



This document is scheduled to be published in the
Federal Register on 03/15/2013 and available online at
<http://federalregister.gov/a/2013-05985>, and on FDsys.gov

8011-01p

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69101; File No. SR-NYSE-2013-19)

March 11, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the New York Stock Exchange LLC Price List to Increase the Gross FOCUS Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on February 26, 2013, New York Stock Exchange LLC (the “Exchange” or “NYSE”) 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.

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

The Exchange proposes to amend the Exchange’s Price List to increase the gross FOCUS fee (“Gross FOCUS Fee”). The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposes to amend its Price List to increase the Gross FOCUS Fee. The Exchange proposes to immediately reflect the proposed change in its Price List, but not to implement the proposed rate change until April 1, 2013.³

The Exchange currently charges each member organization a monthly Gross FOCUS Fee of \$0.105 per \$1,000 of gross revenue reported on its FOCUS Report.⁴ Member organizations are subject to certain minimum annual Gross FOCUS Fees, which are \$500 for carrying firms and designated market makers (“DMMs”), \$250 for introducing firms, and \$45 for member organizations who do not conduct a public business.

The Exchange proposes to increase the rate of the Gross FOCUS Fee from \$0.105 per \$1,000 of gross revenue to \$0.12 per \$1,000 of gross revenue.⁵ The Exchange is proposing this increase in order to offset increased regulatory expenses. In this regard, the Exchange notes that it has not increased the Gross FOCUS Fee in more than five years, since January 2008.⁶

³ The Exchange has proposed changes to the Price List, as reflected in the Exhibit 5 in a manner that would permit readers of the Price List to identify the proposed increase to the Gross FOCUS Fee that would be implemented on April 1, 2013.

⁴ FOCUS is an acronym for Financial and Operational Combined Uniform Single Report. FOCUS Reports are filed periodically with the Securities and Exchange Commission (the “Commission” or “SEC”) as SEC Form X-17A-5 pursuant to Rule 17a-5 under the Act.

⁵ The Exchange is also proposing to specify, as is the case today, that the Gross FOCUS Fee is charged monthly. The Exchange is not proposing to change the existing minimum annual Gross FOCUS Fees.

⁶ See Securities Exchange Act Release No. 56181 (August 1, 2007), 72 FR 44206 (August 7, 2007) (SR-NYSE-2007-70).

The Exchange allocates the funds collected pursuant to the Gross FOCUS Fee to fund the performance of its regulatory activities with respect to member organizations, including expenses associated with the regulatory functions performed both by NYSE Regulation, Inc. (“NYSE Regulation”) and by the Financial Industry Regulatory Authority, Inc. (“FINRA”) pursuant to a regulatory services agreement, for which FINRA is paid by NYSE Regulation.

The Exchange will monitor the amount of revenue collected from the Gross FOCUS Fee to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange expects to monitor regulatory costs and revenues on an annual basis, at a minimum. If the Exchange determines that regulatory revenues exceed regulatory costs, the Exchange would adjust the Gross FOCUS Fee downward by submitting a fee change filing to the Commission.

In addition to being included in the Exchange’s Price List, the Gross FOCUS Fee is also set forth in NYSE Rule 129, along with the applicable minimum annual fees described above.⁷ The Exchange proposes to remove the duplicative Gross FOCUS Fee text from NYSE Rule 129. As a result, NYSE Rule 129 would no longer include the Gross FOCUS Fee or the applicable annual minimums. However, NYSE Rule 129 would continue to provide that the Exchange’s Board may, from time to time, impose such charge or charges on members and member organizations as it deems appropriate to reimburse the Exchange, in whole or in part, for regulatory oversight services provided to the membership by the Exchange.⁸

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would

⁷ See, e.g., Securities Exchange Act Release No. 57139 (January 14, 2008), 73 FR 3503 (January 18, 2008) (SR-NYSE-2008-01).

⁸ The Exchange is also proposing a non-substantive, grammatical change to this text in NYSE Rule 129.

have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because the increase in the Gross FOCUS Fee would permit the Exchange to offset increased regulatory expenses related to member organizations. In this regard, the Exchange notes that it has not increased the Gross FOCUS Fee in more than five years, since January 2008.¹¹

The Exchange further believes that the level of the Gross FOCUS Fee is reasonable because it is expected to generate revenues that, when combined with the Exchange's other regulatory fees with respect to member organizations, will be less than or equal to the Exchange's regulatory costs. The Exchange believes that this is consistent with the Commission's previously stated view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

The Exchange further believes that the proposed change is equitable and not unfairly discriminatory because the Gross FOCUS Fee is assessed in an objective manner to all member organizations based on gross revenue reported on their FOCUS Reports.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ See supra note 6.

The Exchange also believes that consolidating the text related to the Gross FOCUS Fee in the Price List is reasonable, equitable and not unfairly discriminatory because it would provide member organizations with a single location to reference the applicable fees and would eliminate unnecessary duplication of related text.

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. The proposed change is not designed to address any competitive issues. Rather, the proposed change is designed to permit the Exchange to adequately fund its regulatory activities in light of increased regulatory expenses related to member organizations.

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)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ thereunder, because it establishes a due, fee, or other charge imposed by NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

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-2013-19 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2013-19. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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-2013-19 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2013-05985 Filed 03/14/2013 at 8:45 am; Publication Date: 03/15/2013]

¹⁴ 17 CFR 200.30-3(a)(12).