measures to assist funds members in validating their data once it is in the Profile database by developing reports that note probable inconsistencies among related data fields, by arranging for free access by fund members to a vendor tool that verifies Profile data, and by reaching out to fund members in the form of personal contacts and an on-line web demonstration on populating data into the Profile database.

Consistent with its efforts to expand Profile's capabilities as a comprehensive and accurate source for the mutual fund distribution industry, NSCC is now proposing to amend its rules to add an agreement that requires NSCC fund members to have taken reasonable steps to validate the accuracy of their data they submit to the Profile database. This agreement is not intended to be either a basis for independent legal rights against the fund member or is any third party intended or permitted to rely upon it as a representation to a third party or upon which a third-party can base any legal rights. NSCC requires similar agreements from its members elsewhere in its Rules and in its membership agreement, such as the agreement required of a fund member in Section 2 of Rule 51 to not submit a transaction through NSCC's Mutual Fund Services in contravention of any applicable regulatory requirements.

2. Statutory Basis

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act, as amended,[5] and the rules and regulations thereunder because the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions by modifying a 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.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NSCC 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*

NSCC 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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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–NSCC–2008–08 in 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–NSCC–2008–08. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3:30 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site, *http://www.dtcc.com*. 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–NSCC–2008–08 and should be submitted on or before January 20, 2009.

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

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–30783 Filed 12–24–08; 8:45 am]

**BILLING CODE 8011–01–P**

Investment Company Institute, in response to the NASD examination findings in which it was discovered that investors frequently failed to receive appropriate breakpoint discounts in front-end sales load mutual fund transactions. Recommendation (B) of the report stated that NSCC's Profile database should be expanded to include breakpoint aggregation terms and rules for all fund families and should include identification of both link-eligible products (for example, retirement plans, annuities, and insurance products and college savings plans with mutual fund holdings). The Report also noted that for this database to be effective, it must also be comprehensive. Accordingly, mutual funds must fully and accurately populate the database and must update the database on a timely basis.

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59106; File No. SR–NYSE–2008–112]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Discontinue Policy of Prohibiting Transfer Agents from Charging Fees for Issuing Stock Certificates

December 16, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 30, 2008, New York Stock Exchange, LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change No. SR–NYSE–2008–112. The

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

Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NYSE.[2]

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

NYSE proposes to discontinue its policy of prohibiting transfer agents for listed companies from charging fees for the issuance of stock certificates.

**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 NYSE 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 prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE proposes to discontinue its long-standing, unwritten policy of prohibiting transfer agents of NYSE listed companies from charging for the issuance of stock certificates.

The securities industry is 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''). 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. DRS also allows those 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.[4] Approximately 2,428 NYSE listed securities currently participate in DRS.

To further the industry's efforts to dematerialize, the Securities Industry and Financial Markets Association (''SIFMA''), which is one of the leaders in the movement towards dematerialization, recently sent a letter to the NYSE requesting that the NYSE discontinue its prohibition of 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 believes 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 inherent risk that the certificates may be lost, destroyed, or stolen. A SIFMA survey concluded that more than 1.2 million certificates need to be replaced because of loss, destruction, or theft each year 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 transfer agents to charge for the issuance of securities certificates imposes a considerable cost on issuers and transfer agents. Therefore, NYSE proposes to discontinue its prohibition of 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. This should further the movement to dematerialization. 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 this practice by modifying their contractual arrangements with their transfer agents.

NYSE believes that the proposal will help make the securities markets more safe and efficient by encouraging the dematerialization of securities. NYSE also believes that the proposal 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 fees associated with the issuance and processing of securities certificates.

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and particularly furthers the objectives of Section 6(b)(5) of the Act[8] in that it is 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 transactions 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. In particular, NYSE believes that the proposal removes 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. NYSE also believes that the proposal is consistent with the protection of investors and the public interest in that holding securities in or through street name and DRS provides a better alternative to holding securities in certificated form by providing investors with the ability to hold their securities in a safe and cost-effective manner without incurring the fees

[2] The exact text of the NYSE's proposed rule change can be found at *http://www.nyse.com.*

[3] The Commission has modified portions of the text of the summaries prepared by the NYSE.

[4] Section 501.00 requires listed securities to be eligible for a direct registration system operated by a clearing agency, as defined in Section 3(a)(23) of the Act, that is registered with the Commission pursuant to Section 17A(b)(2) of the Act. While currently the DRS administered by The Depository Trust Company is the only direct registration system offered by a registered clearing agency, Section 501.00 provides issuers with the option of using another qualified direct registration system if one should exist in the future. Section 501.00 does not extend to securities which are specifically permitted under that chapter to be and which are book-entry only. NYSE will waive the application of Section 501.00 to any listed company that is a foreign private issuer that submits to NYSE a letter from an independent home country counsel certifying that a home country law or regulation prohibits such compliance.

[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).

[7] 15 U.S.C. 78f(b).

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

associated with the issuance of certificates.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NYSE 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*

NYSE 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**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**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–2008–112 in 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–2008–112. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3:30 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NYSE and on the NYSE's Web site, *http://www.nyse.com.* 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–2008–112 and should be submitted on or before January 20, 2009. For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–30784 Filed 12–24–08; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59112; File No. SR–NYSE–2008–125]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC That the $8,000,000 Annual Trading Floor Regulatory Fee Allocated Among the Designated Market Maker Firms, Formerly Referred to as the ''Specialist Trading Floor Regulatory Fee,'' Be Reduced by 50% for 2008, and Eliminated Thereafter

December 17, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 15, 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 and II 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 that the $8,000,000 annual trading floor regulatory fee allocated among the Designated Market Maker firms (''DMMs'' or ''firms''),[4] formerly referred to as the ''specialist trading floor regulatory fee,'' be reduced by 50% for 2008, and eliminated thereafter.

**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

Effective retroactively to July 1, 2008, the Exchange proposes that the $8,000,000 annual trading floor regulatory fee allocated among the DMMs be reduced by 50% for 2008 (*i.e.*, $4,000,000), and eliminated thereafter. The purpose of the trading floor regulatory fee has been to defray the costs incurred by the Exchange in connection with the monitoring of trading floor activity by the Exchange's Market Surveillance Division. Effective January 1, 2008, the Exchange reduced this fee from $16,000,000 to $8,000,000.

[9] 17 CFR 200.30–3(a)(12).

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 58845 (October 24, 2008) 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46). In this rule filing, which created a new market model for the Exchange, the role of the specialist was altered in certain respects and the term ''specialist'' was replaced with the term ''Designated Market Maker ('DMM').'' Therefore, the annual trading floor regulatory fee previously paid by ''specialist'' firms will be referred to as the ''Designated Market Maker'' annual trading floor regulatory fee.