from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its shares and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

5. Applicants also state that because the Funds, like open-end investment companies, will continuously offer their shares and offer investors a variety of distribution channels and service fees, they will comply with rule 12b–1 and 6c–10 under the Act as if those rules applied to the Funds.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1 and 18f–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with NASD Conduct Rule 2830(d), as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–22204 Filed 11–14–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28046; 813–350]

Tower 21st Century Fund LLC, et al.; Notice of Application

November 8, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') exempting applicants from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain investment vehicles formed for the benefit of partners and key eligible current and former employees of Sonnenschein Nath & Rosenthal LLP (''Sonnenschein'' or the ''Firm'') and certain of its affiliates from certain provisions of the Act. Each such entity will be an ''employees'' securities company'' within the meaning of section 2(a)(13) of the Act.

APPLICANTS: Tower 21st Century Fund LLC (the ''Investment Fund'') and Sonnenschein.

FILING DATES: The application was filed on July 2, 2002, and amended on December 30, 2003, July 7, 2004, March 12, 2007 and November 7, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 3, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicants, c/o Paul J. Miller, Esq., Sonnenschein Nath & Rosenthal LLP, 7800 Sears Tower, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. Sonnenschein is a law firm organized as a Delaware limited liability partnership. The Firm and its ''affiliates,'' as defined in rule 12b–2 under the Securities Act of 1934 (the ''Exchange Act''), are referred to collectively as the ''Sonnenschein Group'' and individually as a ''Sonnenschein Entity.''

2. The Investment Fund is a Delaware limited liability company. The applicants may in the future offer additional pooled investment vehicles identical in all material respects (other than form of organization, investment objective and strategy) to the Investment Fund (each, an ''Additional Fund'') (together, the Investment Fund and the Additional Fund are referred to as the ''Funds''). The applicants anticipate that each Additional Fund will also be structured as a limited liability company, although an Additional Fund could be structured, either domestically or, or for tax purposes, offshore, as a general partnership, limited partnership, corporation or other business organization formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act. Each Fund will operate as a non-diversified, closed-end management investment company. The Funds will be established to enable the Partners (as defined below) and certain employees of the Sonnenschein Group to participate in certain investment opportunities that come to the attention of the Sonnenschein Group. Participation as investors in the Funds will allow the Eligible Investors (as defined below) to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or that might be beyond their individual means.

3. The Funds will each be managed by an investment committee (''Investment Committee''), each member of which shall be a Partner of the Firm. The Firm will initially appoint the members (each, a ''Manager'' of the Fund) of each Investment Committee and vacancies thereafter will be filled by vote of the remaining Managers. The Managers or any person involved in the operation of the Funds will register as an investment adviser if required under the Investment Advisers Act of 1940, or the rules under that Act.

4. Interests in the Funds (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act'') or

Regulation D under the Securities Act, or any successor rule. Interests will be offered solely to Sonnenschein Entities or persons (each an ''Eligible Investor'') who, at the time of the offer, are either ''Eligible Employees'' or ''Qualified Investment Vehicles''. ''Eligible Employees'' are (a) equity, non-equity, special and retired partners and any other category of partners of the Firm (''Partners''), (b) current and former lawyers who are of counsel to the Firm, and (c) certain current and former key employees of the Firm involved in the Firm's non-legal business activities including its administrative, finance and accounting, and marketing activities, who in each case meet the standards of an ''accredited investor'' set forth in rule 501(a)(5) or rule 501(a)(6) of Regulation D under the Securities Act.[1] A ''Qualified Investment Vehicle'' is a trust or other entity the sole beneficiaries of which are an Eligible Employee, or one or more of his or her ''Immediate Family Members'' (parent, spouse, child, brother or sister, spouse of child and any step or adoptive relationship) or as to which the Eligible Employee is settlor or the principal decision maker and the primary beneficiaries of which are one or more of his or her Immediate Family Members, which trust or other entity meets the standards of an ''accredited investor'' set forth in rule 501(a) of Regulation D under the Securities Act.[2] Prior to offering Interests to an individual, the Investment Committee must reasonably believe that the individual is a sophisticated investor capable of understanding and evaluating the risks of participating in the Fund without the benefit of regulatory safeguards. Each investor in a Fund shall be a ''Member'' of such Fund.

