sponsored Participant's order prior to the order's receipt by the Exchange's trading system. In addition, RMG would only return an order to the Sponsored Participant if the order did not meet the criteria set by the Sponsoring Member Organization. RMG would not provide order execution or trade reporting capabilities, but RMG would maintain records of all messages related to

[4] A similar service has been approved for NYSE. *See* Securities Exchange Act Release No. 59354 (February 3, 2009) (SR–NYSE–2008–101).

[5] NYXATS will host the RMG software on its infrastructure. After passing through the RMG software, each order will enter the NYSE Common Customer Gateway for connectivity to the Exchange's matching engine. According to the Exchange, in the future, NYXATS may integrate RMG into the NYSE CCG for more direct access to the Exchange's matching engine.