5. Each Eligible Investor will receive a copy of the Fund's organizational documents and the Application prior to his or her investment in such Fund. Each Fund will send its Members annual reports as soon as practicable after the end of each fiscal year. The annual report of a Fund will not contain financial statements of the Fund, since these would not provide useful information to Members because each Member will generally have differing interest in the Fund's various investments made since he or she became a Member, and will not have an economic interest in the holdings of the Fund on a consolidated basis. In addition, as soon as practicable after the end of each fiscal year, the Funds will send a report to each Member setting forth such tax information as shall be necessary for the preparation by the Member of his or her federal and state tax returns.

6. A Member will be permitted to transfer his or her Interests only to a Qualified Investment Vehicle or to an Eligible Employee as permitted by the Investment Committee in its sole discretion, or on death, by will, trust or otherwise in accordance with the laws of descent and distribution, or to another Member.[3] Capital contributions made to a Fund by its Members will be placed in a liquid capital account (''LCA'') to the credit of the contributor, pending the purchase price for an investment. Interests in the LCA may be repurchased upon request by Members, in whole or in part, by notice to the Investment Committee. Interests in separate accounts for investments may be repurchased only with the agreement of the Investment Committee. No fee of any kind will be charged in connection with the sale of Interests.

7. A Member will not be permitted to participate in any investment made by the Fund after that Member enters any of the following categories: (a) A Member who has notified the Investment Committee before the effective date of the Investment Committee's investment decision to make an investment, which notice, except in the absolute discretion of the Investment Committee, is irrevocable for one year, that that Member will not participate in future investments; (b) a Member who ceases to be an Eligible Investor when the Investment Committee determines to make an investment; (c) a Member who the Investment Committee determines is no longer able to bear the economic risk of further investment; (d) a Member whose aliquot share would be below a required minimum; (e) a Member whose continued membership would have adverse tax consequences to the Fund; or (f) a Member whose continued investment would violate applicable law or regulation.

8. Each Fund will bear its own expenses. The Firm may be reimbursed by a Fund for reasonable services and necessary out-of-pocket costs directly associated with the organization and operation of the Funds, including administrative and overhead expenses. There will be no allocation of any of the Firm's operating expenses to a Fund. No management fee or other compensation will be paid by the Fund or its Members to the Investment Committee or the Managers for their services in such capacity.

9. The Funds may borrow from Sonnenschein Group, a Partner, or a bank or other financial institution, provided that a Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Fund (other than short-term paper). Any borrowings by a Fund will be non-recourse to Members. If a Sonnenschein Entity or a Partner makes a loan to the Funds, the interest rate on the loan will be no less favorable to the Funds than the rate that could be obtained on an arm's length basis.

10. A Fund will not acquire any security issued by a registered investment company if immediately after the acquisition the Fund would own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

[1] Any such former Partners, of counsel or employees will maintain a sufficiently close nexus with the Firm so as to preserve the community of interest between the Eligible Employee and the Firm.

[2] The inclusion of entities controlled by an Eligible Employee in the definition of Eligible Investor is intended to enable Eligible Employees and their Immediate Family Members to make investments in the Funds through private investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion and control over these investment vehicles, thereby creating a close nexus between the Firm and these investment vehicles.

[3] No person may become a transferee or substitute Member unless that person is a member of one of the classes listed in section 2(a)(13) of the Act, except that a legal representative or executor may hold an interest in a Fund in order to settle the estate of a decedent or bankrupt for similar purposes.

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit a Fund to: (a) Purchase, from the Firm or any affiliated person thereof, securities or interests in properties previously acquired for the account of the Firm or any affiliated person thereof; (b) sell, to the Firm or any affiliated person thereof, securities or interests in properties previously acquired by the Funds; (c) invest in companies, partnerships or other investment vehicles offered, sponsored or managed by the Firm or any affiliated person thereof; (d) to invest in securities of issuers for which the Firm or any affiliated person thereof have performed services and from which they may have received fees; (e) purchase interests in any company or other investment vehicle (i) in which the Firm owns 5% or more of the voting securities, or (ii) that otherwise is an affiliated person of the Fund (or an affiliated person of such a person) or an affiliated person of the Firm; and (f) to participate as a selling securityholder in a public offering in which the Firm or any affiliated person thereof acts as or represents as counsel a member of the selling group or the issuer or underwriter.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that the Members will be informed by the offering materials for a Fund of the possible extent of the Fund's dealings with the Firm or any affiliated person thereof. Applicants also state that, as financially sophisticated professionals, Eligible Investors will be able to evaluate the attendant risks. Applicants assert that the community of interest among the Members and the Firm will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d-1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Fund, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Fund is a participant. Joint transactions in which a Fund may participate could include the following: (a) An investment by one or more Funds in a security in which the Firm or its affiliated person (including Partners of the Firm), or another Fund, is a participant, or with respect to which the Firm or an affiliated person is entitled to receive fees (including, but not limited to, legal fees, consulting fees, or other economic benefits or interests); (b) an investment by one or more Funds in an investment vehicle sponsored, offered or managed by the Firm; and (c) an investment by one or more Funds in a security in which an affiliate is or may become a participant.

6. Applicants state that compliance with section 17(d) would cause the Funds to forego investment opportunities simply because a Member, the Firm or other affiliates of the Fund also had made or contemplated making a similar investment. In addition, because investment opportunities of the types considered by the Funds often require that each participant make available funds in an amount that may be substantially greater than that available to the investor alone, there may be certain attractive opportunities of which a Fund may be unable to take advantage except as a co-participant with other persons, including affiliates. Applicants note that, in light of the Firm's purpose of establishing the Funds so as to reward Eligible Investors and to attract highly qualified personnel to the Firm, the possibility is minimal that an affiliated party investor will enter into a transaction with a Fund with the intent of disadvantaging the Fund. Finally, applicants contend that the possibility that a Fund may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 4 below. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 allows an investment company to act as self-custodian, subject to certain requirements. Applicants request an exemption from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Fund's investments may be kept in the locked files of the Firm or of a Partner; (b) for purposes of paragraph (d) of the rule, (i) Partners and employees of the Firm will be deemed employees of the Funds, (ii) each Manager of a Fund will be deemed to be an officer of such Fund; and (iii) the Investment Committee of a Fund will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedures under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Firm. Applicants assert that the securities held by the Funds are most suitably kept in the Firm's files, where they can be referred to as necessary.

8. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons (''disinterested directors'') take certain actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g–1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Paragraph (h) of rule 17g–1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Paragraph (j) of rule 17g–1 exempts a joint insured bond provided and maintained by an investment company and one or more other parties from section 17(d) of the Act and the rules thereunder. Rule 17g–1(j)(3) requires that the board of directors of an investment company satisfy the fund governance standards defined in rule 0–1(a)(7).

9. Applicants request an exemption from section 17(g) and rule 17g–1 to the extent necessary to permit each Fund to comply with rule 17g–1 without the

necessity of having a majority of the disinterested directors take such action and make such approvals as are set forth in the rule. Specifically, each Fund will comply by having the Investment Committee take such actions and make such approvals as are set forth in rule 17g–1. Applicants state that, because the Managers will be interested persons of the Fund, a Fund could not comply with rule 17g–1 without the requested relief. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g–1(j)(3). Applicants believe the filing requirements are burdensome and unnecessary as applied to the Funds. The Investment Committee will maintain the materials otherwise required to be filed with the Commission by rule 17g–1(g) and agree that all such material will be subject to examination by the Commission and its staff. The Investment Committee will designate a person to maintain the records otherwise required to be filed with the Commission under paragraph (g) of the rule. Applicants also state that the notices otherwise required to be given to the board of directors would be unnecessary as the Funds will not have boards of directors. The Funds will comply with all other requirements of rule 17g–1.

10. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the requirements of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Funds.

11. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Funds and would entail administrative and legal costs that outweigh any benefit to the Members. Applicants request exemptive relief to the extent necessary to permit each Fund to report annually to its Members. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the Managers of each Fund and any other persons who may be deemed members of an advisory board of a Fund from filing Forms 3, 4 and 5 under section 16 of the Exchange Act with respect to their ownership of Interests in the Fund. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

12. Rule 38a–1 requires investment companies to adopt, implement and periodically review written policies and procedures reasonably designed to prevent violation of the federal securities laws and to appoint a chief compliance officer. The Funds will comply with rule 38a–1(a), (c) and (d), except that (a) since the Funds do not have boards of directors, the Investment Committee will fulfill the responsibilities assigned to a Fund's board of directors under the rule, and (b) since the Managers are not disinterested persons of the Funds, approval by a majority of the disinterested board members required by rule 38a–1 will not be obtained.

Applicants' Conditions

The applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction to which a Fund is a party otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (each, a ''Section 17 Transaction'') will be effected only if the Investment Committee determines that: (a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Members of the participating Fund and do not involve overreaching of the Fund or its Members on the part of any person concerned; and (b) the Section 17 Transaction is consistent with the interests of the Members of the participating Fund, the Fund's organizational documents and the Fund's reports to its Members.

In addition, the Investment Committee will record and preserve a description of such Section 17 Transactions, its findings, the information or materials upon which its findings are based and the basis therefor. All such records will be maintained for the life of a Fund and at least six years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. If purchases or sales are made by a Fund from or to an entity affiliated with the Fund by reason of a Partner or employee of the Sonnenschein Group (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

3. The Investment Committee will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of such a person, promoter, or principal underwriter.

4. The Investment Committee will not acquire for a Fund any investment in which a Co-Investor, as defined below, has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing all or part of its investment, (a) gives the Investment Committee sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the participating Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with the Co-Investor. The term ''Co-Investor'' with respect to any Fund means any person who is (a) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Fund; (b) the Sonnenschein Group; (c) a Partner, lawyer, or employee of the Sonnenschein Group; (d) an investment vehicle offered, sponsored, or managed by the Firm or an affiliated person of the Firm; or (e) an entity in which a Sonnenschein Entity acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any

company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to Immediate Family Members of the Co-Investor or a trust established for any such Immediate Family Member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder.

5. The Investment Committee of each Fund will send to each Member who had an interest in that Fund at any time during the fiscal year then ended, Fund financial statements. Such financial statements may be unaudited. At the end of each fiscal year, the Investment Committee will make a valuation or have a valuation made of all of the assets of the Fund, as of such fiscal year end in a manner consistent with the customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year of each Fund, the Managers of the Fund shall send a report to each person who was a Fund Investor at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state income tax returns and a report of the investment activities of such Fund during such year.

6. Each Fund and its Investment Committee will maintain and preserve, for the life of that Fund and at least six years thereafter, such accounts, books and other documents as constitute the record forming the basis for the financial statements and annual reports of such Fund to be provided to its Members, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–22297 Filed 11–14–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56766; File No. SR–Amex–2007–114]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Collection of the Activity Assessment Fee

November 7, 2007.

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 October 26, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Amex. Amex filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2)[4] thereunder, as establishing or changing a due, fee, or other charge applicable to a member, which renders the proposed rule change effective upon filing with the Commission. 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 Amex Rule 393 and the Amex Fee Schedule to revise the procedures by which the Exchange collects fees from its members and member organizations to offset its fee obligations under Section 31 of the Act.[5] The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, Amex's principal office, and 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, Amex 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. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Background

Effective August 6, 2004, the Commission established new procedures that govern the calculation, payment, and collection of fees and assessments on securities transactions owed by each national securities exchange and association.[6] Pursuant to the new procedures, each exchange and association must provide data on its securities transactions to the Commission using Form R31. Generally, only data obtained from a registered clearing agency may be submitted to the Commission for this purpose.[7] The Commission in turn, calculates the amount of fees and assessments based on the aggregate dollar volume of these transactions and the fee rate in effect at that time and bills the exchange or association that amount twice annually.

Historically, the Exchange has funded the payment of these fees by requiring members pursuant to Rule 393 to: (i) Report on a monthly basis the aggregate volume of equity sales, aggregate sales price of those equity sales, and the amount of the fee owed; and (ii) submit along with the monthly report a check in the amount of the fee owed. The funds collected by the Exchange pursuant to Rule 393 for all equity securities are then remitted to the Commission in accordance with Rule 31. In addition, the Exchange uses the OCC to collect the funds to offset the payment of Section 31 fees owed based on the sales of options and sales of securities resulting from the exercise of physical delivery options. OCC collects fees directly from Exchange members through their clearing firms and remits the amount collected to the Commission on behalf of Amex.

Proposal

The Exchange now proposes to amend Rule 393 and the Amex Fee Schedule to revise the current procedures used to

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78ee.

[6] *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 1060 (July 7, 2004).

[7] In connection with these new procedures the Commission concluded that the data collected by a registered clearing agency is the most reliable and auditable source for covered sales information. The National Securities Clearing Corporation (''NSCC'') is the primary source of data for equity transactions and the Options Clearing Corporation (''OCC'') is the primary source of data for option transactions.